Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

B E T W E E N:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL~~, AARON JOE~~ and RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

MOTION RECORD OF THE PLAINTIFFS

MOTION FOR SETTLEMENT APPROVAL

August 27, 2021

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SOLICITORS FOR THE DEFENDANT

Court File No. T-1542-12

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FEDERAL COURT

B E T W E E N:

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INDEX

TAB 1

Court File No. T-1542-12

CLASS PROCEEDING
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PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

NOTICE OF MOTION

(Motion for Settlement Approval)

TAKE NOTICE THAT the Plaintiffs will make a motion to the Court, to commence at 9:30 a.m. on September 7, 2021, at the Federal Court, in the City of Vancouver, in the Province of British Columbia.

THE MOTION IS FOR:

1. a declaration that the Settlement Agreement dated June 4, 2021 (the "Settlement Agreement"), attached hereto as Schedule "A", is a fair and reasonable settlement of the

claims of the Survivor and Descendent Classes, and is in the best interests of the Survivor and Descendant Classes;

2. an order approving the Settlement Agreement pursuant to Rule 334.29(1) of the *Federal Courts Rules*, SOR/98-106, and directing that it shall be implemented in accordance with its terms and granting the comprehensive release in favour of the Defendant that is set out therein at ss. 42.01 and 43.01;

3. an order and declaration that the Settlement Agreement is binding on the Defendant and on all members of the Survivor and Descendant Classes, including those Class Members who are minors or mentally incapable;

4. an order dismissing the claims of the Survivor and Descendant Class Members as against the Defendant, with prejudice and without costs;

5. an order appointing Deloitte LLP as the Claims Administrator, as defined in the Settlement Agreement, to carry out the duties assigned to that role in the Settlement Agreement;

6. an order that the fees, disbursements, and applicable taxes of the Claims Administrator shall be paid by Canada in their entirety, as set out in the Settlement Agreement;

7. a declaration that no person may bring any action or commence a proceeding against the Claims Administrator, or any of their employees, agents, partners, associates, representatives, successors or assigns, for any matter in any way relating to the implementation or administration of the Settlement Agreement, except with leave of this Court on notice to all affected parties;

8. contingent on the Court's approval of the Settlement Agreement, an order amending the Certification Order of Justice Harrington, dated June 18, 2015, in the form attached hereto as Schedule "B";

9. contingent on the Court's approval of the Settlement Agreement, an order granting the Plaintiffs leave to amend the First Re-Amended Statement of Claim filed June 26, 2015, in the form attached hereto as Schedule "C";

10. an order that, if the Settlement Agreement is not approved, the parties are all restored, without prejudice, to their respective positions as such existed on February 1, 2021, prior to commencement of settlement negotiations; and

11. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. this action was commenced on August 15, 2012. An Amended Statement of Claim was filed June 17, 2013, and a First Re-Amended Statement of Claim (the "Claim") was filed on June 26, 2015;

2. by order of this Court dated June 26, 2015, this action was certified as a class proceeding for a Class Period of 1920 to 1997, and on behalf of three subclasses:

> Survivor Class: all Aboriginal persons who attended as a student or for educational purposes for any period at a Residential School, during the Class Period, excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the Indian Residential Schools Settlement Agreement;

Descendant Class: the first generation of persons descended from Survivor Class Members or persons who were legally or traditionally adopted by a Survivor Class Member or their spouse;

Band Class: the Tk'emlúps te Secwépemc Indian Band and the Sechelt Indian Band and any other Indian Band(s) which:

(i) has or had some members who are or were members of the Survivor Class, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically Identified Residential Schools;

3. this action seeks recovery: on behalf of the Survivor Class for the loss of Indigenous language and culture that they endured while attending Residential Schools; on behalf of the Descendant Class for the loss of Indigenous language and culture that they endured as a result of their parents' attendance at Residential Schools; and on behalf of the Band Class for the collective harms they suffered as a result of Survivors' attendance at Residential Schools;

4. after almost a decade of hard-fought litigation, the parties executed the Settlement Agreement, that will, if approved, resolve the claims of the Survivor and Descendant Classes in their entirety;

5. amongst other terms, the Settlement Agreement provides that:

(i) each eligible Survivor Class Member who makes a claim, and each person who makes a valid claim on behalf of a deceased individual who falls within the definition of a Survivor Class Member and who was alive as of May 30,

2005, will receive a $10,000 Day Scholar Compensation Payment, with no deductions and no limit or maximum "cap" on the total number of individuals who can receive Day Scholar Compensation Payments; and

(ii) a $50 million Day Scholars Revitalization Fund will be established to support healing, wellness, education, language, culture, heritage, and commemoration projects for the benefit of Survivor and Descendant Class Members;

6. the Settlement Agreement is subject to this Court's approval, pursuant to Rule 334.29 of the *Federal Court Rules*, before it is binding;

7. the Settlement Agreement is the result of intensive negotiations by experienced class action counsel, and is fair, reasonable, and in the best interests of the Survivor and Descendant Classes;

8. the Settlement Agreement is supported by the Representative Plaintiffs;

9. the Survivor and Descendant Class Members were provided with notice of the proposed settlement and settlement approval motion hearing in accordance with the Order of Justice McDonald dated June 10, 2021;

10. Deloitte LLP is a qualified and experienced class action administrator and has agreed to act as the Claims Administrator and to fulfill the Claims Administrator's duties as set out in the Settlement Agreement;

11. if the Court approves the Settlement Agreement, the Plaintiffs will bring further motions for: approval of the Claim Form and Estate Claim Form, approval of the short-form and long-form Notices of Settlement Approval, approval of the plan for dissemination of the Notices of Settlement Approval, and appointing a Notice Administrator to perform the functions set out in the Notice Plan;

12. the Settlement Agreement does not affect the claims of the Band Class, which will continue to be litigated. If the Settlement Agreement is approved, it will be appropriate for the Certification Order and the Claim to be amended to reflect that only the Band Class claims remain in dispute;

13. Rule 334.29 of the *Federal Courts Rules*, SOR/98-106;

14. The motion is made on consent and by agreement of the Defendant and the Plaintiffs; and

15. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the affidavit of Charlotte Anne Victorine Gilbert, sworn August 23, 2021;

2. the affidavit of Diena Marie Jules, sworn August 23, 2021;

3. the affidavit of Daphne Paul, sworn August 23, 2021;

4. the affidavit of Darlene Matilda Bulpit, sworn August 23, 2021;

5. the affidavit of Rita Poulsen, sworn August 23, 2021;

6. the affidavit of Amanda Deanne Big Sorrel Horse, sworn August 23, 2021;

7. the affidavit of Peter Grant, sworn August 25, 2021;

8. the affidavit of Martin Reiher, affirmed August 12, 2021;

9. the affidavit of Rita Aggarwala, sworn August 20, 2021;

10. the affidavit of Joelle Gott, sworn August 25, 2021;

11. the affidavit of Roanne Argyle, sworn August 23, 2021;

12. the pleadings and proceedings herein; and

13. such further and other evidence as counsel may advise and this Honourable Court may permit.

August 27, 2021

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SOLICITORS FOR THE DEFENDANT

Court File No. T-1542-12

FEDERAL COURT

CLASS PROCEEDING

BETWEEN:

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and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

DAY SCHOLARS SURVIVOR AND DESCENDANT CLASS SETTLEMENT AGREEMENT

WHEREAS:

A. Canada and certain religious organizations operated Indian Residential Schools for the education of Indigenous children, in which children suffered harms.

B. On May 8, 2006, Canada entered into the Indian Residential Schools Settlement Agreement, which provided for compensation and other benefits, including the Common Experience Payment, in relation to attendance at Indian Residential Schools.

C. On August 15, 2012, the Plaintiffs filed a putative class action in the Federal Court of Canada bearing Court File No. T-1542-12, *Gottfriedson et al. v. Her Majesty*

the Queen in Right of Canada (the "Action"). An Amended Statement of Claim was filed on June 11, 2013, and a First Re-Amended Statement of Claim was filed on June 26, 2015.

D. The Action was certified as a class proceeding by order of the Federal Court dated June 18, 2015, on behalf of three subclasses: the Survivor Class, the Descendant Class, and the Band Class.

E. The Parties intend there to be a fair and comprehensive settlement of the claims of the Survivor Class and Descendant Class, and further desire the promotion of truth, healing, education, commemoration, and reconciliation. They have negotiated this Agreement with these objectives in mind.

F. Subject to the Settlement Approval Order, the claims of the Survivor Class Members and Descendant Class Members shall be settled on the terms contained in this Agreement.

G. The Parties intend that the claims of the Band Class shall continue, notwithstanding the settlement of the claims of the Survivor Class and Descendant Class, and intend that this Agreement shall not prejudice the rights of the Parties in the continued litigation of the Band Class Members' claims in the Action.

NOW THEREFORE in consideration of the mutual agreements, covenants, and undertakings set out herein, the Parties agree as follows:

INTERPRETATION & EFFECTIVE DATE

1. Definitions

1.01 In this Agreement, the following definitions apply:

"Aboriginal" or "Aboriginal Person" means a person whose rights are recognized and affirmed by the *Constitution Act, 1982*, s. 35;

“Action” means the certified class proceeding bearing Court File No. T-1542-12, *Gottfriedson et al. v. Her Majesty the Queen in Right of Canada*;

“Agreement” means this settlement agreement, including the schedules attached hereto;

“Approval Date” means the date the **Court** issues its **Approval Order**;

“Approval Order” means the order or orders of the **Court** approving this **Agreement**;

“Band Class” means the Tk’emlúps te Secwépmec Indian Band and the Sechelt Indian Band and any other Indian Band(s) which:

a. has or had some members who are or were members of the **Survivor Class**, or in whose community an **Indian Residential School** is located; and

b. is specifically added to the **Action** with one or more **Indian Residential Schools**;

“Business Day” means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the province or territory in which the person who needs to take action pursuant to this **Agreement** is situated or a holiday under the federal laws of Canada applicable in the said province or territory;

“Canada” means Her Majesty the Queen in Right of Canada, the Attorney General of Canada, and their legal representatives, employees, agents, servants, predecessors, successors, executors, administrators, heirs, and assigns;

“Certification Order” means the order of the **Court** dated June 18, 2015, certifying this **Action** under the *Federal Courts Rules*, attached as Schedule B;

“Claim” means an application/request for compensation made by a **Claimant** under this **Agreement** by submitting a **Claim Form**, including any related documentation, to the **Claims Administrator**;

“Claim Form” means the application for a **Day Scholar Compensation Payment** that must be submitted by a **Claimant** to the **Claims Administrator** by the **Claims Deadline,** the form and content of which will be approved by the **Court** prior to the **Implementation Date**;

“Claimant” means a **Day Scholar**, their **Personal Representative**, or, in the case of a Day Scholar who died on or after May 30, 2005, their **Designated Representative**, who makes or continues a **Claim**;

“Claims Administrator” means such entity as may be designated by the **Parties** from time to time and appointed by the **Court** to carry out the duties assigned to it in this **Agreement**;

“Claims Deadline” means the date which is twenty-one (21) months after the **Implementation Date**;

“Claims Process” means the process outlined in this **Agreement**, including Schedule C and related forms, for the submission of **Claims**, assessment of eligibility, and payment of **Day Scholar Compensation Payments** to **Claimants**;

“Class Counsel” means Peter R. Grant Law Corporation, Diane Soroka Avocate Inc., and Waddell Phillips Professional Corporation;

“Class Period” means the period from and including January 1, 1920, and ending on December 31, 1997;

“Court” means the Federal Court unless the context otherwise requires;

“Day Scholar” means a **Survivor Class Member** who attended but did not simultaneously reside at an **Indian Residential School** that is listed in Schedule E, either on List 1 or List 2, during the time periods indicated therein, for any part of a **School Year**;

“Day Scholar Compensation Payment” means the ten thousand dollar ($10,000) payment referred to in section 25.01 herein;

“Day Scholars Revitalization Fund” or “Fund” means the Fund established in section 21.01 herein, and as described in the **Fund Distribution Plan**;

“Day Scholars Revitalization Society” or “Society” means the not-for-profit society established pursuant to section 22.01 herein;

“Descendant Class” means the first generation of persons descended from **Survivor Class Members** or persons who were legally or traditionally adopted by a **Survivor Class Member** or their spouse;

“Descendant Class Member” means an individual who falls within the definition of the **Descendant Class**;

“Designated Representative” means the individual designated by the validly completed Designated Representative Form, the form and content of which will be approved by the **Court** prior to the **Implementation Date**;

“Fee Agreement” means the **Parties**’ standalone legal agreement regarding legal fees, costs, honoraria and disbursements;

“Fund Distribution Plan” is the plan for the distribution of funds allocated to the **Day Scholars Revitalization Fund**, attached as Schedule F;

“Independent Reviewer” means the individual(s) appointed by the **Court** to determine review reconsideration requests from **Claimants** whose **Claims** were denied by the **Claims Administrator**, in accordance with the **Claims Process**;

“Indian Residential Schools” means the institutions identified in the list of Indian Residential Schools attached as Schedule “A” to the **Certification Order**, as that list may be amended by further Order of the **Court**;

“Implementation Date” means the latest of:

a. the day following the last day on which an appeal or motion for leave to appeal the **Approval Order** may be brought; and

b. the date of the final determination of any appeal brought in relation to the **Approval Order**;

"IRSSA" means the Indian Residential Schools Settlement Agreement dated May 8, 2006;

"McLean Settlement" means the McLean Federal Indian Day Schools Settlement Agreement entered into on November 30, 2018, in the matter of *McLean et al. v. Her Majesty the Queen in Right of Canada*, bearing Court File No. T-2169-16;

"Opt Out" means any individual who would otherwise fall within the definition of a **Survivor Class Member** or **Descendant Class Member** who previously validly opted out of the **Action**;

"Parties" means the signatories to this **Agreement**;

"Person Under Disability" means

a. a minor as defined by the legislation of that person's province or territory of residence; or

b. a person who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity and for whom a **Personal Representative** has been appointed under the applicable legislation of that person's province or territory of residence;

"Personal Representative" means the person appointed under the applicable legislation of that person's province or territory of residence to manage or make reasonable judgments or decisions in respect of the affairs of a **Person Under Disability**;

"Released Claims" means those causes of action, liabilities, demands, and claims released pursuant to the **Approval Order**, as set out in section 42.01 herein;

“School Year” means from September 1 of one calendar year to August 31 of the subsequent calendar year;

“Settlement Agreement Notice Plan” means the Notice Plan advising **Survivor Class Members** and **Descendant Class Members** of the Agreement;

“Settlement Approval Notice Plan” means the Notice Plan advising **Survivor Class Members** and **Descendant Class Members** of the **Approval Order**.

“Survivor Class” means all **Aboriginal Persons** who attended as a student or for educational purposes for any period at an **Indian Residential School** during the **Class Period**, excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the **IRSSA**;

“Survivor Class Member” means an individual who falls within the definition of the **Survivor Class** and is not an **Opt Out**; and

“**Ultimate Claims Deadline**” means the date which is three (3) months after the **Claims Deadline**.

2. No Admission of Liability or Fact

2.01 This Agreement shall not be construed as an admission by Canada, nor a finding by the Court, of any fact within, or liability by Canada for any of the claims asserted in the Plaintiffs’ claims and/or pleadings in the Action as they are currently worded in the First Re-Amended Statement of Claim, were worded in previous versions, or may be worded in the future.

2.02 For greater certainty, and without limiting the foregoing, the Parties agree that, in the further litigation of the Band Class claims, the Parties will not argue that the existence of this Agreement or any terms herein are admissions by the Parties, or findings by the Court, of any fact or law, or an admission of liability by Canada, relevant to the claims asserted by the Band Class in the Action, or

a settlement or resolution of the Band Class claims in the Action. Nothing in the above, however, or anything found elsewhere in this Agreement prevents the Parties from referring to or otherwise relying on the existence of the Agreement and the compensation paid or payable under it in any proceeding, if relevant.

3. Headings

3.01 The division of this Agreement into paragraphs, the use of headings, and the appending of Schedules are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

4. Extended Meanings

4.01 In this Agreement, words importing the singular number include the plural and *vice versa*, words importing any gender include all genders, and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations, and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

5. No *Contra Proferentem*

5.01 The Parties acknowledge that they have reviewed and participated in settling the terms of this Agreement and they agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Parties is not applicable in interpreting this Agreement.

6. Statutory References

6.01 In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date thereof or as the same may from

time to time have been amended, re-enacted, or replaced, and includes any regulations made thereunder.

7. Day for Any Action

7.01 Where the time on or by which any action required to be taken hereunder expires or falls on a day that is not a Business Day, such action may be done on the next succeeding day that is a Business Day.

8. Final Order

8.01 For the purpose of this Agreement, a judgment or order becomes final when the time for appealing or seeking leave to appeal the judgment or order has expired without an appeal being taken or leave being sought or, in the event that an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals as may be taken have been disposed of and the time for further appeal, if any, has expired.

9. Currency

9.01 All references to currency herein are to lawful money of Canada.

10. Compensation Inclusive

10.01 The amounts payable under this Agreement are inclusive of any pre-judgment or post-judgment interest or other amounts that may be claimed by Survivor Class Members or Descendant Class Members against Canada arising out of the Released Claims.

11. Schedules

11.01 The following Schedules to this Agreement are incorporated into and form part of this Agreement:

Schedule A: First Re-Amended Statement of Claim, filed June 26, 2015

Schedule B: Certification Order, dated June 18, 2015

Schedule C: Claims Process

Schedule D: Estate Claims Process

Schedule E: Lists of Indian Residential Schools for Claims Process

Schedule F: Day Scholars Revitalization Fund Distribution Plan

Schedule G: Draft Amended Certification Order (re: Band Class claims)

Schedule H: Draft Second Re-Amended Statement of Claim, draft without delineations of prior or currently proposed amendments (re: Band Class claims)

12. No Other Obligations

12.01 All actions, causes of action, liabilities, claims, and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses, and interest which any Survivor Class Member or Descendant Class Member ever had, now has, or may hereafter have arising in relation to the Action against Canada, whether such claims were made or could have been made in any proceeding, will be finally settled based on the terms and conditions set out in this Agreement upon the date of the Approval Order, and Canada will have no further liability except as set out in this Agreement.

13. Entire Agreement

13.01 This Agreement constitutes the entire agreement among the Parties with respect to the Survivor Class and Descendant Class claims asserted in the Action and cancels and supersedes any prior or other understandings and agreements between or among the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied, or statutory between or among the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Agreement.

14. Benefit of the Agreement

14.01 This Agreement will enure to the benefit of and be binding upon the Parties, the Survivor Class Members, the Descendant Class Members, and their respective heirs, estates, Designated Representatives and Personal Representatives.

15. Band Class Claim

15.01 Nothing in this Agreement is intended to, or does prejudice the rights of the Parties in the continued litigation of the Band Class claims in the Action.

15.02 The Band Class claims that will continue are set out in the Draft Amended Certification Order (re: Band Class claims), attached as Schedule G and the Draft Second Re-Amended Statement of Claim (re: Band Class claims), attached as Schedule H.

16. Applicable Law

16.01 This Agreement will be governed by and construed in accordance with the laws of the province or territory where the Survivor Class Member or Descendant Class Member resides and the laws of Canada applicable therein.

17. Counterparts

17.01 This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

18. Official Languages

18.01 Canada will prepare a French translation of this Agreement for use at the settlement approval hearing before the Court. As soon as practicable after the execution of this Agreement, Canada will arrange for the preparation of an authoritative French version. The French version shall be of equal weight and force at law.

19. Date When Binding and Effective

19.01 This Agreement will become binding and effective on and after the Implementation Date on the Parties and all Survivor Class Members and Descendant Class Members. The Approval Order of the Court constitutes deemed approval of this Agreement by all Survivor Class Members and Descendant Class Members.

20. Effective in Entirety

20.01 None of the provisions of this Agreement will become effective unless and until the Court approves this Agreement.

THE DAY SCHOLARS REVITALIZATION FUND

21. The Day Scholars Revitalization Fund

21.01 Canada agrees to provide the amount of fifty million dollars ($50,000,000.00) to the Day Scholars Revitalization Fund, to support healing, wellness, education,

language, culture, heritage and commemoration activities for the Survivor Class Members and Descendant Class Members.

21.02 The monies described in section 21.01 herein will be paid by Canada to the Day Scholars Revitalization Society within thirty (30) days after the Implementation Date.

THE DAY SCHOLARS REVITALIZATION SOCIETY

22. Establishing the Day Scholars Revitalization Society

22.01 The Parties agree that the Day Scholars Revitalization Society will use the Fund to support healing, wellness, education, language, culture, and commemoration activities for the Survivor Class Members and the Descendant Class Members. The monies for the Fund shall be held by the Day Scholars Revitalization Society, which will be established as a “not for profit” entity under the British Columbia *Societies Act*, S.B.C. 2015, c. 18 or analogous federal legislation or legislation in any of the provinces or territories prior to the Implementation Date, and will be independent of the Government of Canada, although Canada shall have the right to appoint one representative to the Society Board of Directors.

22.02 A draft Day Scholars Revitalization Fund Plan is attached as Schedule F.

22.03 The Fund is intended to benefit the Survivor Class Members and Descendant Class Members and to complement and not duplicate any federal government programs.

23. Directors

23.01 The Society will have five first directors, to be appointed by the Parties.

23.02 The Board of the Society will have national representation and will include one director appointed by Canada. The representative appointed by Canada will not be an employee or public servant of Canada.

24. Responsibilities of Directors

24.01 The Society's Directors shall manage and/or supervise the management of the activities and affairs of the Day Scholars Revitalization Society, which will receive, hold, invest, manage, and disburse the monies described in the Fund provisions of this Agreement and any other monies transferred to the Fund under this Agreement for the purposes of funding healing, wellness, education, language, culture, heritage and commemoration activities for the Survivor Class Members and Descendant Class Members.

COMPENSATION FOR INDIVIDUAL CLAIMANTS

25. Day Scholar Compensation Payments

25.01 Canada will pay the sum of ten thousand dollars ($10,000) as non-pecuniary general damages, with no reductions whatsoever, to each Claimant whose Claim is approved pursuant to the Claims Process.

25.02 A Claimant is entitled to a Day Scholar Compensation Payment, and their Claim shall be approved, if the Claimant satisfies the following Eligibility Criteria:

a. the Claim is made with respect to a Day Scholar who was alive on May 30, 2005;

b. the Claim is delivered to the Claims Administrator prior to the Ultimate Claims Deadline;

c. the Claim is made with respect to that Day Scholar's attendance at an Indian Residential School that is listed in Schedule E on either List 1 or List 2 during the time periods indicated therein, for any part of a specific School Year that meets all three of the following conditions, namely that it is a School Year for which the Day Scholar or their executor, representative, or heir who applied in place of the Day Scholar:

i. has not received a Common Experience Payment under the IRSSA;

ii. has not received and will not receive compensation under the McLean Settlement; and

iii. has not received compensation under any other settlement with respect to a school listed on Schedule K to the McLean Settlement.

25.03 For greater clarity, for any School Year during which a Survivor Class Member was eligible for, but did not make a claim for the Common Experience Payment under the IRSSA, no Claim for a Day Scholar Compensation Payment under this Agreement may be made in regard to that Survivor Class Member for that School Year.

26. No Cap on Claims

26.01 There is no limit or cap on Canada's total obligation to pay approved Claims. All approved Claims will be paid fully by Canada.

27. Transfer of Monies by Canada

27.01 Canada will transfer monies directly to the Claims Administrator to provide for payment of approved Claims, in accordance with the Claims Process.

28. Social Benefits

28.01 Canada will make its best efforts to obtain the agreement of the provinces and territories that the receipt of any payments pursuant to this Agreement will not affect the quantity, nature, or duration of any social benefits or social assistance benefits payable to a Claimant pursuant to any legislation of any province or territory of Canada.

28.02 Further, Canada will make its best efforts to obtain the agreement of the necessary Departments of the Government of Canada that the receipt of any

payments pursuant to this Agreement will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Claimant pursuant to any federal social benefit programs, including Old Age Security and Canada Pension Plan.

IMPLEMENTATION OF THIS AGREEMENT

29. The Action

29.01 The First Re-Amended Statement of Claim in the Action is attached as Schedule A.

29.02 The Parties agree that the Plaintiffs will seek leave of the Court, on consent and as part of the application for Court approval of this Agreement, to file the Draft Second Re-Amended Statement of Claim in the Action, which is attached as Schedule H.

30. Certification Order

30.01 The Certification Order is attached as Schedule B.

30.02 The Parties agree that the Plaintiffs will seek an Order from the Court, on consent and as part of the application for Court approval of this Agreement, issuing the Amended Certification Order, which is attached as Schedule G.

31. Notice Plans

31.01 The Parties agree that the Plaintiffs will seek an Order from the Court, on consent, approving a Settlement Agreement Notice Plan, whereby Survivor Class Members and Descendant Class Members will be provided with notice of the Agreement, its terms, how to obtain more information, and how to share their feedback in advance of, and during, the settlement approval hearing.

31.02 The Parties further agree that the Plaintiffs will seek an Order from the Court, on consent and as part of the application for Court approval of this Agreement, approving a Settlement Approval Notice Plan, which will provide Survivor Class Members and Descendant Class Members with notice of the Approval Order and how a Claim for compensation can be made.

31.03 Canada agrees to pay for the implementation of the Settlement Agreement Notice Plan and the Settlement Approval Notice Plan.

CLAIMS MADE BY PERSONAL REPRESENTATIVES AND DESIGNATED REPRESENTATIVES

32. Compensation If Deceased

32.01 Where a Day Scholar has died on or after May 30, 2005, a Claim may be brought on behalf of the deceased Day Scholar's estate or heirs in accordance with the Estate Claims Process set out in Schedule D.

33. Person Under Disability

33.01 If a Day Scholar submits a Claim to the Claims Administrator prior to the Ultimate Claims Deadline and the Claim is approved but the Day Scholar is or becomes a Person Under Disability prior to their receipt of a Day Scholar Compensation Payment, that payment will be made to the Personal Representative of the Day Scholar.

34. Hold Harmless Agreement for Claims

34.01 Canada, the Claims Administrator, Class Counsel, and the Independent Reviewer, shall not be liable for, and will in fact be held harmless by Claimants, from any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including without limitation legal fees, disbursements, and expenses)

or other liabilities of every character whatsoever by reason of or resulting from a payment or non-payment to a Personal Representative or Designated Representative pursuant to this Agreement and any order of the Court approving it.

CLAIMS PROCESS

35. Principles Governing Claims Administration

35.01 The Claims Process is intended to be expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed. The intent is to minimize the burden on the Claimants in pursuing their Claims and to mitigate any likelihood of re-traumatization through the Claims Process. The Claims Administrator and Independent Reviewer shall, in the absence of reasonable grounds to the contrary, assume that a Claimant is acting honestly and in good faith. In considering an Application, the Claims Administrator and Independent Reviewer shall draw all reasonable and favourable inferences that can be drawn in favour of the Claimant.

36. Claims Process

36.01 The Claims Process is set out in Schedule C.

CLAIMS ADMINISTRATOR

37. Duties of the Claims Administrator

37.01 The Claims Administrator's duties and responsibilities include the following:

a. developing, installing, and implementing systems, forms, information, guidelines and procedures for processing Claims in hard or electronic copy, in accordance with this Agreement;

b. developing, installing, and implementing systems and procedures for making payments of Day Scholar Compensation Payments in accordance with this Agreement;

c. providing personnel in such reasonable numbers as are required for the performance of its duties, and training and instructing them;

d. keeping or causing to be kept accurate accounts of its activities and its administration, including preparing such financial statements, reports, and records as are required by the Court;

e. reporting to the Parties on a monthly basis respecting Claims received and determined, and to which Indian Residential Schools the Claims relate;

f. responding to enquiries respecting Claims, reviewing Claims, making decisions in respect of Claims, giving notice of its decisions in accordance with this Agreement, and providing information to Claimants regarding the reconsideration process as set out in the Claims Process;

g. communicating with Claimants in either English or French, as the Claimant elects, and, if a Claimant expresses the desire to communicate in a language other than English or French, making best efforts to accommodate them; and

h. such other duties and responsibilities as the Court may from time to time direct.

38. Appointment of the Claims Administrator

38.01 The Claims Administrator will be appointed by the Court on the recommendation of the Parties.

39. Duties of the Independent Reviewer

39.01 The role of the Independent Reviewer is to determine any request for reconsideration brought by a Claimant pursuant to the Claims Process set out in Schedule C. The Independent Reviewer(s) will be appointed by the Court on the recommendation of the Parties.

40. Costs of Claims Process

40.01 The costs of the Claims Process, including those of the Claims Administrator and the Independent Reviewer, will be paid by Canada.

41. Approval Order

41.01 The Parties agree that an Approval Order of this Agreement will be sought from the Court in a form to be agreed upon by the Parties and shall include the following provisions:

a. incorporating by reference this Agreement in its entirety including all Schedules;

b. ordering and declaring that the Order is binding on all Survivor Class Members and Descendant Class Members, including Persons Under Disability; and

c. ordering and declaring that the Survivor Class and Descendant Class Claims set out in the First Re-Amended Statement of Claim, filed June 26, 2015, are dismissed, and giving effect to the releases and related clauses set out in sections 42.01 and 43.01 herein to ensure the conclusion of all Survivor Class and Descendant Class claims.

42. Conclusion of Survivor Class and Descendant Class Claims

42.01 The Approval Order sought from the Court will declare that:

a. Each Survivor Class Member or, if deceased, their estate (hereinafter "Survivor Releasor"), has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims, and demands of every nature or kind available, asserted for the Survivor Class in the First Re-Amended Statement of Claim filed June 26, 2015, in the Action or that could have been asserted by any of the Survivor Releasors as individuals in any civil action, whether known or unknown, including for damages, contribution, indemnity, costs, expenses, and interest which any such Survivor Releasor ever had, now has, or may hereafter have due to their attendance as a Day Scholar at any Indian Residential School at any time.

b. Each Descendant Class Member or, if deceased, their estate (hereinafter "Descendant Releasor"), has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims, and demands of every nature or kind available, asserted for the Descendant Class in the First Re-Amended Statement of Claim filed June 26, 2015, in the Action or that could have been asserted by any of the Descendant Releasors as individuals in any civil action, whether known or unknown, including for damages, contribution, indemnity, costs, expenses, and interest which any such Descendant Releasor ever had, now has, or may hereafter have due to their respective parents' attendance as a Day Scholar at any Indian Residential School at any time.

c. All causes of actions/claims asserted by, and requests for pecuniary, declaratory or other relief with respect to the Survivor Class Members and Descendant Class Members in the First Re-Amended Statement of Claim filed June 26, 2015 are dismissed on consent of the Parties without determination on their merits, and will not be adjudicated as part of the determination of the Band Class claims.

d. Canada may rely on the above-noted releases as a defence to any lawsuit that purports to seek compensation from Canada for the claims of the Survivor Class and Descendant Class as set out in the First Re-Amended Statement of Claim. For additional certainty, however, the above-noted releases and the Approval Order will not be interpreted as if they release, bar or remove any causes of action or claims that Band Class Members may have in law as distinct legal entities or as entities with standing and authority to advance legal claims for the violation of collective rights of their respective Aboriginal peoples, including to the extent such causes of action, claims and/or breaches of rights or duties owed to the Band Class are alleged in the First Re-Amended Statement of Claim filed June 26, 2015, even if those causes of action, claims and/or breaches of rights or duties are based on alleged conduct towards Survivor Class Members or Descendant Class Members set out elsewhere in either of those documents.

e. Each Survivor Releasor and Descendant Releasor is deemed to agree that, if they make any claim or demand or take any action or proceeding against another person, persons, or entity in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute, common law, or Quebec civil law, in relation to allegations and matters set out in the Action, including any claim against provinces or territories or other legal entities or groups, including but not limited to religious or other institutions that were in any way involved with Indian Residential Schools, the Survivor Releasor or Descendant Releasor will expressly limit their claim so as to exclude any portion of Canada's responsibility.

f. Upon a final determination of a Claim made under and in accordance with the Claims Process, each Survivor Releasor and Descendant Releasor is also deemed to agree to release the Parties, Class Counsel, counsel for Canada, the Claims Administrator, the Independent Reviewer, and any other party involved in the Claims Process, with respect to any claims that arise or

could arise out of the application of the Claims Process, including but not limited to the sufficiency of the compensation received.

43. Deemed Consideration by Canada

43.01 Canada's obligations and liabilities under this Agreement constitute the consideration for the releases and other matters referred to in this Agreement and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Survivor Releasors and Descendant Releasors are limited to the benefits provided and compensation payable pursuant to this Agreement, in whole or in part, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims, and demands.

LEGAL FEES AND DISBURSEMENTS

44. Class Counsel Fees and Disbursements

44.01 All legal fees and disbursements of Class Counsel, and the representative plaintiffs' proposed honoraria are the subject of the Fee Agreement, which is subject to review and approval by the Court.

44.02 Court approval of the Fee Agreement is separate and distinct from Court approval of this Agreement. In the event that the Court does not approve the Fee Agreement, in whole or in part, it will have no effect on the approval or implementation of this Agreement.

45. No Other Fees or Disbursements to Be Charged

45.01 The Parties agree that it is their intention that all payments to Survivor Class Members under this Agreement are to be made without any deductions on account of legal fees or disbursements.

TERMINATION AND OTHER CONDITIONS

46. Termination of Agreement

46.01 This Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled and the Court orders that the Agreement is completed.

47. Amendments

47.01 Except as expressly provided in this Agreement, no amendment may be made to this Agreement, including the Schedules, unless agreed to by the Parties in writing and approved by the Court.

48. No Assignment

48.01 No amount payable under this Agreement can be assigned and any such assignment is null and void except as expressly provided for in this Agreement. Where a Day Scholar is deceased or is a Person Under Disability, payment for an approved Claim will be made to their Designated Representative or Personal Representative, respectively.

CONFIDENTIALITY

49. Confidentiality

49.01 Any information provided, created or obtained in the course of this settlement, whether written or oral, will be kept confidential by the Parties and Class Counsel, all Claimants, the Claims Administrator, and the Independent Reviewer and will not be used for any purpose other than this settlement unless otherwise agreed by the Parties, authorized by this Agreement or applicable federal, provincial or territorial privacy legislation, or ordered by the Court.

50. Destruction of Claimant Information and Records

50.01 Within two (2) years of completing the payments of compensation, the Claims Administrator will destroy all Claimant information and documentation in its possession, unless a Claimant, Designated Representative, or Personal Representative specifically requests the return of such information within the two (2) year period. Upon receipt of such request, the Claims Administrator will forward the Claimant information as directed.

50.02 Within two (2) years of rendering a reconsideration decision, the Independent Reviewer will destroy all Claimant information and documentation in their possession, unless a Claimant, Designated Representative, or Personal Representative specifically requests the return of such information within the two (2) year period. Upon receipt of such request, the Independent Reviewer will forward the Claimant information as directed.

50.03 Prior to destruction of the records, the Claims Administrator and Independent Reviewer shall create and provide to Canada a list showing the (i) Day Scholar, (ii) School Year(s) of attendance, and (iii) Indian Residential School(s), with respect to which each Day Scholar Compensation Payment was made. Notwithstanding anything else in this Agreement, this list must be retained by Canada in strict confidence and can only be used in a legal proceeding or settlement where it is relevant as demonstrating, which the Parties agree they will do without further proof, which individuals received the Day Scholar Compensation Payment for which School Year(s) and with regard to which Indian Residential School(s).

51. Confidentiality of Negotiations

51.01 Save as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to the exchanges of letters of offer and acceptance, and this Agreement continues in force.

CO-OPERATION

52. Co-operation With Canada

52.01 Upon execution of this Agreement, the representative plaintiffs and Class Counsel will co-operate with Canada and make best efforts to obtain Court approval of this Agreement and make reasonable efforts to obtain the support and participation of Survivor Class Members and Descendant Class Members in all aspects of this Agreement.

53. Public Announcements

53.01 At the time agreed upon, the Parties will make public announcements in support of this Agreement and continue to speak publicly in favour of the Agreement.

JKP

IN WITNESS WHEREOF the Parties have executed this Agreement as of this 4th day of June, 2021.

For the Plaintiffs

Waddell Phillips Professional Corporation, per
John K. Phillips
Class Counsel

JOHN KINGMAN PHILLIPS
Barrister & Solicitor

For the Plaintiffs

Peter R. Grant Law Corporation, per
Peter R. Grant
Class Counsel

CO-OPERATION

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IN WITNESS WHEREOF the Parties have executed this Agreement as of this 4 TN day of June, 2021.

For the Plaintiffs

Waddell Phillips Professional Corporation, per
John K. Phillips
Class Counsel

For the Plaintiffs

Peter R. Grant Law Corporation
Peter R. Grant
Class Counsel

Peter R. Grant
Peter Grant Law
Box 22137
#407-808 Nelson Street
Vancouver B.C. V6Z 2H2

Diane Soroka

For the Plaintiffs

Diane Soroka Avocate Inc., per
Diane H. Soroka
Class Counsel

Boudreau, Annie

Digitally signed by Boudreau, Annie
Date: 2021.06.03 08:32:16 -04'00'

For the Defendants

Annie Boudreau
Chief Finances, Results and Delivery Officer
Crown-Indigenous Relations and Northern Affairs Canada

For the Plaintiffs

Diane Soroka Avocate Inc., per
Diane H. Soroka
Class Counsel

Boudreau, Annie

Digitally signed by Boudreau, Annie
Date: 2021.06.03 08:32:16 -04'00'

For the Defendants

Annie Boudreau
Chief Finances, Results and Delivery Officer
Crown-Indigenous Relations and Northern Affairs Canada

Schedule A

Amended Pursuant to the Order of Justice Harrington Made June 3, 2015

Court File No. T-1542-13

~~**PROPOSED**~~ **CLASS PROCEEDING**

FORM 171A - Rule 171

FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND and the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL~~, AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by THE ATTORNEY GENERAL OF CANADA

DEFENDANT

FIRST RE-AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

(Date)

Issued by:_____
(Registry Officer)

Address of local office:_____

TO:

Her Majesty the Queen in Right of Canada,
Minister of Indian Affairs and Northern Development, and
Attorney General of Canada
Department of Justice
900 - 840 Howe Street
Vancouver, B.C. V6Z 2S9

RELIEF SOUGHT

The Survivor Class

1. The Representative Plaintiffs of the Survivor Class, on their own behalf, and on behalf of the members of the Survivor Class, claim:

(a) ~~an Order certifying this proceeding as a Class Proceeding pursuant to the Federal Court Class Proceedings Rules ("CPR") and appointing them as Representative Plaintiffs for the Survivor Class and any appropriate subgroup of that Class~~;

(b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the Plaintiffs and the other Survivor Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the ~~Identified~~ Residential Schools;

(c) a Declaration that members of the Survivor Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

(d) a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) ~~Aboriginal Rights~~ of the Survivor Class;

(e) a Declaration that the Residential Schools Policy and the ~~Identified~~ Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Survivor Class;

(f) a Declaration that Canada is liable to the Survivor Class Representative Plaintiffs and other Survivor Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties, and Aboriginal Rights and for the intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the ~~Identified~~ Residential Schools;

(g) non-pecuniary general damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights and intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law,, negligence and intentional infliction of mental distress for which Canada is liable;

(h) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, loss of educational opportunities, breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights and and intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Survivor Class for which Canada is liable;

(i) exemplary and punitive damages for which Canada is liable ;

(j) prejudgment and post-judgment interest;

(k) the costs of this action; and

(l) such further and other relief as this Honourable Court may deem just.

The Descendant Class

2. The Representative Plaintiffs of the Descendant Class, on their own behalf and on behalf of the members of the Descendant Class, claim:

(a) ~~an Order certifying this proceeding as a Class Proceeding pursuant to the CPR and appointing them as Representative Plaintiffs for the Descendant Class and any appropriate subgroup of that Class~~;

(b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the Plaintiffs and the other Descendant Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the ~~Identified~~ Residential Schools;

(c) a Declaration that the Descendant Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

(d) a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) ~~Aboriginal Rights~~ of the Descendant Class;

(e) a Declaration that the Residential Schools Policy and the ~~Identified~~ Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Descendant Class;

(f) a Declaration that Canada is liable to the Plaintiffs and other Descendant Class members for the damages caused by its breach of fiduciary, constitutionally-

mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the ~~Identified~~ Residential Schools;

(g) non-pecuniary general damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, for which Canada is liable;

(h) pecuniary general damages and special damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Descendant Class for which Canada is liable;

(i) exemplary and punitive damages for which Canada is liable;

(j) pre-judgment and post-judgment interest;

(k) the costs of this action; and

(l) such further and other relief as this Honourable Court may deem just;

The Band Class

3. The Representative Plaintiffs of the Band Class claim:

(a) ~~an Order certifying this proceeding as a Class Proceeding pursuant to the CPR and appointing them as Representative Plaintiffs for the Band Class~~;

(b) a Declaration that the Sechelt Indian Band (referred to as the shíshálh or shíshálh band) and Tk'emlúps Band, and all members of the Band Class, have ~~existing~~ Aboriginal Rights ~~within the meaning of s. 35(1) of the *Constitution Act, 1982*~~ to speak their traditional languages and engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

(c) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties as well as breaches of International Conventions and Covenants, and breaches of international law, to the Band Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the SIRS and the KIRS and other Identified Residential Schools;

(d) a Declaration that the Residential Schools Policy and the KIRS, the SIRS and Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Band Class;

(e) a Declaration that Canada was or is in breach of the Band Class members' linguistic and cultural rights, (Aboriginal Rights or otherwise), as well as breaches of International Conventions and Covenants, and breaches of international law, as a consequence of its establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Residential Schools Policy, and the Identified Residential Schools; ~~Aboriginal Rights;~~

(f) a Declaration that Canada is liable to the Band Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;

(g) non-pecuniary and pecuniary general damages and special damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the ongoing cost of care and development of wellness plans for individual members of the bands in the Band Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Bands for which Canada is liable;

(h) the construction of healing centres in the Band Class communities by Canada;

(i) exemplary and punitive damages for which Canada is liable;

(j) pre-judgment and post-judgment interest;

(k) the costs of this action; and

(l) such further and other relief as this Honourable Court may deem just.

DEFINITIONS

4. The following definitions apply for the purposes of this Claim:

(a) "Aboriginal(s)", "Aboriginal Person(s)" or "Aboriginal Child(ren)" means a person or persons whose rights are recognized and affirmed by the *Constitution Act*, 1982, s. 35;

(b) "Aboriginal Right(s)" means any or all of the aboriginal and treaty rights recognized and affirmed by the *Constitution Act*, 1982, s. 35;

(c) "Act" means the *Indian Act*, R.S.C. 1985, c. I-5 and its predecessors as have been amended from time to time;

(d) "Agents" means the servants, contractors, agents, officers and employees of Canada and the operators, managers, administrators and teachers and staff of each of the Residential Schools;

(e) "Agreement" means the Indian Residential Schools Settlement Agreement dated May 10, 2006 entered into by Canada to settle claims relating to Residential Schools as approved in the orders granted in various jurisdictions across Canada;

(f) "Band Class" means the Tk'emlúps te Secwépemc Indian Band and the shíshálh band and any other Aboriginal Indian Band(s) which:

(i) has or had some members who are or were members of the Survivor Class, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically identified Residential Schools.

(g) "Canada" means the Defendant, Her Majesty the Queen in right of Canada as represented by the Attorney General of Canada;

(h) "Class" or "Class members" means all members of the Survivor Class, Descendant Class and Band Class as defined herein;

(i) "Class Period" means 1920 to ~~1979~~1997;

(j) "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the educational, governmental, economic, cultural, linguistic, spiritual and social customs, practices and way of life, traditional governance structures, as well as to the community and individual security and wellbeing, of Aboriginal Persons;

(k) "Descendant Class" means the first generation of ~~all~~ persons ~~who are~~ descended from Survivor Class members or persons who were legally or traditionally adopted by a Survivor Class Member or their spouse;

(l) "Identified Residential School(s)" means the KIRS or the SIRS ~~or any other~~ Residential School ~~specifically identified by a member of the Band Class~~;

(m) "KIRS" means the Kamloops Indian Residential School;

(n) "Residential Schools" means all Indian Residential Schools recognized under the Agreement;

(o) "Residential Schools Policy" means the policy of Canada with respect to the implementation of Indian Residential Schools;

(p) "SIRS" means the Sechelt Indian Residential School;

(q) "Survivor Class" means all Aboriginal persons who attended as a student or for educational purposes for any period at ~~an Identified~~ Residential School, during the Class Period excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the Indian Residential Schools Settlement Agreement.

THE PARTIES

The Plaintiffs

5. The Plaintiff, Darlene Matilda Bulpit (nee Joe) resides on shíshálh band lands in British Columbia. Darlene Matilda Bulpit was born on August 23, 1948 and attended the SIRS for nine years, between the years 1954 and 1963. Darlene Matilda Bulpit is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

6. The Plaintiff, Frederick Johnson resides on shíshálh band lands in British Columbia. Frederick Johnson was born on July 21, 1960 and attended the SIRS for ten years, between the years 1966 and 1976. Frederick Johnson is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~7. The Plaintiff, Abigail Margaret August (nee Joe) resides on shíshálh band lands in British Columbia. Abigail Margaret August was born on August 21, 1954 and attended the SIRS for eight years, between the years 1959 and 1967. Abigail Margaret August is a proposed Representative Plaintiff for the Survivor Class.~~

~~8. The Plaintiff, Shelly Nadine Hoehne (nee Joe) resides on shíshálh band lands in British Columbia. Shelly Nadine Hoehne was born on June 23, 1952 and attended the SIRS for eight years, between the years 1958 and 1966. Shelly Nadine Hoehne is a proposed Representative Plaintiff for the Survivor Class.~~

9. The Plaintiff, Daphne Paul resides on shíshálh band lands in British Columbia. Daphne Paul was born on January 13, 1948 and attended the SIRS for eight years, between the years 1953 and 1961. Daphne Paul is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

10. The Plaintiff, Violet Catherine Gottfriedson resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Violet Catherine Gottfriedson was born on March 30, 1945 and attended the KIRS for four years, between the years 1958 and 1962. Violet Catherine Gottfriedson is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~11. The Plaintiff, Doreen Louise Seymour resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Doreen Louise Seymour was born on September 7, 1955 and attended the KIRS for five years, between the years 1961 and 1966. Doreen Louise Seymour is a proposed Representative Plaintiff for the Survivor Class.~~

12. The Plaintiff, Charlotte Anne Victorine Gilbert (nee Larue) resides in Williams Lake in British Columbia. Charlotte Anne Victorine Gilbert was born on May 24, 1952 and attended the KIRS for seven years, between the years 1959 and 1966. Charlotte Anne Victorine Gilbert is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~13. The Plaintiff, Victor Fraser (also known as Victor Frezie) resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Victor Fraser was born on June 11, 1957~~

~~and attended the KIRS for six years, between the years 1962 and 1968. Victor Fraser is a proposed Representative Plaintiff for the Survivor Class.~~

14. The Plaintiff, Diena Marie Jules resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Diena Marie Jules was born on September 12, 1955 and attended the KIRS for six years, between the years 1962 and 1968. Diena Marie Jules is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~15. The Plaintiff, Aaron Joe, resides on shíshálh band lands. Aaron Joe was born on January 19, 1972 and is the son of Valerie Joe, who attended the SIRS as a day scholar. Aaron Joe is a proposed Representative Plaintiff for the Descendant Class.~~

16. The Plaintiff, Rita Poulsen, resides on shíshálh band lands. Rita Poulsen was born on March 8, 1974 and is the daughter of Randy Joe, who attended the SIRS as a day scholar. Rita Poulsen is a ~~proposed~~ Representative Plaintiff for the Descendant Class.

17. The Plaintiff, Amanda Deanne Big Sorrel Horse resides on the Tk'emlúps te Secwépemc Indian Band reserve. Amanda Deanne Big Sorrel Horse was born on December 26, 1974 and is the daughter of Jo-Anne Gottfriedson who attended the KIRS for six years between the years 1961 and 1967. Amanda Deanne Big Sorrel Horse is a ~~proposed~~ Representative Plaintiff for the Descendant Class.

18. The Tk'emlúps te Secwépemc Indian Band and the shíshálh band are "bands" as defined by the Act and they both ~~propose to~~ act as Representative Plaintiffs for the Band Class. The Band Class members represent the collective interests and authority of each of their respective communities.

19. The individual Plaintiffs and the proposed Survivor and Descendant Class members are largely members of the shíshálh band and Tk'emlúps Indian Band, and members of Canada's First Nations and/or are the sons and daughters of members of these Aboriginal collectives. The individual Plaintiffs and Survivor and Descendant Class members are Aboriginal Persons within the meaning of the *Constitution Act, 1982,* s. 35.

The Defendant

20. Canada is represented in this proceeding by the Attorney General of Canada. The Attorney General of Canada represents the interests of Canada and the Minister of Aboriginal Affairs and Northern Development Canada and predecessor Ministers who were responsible for "Indians" under s.91(24) of the *Constitution Act, 1867*, and who were, at all material times, responsible for the formation and implementation of the Residential Schools Policy, and the maintenance and operation of the KIRS and the SIRS.

STATEMENT OF FACTS

21. Over the course of the last several years, Canada has acknowledged the devastating impact of its Residential Schools Policy on Canada's Aboriginal Peoples. Canada's Residential Schools Policy was designed to eradicate Aboriginal culture and identity and assimilate the Aboriginal Peoples of Canada into Euro-Canadian society. Through this policy, Canada ripped away the foundations of identity for generations of Aboriginal People and caused incalculable harm to both individuals and communities.

22. The direct beneficiary of the Residential Schools Policy was Canada as its obligations would be reduced in proportion to the number, and generations, of Aboriginal Persons who would no longer recognize their Aboriginal identity and would reduce their claims to rights

under the Act and Canada's fiduciary, constitutionally-mandated, statutory and common law duties.

23. Canada was also a beneficiary of the Residential Schools Policy, as the policy served to weaken the claims of Aboriginal Peoples to their traditional lands and resources. The result was a severing of Aboriginal People from their cultures, traditions and ultimately their lands and resources. This allowed for exploitation of those lands and resources by Canada, not only without Aboriginal Peoples' consent but also, contrary to their interests, the Constitution of Canada and the Royal Proclamation of 1763.

24. The truth of this wrong and the damage it has wrought has now been acknowledged by the Prime Minister on behalf of Canada, and through the pan-Canadian settlement of the claims of those who *resided at* Canada's Residential Schools by way of the Agreement implemented in 2007. Notwithstanding the truth and acknowledgement of the wrong and the damages caused, many members of Canada's Aboriginal communities were excluded from the Agreement, not because they did not *attend* Residential Schools and suffer Cultural, Linguistic and Social Damage, but simply because they did not *reside at* Residential Schools.

25. This claim is on behalf of the members of the Survivor Class, namely those who attended ~~an Identified~~ a Residential School for the Cultural, Linguistic and Social Damage occasioned by that attendance, as well as on behalf of the Descendant Class, who are the first generation descendants of those within the Survivor Class, and the Band Class, consisting of the Aboriginal communities within which the ~~Identified~~ Residential Schools were situated, or whose members belong to ~~and within which the majority of~~ the Survivor and Descendant Class ~~members live~~.

26. The claims of the ~~proposed~~ Representative Plaintiffs are for the harm done to the Representative Plaintiffs as a result of members of the Survivor Class *attending* the KIRS and the SIRS and being exposed to the operation of the Residential Schools Policy and do not include the claims arising from residing at the KIRS or the SIRS for which specific compensation has been paid under the Agreement. This claim seeks compensation for the victims of that policy whose claims have been ignored by Canada and were excluded from the compensation in the Agreement.

The Residential School System

27. Residential Schools were established by Canada prior to 1874, for the education of Aboriginal Children. Commencing in the early twentieth century, Canada began entering into formal agreements with various religious organizations (the "Churches") for the operation of Residential Schools. Pursuant to these agreements, Canada controlled, regulated, supervised and directed all aspects of the operation of Residential Schools. The Churches assumed the day-to-day operation of many of the Residential Schools under the control, supervision and direction of Canada, for which Canada paid the Churches a *per capita* grant. In 1969, Canada took over operations directly.

28. As of 1920, the Residential Schools Policy included compulsory *attendance* at Residential Schools for all Aboriginal Children aged 7 to 15. Canada removed most Aboriginal Children from their homes and Aboriginal communities and transported them to Residential Schools which were often long distances away. However, in some cases, Aboriginal Children lived in their homes and communities and were similarly required to attend Residential Schools as day students and not residents. This practice applied to even more children in the later years

of the Residential Schools Policy. While at Residential School, all Aboriginal Children were confined and deprived of their heritage, their support networks and their way of life, forced to adopt a foreign language and a culture alien to them and punished for non-compliance.

29. The purpose of the Residential Schools Policy was the complete integration and assimilation of Aboriginal Children into the Euro-Canadian culture and the obliteration of their traditional language, culture, religion and way of life. Canada set out and intended to cause the Cultural, Linguistic and Social Damage which has harmed Canada's Aboriginal Peoples and Nations. ~~In addition to the inherent cruelty of the~~ As a result of Canada's requirements for the forced attendance of the Survivor Class members under the Residential Schools Policy ~~itself~~, many children attending Residential Schools were also subject to spiritual, physical, sexual and emotional abuse, all of which continued until the year 1997, when the last Residential School was closed.

30. Canada chose to be disloyal to its Aboriginal Peoples, implementing the Residential Schools Policy in its own self-interest, including economic self-interest, and to the detriment and exclusion of the interests of the Aboriginal Persons to whom Canada owed fiduciary and constitutionally-mandated duties. The intended eradication of Aboriginal identity, culture, language, and spiritual practices ~~and religion~~, to the extent successful, results in the reduction of the obligations owed by Canada in proportion to the number of individuals, over generations, who would no longer identify as Aboriginal and who would be less likely to make claims to their rights as Aboriginal Persons.

The Effects of the Residential Schools Policy on the Class Members

Tk'emlúps Indian Band

31. Tk'emlúpsemc, 'the people of the confluence', now known as the Tk'emlúps te Secwépemc Indian Band are members of the northernmost of the Plateau People and of the Interior-Salish Secwépemc (Shuswap) speaking peoples of British Columbia. The Tk'emlúps Indian Band was established on a reserve now adjacent to the City of Kamloops, where the KIRS was subsequently established. Most, if not all, of the students who *attended*, but did not *reside at* the KIRS were or are members of the Tk'emlúps Indian Band, resident or formerly resident on the reserve.

32. Secwepemctsin is the language of the Secwépemc, and it is the unique means by which the cultural, ecological, and historical knowledge and experience of the Secwépemc people is understood and conveyed between generations. It is through language, spiritual practices and passage of culture and traditions including their rituals, drumming, dancing, songs and stories, that the values and beliefs of the Secwépemc people are captured and shared. From the Secwépemc perspective all aspects of Secwépemc knowledge, including their culture, traditions, laws and languages, are vitally and integrally linked to their lands and resources.

33. Language, like the land, was given to the Secwépemc by the Creator for communication to the people and to the natural world. This communication created a reciprocal and cooperative relationship between the Secwépemc and the natural world which enabled them to survive and flourish in harsh environments. This knowledge, passed down to the next generation orally, contained the teachings necessary for the maintenance of Secwépemc culture, traditions, laws and identity.

34. For the Secwépemc, their spiritual practices, songs, dances, oral histories, stories and ceremonies were an integral part of their lives and societies. These practices and traditions are

absolutely vital to maintain. Their songs, dances, drumming and traditional ceremonies connect the Secwépemc to their land and continually remind the Secwépemc of their responsibilities to the land, the resources and to the Secwépemc people.

35. Secwépemc ceremonies and spiritual practices, including their songs, dances, drumming and passage of stories and history, perpetuate their vital teachings and laws relating to the harvest of resources, including medicinal plants, game and fish, and the proper and respectful protection and preservation of resources. For example, in accordance with Secwépemc laws, the Secwépemc sing and pray before harvesting any food, medicines, and other materials from the land, and make an offering to thank the Creator and the spirits for anything they take. The Secwépemc believe that all living things have spirits and must be shown utmost respect. It was these vital, integral beliefs and traditional laws, together with other elements of Secwépemc culture and identity, that Canada sought to destroy with the Residential Schools Policy.

Shíshálh band

36. The shíshálh Nation, a division of the Coast Salish First Nations, originally occupied the southern portion of the lower coast of British Columbia. The shíshálh People settled the area thousands of years ago, and occupied approximately 80 village sites over a vast tract of land. The shíshálh People are made up of four sub-groups that speak the language of Shashishalhem, which is a distinct and unique language, although it is part of the Coast Salish Division of the Salishan Language.

37. Shíshálh tradition describes the formation of the shíshálh world (Spelmulh story). Beginning with the creator spirits, who were sent by the Divine Spirit to form the world, they

carved out valleys leaving a beach along the inlet at Porpoise Bay. Later, the transformers, a male raven and a female mink, added details by carving trees and forming pools of water.

38. The shíshálh culture includes singing, dancing and drumming as an integral part of their culture and spiritual practices, a connection with the land and the Creator and passing on the history and beliefs of the people. Through song and dance the shíshálh People would tell stories, bless events and even bring about healing. Their songs, dances and drumming also signify critical seasonal events that are integral to the shíshálh. Traditions also include making and using masks, baskets, regalia and tools for hunting and fishing. It was these vital, integral beliefs and traditional laws, together with other elements of the shíshálh culture and identity, that Canada sought to destroy with the Residential Schools Policy.

The Impact of the ~~Identified~~ Residential schools

39. For all of the Aboriginal Children who were compelled to attend the ~~Identified~~ Residential Schools, rigid discipline was enforced as per the Residential Schools Policy. While at school, children were not allowed to speak their Aboriginal language, even to their parents, and thus members of these Aboriginal communities were forced to learn English.

40. Aboriginal culture was strictly suppressed by the school administrators in compliance with the policy directives of Canada including the Residential Schools Policy. At the SIRS, ~~converts to Catholicism~~ members of shishalh were forced to burn or give to the agents of Canada centuries-old totem poles, regalia, masks and other "paraphernalia of the medicine men" and to abandon their potlatches, dancing and winter festivities, and other elements integral to the Aboriginal culture and society of the shíshálh and Secwépemc peoples.

41. Because the SIRS was physically located in the shíshálh community, ~~thechurch and~~Canada's ~~government~~ eyes, both directly and through its Agents, were upon the elders and they were punished severely for practising their culture or speaking their language or passing this on to future generations. In the midst of that scrutiny, the Class members struggled, often unsuccessfully, to practice, protect and preserve their songs, masks, dancing or other cultural practices

42. The Tk'emlúps te Secwépemc suffered a similar fate due to their proximity to the KIRS.

43. The children at the ~~Identified~~ Residential Schools were ~~indoctrinated into Christianity, and~~ taught to be ashamed of their Aboriginal identity, culture, spirituality and practices. They were referred to as, amongst other derogatory epithets, "dirty savages" and "heathens" and taught to shun their very identities. The Class members' Aboriginal way of life, traditions, cultures and spiritual practices were supplanted with the Euro-Canadian identity imposed upon them by Canada through the Residential Schools Policy.

44. This implementation of the Residential Schools Policy further damaged the Survivor Class members of the ~~Identified~~ Residential Schools, who returned to their homes at the end of the school day and, having been taught in the school that the traditional teachings of their parents, grandparents and elders were of no value and, in some cases, "heathen" practices and beliefs, would dismiss the teachings of their parents, grandparents and elders.

45. The assault on their traditions, laws, language and culture through the implementation of the Residential Schools Policy by Canada, directly and through its

Agents, has continued to undermine the individual Survivor Class members, causing a loss of self-esteem, depression, anxiety, suicidal ideation, suicide, physical illnesses without clear causes, difficulties in parenting, difficulties in maintaining positive relationships, substance abuse and violence, among other harms and losses, all of which has impacted the Descendant Class.

46. The Band Class members have lost, in whole or in part, their traditional economic viability, self-government and laws, language, land base and land-based teachings, traditional spiritual practices and religious practices, and the integral sense of their collective identity.

47. The Residential Schools Policy, delivered through the ~~Identified~~ Residential Schools, wrought cultural, linguistic and social devastation on the communities of the Band Class and altered their traditional way of life.

Canada's Settlement with Former Residential School Residents

48. From the closure of the ~~Identified~~ Residential Schools ~~in the 1970's~~ until the late 1990's, Canada's Aboriginal communities were left to battle the damages and suffering of their members as a result of the Residential Schools Policy, without any acknowledgement from Canada. During this period, Residential School survivors increasingly began speaking out about the horrible conditions and abuse they suffered, and the dramatic impact it had on their lives. At the same time, many survivors committed suicide or self-medicated to the point of death. The deaths devastated not only the members of the Survivor Class and the Descendant Class, but also the life and stability of the communities represented by the Band Class.

49. In January 1998, Canada issued a Statement of Reconciliation acknowledging and apologizing for the failures of the Residential Schools Policy. Canada admitted that the Residential Schools Policy was designed to assimilate Aboriginal Persons and that it was wrong to pursue that goal. The Plaintiffs plead that the Statement of Reconciliation by Canada is an admission by Canada of the facts and duties set out herein and is relevant to the Plaintiffs' claim for damages, particularly punitive damages.

50. The Statement of Reconciliation stated, in part, as follows:

> *Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the results of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.*
>
> *Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the Federal Government which have contributed to these difficult pages in the history of our relationship together.*
>
> *One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School System. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continued to reverberate in Aboriginal communities to this date. Tragically, some children were the victims of physical and sexual abuse.*

> *The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at Residential Schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at Residential Schools, we are deeply sorry. In dealing with the legacies of the Residential School program, the Government of Canada proposes to work with First Nations, Inuit, Metis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of this sad era of our history...*
>
> *Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong community...*

51. On or about May 10, 2006, Canada entered into the Agreement to provide compensation primarily to those who *resided at* Residential Schools.

52. The Agreement provides for two types of individualized compensation: the Common Experience Payment ("CEP") for the fact of having resided at a Residential School, and compensation based upon an Independent Assessment Process ("IAP"), to provide compensation for certain abuses suffered and harms these abuses caused.

53. The CEP consisted of compensation for former *residents* of a Residential School in the amount of $10,000 for the first school year or part of a school year and a further $3,000 for each subsequent school year or part of a school year of *residence* at a Residential School. The CEP was payable based upon residence at a Residential School out of a recognition that the experience of assimilation was damaging and worthy of compensation, regardless of whether a student experienced physical, sexual or other abuse while at the Residential School. Compensation for the latter was payable through the IAP. The CEP was available only to former

residents of a Residential School while, in some cases, the IAP was available not only to former residents but also other young people who were lawfully on the premises of a Residential School, including former day students.

54. The implementation of the Agreement represented the first time Canada agreed to pay compensation for Cultural, Linguistic and Social Damage. Canada refused to incorporate compensation for members of the Survivor Class, namely, those students who *attended* the ~~Identified Residential Schools, or other~~ Residential Schools, but who did not *reside* there.

55. The Agreement was approved by provincial and territorial superior courts from British Columbia to Quebec, and including the Northwest Territories, Yukon Territory and Nunavut, and the Agreement was implemented beginning on September 20, 2007.

56. On June 11, 2008, Prime Minister Stephen Harper on behalf of Canada, delivered an apology ("Apology") that acknowledged the harm done by Canada's Residential Schools Policy:

> *For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities. In the 1870's, the federal government, partly in order to meet its obligation to educate Aboriginal children, began to play a role in the development and administration of these schools.* ***Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture.*** *These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said,* ***"to kill the Indian in the child".*** *Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country.* ***[emphasis added]***

57. In this Apology, the Prime Minister made some important acknowledgments regarding the Residential Schools Policy and its impact on Aboriginal Children:

> *The Government of Canada built an educational system in which very young children were often forcibly removed from their homes, often taken far from their communities. Many were inadequately fed, clothed and housed. All were deprived of the care and nurturing of their parents, grandparents and communities. First Nations, Inuit and Métis languages and cultural practices were prohibited in these schools. Tragically, some of these children died while attending residential schools and others never returned home.*
>
> *The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language.*
>
> *The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.*
>
> * * *
>
> *We now recognize that it was wrong to separate children from rich and vibrant cultures and traditions, that it created a void in many lives and communities, and we apologize for having done this. We now recognize that, in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow, and we apologize for having done this. We now recognize that, far too often, these institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you. Not only did you suffer these abuses as children, but as you became parents, you were powerless to protect your own children from suffering the same experience, and for this we are sorry.*
>
> *The burden of this experience has been on your shoulders for far too long. The burden is properly ours as a Government, and as a country. There is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again. You have been working on recovering from this experience for a long time and in a very real sense, we are now joining you on this journey. The Government of Canada sincerely apologizes and asks the forgiveness of the Aboriginal peoples of this country for failing them so profoundly.*

58. Notwithstanding the Apology and the acknowledgment of wrongful conduct by Canada, as well as the call for recognition from Canada's Aboriginal communities and from the *Truth and Reconciliation Commission* in its Interim Report of February 2012, the exclusion of

the Survivor Class from the Agreement by Canada reflects Canada's continued failure to members of the Survivor Class. Canada continues, as it did from the 1970s until 2006 with respect to 'residential students', to deny the damage suffered by the individual Plaintiffs and the members of the Survivor, Descendant and Band Classes.

Canada's Breach of Duties to the Class Members

59. From the formation of the Residential Schools Policy to its execution in the form of forced attendance at the ~~Identified~~ Residential Schools, Canada utterly failed the Survivor Class members, and in so doing, destroyed the foundations of the individual identities of the Survivor Class members, stole the heritage of the Descendant Class members and caused incalculable losses to the Band Class members.

60. The Survivor Class members, Descendant Class members and Band Class members have all been affected by family dysfunction, a crippling or elimination of traditional ceremonies, and a loss of the hereditary governance structure which allowed for the ability to govern their peoples and their lands.

61. While attending the ~~Identified~~ Residential School the Survivor Class members were utterly vulnerable, and Canada owed them the highest fiduciary, moral, statutory, constitutionally-mandated and common law duties, which included, but were not limited to, the duty to protect Aboriginal Rights and prevent Cultural, Linguistic and Social Damage. Canada breached these duties, and failed in its special responsibility to ensure the safety and well-being of the Survivor Class while at the ~~Identified~~ Residential Schools.

Canada's Duties

62. Canada was responsible for developing and implementing all aspects of the Residential Schools Policy, including carrying out all operational and administrative aspects of Residential Schools. While the Churches were ~~often~~used as Canada's Agents to assist Canada in carrying out its objectives, those objectives and the manner in which they were carried out were the obligations of Canada. Canada was responsible for:

(a) the administration of the Act and its predecessor statutes as well as all other statutes relating to Aboriginal Persons and all Regulations promulgated under these Acts and their predecessors during the Class Period;

(b) the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessors and related Ministries and Departments, as well as the decisions taken by those ministries and departments;

(c) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of the ~~Identified~~ Residential Schools and for the creation, design and implementation of the program of education for Aboriginal Persons in attendance;

(d) the selection, control, training, supervision and regulation of the operators of the ~~Identified~~ Residential Schools, including their employees, servants, officers and agents, and for the care and education, control and well being of Aboriginal Persons attending the ~~Identified~~ Residential Schools;

(e) preserving, promoting, maintaining and not interfering with Aboriginal Rights, including the right to retain and practice their culture, spirituality, language and traditions and the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities; and

(f) the care and supervision of all members of the Survivor Class while they were in attendance at the ~~Identified~~ Residential Schools during the Class Period.

63. Further, Canada has at all material times committed itself to honour international law in relation to the treatment of its people, which obligations form minimum commitments to Canada's Aboriginal Peoples, including the Survivor, Descendant and Band Classes, and which have been breached. In particular, Canada's breaches include the failure to comply with the terms and spirit of:

(a) the *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277, entered into force Jan. 12, 1951,, and in particular Article 2(b), (c) and (e) of that convention, by engaging in the intentional destruction of the culture of Aboriginal Children and communities, causing profound and permanent cultural, psychological, emotional and physical injuries to the Class;

(b) the *Declaration of the Rights of the Child* (1959) G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 by failing to provide Aboriginal Children with the means necessary for normal development, both materially and spiritually, and failing to put them in a position to earn a livelihood and protect them against exploitation;

(c) the *Convention on the Rights of the Child*, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989), and in particular Articles 29 and 30 of that convention, by failing to provide Aboriginal Children with education that is directed to the development of respect for their parents, their cultural identities, language and values, and by denying the right of Aboriginal Children to enjoy their own cultures, to profess and practise their own religions and to use their own languages;

(d) the *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, in particular Articles 1 and 27 of that convention, by interfering with Class members' rights to retain and practice their culture, spirituality, language and traditions, the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities and the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities.

(e) the *American Declaration of the Rights and Duties of Man*, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System,* OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992), and in particular Article XIII, by violating Class members' right to take part in the cultural life of their communities.

(f) the *United Nations Declaration on the Rights of Indigenous Peoples,* G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007), endorsed by Canada 12 November 2010, and in particular article 8, 2(d), which commits to the provision of effective mechanisms for redress for forced assimilation.

64. Canada's obligations under international law inform Canada's common law, statutory, fiduciary, constitutionally-mandated and other duties, and a breach of the aforementioned international obligations is evidence of, or constitutes, a breach under domestic law.

Breach of Fiduciary and Constitutionally-Mandated Duties

65. Canada has constitutional obligations to, and a fiduciary relationship with, Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated the ~~Identified~~ Residential Schools and established the Residential Schools Policy. Through these acts, and by virtue of the *Constitution Act 1867*, the *Constitution Act, 1982*, and the provisions of the Act, as amended, Canada assumed the power and obligation to act in a fiduciary capacity with respect to the education and welfare of Class members.

66. Canada's constitutional duties include the obligation to uphold the honour of the Crown in all of its dealings with Aboriginal Peoples, including the Class members. This obligation arose with the Crown's assertion of sovereignty from the time of first contact and continues through post-treaty relationships. This is and remains an obligation of the Crown and was an obligation on the Crown at all material times. The honour of the Crown is a legal principle which requires the Crown to operate at all material times in its relations with Aboriginal Peoples from contact to post-treaty in the most honourable manner to protect the interests of the Aboriginal Peoples.

67. Canada's fiduciary duties obliged Canada to act as a protector of Class members' Aboriginal Rights, including the protection and preservation of their language, culture and their way of life, and the duty to take corrective steps to restore the Plaintiffs' culture, history and status, or assist them to do so. At a minimum, Canada's duty to Aboriginal Persons included the duty not to deliberately reduce the number of the beneficiaries to whom Canada owed its duties.

68. Canada's fiduciary duties and the duties otherwise imposed by the constitutional mandate assumed by Canada extend to the Descendant Class because the purpose of the assumption of control over the Survivor Class education was to eradicate from those Aboriginal Children their culture and identity, thereby removing their ability, as adults, to pass on to succeeding generations the linguistic, spiritual, cultural and behavioural bases of their people, as well as to relate to their families and communities and, ultimately, their ability to identify themselves as Aboriginal Persons to whom Canada owed its duties.

69. The fiduciary and constitutional duties owed by Canada extend to the Band Class because the Residential Schools Policy was intended to, and did, undermine and seek to destroy the way of life established and enjoyed by these Nations whose identities were and are viewed as collective.

70. Canada acted in its own self-interest and contrary to the interests of Aboriginal Children, not only by being disloyal to, but by actually betraying the Aboriginal Children and communities whom it had a duty to protect. Canada wrongfully exercised its discretion and power over Aboriginal People, and in particular children, for its own benefit. The Residential Schools Policy was pursued by Canada, in whole or in part, to eradicate what Canada saw as the "Indian Problem". Namely, Canada sought to relieve itself of its moral and financial responsibilities for Aboriginal People, the expense and inconvenience of dealing with cultures, languages, habits and values different from Canada's predominant Euro-Canadian heritage, and the challenges arising from land claims.

71. In breach of its ongoing fiduciary, constitutionally-mandated, statutory and common law duties to the Survivor, Descendant and Band Classes, Canada failed, and continues to fail, to

adequately remediate the damage caused by its wrongful acts, failures and omissions. In particular, Canada has failed to take adequate measures to ameliorate the Cultural, Linguistic and Social Damage suffered by the Survivor, Descendant and Band Classes, notwithstanding Canada's admission of the wrongfulness of the Residential Schools Policy since 1998.

Breach of Aboriginal Rights

72. The shíshálh and Tk'emlúps people, and indeed all members of the Band Class, from whom the individual Plaintiffs have descended have exercised laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans, these Nations have sustained their individual members, communities and distinctive cultures by speaking their languages and practicing their customs and traditions.

73. During the time when Survivor Class members attended the ~~Identified~~ Residential Schools, in compliance with the Residential Schools Policy, they were taught to speak English, were punished for using their traditional languages and were made ashamed of their traditional language and way of life. Consequently, by reason of the attendance at the ~~Identified~~ Residential Schools, the Survivor Class members' ability to speak their traditional languages and practice their shíshálh, Tk'emlúps, and other, spiritual, religious and cultural activities was seriously impaired and, in some cases, lost entirely. These Class members were denied the ability to exercise and enjoy their Aboriginal Rights, both individually and in the context of their collective expression within the Bands, some particulars of which include, but are not limited to:

(a) shíshálh, Tk'emlúps and other Aboriginal cultural, spiritual and traditional activities have been lost or impaired;

(b) the traditional social structures, including the equal authority of male and female leaders have been lost or impaired;

(c) the shíshálh, Tk'emlúps and other Aboriginal languages have been lost or impaired;

(d) traditional shíshálh, Tk'emlúps and Aboriginal parenting skills have been lost or impaired;

(e) shíshálh, Tk'emlúps and other Aboriginal skills for gathering, harvesting, hunting and preparing traditional foods have been lost or impaired; and,

(f) shíshálh, Tk'emlúps and Aboriginal spiritual beliefs have been lost or impaired.

74. The interference in the Aboriginal Rights of the Survivor Class has resulted in that same loss being suffered by their descendants and communities, namely the Descendant and Band Classes, all of which was the result sought by Canada.

75. Canada had at all material times and continues to have a duty to protect the Class members' Aboriginal Rights, including the exercise of their spiritual practices and traditional protection of their lands and resources, and an obligation not to undermine or interfere with the individual Plaintiffs' and Class members' Aboriginal Rights. Canada has failed in these duties, without justification, through its Residential Schools Policy.

Intentional Infliction of Mental Distress

76. The design and implementation of the Residential Schools Policy as a program of assimilation to eradicate Aboriginal culture constituted flagrant, extreme and outrageous conduct which was plainly calculated to result in the Cultural, Social and Linguistic Damage, and the mental distress arising from that damage, which was actually suffered by the members of the Survivor and Descendant Classes.

Negligence giving rise to Spiritual, ~~Physical, Sexual,~~ Emotional and Mental Abuse

77. Through its Agents, Canada was negligent and in breach of its duties of care to the Survivor Class, particulars of which include, but are not limited to, the following:

(a) it failed to adequately screen and select the individuals ~~to whom it delegated~~ who it hired either directly or through its ~~a~~Agents for the operation of the ~~Identified~~ Residential Schools, to adequately supervise and control the operations of the ~~Identified~~ Residential Schools, and to protect Aboriginal children from spiritual, ~~physical, sexual~~, emotional and mental abuse at the ~~Identified~~ Residential Schools, and as a result, such abuses did occur to Survivor Class members and Canada is liable for such abuses;

(b) it failed to respond appropriately or at all to disclosure of abuses in the ~~Identified~~ Residential Schools, and in fact, covered up such abuse and suppressed information relating to those abuses; and

(c) it failed to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed.

Vicarious Liability

78. Through its Agents, Canada breached its duty of care to the Survivor Class resulting in damages to the Survivor Class and is vicariously liable for all of the breaches and abuses committed on its behalf.

79. Further, or in the alternative, Canada is vicariously liable for the negligent performance of the fiduciary, constitutionally-mandated, statutory and common law duties of its Agents.

80. Additionally, the Plaintiffs hold Canada solely responsible for the creation and implementation of the Residential Schools Policy and, furthermore:

a. The Plaintiffs expressly waive any and all rights they may possess to recover from Canada, or any other party, any portion of the Plaintiffs' loss that may be attributable to the fault or liability of any third-party and for which Canada might reasonably be entitled to claim from any one or more third-party for contribution,

indemnity or an apportionment at common law, in equity, or pursuant to the British Columbia *Negligence Act*, R.S.B.C. 1996, c. 333, as amended; and

b. The Plaintiffs will not seek to recover from any party, other than Canada, any portion of their losses which have been claimed, or could have been claimed, against any third-parties.

Damages

81. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of mental distress and the breaches of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Survivor Class members, including the Representative Plaintiffs, suffered injury and damages including:

(a) loss of language, culture, spirituality, and Aboriginal identity;

(b) emotional and psychological harm;

(c) isolation from their family, community and Nation;

(d) deprivation of the fundamental elements of an education, including basic literacy;

(e) an impairment of mental and emotional health, in some cases amounting to a permanent disability;

(f) an impaired ability to trust other people, to form or sustain intimate relationships, to participate in normal family life, or to control anger;

(g) a propensity to addiction;

(h) alienation from community, family, spouses and children;

(i) an impaired ability to enjoy and participate in recreational, social, cultural, athletic and employment activities;

(j) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;

(k) deprivation of education and skills necessary to obtain gainfully employment;

(l) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the Residential School experience;

(m) sexual dysfunction;

(n) depression, anxiety and emotional dysfunction;

(o) suicidal tendencies;

(p) pain and suffering;

(q) loss of self-esteem and feelings of degradation, shame, fear and loneliness;,

(r) nightmares, flashbacks and sleeping problems;

(s) fear, humiliation and embarrassment as a child and adult;

(t) sexual confusion and disorientation as a child and young adult;

(u) impaired ability to express emotions in a normal and healthy manner;

(v) loss of ability to participate in, or fulfill, cultural practices and duties;

(w) loss of ability to live in their community and Nation; and

(x) constant and intense emotional, psychological pain and suffering.

82. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of harm and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Descendant Class members, including the Representative Plaintiffs, suffered injury and damages including:

(a) their relationships with Survivor Class members were impaired, damaged and distorted as a result of the experiences of Survivor Class members in the ~~Identified~~ Residential Schools; and,

(b) their culture and languages were undermined and in some cases eradicated by, amongst other things, as pleaded, the forced assimilation of Survivor Class members into Euro-Canadian culture through the operation of the ~~Identified~~ Residential Schools.

83. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of harm and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Band Class has suffered from the loss of the ability to fully exercise their Aboriginal Rights collectively, including the right to have a traditional government based on their own languages, spiritual practices, traditional laws

and practices and to have those traditions fully respected by the members of the Survivor and Descendant Classes and subsequent generations, all of which flowed directly from the individual losses of the Survivor Class and Descendant Class members' Cultural, Linguistic and Social Damage.

Grounds for Punitive and Aggravated Damages

84. Canada deliberately planned the eradication of the language, religion and culture of Survivor Class members and Descendant Class members, and the destruction of the Band Class. The actions were malicious and intended to cause harm, and in the circumstances punitive and aggravated damages are appropriate and necessary.

85. The Class members plead that Canada and its Agents had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses of Survivor Class members that were occurring at the ~~Identified~~ Residential Schools.

86. Despite this knowledge, Canada continued to operate the Residential Schools and took no steps, or in the alternative no reasonable steps, to protect the Survivor Class members from these abuses and the grievous harms that arose as a result. In the circumstances, the failure to act on that knowledge to protect vulnerable children in Canada's care amounts to a wanton and reckless disregard for their safety and renders punitive and aggravated damages both appropriate and necessary.

Legal Basis of Claim

87. The Survivor and Descendant Class members are Indians as defined by the *Indian Act*, R.S.C. 1985, c. 1-5. The Band Class members are bands made up of Indians so defined.

88. The Class members' Aboriginal Rights existed and were exercised at all relevant times pursuant to the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

89. At all material times, Canada owed the Plaintiffs and Class members a special and constitutionally-mandated duty of care, good faith, honesty and loyalty pursuant to Canada's constitutional obligations and Canada's duty to act in the best interests of Aboriginal People and especially Aboriginal Children who were particularly vulnerable. Canada breached those duties, causing harm.

90. The Class members descend from Aboriginal Peoples who have exercised their respective laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans to the present, the Aboriginal Peoples from whom the Plaintiffs and Class members descend have sustained their people, communities and distinctive culture by exercising their respective laws, customs and traditions in relation to their entire way of life, including language, dance, music, recreation, art, family, marriage and communal responsibilities, and use of resources.

Constitutionality of Sections of the *Indian Act*

91. The Class members plead that any section of the Act and its predecessors and any Regulation passed under the Act and any other statutes relating to Aboriginal Persons that provide or purport to provide the statutory authority for the eradication of Aboriginal People through the destruction of their languages, culture, practices, traditions and way of life, are in violation of sections 25 and 35(1) of the *Constitution Act* 1982, sections 1 and 2 of the *Canadian*

Bill of Rights, R.S.C. 1985, as well as sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* and should therefore be treated as having no force and effect.

92. Canada deliberately planned the eradication of the language, spirituality and culture of the Plaintiffs and Class members.

93. Canada's actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

94. The Plaintiffs plead and rely upon the following:

Federal Courts Act, R.S.C., 1985, c. F-7, s. 17;

Federal Courts Rules, SOR/98-106, Part 5.1 Class Proceedings;

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, ss. 3, 21, 22, and 23;

Canadian Charter of Rights and Freedoms, ss. 7, 15 and 24;

Constitution Act, 1982, ss. 25 and 35(1),

Negligence Act (British Columbia), R.S.B.C. 1996, c. 333;

The Canadian Bill of Rights, R.S.C. 1985, App. III, Preamble, ss. 1 and 2;

The Indian Act, R.S.C. 1985, ss. 2(1), 3, 18(2), 114-122 and its predecessors.

International Treaties:

Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force Jan. 12, 1951;

Declaration of the Rights of the Child (1959), G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354;

Convention on the Rights of the Child, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989);

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976;

American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System,* OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992); and

United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007), endorsed by Canada 12 November 2010.

The plaintiffs propose that this action be tried at Vancouver, BC.

June 11th, 2013

Peter R. Grant, on behalf of
all Solicitors for the Plaintiffs

Solicitors for the Plaintiffs

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Schedule B

Federal Court  Cour fédérale

Date: 20150618

Docket: T-1542-12

Citation: 2015 FC 766

Ottawa, Ontario, June 18, 2015

PRESENT: The Honourable Mr. Justice Harrington

PROPOSED CLASS ACTION

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND AND THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE SECHELT INDIAN BAND AND THE SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE AND RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

ORDER

FOR REASONS GIVEN on 3 June 2015, reported at 2015 FC 706;

THIS COURT ORDERS that:

1. The above captioned proceeding shall be certified as a class proceeding with the following conditions:

a. The Classes shall be defined as follows:

Survivor Class: all Aboriginal persons who attended as a student or for educational purposes for any period at a Residential School, during the Class Period, excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the Indian Residential Schools Settlement Agreement.

Descendant Class: the first generation of persons descended from Survivor Class Members or persons who were legally or traditionally adopted by a Survivor Class Member or their spouse.

Band Class: the Tk'emlúps te Secwépemc Indian Band and the Sechelt Indian Band and any other Indian Band(s) which:

(i) has or had some members who are or were members of the Survivor Class, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically Identified Residential Schools.

b. The Representative Plaintiffs shall be:

For the Survivor Class:

Violet Catherine Gottfriedson

Charlotte Anne Victorine Gilbert

Diena Marie Jules

Darlene Matilda Bulpit

Frederick Johnson

Daphne Paul

For the Descendant Class:

Amanda Deanne Big Sorrel Horse

Rita Poulsen

For the Band Class:

Tk'emlúps te Secwépemc Indian Band

Sechelt Indian Band

c. The Nature of the Claims are:

Breaches of fiduciary and constitutionally mandated duties, breach of Aboriginal Rights, intentional infliction of mental distress, breaches of International Conventions and/or Covenants, breaches of international law, and negligence committed by or on behalf Canada for which Canada is liable.

d. The Relief claimed is as follows:

By the Survivor Class:

i. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties to the Survivor Class Representative Plaintiffs and the other Survivor Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools;

ii. a Declaration that members of the Survivor Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

iii. a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) of the Survivor Class;

iv. a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Survivor Class;

v. a Declaration that Canada is liable to the Survivor Class Representative Plaintiffs and other Survivor Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties, and Aboriginal Rights and for the intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose,

establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Residential Schools;

vi. general damages for negligence, breach of fiduciary, constitutionally-mandated, statutory and common law duties, Aboriginal Rights and intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, for which Canada is liable;

vii. pecuniary damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, loss of educational opportunities, breach of fiduciary, constitutionally-mandated, statutory and common law duties, Aboriginal Rights and for intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Survivor Class for which Canada is liable;

viii. exemplary and punitive damages for which Canada is liable; and

ix. pre-judgment and post-judgment interest and costs.

By the Descendant Class:

i. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties owed to the Descendant Class Representative Plaintiffs and the other Descendant Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools;

ii. a Declaration that the Descendant Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner

iii. a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) of the Descendant Class;

iv. a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Descendant Class;

v. a Declaration that Canada is liable to the Descendant Class Representative Plaintiffs and other Descendant Class members for the damages caused by its breach of fiduciary and constitutionally-mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at, and support of, the Residential Schools;

vi. general damages for breach of fiduciary and constitutionally-mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, for which Canada is liable;

vii. pecuniary damages and special damages for breach of fiduciary and constitutionally-mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Descendant Class for which Canada is liable;

viii. exemplary and punitive damages for which Canada is liable; and

ix. pre-judgment and post-judgment interest and costs.

By the Band Class:

i. a Declaration that the Sechelt Indian Band and Tk'emlúps te Secwépemc Indian Band, and all members of the Band Class, have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

ii. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties, as well as breaches of International Conventions and Covenants, and breaches of international law, to the Band Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance,

obligatory attendance of Survivor Class members at, and support of, the SIRS and the KIRS and other Identified Residential Schools;

iii. a Declaration that the Residential Schools Policy and the KIRS, the SIRS and Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Band Class;

iv. a Declaration that Canada was or is in breach of the Band Class members' linguistic and cultural rights, (Aboriginal Rights or otherwise), as well as breaches of International Conventions and Covenants, and breaches of international law, as a consequence of its establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Residential Schools Policy, and the Identified Residential Schools;

v. a Declaration that Canada is liable to the Band Class members for the damages caused by its breach of fiduciary and constitutionally mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;

vi. non-pecuniary and pecuniary damages and special damages for breach of fiduciary and constitutionally mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the ongoing cost

of care and development of wellness plans for members of the bands in the Band Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Band Class for which Canada is liable;

vii. The construction and maintenance of healing and education centres in the Band Class communities and such further and other centres or operations as may mitigate the losses suffered and that this Honourable Court may find to be appropriate and just;

viii. exemplary and punitive damages for which Canada is liable; and

ix. pre-judgment and post-judgment interest and costs.

e. The Common Questions of Law or Fact are:

a. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a fiduciary duty owed to the Survivor, Descendant and Band Class, or any of them, not to destroy their language and culture?

b. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach the cultural and/or linguistic rights, be they Aboriginal Rights or otherwise of the Survivor, Descendant and Band Class, or any of them?

c. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a fiduciary duty owed to the Survivor Class to protect them from actionable mental harm?

d. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a duty of care owed to the Survivor Class to protect them from actionable mental harm?

e. If the answer to any of (a)-(d) above is yes, can the Court make an aggregate assessment of the damages suffered by the Class as part of the common issues trial?

f. If the answer to any of (a)-(d) above is yes, was the Defendant guilty of conduct that justifies an award of punitive damages; and

g. If the answer to (f) above is yes, what amount of punitive damages ought to be awarded?

f. The following definitions apply to this Order:

a. "Aboriginal(s)", "Aboriginal Person(s)" or "Aboriginal Child(ren)" means a person or persons whose rights are recognized and affirmed by the *Constitution Act* , 1982, s. 35;

b. "Aboriginal Right(s)" means any or all of the Aboriginal and treaty rights recognized and affirmed by the *Constitution Act, 1982*, section. 35;

c. "Act" means the *Indian Act*, R.S.C. 1985, c. I-5 and its predecessors as have been amended from time to time;

d. "Agreement" means the Indian Residential Schools Settlement Agreement dated May 10, 2006 entered into by Canada to settle claims relating to Residential Schools as approved in the orders granted in various jurisdictions across Canada;

e. "Canada" means the Defendant, Her Majesty the Queen;

f. "Class Period" means 1920 to 1997;

g. "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the educational, governmental, economic, cultural, linguistic, spiritual and social customs, practices and way of life, traditional governance structures, as well as to the community and individual security and wellbeing, of Aboriginal Persons;

h. "Identified Residential School(s)" means the KIRS or the SIRS or any other Residential School specifically identified as a member of the Band Class;

i. "KIRS" means the Kamloops Indian Residential School;

j. "Residential Schools" means all Indian Residential Schools recognized under the Agreement and listed in Schedule "A" appended to this Order

which Schedule may be amended from time to time by Order of this Court.;

k. "Residential Schools Policy" means the policy of Canada with respect to the implementation of Indian Residential Schools; and

l. "SIRS" means the Sechelt Indian Residential School.

g. The manner and content of notices to class members shall be approved by this Court. Class members in the Survivor and Descendent class shall have until October 30, 2015 in which to opt-out, or such other time as this Court may determine. Members of the Band Class will have 6 months within which to opt-in from the date of publication of the notice as directed by the Court, or other such time as this Court may determine.

h. Either party may apply to this Court to amend the list of Residential Schools set out in Schedule "A" for the purpose of these proceedings.

"Sean Harrington"
Judge

SCHEDULE "A"
to the Order of Justice Harrington

LIST OF RESIDENTIAL SCHOOLS

British Columbia Residential Schools

Ahousaht

Alberni

Cariboo (St. Joseph's, William's Lake)

Christie (Clayoquot, Kakawis)

Coqualeetza from 1924 to 1940

Cranbrook (St. Eugene's, Kootenay)

Kamloops

Kuper Island

Lejac (Fraser Lake)

Lower Post

St George's (Lytton)

St. Mary's (Mission)

St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)

Sechelt

St. Paul's (Squamish, North Vancouver)

Port Simpson (Crosby Home for Girls)

Kitimaat

Anahim Lake Dormitory (September 1968 to June 1977)

Alberta Residential Schools

Assumption (Hay Lake)

Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)

Crowfoot (Blackfoot, St. Joseph's, Ste. Trinité)

Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)

Edmonton (Poundmaker, replaced Red Deer Industrial)

Ermineskin (Hobbema)

Holy Angels (Fort Chipewyan, École des Saint-Anges)

Fort Vermilion (St. Henry's)

Joussard (St. Bruno's)

Lac La Biche (Notre Dame des Victoires)

Lesser Slave Lake (St. Peter's)

Morley (Stony/Stoney, replaced McDougall Orphanage)

Old Sun (Blackfoot)

Sacred Heart (Peigan, Brocket)

St. Albert (Youville)

St. Augustine (Smokey-River)

St. Cyprian (Queen Victoria's Jubilee Home, Peigan)

St. Joseph's (High River, Dunbow)

St. Mary's (Blood, Immaculate Conception)

St. Paul's (Blood)

Sturgeon Lake (Calais, St. Francis Xavier)

Wabasca (St. John's)

Whitefish Lake (St. Andrew's)

Grouard to December 1957

Sarcee (St. Barnabas)

Saskatchewan Residential Schools

Beauval (Lac la Plonge)

File Hills

Gordon's

Lac La Ronge (see Prince Albert)

Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)

Marieval (Cowesess, Crooked Lake)

Muscowequan (Lestock, Touchwood)

Onion Lake Anglican (see Prince Albert)

Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)

Regina

Round Lake

St. Anthony's (Onion Lake, Sacred Heart)

St. Michael's (Duck Lake)

St. Philip's

Sturgeon Landing (replaced by Guy Hill, MB)

Thunderchild (Delmas, St. Henri)

Crowstand

Fort Pelly

Cote Improved Federal Day School (September 1928 to June 1940)

Manitoba Residential Schools

Assiniboia(Winnipeg)

Birtle

Brandon

Churchill Vocational Centre

Cross Lake (St. Joseph's, Norway House)

Dauphin (replaced McKay)

Elkhorn (Washakada)

Fort Alexander (Pine Falls)

Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)

McKay (The Pas, replaced by Dauphin)

Norway House

Pine Creek (Campeville)

Portage la Prairie

Sandy Bay

Notre Dame Hostel (Norway House Catholic, Jack River Hostel, replaced Jack River Annex at Cross Lake)

Ontario Residential Schools

Bishop Horden Hall (Moose Fort, Moose Factory)

Cecilia Jeffrey (Kenora, Shoal Lake)

Chapleau (St. Joseph's)

Fort Frances (St. Margaret's)

McIntosh (Kenora)

Mohawk Institute

Mount Elgin (Muncey, St. Thomas)

Pelican Lake (Pelican Falls)

Poplar Hill

St. Anne's (Fort Albany)

St. Mary's (Kenora, St. Anthony's)

Shingwauk

Spanish Boys' School (Charles Garnier, St. Joseph's)

Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)

St. Joseph's/Fort William

Stirland Lake High School (Wahbon Bay Academy) from September 1, 1971 to June 30, 1991

Cristal Lake High School (September 1, 1976 to June 30, 1986)

Quebec Residential Schools

Amos

Fort George (Anglican)

Fort George (Roman Catholic)

La Tuque

Point Bleue

Sept-Îles

Federal Hostels at Great Whale River

Federal Hostels at Port Harrison

Federal Hostels at George River

Federal Hostel at Payne Bay (Bellin)

Fort George Hostels (September 1, 1975 to June 30, 1978)

Mistassini Hostels (September 1, 1971 to June 30, 1978)

Nova Scotia Residential Schools

Shubenacadie

Nunavut Residential Schools

Chesterfield Inlet (Joseph Bernier, Turquetil Hall)

Federal Hostels at Panniqtuug/Pangnirtang

Federal Hostels at Broughton Island/Qikiqtarjuaq

Federal Hostels at Cape Dorset Kinngait

Federal Hostels at Eskimo Point/Arviat

Federal Hostels at Igloolik/Iglulik

Federal Hostels at Baker Lake/Qamani'tuaq

Federal Hostels at Pond Inlet/Mittimatalik

Federal Hostels at Cambridge Bay

Federal Hostels at Lake Harbour

Federal Hostels at Belcher Islands

Federal Hostels at Frobisher Bay/Ukkivik

Federal Tent Hostel at Coppermine

Northwest Territories Residential Schools

Aklavik (Immaculate Conception)

Aklavik (All Saints)

Fort McPherson (Fleming Hall)

Ford Providence (Sacred Heart)

Fort Resolution (St. Joseph's)

Fort Simpson (Bompas Hall)

Fort Simpson (Lapointe Hall)

Fort Smith (Breynat Hall)

HayRiver-(St. Peter's)

Inuvik (Grollier Hall)

Inuvik (Stringer Hall)

Yellowknife (Akaitcho Hall)

Fort Smith -Grandin College

Federal Hostel at Fort Franklin

Yukon Residential Schools

Carcross (Chooulta)

Yukon Hall (Whitehorse/Protestant Hostel)

Coudert Hall (Whitehorse Hostel/Student Residence -replaced by Yukon Hall)

Whitehorse Baptist Mission

Shingle Point Eskimo Residential School

St. Paul's Hostel from September 1920 to June 1943

SCHEDULE C

CLAIMS PROCESS FOR DAY SCHOLAR COMPENSATION PAYMENT

Principles Governing Claims Administration

1. The following principles shall govern the Claims administration ("Claims Process Principles"):

    a. the Claims Process shall be expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed;

    b. the Claims Process shall minimize the burden on the Claimants in pursuing their Claims;

    c. the Claims Process shall mitigate any likelihood of re-traumatization through the Claims Process;

    d. the Claims Administrator and Independent Reviewer shall assume that a Claimant is acting honestly and in good faith unless there is reasonable evidence to the contrary;

    e. the Claims Administrator and Independent Reviewer shall draw all reasonable and favourable inferences that can be drawn in favour of the Claimant.

2. The above Claims Process Principles shall be applied throughout the Claims Process, including in any reconsideration.

Eligibility Criteria

3. Pursuant to the Settlement Agreement, a Claimant is entitled to a Day Scholar Compensation Payment, and their Claim shall be approved, if the Claimant satisfies the following eligibility criteria:

    a. the Claim is made with respect to a Day Scholar who was alive on May 30, 2005;

b. the Claim is made with respect to that Day Scholar's attendance at an Indian Residential School listed in Schedule E during all or part of a School Year for which the Day Scholar has not received a Common Experience Payment under the IRSSA, has not and will not receive compensation under the McLean Settlement, and has not received compensation under any other settlement with respect to a school listed in Schedule K to the McLean Settlement; and

c. the Claim is delivered to the Claims Administrator prior to the Ultimate Claims Deadline.

Intake

4. To apply for a Day Scholar Compensation Payment, a Claimant must complete a Claim Form and deliver it to the Claims Administrator prior to the Claims Deadline, through either the electronic or hard copy processes established by the Claims Administrator.

5. Notwithstanding the Claims Deadline, a Claimant may submit a Claim Form along with a request for a Claims Deadline extension to the Claims Administrator after the Claims Deadline but before the Ultimate Claims Deadline. Under no circumstances will the Claims Administrator accept any Claim Forms after the Ultimate Claims Deadline, except as specifically provided for herein and in the Estate Claims Process set out in Schedule D.

6. The Claims Administrator will provide the Claimant with confirmation of receipt of the Claim.

7. The Claims Administrator will digitize all paper applications and maintain electronic copies for use only as provided for by this Agreement.

8. The Claims Administrator will review each Claim for completeness. If any required information is missing from the Claim Form that renders it incomplete, including a request for a Claims Deadline extension, the Claims Administrator will contact the

Claimant and request that the Claimant provide the missing information or resubmit the Claim Form. The Claimant will have 60 days from the date of the resubmission request to resubmit their Claim Form, notwithstanding that the Ultimate Claims Deadline may have elapsed.

9. The Claims Administrator shall, without taking any further action, dismiss any Claim made with respect to an individual who died on or before May 29, 2005.

Information Provided by Canada

10. The Claims Administrator will provide a copy of each Claim made with respect to an individual alive on May 30, 2005, to Canada for use only as provided for by this Agreement.

11. Canada will review the Claim against any information in its possession for the purposes of:

    a. determining whether the individual at issue in the Claim or their executor, representative, or heir who applied in place of the individual received a Common Experience Payment pursuant to the IRSSA for any of the same School Years set out in the Claim;

    b. determining whether the individual at issue in the Claim or their executor, representative, or heir who applied in place of the individual was denied a Common Experience Payment claim pursuant to the IRSSA for any of the same School Years set out in the Claim;

    c. determining whether the individual at issue or their executor, representative, or heir who applied in place of the individual received compensation under any other settlement with respect to a school listed in Schedule K to the McLean Settlement, for any of the same School Years set out in the Claim;

    d. determining whether the individual at issue attended a school not listed in List 1 or List 2 as set out in Schedule E for any of the same School Years set out in the Claim; and

e. any other information that may be relevant to a Claim with respect to a school listed in List 2 of Schedule E.

12. In order to ensure that the Claim is not denied by reason only of the Claimant having been mistaken as to the School Year(s) of attendance as a Day Scholar, Canada will review the attendance records at the identified Indian Residential School(s) with respect to which the Claim was made for the five School Years before and after the School Year(s) identified in the Claim. If, as a result of this process, it is found that the individual at issue was a Day Scholar in (a) School Year(s) not claimed, this information shall be provided to the Claims Administrator and the Claim will be assessed as if it included that/those School Year(s).

13. Canada may forward to the Claims Administrator any information/documentation that supports or contradicts the individual at issue's attendance as a Day Scholar within 45 days of its receipt of a Claim from the Claims Administrator but will endeavour to do so as quickly as possible so as not to delay the determination of any Claim.

Assessment by the Claims Administrator

14. Where the Claim is with respect to an individual who was denied a Common Experience Payment claim pursuant to the IRSSA for any of the same School Years set out in the Claim on the grounds that they attended but did not reside at the Indian Residential School(s), regardless of which Indian Residential School(s) are named in the Claim, the Claims Administrator will consider the Claim to be presumptively valid, subject to the provisions below.

15. For all other Claims, the Claims Administrator will first make a determination whether the Claim is made with respect to a Day Scholar, in accordance with the following protocol:

    a. where the Claim is with respect to one or more Indian Residential Schools listed in List 1 of Schedule E within any time periods specified in that list, and the Claim Form states positively that the Claim is with respect to an

individual who attended the School as a Day Scholar, the Claims Administrator will consider the Claim to be presumptively valid, subject to the provisions below;

b. where the Claim is with respect only to one or more Indian Residential Schools listed in List 2 of Schedule E within any time periods specified in that list, and the Claimant provides a statutory declaration stating that the individual with respect to whom the Claim is made was a Day Scholar and identifying where the individual resided during the time they were a Day Scholar, the Claims Administrator will review the Claim and any information provided by Canada under ss. 11 – 13 above. Unless Canada has provided positive evidence demonstrating on a balance of probabilities that the individual was not a Day Scholar, the Claim will be considered presumptively valid, subject to the provisions below; and

c. where the Claim does not name any Indian Residential School listed in Schedule E, the Claims Administrator shall make best efforts to determine if there is any possibility of mistake or misnomer in the name of an Indian Residential School, including, where necessary, by contacting the Claimant. The Claims Administrator shall correct any such mistakes or misnomers. Where the Claims Administrator is satisfied that the Claim is not regarding any Indian Residential School listed in Schedule E, the Claims Administrator shall dismiss the Claim.

16. The Claims Administrator will review any information provided by Canada pursuant to ss. 11 - 13 above and any information in its possession as part of the McLean Settlement. If the Claims Administrator finds that there is positive evidence demonstrating on a balance of probabilities that, for all of the School Years set out in the Claim Form, the individual at issue or her/his executor, representative, or heir who applied in place of the individual:

    a. Received a Common Experience Payment under the IRSSA;

b. Received compensation under the McLean Settlement;

c. Received compensation as part of any other settlement with respect to a school listed in Schedule K to the McLean Settlement;

d. attended a school not listed in Schedule E; or

e. any combination of (a), (b), (c), or (d).

the Claims Administrator shall dismiss the Claim.

17. The Claims Administrator shall inform any Claimant whose Claim is dismissed by delivering a letter to them, via the Claimant's preferred method of communication:

a. providing clear reasons why the Claim has been dismissed;

b. in cases where the Claimant has a right to seek reconsideration:

i. informing the Claimant of their right to seek reconsideration, the process for seeking reconsideration, and any applicable deadlines;

ii. informing the Claimant of their right to assistance from Class Counsel at no cost and their right to assistance from another counsel of their choice at their own expense; and

iii. attaching copies of any information and documents that were considered as part of the Claims Administrator's decision to dismiss the Claim.

Reconsideration

18. A Claimant whose Claim is dismissed because:

a. it is in relation to a school that the Claims Administrator is satisfied is not an Indian Residential School listed in Schedule E; or

b. it is on behalf of an individual who died on or before May 29, 2005,

has no right to seek reconsideration.

19. A Claimant whose Claim is denied for any other reason has a right to seek reconsideration before the Independent Reviewer. Notice of intent to seek reconsideration must be delivered to the Independent Reviewer within 60 days of the date of the Claims Administrator's decision.

20. Canada has no right to seek reconsideration under any circumstances.

21. Claimants seeking reconsideration have the right to be represented by Class Counsel for the purposes of reconsideration at no cost to them or to retain another counsel of their choice at their own expense.

22. The Independent Reviewer will provide the Claimant with confirmation of receipt of the notice of intent to seek reconsideration and will provide Canada with a copy of the notice of intent to seek reconsideration.

23. The Independent Reviewer will advise the Claimant that they have a right to submit new evidence on reconsideration. The Claimant shall have 60 days to submit any new evidence on reconsideration, with such further reasonable extensions as the Claimant may request and the Independent Reviewer may grant.

24. The Independent Reviewer will provide Canada with any new evidence submitted by the Claimant and Canada will have the right to provide additional information to the Independent Reviewer that responds to any new evidence provided within 60 days.

25. The Independent Reviewer shall then consider each Claim, including its supporting documentation, *de novo*, and render a decision in accordance with the Claims Process Principles set out above. In particular, the Independent Reviewer shall:

    a. assume that a Claimant is acting honestly and in good faith, in the absence of reasonable grounds to the contrary; and

b. draw all reasonable and favourable inferences that can be drawn in favour of the Claimant.

26. If the Independent Reviewer decides the Claim should be accepted, the Claims Administrator and the Claimant will be informed, and the Claims Administrator will pay the Claimant forthwith.

27. If the Independent Reviewer decides the Claim should be dismissed, they will inform the Claimant by delivering a letter to them, via the Claimant's preferred method of communication:

a. providing clear reasons why the Claim has been dismissed; and

b. attaching copies of any information and documents that were considered as part of the Independent Reviewer's decision to dismiss the Claim.

28. All requests for reconsideration shall be resolved by the Independent Reviewer within 30 days of the receipt of any responding material provided by Canada or the expiry of time for Canada to provide responding material, whichever is sooner. If the Claimant does not file any new evidence on reconsideration, the Independent Reviewer shall resolve the reconsideration within 30 days of the expiry of time for the Claimant to provide new evidence. The timelines within this section may be modified by agreement between Class Counsel and Canada in consultation with the Independent Reviewer.

29. The decision of the Independent Reviewer is final without any further right of appeal or judicial review.

SCHEDULE D

ESTATE CLAIMS PROCESS FOR DAY SCHOLAR COMPENSATION PAYMENT

Where There is an Executor/Administrator/Trustee/Liquidator

1. The Claimant shall:

    a. complete the appropriate Claim Form;

    b. provide evidence that the Day Scholar is deceased;

    c. provide evidence of when the Day Scholar died; and

    d. provide evidence that they have been appointed as the executor, administrator, trustee, or liquidator.

2. The Claim Form will contain release, indemnity, and hold harmless provisions in favour of Canada, the representative plaintiffs, Class Counsel, the Claims Administrator, and the Independent Reviewer.

3. The Claims Administrator will assess the Claim in accordance with the Claims Process.

4. Payment of any approved Claim will be made payable to “the estate of” the deceased Day Scholar.

Where There is no Executor/Administrator/Trustee/Liquidator

5. The Claimant shall:

    a. complete the appropriate Claim Form;

    b. provide evidence that the Day Scholar is deceased;

    c. provide evidence of when the Day Scholar died;

    d. provide an attestation/declaration that the Day Scholar did not have a will and that no executor, administrator, trustee, or liquidator has been appointed by the court;

e. provide proof of their relationship to the Day Scholar, which may take the form of an attestation/declaration from a third party;

f. provide an attestation/declaration from the Claimant that there is/are no higher priority heir(s);

g. list all individuals (if any) at the same priority level of heirs as the Claimant; and

h. provide the written consent of all individuals (if any) at the same priority level of heirs as the Claimant for the Claimant to submit a claim on behalf of the deceased Day Scholar.

6. The Claim Form will contain release, indemnity, and hold harmless provisions in favour of Canada, the representative plaintiffs, class counsel, the Claims Administrator, and the Independent Reviewer.

7. The Claims Administrator will assess the Claim in accordance with the Claims Process but will only make a payment for an approved Claim or communicate a dismissed Claim with a right of reconsideration in accordance with the provisions below. In cases where the Claim is dismissed with no right of reconsideration, the Claims Administrator will inform the Claimant in accordance with the Claims Administrator's normal process.

8. If no additional Claims with respect to the same deceased Day Scholar are received by the Claims Administrator before the Ultimate Claims Deadline, the Claims Administrator shall:

a. in the case of a Claim that is approved, pay the Claimant; and

b. in the case of a Claim that is dismissed, advise the Claimant of the dismissal in accordance with paragraph 17 of the Claims Process. The Claimant is able to seek reconsideration in accordance with the Claims Process.

9. If the Claims Administrator receives another Claim with respect to the same deceased Day Scholar before the Ultimate Claims Deadline, where the Claimant is the estate executor, administrator, trustee, or liquidator, the Claims Administrator shall dismiss the Claim from the non-executor, administrator, trustee, or liquidator Claimant, without any right of reconsideration.

10. If any additional Claim(s) with respect to the same deceased Day Scholar is/are received by the Claims Administrator before the Ultimate Claims Deadline, from a Claimant who is not the estate executor, administrator, trustee, or liquidator, and who is of a different priority level of heirs than the previous Claimant(s), the Claims Administrator shall contact the Claimant with the lower priority to inquire as to whether that Claimant disputes the existence of the higher priority level heir. If the existence of a higher priority level heir is disputed, the matter shall be referred to the Independent Reviewer for a determination regarding which Claimant has the highest valid priority level and deem them to be the Designated Representative of the deceased Day Scholar. The decision of the Independent Reviewer is final without any right of appeal or judicial review. The Independent Reviewer shall inform the Claims Administrator of their decision, and the Claims Administrator shall:

    a. in the case of a Claim that is approved, pay the Designated Representative; and

    b. in the case of a Claim that is dismissed, advise the Claimant of the dismissal in accordance with paragraph 17 of the Claims Process. The Designated Representative is able to seek reconsideration in accordance with the Claims Process.

11. If any additional Claim(s) with respect to the same deceased Day Scholar is/are received by the Claims Administrator before the Ultimate Claims Deadline, from a Claimant who is not the estate executor, administrator, trustee, or liquidator and who is of the same priority level of heirs as the previous Claimant(s), the Claims Administrator shall reject all of the Claims and notify each Claimant accordingly.

Notwithstanding the Ultimate Claims Deadline, the Claimants who submitted competing Claims will then have three months to submit one new Claim signed by all previously competing Claimants designating one Designated Representative on behalf of all of them and any other heirs. Upon receipt of the new Claim, the Claims Administrator shall:

a. in the case of a Claim that is approved, pay the Designated Representative;

b. in the case of a Claim that is dismissed, advise the Claimant of the dismissal in accordance with paragraph 17 of the Claims Process. The Designated Representative is able to seek reconsideration in accordance with the Claims Process.

Priority Level of Heirs

12. The priority level of heirs follows the distribution of property intestacy provisions of the *Indian Act* and all terms have the definitions as set out in the *Indian Act.*

13. The priority level of heirs from highest to lowest priority are as follows:

a. surviving spouse or common-law partner;

b. children;

c. grandchildren;

d. parents;

e. siblings; and

f. children of siblings.

SCHEDULE E – Lists of Indian Residential Schools for Claims Process

List 1 – Schools with Confirmed Day Scholars

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
British Columbia Residential Schools			
Alberni	Port Alberni (Tseshaht Reserve)	January 1, 1920 **Interim Closures:** June 2, 1917, to December 1, 1920 February 21, 1937 to September 23, 1940	August 31, 1965
Cariboo (St. Joseph's, William's Lake)	Williams Lake	January 1, 1920	February 28, 1968
Christie (Clayoquot, Kakawis)	Tofino	January 1, 1920	June 30, 1983
Kamloops	Kamloops (Kamloops Indian Reserve)	January 1, 1920	August 31, 1969
Kuper Island	Kuper Island	January 1, 1920	August 31, 1968
Lejac (Fraser Lake)	Fraser Lake (on reserve)	January 1, 1920	August 31, 1976
Lower Post	Lower Post (on reserve)	September 1, 1951	August 31, 1968
St. George's (Lytton)	Lytton	January 1, 1920	August 31, 1972
St. Mary's (Mission)	Mission	January 1, 1920	August 31, 1973
Sechelt	Sechelt (on reserve)	January 1, 1920	August 31, 1969
St. Paul's (Squamish, North Vancouver)	Squamish, North Vancouver	January 1, 1920	August 31, 1959
Alberta Residential Schools			
Assumption (Hay Lake)	Assumption (Hay Lakes)	February 1, 1951	September 8, 1968

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Blue Quills	Saddle Lake Indian Reserve (1898 to 1931) St. Paul (1931 to 1990)	January 1, 1920	January 31, 1971
Crowfoot (Blackfoot, St. Joseph's, Ste. Trinité)	Cluny	January 1, 1920	December 31, 1968
Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)	Desmarais, Wabasca / Wabisca	January 1, 1920	August 31, 1964
Ermineskin (Hobbema)	Hobbema (Ermineskin Indian Reserve)	January 1, 1920	March 31, 1969
Holy Angels (Fort Chipewyan, École des Saint-Anges)	Fort Chipewyan	January 1, 1920	August 31, 1956
Fort Vermillion (St. Henry's)	Fort Vermillion	January 1, 1920	August 31, 1964
Joussard (St. Bruno's)	Lesser Slave Lake	1920	October 31, 1969
Morley (Stony/Stoney, replaced McDougall Orphanage)	Morley (Stony Indian Reserve)	September 1, 1922	July 31, 1969
Old Sun (Blackfoot)	Gleichen (Blackfoot Reserve)	January 1, 1920 **Interim Closures:** 1922 to February 1923 June 26, 1928 to February 17, 1931	June 30, 1971
Sacred Heart (Peigan, Brocket)	Brocket (Peigan Indian Reserve)	January 1, 1920	June 30, 1961
St. Cyprian (Queen Victoria's Jubliee Home, Peigan)	Brocket (Peigan Indian Reserve)	January 1, 1920 **Interim Closure:** September 1, 1953 to October 12, 1953	June 30, 1961

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
St. Mary's (Blood, Immaculate Conception)	Cardston (Blood Indian Reserve)	1920 **Interim Closure:** September 1, 1965 to January 6, 1966	August 31, 1969
St. Paul's (Blood)	Cardston (Blood Indian Reserve)	January 1, 1920	August 31, 1965
Sturgeon Lake (Calais, St. Francis Xavier)	Calais	January 1, 1920	August 31, 1959
Wabasca (St. John's)	Wabasca Lake	January 1, 1920	August 31, 1965
Whitefish Lake (St. Andrew's)	Whitefish Lake	January 1, 1920	June 30, 1950
Grouard	West side of Lesser Slave Lake, Grouard	January 1, 1920	September 30, 1957
Saskatchewan Residential Schools			
Beauval (Lac la Plonge)	Beauval	January 1, 1920	August 31, 1968
File Hills	Balcarres	January 1, 1920	June 30, 1949
Gordon's	Punnichy (Gordon's Reserve)	January 1, 1920 **Interim Closures:** June 30, 1947, to October 14, 1949 January 25, 1950 to September 1, 1953	August 31, 1968

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	Lebret	January 1, 1920 **Interim Closure:** November 13, 1932 to May 29, 1936	August 31, 1968
Marieval (Cowesess, Crooked Lake)	Cowesess Reserve	January 1, 1920	August 31, 1969
Muscowequan (Lestock, Touchwood)	Lestock	January 1, 1920	August 31, 1968
Prince Albert (Onion Lake Anglican, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	Onion Lake / Lac La Ronge / Prince Albert	January 1, 1920	August 31, 1968
St. Anthony's (Onion Lake, Sacred Heart)	Onion Lake	January 1, 1920	March 31, 1969
St. Michael's (Duck Lake)	Duck Lake	January 1, 1920	August 31, 1968
St. Philip's	Kamsack	April 16, 1928	August 31, 1968
Manitoba Residential Schools			
Assiniboia (Winnipeg)	Winnipeg	September 2, 1958	August 31, 1967
Brandon	Brandon	1920 **Interim Closure:** July 1, 1929 to July 18, 1930	August 31, 1968
Churchill Vocational Centre	Churchill	September 9, 1964	June 30, 1973
Cross Lake (St. Joseph's, Norway House)	Cross Lake	January 1, 1920	June 30, 1969
Fort Alexander (Pine Falls)	Fort Alexander Reserve No. 3, near Pine Falls	January 1, 1920	September 1, 1969

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	Clearwater Lake	September 5, 1952	August 31, 1968
Norway House	Norway House	January 1, 1920 **Interim Closure:** May 29, 1946 to September 1, 1954	June 30, 1967
Pine Creek (Camperville)	Camperville	January 1, 1920	August 31, 1969
Portage la Prairie	Portage la Prairie	January 1, 1920	August 31, 1960
Sandy Bay	Sandy Bay Reserve	January 1, 1920	June 30, 1970
Ontario Residential Schools			
Bishop Horden Hall (Moose Fort, Moose Factory)	Moose Island	January 1, 1920	August 31, 1964
Cecilia Jeffrey (Kenora, Shoal Lake)	Shoal Lake	January 1, 1920	August 31, 1965
Fort Frances (St. Margaret's)	Fort Frances	January 1, 1920	August 31, 1968
McIntosh (Kenora)	McIntosh	May 27, 1925	June 30, 1969
Pelican Lake (Pelican Falls)	Sioux Lookout	September 1, 1927	August 31, 1968
Poplar Hill	Poplar Hill	September 1, 1962	June 30, 1989
St. Anne's (Fort Albany)	Fort Albany	January 1, 1920	June 30, 1976
St. Mary's (Kenora, St. Anthony's)	Kenora	January 1, 1920	August 31, 1968
Spanish Boys' School (Charles Garnier, St. Joseph's)	Spanish	January 1, 1920	June 30, 1958
Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	Spanish	January 1, 1920	June 30, 1962

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Quebec Residential Schools			
Fort George (Anglican)	Fort George	September 1, 1933 **Interim Closure:** January 26, 1943 to July 9, 1944	August 31, 1971
Fort George (Roman Catholic)	Fort George	September 1, 1937	June 30, 1978
Point Bleue	Point Bleue	October 6, 1960	August 31, 1968
Sept-Îles	Sept-Îles	September 2, 1952	August 31, 1969
Nova Scotia Residential Schools			
Shubenacadie	Shubenacadie	September 1, 1929	June 30, 1967
Northwest Territories Residential Schools			
Aklavik (Immaculate Conception)	Aklavik	July 1, 1926	June 30, 1959
Aklavik (All Saints)	Aklavik	August 1, 1936	August 31, 1959
Fort Providence (Sacred Heart)	Fort Providence	January 1, 1920	June 30, 1960
Fort Resolution (St. Joseph's)	Fort Resolution	January 1, 1920	December 31, 1957
Hay River (St. Peter's)	Hay River	January 1, 1920	August 31, 1937
Yukon Residential Schools			
Carcross (Chooutla)	Carcross	January 1, 1920 **Interim Closure:** June 15, 1943 to September 1, 1944	June 30, 1969
Whitehorse Baptist Mission	Whitehorse	September 1, 1947	June 30, 1960
Shingle Point Eskimo Residential School	Shingle Point	September 16, 1929	August 31, 1936

List 2 – Schools Not Known to Have Day Scholars

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	Closing or Transfer Date
British Columbia Residential Schools			
Ahousaht	Ahousaht (Maktosis Reserve)	January 1, 1920	January 26, 1940
Coqualeetza from 1924 to 1940	Chilliwack	January 1, 1924	June 30, 1940
Cranbrook (St. Eugene's, Kootenay)	Cranbrook (on reserve)	January 1, 1920	June 23, 1965
St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	Alert Bay (on reserve)	January 1, 1920	August 31, 1960
Alberta Residential Schools			
Edmonton (Poundmaker, replaced Red Deer Industrial)	St. Albert	March 1, 1924 **Interim Closures:** July 1, 1946 to October 1, 1946 July 1, 1951 to November 5, 1951	August 31, 1960
Lesser Slave Lake (St. Peter's)	Lesser Slave Lake	January 1, 1920	June 30, 1932
St. Albert (Youville)	St. Albert, Youville	January 1, 1920	June 30, 1948
Sarcee (St. Barnabas)	Sarcee Junction, T'suu Tina (Sarcee Indian Reserve)	January 1, 1920	September 30, 1921
Saskatchewan Residential Schools			
Round Lake	Broadview	January 1, 1920	August 31, 1950
Sturgeon Landing (replaced by Guy Hill, MB)	Sturgeon Landing	September 1, 1926	October 21, 1952
Thunderchild (Delmas, St. Henri)	Delmas	January 1, 1920	January 13, 1948
Manitoba Residential Schools			
Birtle	Birtle	January 1, 1920	June 30, 1970

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	Closing or Transfer Date
Dauphin (replaced McKay)	The Pas / Dauphin	See McKay below	See McKay below
Elkhorn (Washakada)	Elkhorn	January 1, 1920 **Interim Closure:** 1920 to September 1, 1923	June 30, 1949
McKay (The Pas, replaced by Dauphin)	The Pas / Dauphin	January 1, 1920 **Interim Closure:** March 19, 1933 to September 1, 1957	August 31, 1968
Ontario Residential Schools			
Chapleau (St. John's)	Chapleau	January 1, 1920	July 31, 1948
Mohawk Institute	Brantford	January 1, 1920	August 31, 1968
Mount Elgin (Muncey, St. Thomas)	Muncey	January 1, 1920	June 30, 1946
Shingwauk	Sault Ste. Marie	January 1, 1920	June 30, 1970
St. Joseph's / Fort William	Fort William	January 1, 1920	September 1, 1968
Stirland Lake High School (Wahbon Bay Academy)	Stirland Lake	September 1, 1971	June 30, 1991
Cristal Lake High School	Stirland Lake	September 1, 1976	June 30, 1986
Quebec Residential Schools			
Amos	Amos	October 1, 1955	August 31, 1969
La Tuque	La Tuque	September 1, 1963	June 30, 1970

SCHEDULE F

DAY SCHOLARS REVITALIZATION SOCIETY PLAN

The Parties have agreed to settle the claims of the Survivor Class and the Descendant Class ("Survivors", "Descendants") in the *Gottfriedson v. AGC* proceeding. Under the Settlement Agreement, the Parties have agreed that Canada will fund $50 million to establish the Day Scholars Revitalization Society (the "Society"). The Parties agree the intention of the Society will be to support Survivors and Descendants in healing, wellness, education, language, culture, heritage, and commemoration activities and programs.

The monies will be used by the Society to support activities and programs for the benefit of the Survivors and Descendants as follows:

a. to revitalize and protect the Survivors' and Descendants' Indigenous languages;

b. to protect and revitalize the Survivors' and Descendants' Indigenous cultures;

c. to pursue healing and wellness for the Survivors and Descendants;

d. to protect the Survivors' and Descendants' Indigenous heritage; and,

e. to promote education and commemoration.

The activities and programs will not duplicate those of the Government of Canada. Grants will be made to Survivors and Descendants for activities and programs designed to support healing and address any losses to languages, culture, wellness, and heritage that Survivors suffered while attending Indian Residential Schools as Day Scholars.

The Society will be incorporated under the B.C. *Societies Act* prior to the Implementation Date and will be properly registered in each jurisdiction in Canada to the extent required by those jurisdictions. The Society will have between 5 and 11 Directors. One of those Directors will be named by Canada, but will not be a Government

employee. The Parties will ensure the other Directors provide adequate regional representation from across Canada.

The Society will have a small administrative staff and will retain financial consultants to provide investment advice. Once funds have been invested, the expenses of the Society will be funded from investment income.

Advisory Board

The Directors will be guided by an Advisory Board consisting of individuals, appointed by the Directors, who provide regional representation, understanding and knowledge of the loss and revitalization of Indigenous languages, cultures, wellness and heritage.

The Advisory Board shall advise the Directors regarding all activities of the Directors in the pursuit of the activities of the Society, including the development and implementation of a policy for applications to obtain funding from the Society in that pursuit.

SCHEDULE G

ORDER

THIS COURT ORDERS that:

1. The above captioned proceeding is certified as a class proceeding with the following conditions:

a. The Class shall be defined as:

The Tk'emlúps te Secwépemc Indian Band and the Sechelt Indian Band and any other Indian Band(s) which:

(i) has or had some members who are or were members who were Survivors, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically Identified Residential Schools.

b. The Class's Representative Plaintiffs shall be:

Tk'emlúps te Secwépemc Indian Band; and

Sechelt Indian Band.

c. The nature of the claims of the Class are:

Breaches of fiduciary and constitutionally mandated duties, breach of Aboriginal Rights, breaches of International Conventions and/or Covenants, and breaches of international law committed by or on behalf of Canada for which Canada is liable.

d. The relief claimed by the Class is as follows:

i. a Declaration that the Sechelt Indian Band and Tk'emlúps te Secwépemc Indian Band, and all members of the Class, have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices;

ii. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties, as well as breaches of International Conventions and Covenants, and breaches of international law, to the Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivors at, and support of, the SIRS and the KIRS and other Identified Residential Schools;

iii. a Declaration that the Residential Schools Policy and the KIRS, the SIRS and Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Class;

iv. a Declaration that Canada was or is in breach of the Class members' linguistic and cultural rights (Aboriginal Rights or otherwise), as well as breaches of International Conventions and Covenants, and breaches of international law, as a consequence of its establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivors at and support of the Residential Schools Policy, and the Identified Residential Schools;

v. a Declaration that Canada is liable to the Class members for the damages caused by its breach of fiduciary and constitutionally mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivors at and support of the Identified Residential Schools;

vi. non-pecuniary and pecuniary damages and special damages for breach of fiduciary and constitutionally mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the ongoing cost of care and development of wellness plans for members of the bands in the Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Class for which Canada is liable;

vii. The construction and maintenance of healing and education centres in the Class communities and such further and other centres or operations as may mitigate the losses suffered and that this Honourable Court may find to be appropriate and just;

viii. exemplary and punitive damages for which Canada is liable; and

ix. pre-judgment and post-judgment interest and costs.

e. The common questions of law or fact are:

a. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a fiduciary duty owed to the Class not to destroy their language and culture?

b. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach the cultural and/or linguistic rights, be they Aboriginal Rights or otherwise, of the Class?

c. If the answer to any of (a)-(b) above is yes, can the Court make an aggregate assessment of the damages suffered by the Class as part of the common issues trial?

d. If the answer to any of (a)-(b) above is yes, was the Defendant guilty of conduct that justifies an award of punitive damages; and

e. If the answer to (d) above is yes, what amount of punitive damages ought to be awarded?

f. The following definitions apply to this Order:

a. "Aboriginal(s)", "Aboriginal Person(s)" or "Aboriginal Child(ren)" means a person or persons whose rights are recognized and affirmed by the *Constitution Act, 1982*, s. 35;

b. "Aboriginal Right(s)" means any or all of the Aboriginal and treaty rights recognized and affirmed by the *Constitution Act, 1982*, s. 35;

c. "Agreement" means the Indian Residential Schools Settlement Agreement dated May 10, 2006, entered into by Canada to settle claims relating to Residential Schools as approved in the orders granted in various jurisdictions across Canada;

d. "Canada" means the Defendant, Her Majesty the Queen;

e. "Class Period" means 1920 to 1997;

f. "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the educational, governmental, economic, cultural, linguistic, spiritual and social customs, practices and way of life, traditional governance structures, as well as to the community and individual security and wellbeing, of Aboriginal Persons;

g. "Identified Residential School(s)" means the KIRS or the SIRS or any other Residential School specifically identified as a member of the Band Class;

h. "KIRS" means the Kamloops Indian Residential School;

i. "Residential Schools" means all Indian Residential Schools recognized under the Agreement and listed in Schedule "A" appended to this Order which Schedule may be amended from time to time by Order of this Court;

j. "Residential Schools Policy" means the policy of Canada with respect to the implementation of Indian Residential Schools;

k. "Survivors" means all Aboriginal persons who attended as a student or for educational purposes for any period at a Residential School, during the Class Period, excluding, for any individual Survivor, such periods of time for which that Survivor received compensation by way of the Common Experience Payment under the Agreement. For greater clarity, Survivors are all those who were members of the formerly certified Survivor Class in this proceeding, whose claims were settled on terms set out in the Settlement Agreement signed on [DATE], and approved by the Federal Court on [DATE]; and

l. "SIRS" means the Sechelt Indian Residential School.

g. Members of the Class are the representative plaintiff Indian Bands as well as those Indian Bands that opted in by the opt-in deadline previously set by this Court.

h. Either party may apply to this Court to amend the list of Residential Schools set out in Schedule "A" hereto, for the purpose of this proceeding.

_____

Judge

SCHEDULE "A"
to the Order of Justice MacDonald

LIST OF RESIDENTIAL SCHOOLS

British Columbia Residential Schools

Ahousaht
Alberni
Cariboo (St. Joseph's, William's Lake)
Christie (Clayoquot, Kakawis)
Coqualeetza from 1924 to 1940
Cranbrook (St. Eugene's, Kootenay)
Kamloops
Kuper Island
Lejac (Fraser Lake)
Lower Post
St George's (Lytton)
St. Mary's (Mission)
St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)
Sechelt
St. Paul's (Squamish, North Vancouver)
Port Simpson (Crosby Home for Girls)
Kitimaat
Anahim Lake Dormitory (September 1968 to June 1977)

Alberta Residential Schools

Assumption (Hay Lake)
Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)
Crowfoot (Blackfoot, St. Joseph's, Ste. Trinité)
Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)
Edmonton (Poundmaker, replaced Red Deer Industrial)
Ermineskin (Hobbema)
Holy Angels (Fort Chipewyan, École des Saint-Anges)
Fort Vermilion (St. Henry's)

Joussard (St. Bruno's)
Lac La Biche (Notre Dame des Victoires)
Lesser Slave Lake (St. Peter's)
Morley (Stony/Stoney, replaced McDougall Orphanage)
Old Sun (Blackfoot)
Sacred Heart (Peigan, Brocket)
St. Albert (Youville)
St. Augustine (Smokey-River)
St. Cyprian (Queen Victoria's Jubilee Home, Peigan)
St. Joseph's (High River, Dunbow)
St. Mary's (Blood, Immaculate Conception)
St. Paul's (Blood)
Sturgeon Lake (Calais, St. Francis Xavier)
Wabasca (St. John's)
Whitefish Lake (St. Andrew's)
Grouard to December 1957
Sarcee (St. Barnabas)

Saskatchewan Residential Schools

Beauval (Lac la Plonge)
File Hills
Gordon's
Lac La Ronge (see Prince Albert)
Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)
Marieval (Cowesess, Crooked Lake)
Muscowequan (Lestock, Touchwood)
Onion Lake Anglican (see Prince Albert)
Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)
Regina
Round Lake
St. Anthony's (Onion Lake, Sacred Heart)
St. Michael's (Duck Lake)
St. Philip's

Sturgeon Landing (replaced by Guy Hill, MB)

Thunderchild (Delmas, St. Henri)

Crowstand

Fort Pelly

Cote Improved Federal Day School (September 1928 to June 1940)

Manitoba Residential Schools

Assiniboia (Winnipeg)

Birtle

Brandon

Churchill Vocational Centre

Cross Lake (St. Joseph's, Norway House)

Dauphin (replaced McKay)

Elkhorn (Washakada)

Fort Alexander (Pine Falls)

Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)

McKay (The Pas, replaced by Dauphin)

Norway House

Pine Creek (Campeville)

Portage la Prairie

Sandy Bay

Notre Dame Hostel (Norway House Catholic, Jack River Hostel, replaced Jack River Annex at Cross Lake)

Ontario Residential Schools

Bishop Horden Hall (Moose Fort, Moose Factory)

Cecilia Jeffrey (Kenora, Shoal Lake)

Chapleau (St. John's)

Fort Frances (St. Margaret's)

McIntosh (Kenora)

Mohawk Institute

Mount Elgin (Muncey, St. Thomas)

Pelican Lake (Pelican Falls)

Poplar Hill
St. Anne's (Fort Albany)
St. Mary's (Kenora, St. Anthony's)
Shingwauk
Spanish Boys' School (Charles Garnier, St. Joseph's)
Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)
St. Joseph's/Fort William
Stirland Lake High School (Wahbon Bay Academy) from September 1, 1971 to June 30, 1991
Cristal Lake High School (September 1, 1976 to June 30, 1986)

Quebec Residential Schools

Amos
Fort George (Anglican)
Fort George (Roman Catholic)
La Tuque
Point Bleue
Sept-Îles
Federal Hostels at Great Whale River
Federal Hostels at Port Harrison
Federal Hostels at George River
Federal Hostel at Payne Bay (Bellin)
Fort George Hostels (September 1, 1975 to June 30, 1978)
Mistassini Hostels (September 1, 1971 to June 30, 1978)

Nova Scotia Residential Schools

Shubenacadie

Nunavut Residential Schools

Chesterfield Inlet (Joseph Bernier, Turquetil Hall)
Federal Hostels at Panniqtuug/Pangnirtang
Federal Hostels at Broughton Island/Qikiqtarjuaq
Federal Hostels at Cape Dorset Kinngait
Federal Hostels at Eskimo Point/Arviat

Federal Hostels at Igloolik/Iglulik
Federal Hostels at Baker Lake/Qamani'tuaq
Federal Hostels at Pond Inlet/Mittimatalik
Federal Hostels at Cambridge Bay
Federal Hostels at Lake Harbour
Federal Hostels at Belcher Islands
Federal Hostels at Frobisher Bay/Ukkivik
Federal Tent Hostel at Coppermine

Northwest Territories Residential Schools
Aklavik (Immaculate Conception)
Aklavik (All Saints)
Fort McPherson (Fleming Hall)
Ford Providence (Sacred Heart)
Fort Resolution (St. Joseph's)
Fort Simpson (Bompas Hall)
Fort Simpson (Lapointe Hall)
Fort Smith (Breynat Hall)
HayRiver-(St. Peter's)
Inuvik (Grollier Hall)
Inuvik (Stringer Hall)
Yellowknife (Akaitcho Hall)
Fort Smith -Grandin College
Federal Hostel at Fort Franklin

Yukon Residential Schools
Carcross (Chooulta)
Yukon Hall (Whitehorse/Protestant Hostel)
Coudert Hall (Whitehorse Hostel/Student Residence -replaced by Yukon Hall)
Whitehorse Baptist Mission
Shingle Point Eskimo Residential School
St. Paul's Hostel from September 1920 to June 1943

SCHEDULE H

Amended Pursuant to the Order of Justice McDonald
Made _____

Court File No. T-1542-13

CLASS PROCEEDING

FORM 171A - Rule 171

FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, and

CHIEF GARRY FESCHUK, on behalf of the SECHELT INDIAN BAND

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by THE ATTORNEY GENERAL OF CANADA

DEFENDANT

SECOND RE-AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

(Date)

Issued by:_____
(Registry Officer)

Address of local office:_____

TO:

Her Majesty the Queen in Right of Canada,
Minister of Indian Affairs and Northern Development, and
Attorney General of Canada
Department of Justice
900 - 840 Howe Street
Vancouver, B.C. V6Z 2S9

RELIEF SOUGHT

1. The Representative Plaintiffs, on behalf of Tk'emlúps te Secwépemc Indian Band and Sechelt Indian Band, and on behalf of the members of the Class, claim:

(a) a Declaration that the Sechelt Indian Band (referred to as the shíshálh or shíshálh band) and Tk'emlúps Band, and all members of the certified Class of Indian Bands, have Aboriginal Rights to speak their traditional languages and engage in their traditional customs and religious practices;

(b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties as well as breaches of International Conventions and Covenants, and breaches of international law, to the Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivors at, and support of, the SIRS and the KIRS and other Identified Residential Schools;

(c) a Declaration that the Residential Schools Policy and the KIRS, the SIRS and Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Class;

(d) a Declaration that Canada was or is in breach of the Class members' linguistic and cultural rights, (Aboriginal Rights or otherwise), as well as breaches of International Conventions and Covenants, and breaches of international law, as a consequence of its establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivors at and support of the Residential Schools Policy, and the Identified Residential Schools;

(e) a Declaration that Canada is liable to the Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivors at and support of the Identified Residential Schools;

(f) non-pecuniary and pecuniary general damages and special damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the ongoing cost of care and development of wellness plans for individual members of the bands in the Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Bands for which Canada is liable;

(g) the construction of healing centres in the Class communities by Canada;

(h) exemplary and punitive damages for which Canada is liable;

(i) pre-judgment and post-judgment interest;

(j) the costs of this action; and

(k) such further and other relief as this Honourable Court may deem just.

DEFINITIONS

2. The following definitions apply for the purposes of this Claim:

(a) "Aboriginal(s)", "Aboriginal Person(s)" or "Aboriginal Child(ren)" means a person or persons whose rights are recognized and affirmed by the *Constitution Act*, 1982, s. 35;

(b) "Aboriginal Right(s)" means any or all of the aboriginal and treaty rights recognized and affirmed by the *Constitution Act*, 1982, s. 35;

(c) "Act" means the *Indian Act*, R.S.C. 1985, c. I-5 and its predecessors as have been amended from time to time;

(d) "Agents" means the servants, contractors, agents, officers and employees of Canada and the operators, managers, administrators and teachers and staff of each of the Residential Schools;

(e) "Agreement" means the Indian Residential Schools Settlement Agreement dated May 10, 2006 entered into by Canada to settle claims relating to Residential Schools as approved in the orders granted in various jurisdictions across Canada;

(f) "Class" means the Tk'emlúps te Secwépemc Indian Band and the shíshálh band and any other Aboriginal Indian Band(s) which:

(i) has or had some members who are or were Survivors, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically identified Residential Schools.

(g) "Canada" means the Defendant, Her Majesty the Queen in right of Canada as represented by the Attorney General of Canada;

(h) "Class Period" means 1920 to 1997**;**

(i) "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the educational, governmental, economic, cultural, linguistic, spiritual and social

customs, practices and way of life, traditional governance structures, as well as to the community and individual security and wellbeing, of Aboriginal Persons;

(j) "Identified Residential School(s)" means the KIRS or the SIRS Residential School;

(k) "KIRS" means the Kamloops Indian Residential School;

(l) "Residential Schools" means all Indian Residential Schools recognized under the Agreement;

(m) "Residential Schools Policy" means the policy of Canada with respect to the implementation of Indian Residential Schools;

(n) "SIRS" means the Sechelt Indian Residential School;

(o) "Survivors" means all Aboriginal persons who attended as a student or for educational purposes for any period at a Residential School, during the Class Period excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the Indian Residential Schools Settlement Agreement. For greater clarity, Survivors are all those who were members of the formerly certified Survivor Class in this proceeding, whose claims were settled on terms set out in the Settlement Agreement signed on [DATE], and approved by the Federal Court on [DATE].

THE PARTIES

The Plaintiffs

3. The Tk'emlúps te Secwépemc Indian Band and the shíshálh band are Aboriginal Indian Bands and they both act as Representative Plaintiffs for the Class. The Class members represent the collective interests and authority of each of their respective communities.

The Defendant

4. Canada is represented in this proceeding by the Attorney General of Canada. The Attorney General of Canada represents the interests of Canada and the Minister of Aboriginal Affairs and Northern Development Canada and predecessor Ministers who were responsible for

"Indians" under s.91 (24) of the *Constitution Act, 1867*, and who were, at all material times, responsible for the formation and implementation of the Residential Schools Policy, and the maintenance and operation of the KIRS and the SIRS.

STATEMENT OF FACTS

5. Over the course of the last several years, Canada has acknowledged the devastating impact of its Residential Schools Policy on Canada's Aboriginal Peoples. Canada's Residential Schools Policy was designed to eradicate Aboriginal culture and identity and assimilate the Aboriginal Peoples of Canada into Euro-Canadian society. Through this policy, Canada ripped away the foundations of identity for generations of Aboriginal People and caused incalculable harm to both individuals and communities.

6. The direct beneficiary of the Residential Schools Policy was Canada as its obligations would be reduced in proportion to the number, and generations, of Aboriginal Persons who would no longer recognize their Aboriginal identity and would reduce their claims to rights under the Act and Canada's fiduciary, constitutionally-mandated, statutory and common law duties.

7. Canada was also a beneficiary of the Residential Schools Policy, as the policy served to weaken the claims of Aboriginal Peoples to their traditional lands and resources. The result was a severing of Aboriginal People from their cultures, traditions and ultimately their lands and resources. This allowed for exploitation of those lands and resources by Canada, not only without Aboriginal Peoples' consent but also, contrary to their interests, the Constitution of Canada and the Royal Proclamation of 1763.

8. The truth of this wrong and the damage it has wrought has now been acknowledged by the Prime Minister on behalf of Canada, and through the pan-Canadian settlement of the claims of

those who *resided at* Canada's Residential Schools by way of the Agreement implemented in 2007. Notwithstanding the truth and acknowledgement of the wrong and the damages caused, many members of Canada's Aboriginal communities were excluded from the Agreement, not because they did not *attend* Residential Schools and suffer Cultural, Linguistic and Social Damage, but simply because they did not *reside at* Residential Schools.

9. This claim is on behalf of the members of the Class, consisting of the Aboriginal communities within which the Residential Schools were situated, or whose members are or were Survivors.

The Residential School System

10. Residential Schools were established by Canada prior to 1874, for the education of Aboriginal Children. Commencing in the early twentieth century, Canada began entering into formal agreements with various religious organizations (the "Churches") for the operation of Residential Schools. Pursuant to these agreements, Canada controlled, regulated, supervised and directed all aspects of the operation of Residential Schools. The Churches assumed the day-to-day operation of many of the Residential Schools under the control, supervision and direction of Canada, for which Canada paid the Churches a *per capita* grant. In 1969, Canada took over operations directly.

11. As of 1920, the Residential Schools Policy included compulsory *attendance* at Residential Schools for all Aboriginal Children aged 7 to 15. Canada removed most Aboriginal Children from their homes and Aboriginal communities and transported them to Residential Schools which were often long distances away. However, in some cases, Aboriginal Children lived in their homes and communities and were similarly required to attend Residential Schools as

day students and not residents. This practice applied to even more children in the later years of the Residential Schools Policy. While at Residential School, all Aboriginal Children were confined and deprived of their heritage, their support networks and their way of life, forced to adopt a foreign language and a culture alien to them and punished for non-compliance.

12. The purpose of the Residential Schools Policy was the complete integration and assimilation of Aboriginal Children into the Euro-Canadian culture and the obliteration of their traditional language, culture, religion and way of life. Canada set out and intended to cause the Cultural, Linguistic and Social Damage which has harmed Canada's Aboriginal Peoples and Nations.

13. Canada chose to be disloyal to its Aboriginal Peoples, implementing the Residential Schools Policy in its own self-interest, including economic self-interest, and to the detriment and exclusion of the interests of the Aboriginal Persons to whom Canada owed fiduciary and constitutionally-mandated duties. The intended eradication of Aboriginal identity, culture, language, and spiritual practices, to the extent successful, results in the reduction of the obligations owed by Canada in proportion to the number of individuals, over generations, who would no longer identify as Aboriginal and who would be less likely to make claims to their rights as Aboriginal Persons.

The Effects of the Residential Schools Policy on the Class Members

Tk'emlúps Indian Band

14. Tk'emlúpsemc, 'the people of the confluence', now known as the Tk'emlúps te Secwépemc Indian Band are members of the northernmost of the Plateau People and of the Interior-Salish Secwépemc (Shuswap) speaking peoples of British Columbia. The Tk'emlúps

Indian Band was established on a reserve now adjacent to the City of Kamloops, where the KIRS was subsequently established.

15. Secwepemctsin is the language of the Secwépemc, and it is the unique means by which the cultural, ecological, and historical knowledge and experience of the Secwépemc people is understood and conveyed between generations. It is through language, spiritual practices and passage of culture and traditions including their rituals, drumming, dancing, songs and stories, that the values and beliefs of the Secwépemc people are captured and shared. From the Secwépemc perspective all aspects of Secwépemc knowledge, including their culture, traditions, laws and languages, are vitally and integrally linked to their lands and resources.

16. Language, like the land, was given to the Secwépemc by the Creator for communication to the people and to the natural world. This communication created a reciprocal and cooperative relationship between the Secwépemc and the natural world which enabled them to survive and flourish in harsh environments. This knowledge, passed down to the next generation orally, contained the teachings necessary for the maintenance of Secwépemc culture, traditions, laws and identity.

17. For the Secwépemc, their spiritual practices, songs, dances, oral histories, stories and ceremonies were an integral part of their lives and societies. These practices and traditions are absolutely vital to maintain. Their songs, dances, drumming and traditional ceremonies connect the Secwépemc to their land and continually remind the Secwépemc of their responsibilities to the land, the resources and to the Secwépemc people.

18. Secwépemc ceremonies and spiritual practices, including their songs, dances, drumming and passage of stories and history, perpetuate their vital teachings and laws relating to the harvest

of resources, including medicinal plants, game and fish, and the proper and respectful protection and preservation of resources. For example, in accordance with Secwépemc laws, the Secwépemc sing and pray before harvesting any food, medicines, and other materials from the land, and make an offering to thank the Creator and the spirits for anything they take. The Secwépemc believe that all living things have spirits and must be shown utmost respect. It was these vital, integral beliefs and traditional laws, together with other elements of Secwépemc culture and identity, that Canada sought to destroy with the Residential Schools Policy.

Shíshálh band

19. The shíshálh Nation, a division of the Coast Salish First Nations, originally occupied the southern portion of the lower coast of British Columbia. The shíshálh People settled the area thousands of years ago, and occupied approximately 80 village sites over a vast tract of land. The shíshálh People are made up of four sub-groups that speak the language of Shashishalhem, which is a distinct and unique language, although it is part of the Coast Salish Division of the Salishan Language.

20. Shíshálh tradition describes the formation of the shíshálh world (Spelmulh story). Beginning with the creator spirits, who were sent by the Divine Spirit to form the world, they carved out valleys leaving a beach along the inlet at Porpoise Bay. Later, the transformers, a male raven and a female mink, added details by carving trees and forming pools of water.

21. The shíshálh culture includes singing, dancing and drumming as an integral part of their culture and spiritual practices, a connection with the land and the Creator and passing on the history and beliefs of the people. Through song and dance the shíshálh People would tell stories, bless events and even bring about healing. Their songs, dances and drumming also signify critical

seasonal events that are integral to the shíshálh. Traditions also include making and using masks, baskets, regalia and tools for hunting and fishing. It was these vital, integral beliefs and traditional laws, together with other elements of the shíshálh culture and identity, that Canada sought to destroy with the Residential Schools Policy.

The Impact of the Residential schools

22. For all of the Aboriginal Children who were compelled to attend the Residential Schools, rigid discipline was enforced as per the Residential Schools Policy. While at school, children were not allowed to speak their Aboriginal language, even to their parents, and thus members of these Aboriginal communities were forced to learn English.

23. Aboriginal culture was strictly suppressed by the school administrators in compliance with the policy directives of Canada including the Residential Schools Policy. At the SIRS, members of shishalh were forced to burn or give to the agents of Canada centuries-old totem poles, regalia, masks and other "paraphernalia of the medicine men" and to abandon their potlatches, dancing and winter festivities, and other elements integral to the Aboriginal culture and society of the shíshálh and Secwépemc peoples.

24. Because the SIRS was physically located in the shíshálh community, Canada's eyes, both directly and through its Agents, were upon the elders and they were punished severely for practising their culture or speaking their language or passing this on to future generations. In the midst of that scrutiny, members of the shíshálh band struggled, often unsuccessfully, to practice, protect and preserve their songs, masks, dancing or other cultural practices.

25. The Tk'emlúps te Secwépemc suffered a similar fate due to their proximity to the KIRS.

26. The children at the Residential Schools were taught to be ashamed of their Aboriginal identity, culture, spirituality and practices. They were referred to as, amongst other derogatory epithets, "dirty savages" and "heathens" and taught to shun their very identities. The Class members' Aboriginal way of life, traditions, cultures and spiritual practices were supplanted with the Euro-Canadian identity imposed upon them by Canada through the Residential Schools Policy.

27. The Class members have lost, in whole or in part, their traditional economic viability, self-government and laws, language, land base and land-based teachings, traditional spiritual practices and religious practices, and the integral sense of their collective identity.

28. The Residential Schools Policy, delivered through the Residential Schools, wrought cultural, linguistic and social devastation on the communities of the Class and altered their traditional way of life.

Canada's Settlement with Former Residential School Residents

29. From the closure of the Residential Schools until the late 1990's, Canada's Aboriginal communities were left to battle the damages and suffering of their members as a result of the Residential Schools Policy, without any acknowledgement from Canada. During this period, Residential School survivors increasingly began speaking out about the horrible conditions and abuse they suffered, and the dramatic impact it had on their lives. At the same time, many survivors committed suicide or self-medicated to the point of death. The deaths devastated the life and stability of the communities represented by the Class.

30. In January 1998, Canada issued a Statement of Reconciliation acknowledging and apologizing for the failures of the Residential Schools Policy. Canada admitted that the Residential

Schools Policy was designed to assimilate Aboriginal Persons and that it was wrong to pursue that goal. The Plaintiffs plead that the Statement of Reconciliation by Canada is an admission by Canada of the facts and duties set out herein and is relevant to the Plaintiffs' claim for damages, particularly punitive damages.

31. The Statement of Reconciliation stated, in part, as follows:

> *Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the results of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.*
>
> *Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the Federal Government which have contributed to these difficult pages in the history of our relationship together.*
>
> *One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School System. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continued to reverberate in Aboriginal communities to this date. Tragically, some children were the victims of physical and sexual abuse.*
>
> *The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at Residential Schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what*

> *you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at Residential Schools, we are deeply sorry. In dealing with the legacies of the Residential School program, the Government of Canada proposes to work with First Nations, Inuit, Metis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of this sad era of our history...*

32. Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong community...On June 11, 2008, Prime Minister Stephen Harper on behalf of Canada, delivered an apology ("Apology") that acknowledged the harm done by Canada's Residential Schools Policy:

> *For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities. In the 1870's, the federal government, partly in order to meet its obligation to educate Aboriginal children, began to play a role in the development and administration of these schools.* ***Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture.*** *These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said,* ***"to kill the Indian in the child"****. Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country. [****emphasis added****]*

33. In this Apology, the Prime Minister made some important acknowledgments regarding the Residential Schools Policy and its impact on Aboriginal Children:

> *The Government of Canada built an educational system in which very young children were often forcibly removed from their homes, often taken far from their communities. Many were inadequately fed, clothed and housed. All were deprived of the care and nurturing of their parents, grandparents and communities. First Nations, Inuit and Métis languages and cultural practices were prohibited in these schools.*

> *Tragically, some of these children died while attending residential schools and others never returned home.*
>
> *The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language.*
>
> *The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.*
>
> * * *
>
> *We now recognize that it was wrong to separate children from rich and vibrant cultures and traditions, that it created a void in many lives and communities, and we apologize for having done this. We now recognize that, in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow, and we apologize for having done this. We now recognize that, far too often, these institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you. Not only did you suffer these abuses as children, but as you became parents, you were powerless to protect your own children from suffering the same experience, and for this we are sorry.*
>
> *The burden of this experience has been on your shoulders for far too long. The burden is properly ours as a Government, and as a country. There is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again. You have been working on recovering from this experience for a long time and in a very real sense, we are now joining you on this journey. The Government of Canada sincerely apologizes and asks the forgiveness of the Aboriginal peoples of this country for failing them so profoundly.*

Canada's Breach of Duties to the Class Members

34. From the formation of the Residential Schools Policy to its execution in the form of forced attendance at the Residential Schools, Canada caused incalculable losses to the Class members.

35. The Class members have all been affected by a crippling or elimination of traditional ceremonies and a loss of the hereditary governance structure which allowed for the ability to govern their peoples and their lands.

Canada's Duties

36. Canada was responsible for developing and implementing all aspects of the Residential Schools Policy, including carrying out all operational and administrative aspects of Residential Schools. While the Churches were used as Canada's Agents to assist Canada in carrying out its objectives, those objectives and the manner in which they were carried out were the obligations of Canada. Canada was responsible for:

(a) the administration of the Act and its predecessor statutes as well as all other statutes relating to Aboriginal Persons and all Regulations promulgated under these Acts and their predecessors during the Class Period;

(b) the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessors and related Ministries and Departments, as well as the decisions taken by those ministries and departments;

(c) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of the Residential Schools and for the creation, design and implementation of the program of education for Aboriginal Persons in attendance;

(d) the selection, control, training, supervision and regulation of the operators of the Residential Schools, including their employees, servants, officers and agents, and for the care and education, control and well being of Aboriginal Persons attending the Residential Schools;

(e) preserving, promoting, maintaining and not interfering with Aboriginal Rights, including the right to retain and practice their culture, spirituality, language and traditions and the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities; and

(f) the care and supervision of all Survivors while they were in attendance at the Residential Schools during the Class Period.

37. Further, Canada has at all material times committed itself to honour international law in relation to the treatment of its people, which obligations form minimum commitments to Canada's Aboriginal Peoples, including the Class, and which have been breached. In particular, Canada's breaches include the failure to comply with the terms and spirit of:

(a) the *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277, entered into force Jan. 12, 1951,, and in particular Article 2(b), (c) and (e) of that convention, by engaging in the intentional destruction of the culture of Aboriginal Children and communities, causing profound and permanent cultural injuries to the Class;

(b) the *Declaration of the Rights of the Child* (1959) G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 by failing to provide Aboriginal Children with the means necessary for normal development, both materially and spiritually, and failing to put them in a position to earn a livelihood and protect them against exploitation;

(c) the *Convention on the Rights of the Child*, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989), and in particular Articles 29 and 30 of that convention, by failing to provide Aboriginal Children with education that is directed to the development of respect for their parents, their cultural identities, language and values, and by denying the right of Aboriginal Children to enjoy their own cultures, to profess and practise their own religions and to use their own languages;

(d) the *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, in particular Articles 1 and 27 of that convention, by interfering with Class members' rights to retain and practice their culture, spirituality, language and traditions, the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities and the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities;

(e) the *American Declaration of the Rights and Duties of Man*, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992), and in particular Article XIII, by violating Class members' right to take part in the cultural life of their communities;

(f) the *United Nations Declaration on the Rights of Indigenous Peoples*, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007), endorsed by Canada 12 November 2010, and in particular article 8, 2(d), which commits to the provision of effective mechanisms for redress for forced assimilation.

38. Canada's obligations under international law inform Canada's common law, statutory, fiduciary, constitutionally-mandated and other duties, and a breach of the aforementioned international obligations is evidence of, or constitutes, a breach under domestic law.

Breach of Fiduciary and Constitutionally-Mandated Duties

39. Canada has constitutional obligations to, and a fiduciary relationship with, Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated the Residential Schools and established the Residential Schools Policy. Through these acts, and by virtue of the *Constitution Act 1867*, the *Constitution Act, 1982*, and the provisions of the Act, as amended, Canada owed a fiduciary duty to Class members.

40. Canada's constitutional duties include the obligation to uphold the honour of the Crown in all of its dealings with Aboriginal Peoples, including the Class members. This obligation arose with the Crown's assertion of sovereignty from the time of first contact and continues through post-treaty relationships. This is and remains an obligation of the Crown and was an obligation on the Crown at all material times. The honour of the Crown is a legal principle which requires the Crown to operate at all material times in its relations with Aboriginal Peoples from contact to post-treaty in the most honourable manner to protect the interests of the Aboriginal Peoples.

41. Canada's fiduciary duties obliged Canada to act as a protector of Class members' Aboriginal Rights, including the protection and preservation of their language, culture and their way of life, and the duty to take corrective steps to restore the Plaintiffs' culture, history and status, or assist them to do so. At a minimum, Canada's duty to Aboriginal Persons included the duty not to deliberately reduce the number of the beneficiaries to whom Canada owed its duties.

42. The fiduciary and constitutional duties owed by Canada extend to the Class because the Residential Schools Policy was intended to, and did, undermine and seek to destroy the way of life established and enjoyed by these Nations whose identities were and are viewed as collective.

43. Canada acted in its own self-interest and contrary to the interests of Aboriginal Children, not only by being disloyal to, but by actually betraying the Aboriginal Children and communities whom it had a duty to protect. Canada wrongfully exercised its discretion and power over Aboriginal People, and in particular children, for its own benefit. The Residential Schools Policy was pursued by Canada, in whole or in part, to eradicate what Canada saw as the "Indian Problem". Namely, Canada sought to relieve itself of its moral and financial responsibilities for Aboriginal People, the expense and inconvenience of dealing with cultures, languages, habits and values different from Canada's predominant Euro-Canadian heritage, and the challenges arising from land claims.

44. In breach of its ongoing fiduciary, constitutionally-mandated, statutory and common law duties to the Class, Canada failed, and continues to fail, to adequately remediate the damage caused by its wrongful acts, failures and omissions. In particular, Canada has failed to take adequate measures to ameliorate the Cultural, Linguistic and Social Damage suffered by the Class, notwithstanding Canada's admission of the wrongfulness of the Residential Schools Policy since 1998.

Breach of Aboriginal Rights

45. The shíshálh and Tk'emlúps people, and indeed all members of the Class have exercised laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans, these Nations have sustained

their individual members, communities and distinctive cultures by speaking their languages and practicing their customs and traditions.

46. As a result of Residential School Policy, Class members were denied the ability to exercise and enjoy their Aboriginal Rights in the context of their collective expression within the Bands, some particulars of which include, but are not limited to:

(a) shíshálh, Tk'emlúps and other Aboriginal cultural, spiritual and traditional activities have been lost or impaired;

(b) the traditional social structures, including the equal authority of male and female leaders have been lost or impaired;

(c) the shíshálh, Tk'emlúps and other Aboriginal languages have been lost or impaired;

(d) traditional shíshálh, Tk'emlúps and Aboriginal parenting skills have been lost or impaired;

(e) shíshálh, Tk'emlúps and other Aboriginal skills for gathering, harvesting, hunting and preparing traditional foods have been lost or impaired; and,

(f) shíshálh, Tk'emlúps and Aboriginal spiritual beliefs have been lost or impaired.

47. Canada had at all material times and continues to have a duty to protect the Class members' Aboriginal Rights, including the exercise of their spiritual practices and traditional protection of their lands and resources, and an obligation not to undermine or interfere with the Class members' Aboriginal Rights. Canada has failed in these duties, without justification, through its Residential Schools Policy.

Vicarious Liability

48. Canada is vicariously liable for the negligent performance of the fiduciary, constitutionally-mandated, statutory and common law duties of its Agents.

49. Additionally, the Plaintiffs hold Canada solely responsible for the creation and implementation of the Residential Schools Policy and, furthermore:

a. The Plaintiffs expressly waive any and all rights they may possess to recover from Canada, or any other party, any portion of the Plaintiffs' loss that may be attributable to the fault or liability of any third-party and for which Canada might reasonably be entitled to claim from any one or more third-party for contribution, indemnity or an apportionment at common law, in equity, or pursuant to the British Columbia *Negligence Act*, R.S.B.C. 1996, c. 333, as amended; and

b. The Plaintiffs will not seek to recover from any party, other than Canada, any portion of their losses which have been claimed, or could have been claimed, against any third-parties.

Damages

50. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Class has suffered from the loss of the ability to fully exercise their Aboriginal Rights collectively, including the right to have a traditional government based on their own languages, spiritual practices, traditional laws and practices.

Grounds for Punitive and Aggravated Damages

51. Canada deliberately planned the eradication of the language, religion and culture of the Class. The actions were malicious and intended to cause harm, and in the circumstances punitive and aggravated damages are appropriate and necessary.

Legal Basis of Claim

52. The Class members are Aboriginal Indian Bands

53. The Class members' Aboriginal Rights existed and were exercised at all relevant times pursuant to the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

54. At all material times, Canada owed the Plaintiffs and Class members a special and constitutionally-mandated duty of care, good faith, honesty and loyalty pursuant to Canada's constitutional obligations and Canada's duty to act in the best interests of Aboriginal People and especially Aboriginal Children who were particularly vulnerable. Canada breached those duties, causing harm.

55. The Class members are comprised of Aboriginal Peoples who have exercised their respective laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans to the present, the Aboriginal Peoples who comprise the Class members have sustained their people, communities and distinctive culture by exercising their respective laws, customs and traditions in relation to their entire way of life, including language, dance, music, recreation, art, family, marriage and communal responsibilities, and use of resources.

Constitutionality of Sections of the *Indian Act*

56. The Class members plead that any section of the Act and its predecessors and any Regulation passed under the Act and any other statutes relating to Aboriginal Persons that provide or purport to provide the statutory authority for the eradication of Aboriginal People through the destruction of their languages, culture, practices, traditions and way of life, are in violation of sections 25 and 35(1) of the *Constitution Act* 1982, sections 1 and 2 of the *Canadian Bill of Rights*,

R.S.C. 1985, as well as sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* and should therefore be treated as having no force and effect.

57. Canada deliberately planned the eradication of the language, spirituality and culture of the Plaintiffs and Class members.

58. Canada's actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

59. The Plaintiffs plead and rely upon the following:

Federal Courts Act, R.S.C., 1985, c. F-7, s. 17;

Federal Courts Rules, SOR/98-106, Part 5.1 Class Proceedings;

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, ss. 3, 21, 22, and 23;

Canadian Charter of Rights and Freedoms, ss. 7, 15;

Constitution Act, 1982, ss. 25 and 35(1),

The Canadian Bill of Rights, R.S.C. 1985, App. III, Preamble, ss. 1 and 2;

The Indian Act, R.S.C. 1985, ss. 2(1), 3, 18(2), 114-122 and its predecessors.

International Treaties:

Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force Jan. 12, 1951;

Declaration of the Rights of the Child (1959), G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354;

Convention on the Rights of the Child, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989);

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976;

American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992); and

United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007), endorsed by Canada 12 November 2010.

The plaintiffs propose that this action be tried at Vancouver, BC.

April 30, 2021

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Peter R. Grant, on behalf of
all Solicitors for the Plaintiffs

Solicitors for the Plaintiffs

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Dossier nº T-1542-12

COUR FÉDÉRALE

RECOURS COLLECTIF

ENTRE :

LE CHEF SHANE GOTTFRIEDSON, en son propre nom et au nom de tous les membres de la BANDE INDIENNE TK'EMLUPS TE SECWÉPEMC et de la BANDE TK'EMLUPS TE SECWÉPEMC,

LE CHEF GARRY FESCHUK, en son propre nom et au nom de tous les membres de la BANDE DE SECHELT et de la BANDE DE SECHELT,

VIOLET CATHERINE GOTTFRIEDSON, CHARLOTTE ANNE VICTORINE GILBERT, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, DAPHNE PAUL et RITA POULSEN

DEMANDEURS

et

SA MAJESTÉ LA REINE DU CHEF DU CANADA

DÉFENDERESSE

CONVENTION DE RÈGLEMENT DU RECOURS COLLECTIF CONCERNANT LES SURVIVANTS ET DESCENDANTS D'ÉLÈVES D'EXTERNATS

ATTENDU QUE :

A. Le Canada et des organismes religieux ont géré des pensionnats indiens, dont la mission consistait à éduquer de jeunes autochtones et dans lesquels des enfants ont subi des préjudices.

B. Le 8 mai 2006, le Canada a conclu la Convention de règlement relative aux pensionnats indiens, qui prévoit une indemnisation et d'autres prestations, y compris le paiement d'expérience commune, liées la fréquentation de pensionnats indiens.

C. Le 15 août 2012, les demandeurs ont déposé un recours collectif putatif devant la Cour fédérale du Canada portant le n° du dossier T-1542-12, *Gottfriedson et al. c. Sa Majesté la Reine du chef du Canada* (le « recours »). Le 11 juin 2013, une déclaration amendée a été déposée et le 26 juin 2015, une nouvelle déclaration modifiée a été déposée.

D. Le recours a été certifié comme recours collectif par une ordonnance de la Cour fédérale datée du 18 juin 2015, au nom de trois sous-groupes : le groupe des survivants, le groupe des descendants et le groupe des bandes.

E. Les parties ont l'intention de parvenir à un règlement équitable et exhaustif des réclamations du groupe des survivants et du groupe des descendants, et souhaitent en outre promouvoir la vérité, la guérison, l'éducation, la commémoration et la réconciliation. Ils ont négocié cette convention en gardant ces objectifs à l'esprit.

F. Sous réserve de l'ordonnance d'approbation du règlement, les réclamations des membres du groupe des survivants et des membres du groupe des descendants seront réglées conformément aux conditions énoncées dans cette convention.

G. Les parties ont convenu de maintenir les réclamations du groupe des bandes, nonobstant le règlement des réclamations du groupe des survivants et du groupe des descendants. Il a également été convenu que la présente convention ne portera pas atteinte aux droits des parties en ce qui concerne la poursuite du litige relatif aux réclamations des membres du groupe des bandes dans le cadre du recours.

EN CONSÉQUENCE, compte tenu des accords et engagements mutuels décrits dans la présente, les parties conviennent de ce qui suit :

INTERPRÉTATION ET DATE DE PRISE D'EFFET

1. Définitions

1.01 Les définitions suivantes s'appliquent à la présente convention :

« Autochtone » désigne une personne dont les droits sont reconnus et garantis par l'article 35 de la *Loi constitutionnelle de 1982*;

« Action » désigne le recours collectif *Gottfriedson et al. c Sa Majesté la Reine du chef du Canada* (dossier n° T-1542-12);

« Convention » désigne la présente convention de règlement, y compris les annexes qui y sont jointes;

« Date d'approbation » correspond à la date à laquelle la **Cour** rend son **ordonnance d'approbation**;

« Ordonnance d'approbation » s'entend de l'ordonnance ou des ordonnances de la **Cour** approuvant la présente **convention**;

« groupe des bandes » La bande indienne Tk'emlúps te Secwépmec et la bande indienne de Sechelt et de toute autre bande qui :

a. a ou avait des membres qui sont ou ont été membres du **groupe des survivants**, ou dont la communauté abrite un **pensionnat indien**;

b. est expressément associé à **l'action** concernant un ou plusieurs **pensionnats indiens**;

« Jour ouvrable » signifie une journée autre que le samedi, le dimanche, un jour considéré férié en vertu des lois de la province ou du territoire où vit la personne qui doit prendre des mesures conformément aux présentes, ou encore un jour décrété férié par une loi fédérale du Canada et observé dans la province ou le territoire en question;

« Canada » s'entend de Sa Majesté la Reine du chef du Canada, du Procureur général du Canada, ainsi que de leurs représentants légaux, salariés, agents, préposés, prédécesseurs, successeurs, exécuteurs, administrateurs, héritiers et ayants droit;

« Ordonnance d'autorisation » désigne l'ordonnance de la **Cour** datée du 18 juin 2015, autorisant la présente **action** en vertu des *Règles des Cours fédérales*, jointe à titre d'annexe B;

« Réclamation » désigne une demande d'indemnité présentée par un **demandeur** en vertu de la présente **convention** en soumettant un **formulaire de réclamation**, y compris toute documentation connexe, à l'**administrateur des réclamations**;

« Formulaire de réclamation » désigne la demande **d'indemnisation liée à la fréquentation d'externat** qui doit être soumise par un **demandeur** à **l'administrateur des réclamations** avant la **date limite des réclamations,** dont la forme et le contenu doivent être approuvés par la **Cour** avant la **date de mis en œuvre**;

« Demandeur » désigne un **ancien élève d'externat**, son **représentant personnel**, ou dans le cas d'un ancien élève d'externat décédé le 30 mai 2005 ou après, de son **représentant désigné**, qui présente ou maintient une **réclamation**;

« Administrateur des réclamations » désigne toute entité pouvant être désignée par les **parties** le cas échéant et qui est nommée par la **Cour** afin de remplir les fonctions qui lui sont assignées dans le cadre de la présente **convention**;

« Date limite des réclamations » correspond à la date qui tombe vingt-et-un (21) mois après la **date de mise en œuvre**;

« Processus de réclamation » correspond au processus décrit dans la présente **convention**, y compris l'annexe C et les formulaires connexes, visant la soumission des **réclamations**, l'évaluation de l'admissibilité et le paiement de **l'indemnité liée à la fréquentation d'externat** aux **demandeurs**;

« Avocat du groupe » désigne Peter R. Grant Law Corporation, Diane Soroka Avocate Inc., et Waddell Phillips Professional Corporation;

« Période visée par le recours collectif » désigne la période commençant le 1er janvier 1920 et se terminant le 31 décembre 1997 inclusivement;

« Cour » s'entend de la Cour fédérale, sauf si le contexte ne s'y prête pas;

« Ancien élève externe » s'entend de tout **membre du groupe des survivants** qui a fréquenté pour toute partie d'une **année scolaire**, sans y résider, un **pensionnat indien** figurant à l'annexe E, soit sur la liste 1 ou la liste 2, pendant les périodes qui y sont indiquées;

« Indemnité liée à la fréquentation d'externat » désigne le paiement de dix mille dollars (10 000 $) mentionné au paragraphe 25.01 de la présente;

« Fonds de revitalisation destiné aux anciens élèves externes » ou « Fonds » établi en vertu du paragraphe 21.01 des présentes, et comme décrit dans le **plan de distribution du Fonds**;

« Société de revitalisation pour les élèves externes » (*Day Scholars Revitalization Society*) **ou « Société »** désigne la société sans but lucratif établie en vertu du paragraphe 22.01 des présentes;

« Groupe des descendants » désigne les personnes faisant partie de la première génération de descendants des **membres du groupe des survivants** qui ont été légalement ou techniquement adoptées par un **membre du groupe des survivants** ou son conjoint;

« Membre du groupe des descendants » désigne une personne qui correspond à la définition du **groupe des descendants**;

« Représentant désigné » désigne la personne physique désignée dans le formulaire du représentant désigné dûment rempli, dont la forme et le contenu seront approuvés par la **Cour** avant la **date de mise en œuvre**;

« Accord sur les honoraires » désigne l'accord juridique distinct conclu par les **parties** concernant les frais juridiques, les coûts, les honoraires et les débours;

« Plan de distribution du Fonds » désigne le plan de distribution des fonds alloués au **Fonds de revitalisation destiné aux anciens élèves externes**, joint à titre d'annexe F;

« Examinateur indépendant » désigne la ou les personnes désignées par la **Cour** pour statuer sur les demandes de réexamen des **demandeurs** dont les **réclamations** ont été rejetées par **l'administrateur des réclamations**, conformément au **processus de réclamation**;

« Pensionnats indiens » désigne les établissements figurant sur la liste des pensionnats indiens jointe à titre d'annexe « A » de **l'ordonnance d'autorisation**, cette liste pouvant être modifiée par une autre ordonnance de la **Cour**;

« Date de mise en œuvre » signifie la date la plus tardive parmi :

a. le lendemain de la date limite à laquelle un recours ou une requête en autorisation d'appel de **l'ordonnance d'approbation** peut être déposé,

b. la date de la décision finale rendue à la suite d'un appel ayant trait à l'ordonnance d'approbation;

« CRRPI » désigne la Convention de règlement relative aux pensionnats indiens datée du 8 mai 2006;

« Règlement McLean » désigne la convention de règlement relative aux externats indiens fédéraux (McLean) conclue le 30 novembre 2018, dans le cadre de l'affaire *McLean et al. c. Sa Majesté la Reine du chef du Canada* (dossier n° T-2169-16);

« Exclue » s'entend de toute personne qui répondrait autrement à la définition d'un **membre du groupe des survivants** ou d'un **membre du groupe des descendants** ayant déjà dûment renoncé à prendre part à l'**action**;

« Parties » correspond aux signataires de la présente **convention**;

« Personne frappée d'incapacité » désigne :

a. une personne mineure telle que définie par les lois de la province ou du territoire de résidence de cette personne;

b. une personne incapable de gérer ses affaires, de porter des jugements ou de prendre des décisions raisonnables à cet égard en raison d'une incapacité mentale et pour laquelle un **représentant personnel** a été nommé en vertu des lois applicables dans la province ou dans le territoire de résidence de cette personne;

« Représentant personnel » désigne la personne nommée en vertu des lois en vigueur dans la province ou le territoire de résidence de cette personne pour gérer les affaires d'une **personne frappée d'incapacité** ou porter des jugements ou prendre des décisions raisonnables à cet égard;

« Réclamations abandonnées » désigne les causes d'action, les responsabilités, les demandes et les réclamations abandonnées conformément à **l'ordonnance d'approbation**, comme indiqué au paragraphe 42.01 de la présente;

« Année scolaire » s'entend de la période allant du 1er septembre d'une année civile au 31 août de l'année civile suivante;

« Plan de notification de la convention de règlement » s'entend du plan de notification visant à informer les **membres du groupe des survivants** et les **membres du groupe des descendants** du contenu de la présente convention;

« Plan d'approbation du règlement » s'entend du plan de notification visant à informer les **membres du groupe des survivants** et les **membres du groupe des descendants** du contenu de l'ordonnance d'approbation;

« Groupe des survivants » désigne tous les **Autochtones** qui ont fréquenté un **pensionnat indien** en tant qu'élèves ou à des fins éducatives pendant une période quelconque au cours de la **période visée par le recours**, à l'exclusion, pour chacun des membres du groupe, des périodes pour lesquelles ce membre a reçu une indemnité au moyen du paiement d'expérience commune en vertu de la **CRRPI**;

« Membre du groupe des survivants » désigne toute personne qui correspond à la définition du **groupe des survivants** et qui n'est pas réputée **exclue**;

« **Date limite ultime des réclamations** » désigne la date qui tombe trois (3) mois après la **date limite des réclamations**.

2. Aucune admission de fait ou de responsabilité

2.01 La présente convention ne constitue pas une admission de la part du Canada, ni une constatation par la Cour, d'un fait quelconque, ou d'une responsabilité du Canada concernant l'une ou l'autre des réclamations formulées dans les demandes ou le plaidoyer des demandeurs dans le cadre de l'action, telles qu'elles sont actuellement formulées dans la nouvelle déclaration modifiée, qu'elles ont été formulées dans des versions antérieures ou qu'elles pourraient être formulées à l'avenir.

2.02 Sans limiter la portée de ce qui précède, il est entendu que les parties conviennent que, dans le cadre de litiges ultérieurs concernant les réclamations du groupe des bandes, les parties ne soutiendront pas que l'existence de la présente convention ou de toute autre disposition des présentes constitue une reconnaissance de la part des parties, ou une constatation par la Cour, de tout fait ou de toute loi, ou une reconnaissance de la responsabilité du Canada, se rapportant aux réclamations formulées par le groupe des bandes dans le cadre de l'action, ou un règlement ou une résolution des réclamations du groupe des bandes dans le cadre de l'action. Toutefois, aucune disposition susmentionnée ni aucune autre disposition de la présente convention n'empêche les parties de faire référence ou de s'appuyer par ailleurs sur l'existence de la convention et de l'indemnité payée ou payable en vertu de celle-ci dans toute procédure, le cas échéant.

3. Titres

3.01 La division de la présente convention en paragraphes, titres et l'ajout d'annexes visent uniquement à en faciliter la consultation et ne sauraient affecter l'interprétation de la présente convention.

4. Sens étendu

4.01 Dans les présentes, le singulier comprend le pluriel et *vice versa*, le masculin ou le féminin s'applique aux personnes de l'un ou de l'autre sexe, et le mot personne comprend les particuliers, les partenariats, les associations, les fiducies, les organismes non constitués en société, les sociétés et les autorités gouvernementales. L'expression « y compris » signifie « y compris, sans restreindre la généralité de ce qui précède ».

5. Ambiguïté

5.01 Les parties reconnaissent qu'elles ont examiné les modalités de la présente convention et qu'elles ont contribué à les établir, et elles conviennent que toute règle d'interprétation selon laquelle les ambiguïtés seront réglées à l'encontre des parties chargées de la rédaction ne s'appliquera pas à l'interprétation des présentes.

6. Renvois législatifs

6.01 Dans la présente convention, à moins que l'objet ou le contexte n'exige une interprétation différente ou sauf disposition contraire des présentes, toute référence à une loi renvoie à cette loi telle quelle a été promulguée à la date de son entrée en vigueur ou telle qu'elle a pu être modifiée, promulguée de nouveau ou remplacée, et comprend tout règlement pris en vertu de celle-ci.

7. Jour de prise de mesures

7.01 Si le délai dans lequel une mesure doit être prise en vertu des présentes expire ou lors d'un jour non ouvrable, cette mesure peut être prise le prochain jour ouvrable suivant cette journée.

8. Ordonnance définitive

8.01 Aux fins des présentes, un jugement ou une ordonnance devient définitif à l'expiration du délai d'appel ou de demande d'autorisation d'en appeler d'un jugement ou d'une ordonnance, sans qu'un appel ne soit porté ou sans qu'on ait demandé l'autorisation d'interjeter appel ou, dans les cas contraires, lorsque l'appel ou la demande d'autorisation et les autres appels ont été tranchés et que tout autre dernier délai d'appel est expiré.

9. Devise

9.01 Tous les montants en devise dans les présentes sont indiqués en dollars canadiens.

10. Indemnité globale

10.01 Il est entendu que les montants payables en vertu des présentes sont inclusifs de tout intérêt avant ou après jugement ou de tout autre montant pouvant être réclamé par les membres du groupe des survivants ou les membres du groupe des descendants au Canada en raison des réclamations abandonnées.

11. Annexes

11.01 Les annexes suivantes sont incorporées aux présentes et en font partie intégrante :

Annexe A : Nouvelle déclaration modifiée, déposée le 26 juin 2015

Annexe B : Ordonnance d’autorisation, datée du 18 juin 2015

Annexe C : Processus de règlement des revendications

Annexe D : Processus de réclamation successorale

Annexe E : Liste des pensionnats indiens concernés par le processus réclamation

Annexe F : Plan de distribution du Fonds de revitalisation destiné aux anciens élèves externes

Annexe G : Projet d’ordonnance d’autorisation modifié (re : réclamations du groupe des bandes)

Annexe H : Projet de deuxième déclaration modifiée, projet sans description des modifications antérieures ou actuellement proposées.(re : réclamations du groupe des bandes)

12. Aucune autre obligation

12.01 Toute action, cause d’action, responsabilité, réclamation et demande de quelque nature que ce soit visant à réclamer des dommages-intérêts, des contributions, des indemnités, des coûts, des dépenses et des intérêts que tout membre du groupe des survivants ou du groupe des descendants a déjà eus, a actuellement ou pourrait avoir à l’avenir en rapport avec l’action contre le Canada, que ces réclamations ont été présentées ou auraient pu l’être dans le cadre de toute procédure, sera définitivement réglée selon les conditions énoncées dans la présente convention à la date de l’ordonnance d’approbation, et le Canada n’aura aucune autre responsabilité que celles énoncées dans les présentes.

13. Intégralité de la convention

13.01 La présente convention constitue la convention complète entre les parties en ce qui concerne les réclamations du groupe des survivants et du groupe des descendants présentées dans le cadre de l'action, et annule et remplace tous les accords et conventions antérieurs ou autres conclus entre les parties à cet égard. Il n'existe aucune déclaration, aucune garantie, aucune modalité, aucune condition, aucun engagement, aucune entente ou aucune convention accessoire, expresse, implicite ou statutaire entre les parties, en ce qui concerne l'objet des présentes, autre que ce qui est expressément énoncé ou mentionné dans les présentes.

14. Portée de la Convention

14.01 La présente convention est exécutoire et s'applique au profit des parties, des membres du groupe des survivants, des membres du groupe des descendants et de leurs héritiers, ayants droit, représentants désignés et représentants personnels respectifs.

15. Réclamation du groupe des bandes

15.01 Rien dans les présentes n'a pour but de porter atteinte aux droits des parties en ce qui concerne la poursuite du litige relatif aux réclamations du groupe des bandes dans le cadre de l'action.

15.02 Les réclamations du groupe des bandes qui sont maintenues sont énoncées dans le projet d'ordonnance d'autorisation modifiée (re : réclamations du groupe des bandes), joint à titre d'annexe G et le projet de deuxième déclaration modifiée concernant les réclamations du groupe des bandes (re : réclamations du groupe des bandes), joint à titre d'annexe H.

16. Lois applicables

16.01 La présente convention est régie par les lois de la province ou du territoire où réside le membre du groupe des survivants ou le membre du groupe des descendants et par les lois du Canada qui s'y appliquent et est interprétée conformément à celles-ci.

17. Exemplaires

17.01 La présente convention peut être signée en plusieurs exemplaires, chacun étant réputé être un original et, pris dans leur ensemble, étant réputé constituer une seule et même convention.

18. Langues officielles

18.01 Le Canada préparera la traduction française des présentes pour utilisation lors des audiences d'approbation du règlement devant la Cour. Dès que possible après la signature de la présente convention, le Canada prendra des dispositions pour la préparation d'une version française faisant autorité. La version française aura le même poids et la même force de loi que la version anglaise.

19. Caractère exécutoire

19.01 Cette convention deviendra exécutoire à compter de sa date d'entrée en vigueur, et liera toutes les parties, tous les membres du groupe des survivants et du groupe et tous les membres du groupe des descendants. L'ordonnance d'approbation de la Cour constitue une approbation des présentes à l'égard de tous les membres du groupe des survivants et des membres du groupe des descendants.

20. Indivisibilité de la convention

20.01 Aucune disposition de la présente convention n'entrera en vigueur tant que la Cour n'aura pas approuvé les présentes.

LE FONDS DE REVITALISATION DESTINÉ AUX ANCIENS ÉLÈVES EXTERNES

21. Fonds de revitalisation destiné aux anciens élèves externes

21.01 Le Canada accepte de verser la somme de cinquante millions de dollars (50 000 000,00 $) au Fonds de revitalisation destiné aux anciens élèves externes pour financer des activités, destinées aux membres du groupe des survivants et les membres du groupe des descendants, visant à promouvoir la guérison, le mieux-être, l'éducation, la langue, la culture, le patrimoine et la commémoration.

21.02 Les sommes indiquées au paragraphe 21.01 de la présente seront versées par le Canada à la Société de revitalisation pour les élèves externes dans les trente (30) jours suivant la date de mise en œuvre.

SOCIÉTÉ DE REVITALISATION POUR LES ÉLÈVES EXTERNES

22. Création de la Société de revitalisation pour les élèves externes

22.01 Les parties conviennent que la Société de revitalisation pour les élèves externes utilisera le Fonds pour financer des activités destinées aux membres du groupe des survivants et les membres du groupe des descendants, visant à promouvoir la guérison, le mieux-être, l'éducation, la langue, la culture, le patrimoine et la commémoration. L'argent du Fonds sera détenu par la Société de revitalisation pour les élèves externes, qui sera constituée en tant qu'organisme « sans but lucratif » en vertu de la British Columbia *Societies Act* (S.B.C. 2015, c. 18), de toute législation fédérale analogue ou de toute loi de l'une des provinces ou de l'un des territoires avant la date de mise en œuvre. La Société sera indépendante du gouvernement du Canada, ce dernier ayant toutefois le droit de nommer un représentant au sein de son conseil d'administration.

22.02 Un projet de plan de Fonds de revitalisation destiné aux anciens élèves des externats est joint aux présentes à titre d'annexe F.

22.03 Le Fonds est destiné à soutenir les membres du groupe des survivants et les membres du groupe des descendants en complément aux programmes du gouvernement fédéral et ne sauraient en faire double emploi.

23. Administrateurs

23.01 Les cinq premiers administrateurs de la Société seront nommés par les parties.

23.02 Le conseil d'administration de la Société aura une représentation nationale et sera composé d'un administrateur nommé par le Canada. Le représentant nommé par le Canada ne sera pas un salarié ou un fonctionnaire du Canada.

24. Responsabilités des administrateurs

24.01 Les administrateurs de la Société géreront ou superviseront la gestion des activités et des affaires de la Société de revitalisation pour les élèves externes, qui recevra, détiendra, investira, gérera et décaissera les sommes décrites dans les dispositions sur le Fonds contenues dans les présentes et toute autre somme transférée dans le Fonds en vertu de la présente convention dans le but de financer des activités visant à promouvoir la guérison, le mieux-être, l'éducation, la langue, la culture, le patrimoine et la commémoration pour les membres du groupe des survivants et les membres du groupe des descendants.

INDEMNITÉS POUR LES DEMANDEURS INDIVIDUELS

25. Indemnité liée à la fréquentation d'externat

25.01 Le Canada versera la somme de dix mille dollars (10 000 $) à titre de dommages-intérêts généraux non pécuniaires, sans aucune déduction, à chaque demandeur dont la réclamation a été approuvée dans le cadre du processus de réclamation.

25.02 Le demandeur a droit au versement d'une indemnité lié à la fréquentation d'externat et sa réclamation sera approuvée s'il satisfait aux critères d'admissibilité suivants :

a. la réclamation concerne un ancien élève externe qui était vivant le 30 mai 2005;

b. la réclamation est remise à l'administrateur des réclamations avant la date limite ultime des réclamations;

c. la réclamation concerne la fréquentation par d'anciens élèves externes de pensionnats indiens figurant sur la liste 1 ou la liste 2 de l'annexe E pendant les périodes qui y sont indiquées pour toute partie d'une année scolaire donnée satisfaisant aux trois conditions suivantes, à savoir qu'il doit s'agir d'une année scolaire pour laquelle l'ancien élève externe ou l'exécuteur testamentaire, le représentant ou l'héritier qui a présenté une demande à la place de l'ancien élève :

   i. n'a pas reçu un paiement d'expérience commune en vertu de la CRRPI;

   ii. n'a pas reçu et ne recevra pas d'indemnisation en vertu du règlement McLean;

   iii. n'a pas reçu une indemnisation en vertu de tout autre règlement concernant une école figurant à l'Annexe K du règlement McLean.

25.03 Pour plus de clarté, pour toute année scolaire au cours de laquelle un membre du groupe des survivants était admissible au paiement d'expérience commune en vertu de la CRRPI, mais qui n'en a pas fait la demande, aucune réclamation relative au paiement d'indemnité lié à la fréquentation d'externat en vertu de la présente convention ne peut être faite en ce qui concerne ce membre du groupe des survivants pour cette année scolaire.

26. Aucune limite pour les réclamations

26.01 Il a été convenu qu'il n'y a pas de limite ou de plafond imposé au Canada en ce qui concerne son obligation de payer les réclamations approuvées. Toutes les réclamations approuvées seront entièrement payées par le Canada.

27. Transfert de fonds par le Canada

27.01 Conformément au processus de réclamation, le Canada transférera des fonds directement à l'administrateur des réclamations pour garantir le paiement des indemnités en ce qui concerne les réclamations approuvées.

28. Prestations sociales

28.01 Le Canada fera de son mieux pour obtenir l'accord des provinces et des territoires afin que la réception de tout paiement en vertu des présentes n'affecte pas le montant, la nature ou la durée des prestations sociales ou des prestations d'aide sociale payables à un demandeur en vertu des lois de toute province ou de tout territoire du Canada.

28.02 En outre, le Canada fera de son mieux pour obtenir l'accord des ministères du gouvernement du Canada concernés pour que la réception de tout paiement en vertu des présentes n'affecte pas le montant, la nature ou la durée de toute prestation sociale ou d'aide sociale payable à un demandeur en vertu de tout programme fédéral de prestations sociales, y compris la Sécurité de la vieillesse et le Régime de pensions du Canada.

MISE EN ŒUVRE DE LA PRÉSENTE CONVENTION

29. L'action

29.01 La nouvelle déclaration modifiée dans le cadre de l'action est jointe aux présentes à titre d'annexe A.

29.02 Les parties conviennent que les demandeurs solliciteront l'autorisation de la Cour, sur consentement et dans le cadre de la demande d'approbation des présentes, de déposer le projet de deuxième déclaration modifiée dans le cadre de l'action, qui est jointe à titre d'annexe H.

30. Ordonnance d'autorisation

30.01 L'ordonnance d'autorisation est jointe à titre d'annexe B.

30.02 Les parties conviennent que les demandeurs solliciteront une ordonnance de la Cour, sur consentement et dans le cadre de la demande d'approbation de la présente convention par la Cour, qui émettra l'ordonnance d'autorisation modifiée, laquelle est jointe à titre d'annexe G.

31. Plans de notification

31.01 Les parties conviennent que les demandeurs solliciteront une ordonnance de la Cour, sur consentement, approuvant le plan de notification de la convention de règlement, par lequel les membres du groupe des survivants et les membres du groupe des descendants seront notifiés de la convention, de ses modalités, de la procédure à suivre pour obtenir de plus amples informations et de la procédure à suivre pour faire part de leurs commentaires avant et pendant l'audience d'approbation du règlement.

31.02 Les parties conviennent, en outre, que les demandeurs solliciteront une ordonnance de la Cour, sur consentement et dans le cadre de la demande d'approbation de la convention par la Cour, approuvant un plan de notification de l'approbation du règlement, par lequel les membres du groupe des survivants et les membres du groupe des descendants seront notifiés de l'ordonnance d'approbation et de la procédure de demande d'indemnisation.

31.03 Le Canada accepte de payer les frais de mise en œuvre du plan de notification de la convention de règlement et du plan de notification de l'approbation du règlement.

RÉCLAMATIONS FAITES PAR LES REPRÉSENTANTS PERSONNELS ET LES REPRÉSENTANTS DÉSIGNÉS

32. Indemnité en cas de décès

32.01 Si un ancien élève externe est mort le 30 mai 2005 ou meurt après, une réclamation peut être soumise au nom des héritiers ou de la succession de l'ancien élève externe décédé, conformément au processus de réclamation de la succession décrit à l'annexe D.

33. Personne frappée d'incapacité

33.01 Si un ancien élève externe jour soumet une réclamation à l'administrateur des réclamations avant la date limite ultime des réclamations et que la réclamation est approuvée, mais que l'ancien élève est ou devient frappé d'incapacité avant de recevoir une indemnité liée à la fréquentation d'externat, cette indemnité sera versée à son représentant personnel.

34. Exclusion de responsabilité relative aux réclamations

34.01 Le Canada, l'administrateur des réclamations, les avocats du groupe et l'examinateur indépendant ne seront pas responsables, et seront de fait dégagés de toute responsabilité par les demandeurs, en ce qui concerne les réclamations, demandes reconventionnelles, poursuites, actions, causes d'action, demandes, dommages, pénalités, blessures, compensations, jugements, dettes, coûts (y compris, mais sans s'y limiter, les honoraires d'avocat, les débours et les dépenses) ou toute autre responsabilité de quelque nature que ce soit découlant d'un paiement ou d'un non-paiement à un représentant personnel ou à un représentant désigné dans le cadre de la présente convention et de toute ordonnance du tribunal l'approuvant.

PROCESSUS DE RÉCLAMATION

35. Principes régissant l'administration des réclamations

35.01 Le processus de réclamation se veut rapide, peu coûteux, convivial, sensible aux aspects culturels et tenant compte des traumatismes subis. L'objectif est de réduire au minimum le fardeau imposé aux demandeurs qui formulent leurs réclamations et de limiter toute probabilité de nouveau traumatisme au cours du processus de réclamation. L'administrateur des réclamations et l'examinateur indépendant doivent, en l'absence de motifs raisonnables contraires, tenir pour acquis que le demandeur agit honnêtement et de bonne foi. Lors de l'examen d'une demande, l'administrateur des réclamations et l'examinateur indépendant tireront toutes les conclusions raisonnables et favorables possibles en faveur du demandeur.

36. Processus de règlement des revendications

36.01 Le processus de réclamation est décrit à l'annexe C.

ADMINISTRATEUR DES RÉCLAMATIONS

37. Fonctions de l'administrateur des réclamations

37.01 Les fonctions et les responsabilités de l'administrateur des réclamations sont les suivantes :

a. élaborer, installer et mettre en œuvre des systèmes ainsi que des formulaires et fournir des renseignements, des lignes directrices et des procédures pour le traitement des réclamations par copie papier ou par voie électronique, conformément à la présente convention;

b. élaborer, installer et mettre en œuvre des systèmes et des procédures pour le paiement des indemnités des anciens élèves externes conformément à la présente convention;

c. prévoir l’embauche du personnel requis pour lui permettre de s’acquitter de ses fonctions, et assurer leur formation et leur instruction;

d. tenir des comptes exacts ou s’assurer de la tenue de comptes exacts en ce qui concerne ses activités et son administration, y compris la préparation des états financiers, des rapports et des dossiers exigés par la Cour;

e. présenter aux parties un rapport mensuel sur les réclamations reçues et réglées, et sur les pensionnats indiens concernés par les réclamations;

f. répondre aux demandes de renseignements concernant les réclamations, examiner les réclamations, prendre des décisions relatives aux réclamations, communiquer ses décisions conformément à la présente convention et fournir des renseignements aux demandeurs concernant le processus de réexamen tel que décrit dans le processus de réclamation;

g. communiquer avec les demandeurs en anglais ou en français, selon la préférence du demandeur, et, si un demandeur exprime le désir de communiquer dans une langue autre que l’anglais ou le français, faire de son mieux pour répondre à cette demande;

h. toutes les autres fonctions et responsabilités que la Cour peut lui assigner.

38. Nomination de l’administrateur des réclamations

38.01 L’administrateur des réclamations sera nommé par la Cour sur recommandation des parties.

39. Fonctions de l’examinateur indépendant

39.01 Le rôle de l’examinateur indépendant est de statuer sur toute demande de réexamen présentée par un demandeur conformément au processus de réclamation décrit à l’annexe C. Le ou les examinateurs indépendants seront nommés par la Cour sur recommandation des parties.

40. Coûts du processus de réclamation

40.01 Les coûts du processus de réclamation, y compris ceux de l'administrateur des réclamations et de l'examinateur indépendant, seront payés par le Canada.

41. Ordonnance d'approbation

41.01 Les parties conviennent de demander à la Cour une ordonnance d'approbation des présentes sous une forme convenue par les parties et comprendra notamment une disposition :

a. incorporant par renvoi la présente convention dans son intégralité, y compris toutes les annexes;

b. indiquant et stipulant que l'ordonnance lie tous les membres du groupe des survivants et du groupe des descendants, y compris les personnes frappées d'incapacité;

c. indiquant et stipulant que les réclamations du groupe des survivants et du groupe des descendants énoncés dans la première déclaration modifiée, déposée le 26 juin 2015, sont rejetées, et donnant effet aux quittances et aux clauses connexes énoncées aux articles 42.01 et 43.01 afin de garantir le règlement de toutes les réclamations du groupe des survivants et du groupe des descendants.

42. Règlement des réclamations du groupe des survivants et du groupe des descendants

42.01 L'ordonnance d'approbation demandée à la Cour déclarera que :

a. chaque membre du groupe des survivants ou, s'il est décédé, sa succession (ci-après « le cédant du survivant »), a donné quittance entière et définitive au Canada, ses fonctionnaires, ses agents, ses gestionnaires et ses employés, de toute action, cause d'action, responsabilité en vertu common law, en droit civil

du Québec et découlant de la loi, contrats, réclamations et demandes de quelque nature que ce soit, qu'elle ait été déposée pour le groupe des survivants dans la première déclaration modifiée déposée le 26 juin 2015 dans le cadre de l'action, ou qui aurait pu être déposée par tout cédant individuel du survivant dans le cadre d'une action civile, qu'elle soit connue ou inconnue, pour des dommages, contributions, indemnités, coûts, dépenses et intérêts que ce cédant a détenus, détient ou pourrait détenir du fait de sa fréquentation en qualité d'élève externe dans un pensionnat indien, à tout moment.

b. chaque membre du groupe des descendants ou, s'il est décédé, sa succession (ci-après « le cédant du descendant »), a donné quittance entière et définitive au Canada, ses fonctionnaires, ses agents, ses gestionnaires et ses employés, de toute action, cause d'action, responsabilité en vertu common law, en droit civil du Québec et découlant de la loi, contrats, réclamations et demandes de quelque nature que ce soit, qu'elle ait été déposée pour le groupe des descendants dans la première déclaration modifiée déposée le 26 juin 2015 dans le cadre de l'action, ou qui aurait pu être déposée par tout cédant individuel du descendant dans le cadre d'une action civile, qu'elle soit connue ou inconnue, pour des dommages, contributions, indemnités, coûts, dépenses et intérêts que ce cédant a détenus, détient ou pourrait détenir du fait de la fréquentation d'un membre de sa famille en qualité d'élève externe dans un pensionnat indien, à tout moment.

c. Toutes les causes d'actions ou réclamations formulées par les membres du groupe des survivants et les membres du groupe des descendants, ainsi que leurs demandes de réparation pécuniaire, de mesure de redressement déclaratoire ou autre, dans la première déclaration de réclamation modifiée déposée le 26 juin 2015, sont rejetées d'un commun accord par les parties sans examen de leur bien-fondé, et ne seront pas traitées lors de l'examen des réclamations du groupe des bandes.

d. le Canada peut invoquer les quittances susmentionnées comme pour se défendre dans le cadre de toute action en justice visant à obtenir des indemnités du Canada pour les réclamations du groupe des survivants et du groupe des descendants, telles qu'elles sont énoncées dans la première déclaration modifiée. Il est toutefois entendu que les quittances susmentionnées et l'ordonnance d'approbation ne doivent pas être interprétées comme si elles avaient pour effet de décharger, exclure ou supprimer toute cause d'action ou réclamation que les membres du groupe de la bande pourraient avoir en droit en tant que personnes morales distinctes ou en tant que personne juridique ayant la qualité et l'autorité pour soumettre des réclamations fondées en droit pour la violation des droits collectifs de leurs peuples autochtones respectifs, y compris dans la mesure où de telles causes d'action, réclamations, violations de droits ou manquements à des obligations dues au groupe des bandes sont décrites dans la première déclaration modifiée déposée le 26 juin 2015, même si ces causes d'action, réclamations, violations de droits ou manquements à des obligations sont fondées sur une faute présumée commise à l'égard des membres du groupe des survivants ou des membres du groupe des descendants énoncée ailleurs dans l'un ou l'autre de ces documents.

e. tout cédant de survivant et tout cédant de descendant est réputé convenir que s'il présente une réclamation, une demande ou s'ils engagent une action ou une procédure contre une personne, des personnes ou une personnalité dans laquelle une réclamation pourrait être faite contre le Canada pour des dommages-intérêts, une contribution, une indemnité ou tout autre dédommagement, en vertu d'une loi, de la common law ou du droit civil du Québec, en ce qui concerne les allégations et les faits énoncés dans le cadre de l'action, y compris toute réclamation contre des provinces ou des territoires ou d'autres personnalités juridiques ou groupes, y compris, mais sans s'y limiter, des organismes religieux ou autres qui ont joué un rôle quelconque dans les pensionnats indiens, le cédant d'un survivant ou d'un

descendant limitera expressément sa réclamation de manière à exclure toute forme de responsabilité du Canada.

f. lorsqu'une décision définitive concernant une réclamation est prise dans le cadre du processus de réclamation et conformément à celui-ci, chaque cédant de survivant ou de descendant est également réputé avoir accepté de quittancer les parties, les avocats du groupe, les avocats du Canada, l'administrateur des réclamations, l'examinateur indépendant et toute autre partie participant au processus de réclamation, de toute réclamation découlant ou pouvant découler de l'application du processus de réclamation, y compris, mais sans s'y limiter, de l'insuffisance de l'indemnité reçue.

43. Contrepartie réputée du Canada

43.01 Les obligations et les responsabilités du Canada qui sont prévues par les présentes constituent la contrepartie pour les quittances et autres engagements énoncés dans les présentes et cette contrepartie constitue un règlement complet et final de toute demande dont il est question dans les présentes. Les cédants des survivants et les cédants des descendants n'ont droit qu'aux prestations prévues et aux indemnités payables en vertu des présentes, en tout ou en partie, comme seul recours pour telle action, cause d'action, responsabilité, réclamation ou demande.

HONORAIRES ET DÉBOURS

44. Honoraires et débours des avocats du groupe

44.01 Tous les honoraires et débours des avocats du groupe, ainsi que les honoraires proposés par les représentants des demandeurs, sont soumis à l'accord sur les honoraires, qui doit être examiné et approuvé par la Cour.

44.02 L'approbation de l'accord d'honoraires n'est pas liée à l'approbation par la cour de la présente convention. Le refus de la Cour d'approuver l'accord

d’honoraires, en tout ou en partie, n’aura aucun effet sur l’approbation ou la mise en œuvre de la présente convention.

45. Aucuns autres frais ou débours ne sera facturé

45.01 Les parties reconnaissent que c’est leur intention que tous les paiements aux membres du groupe des survivants en vertu des présentes soient effectués sans aucune déduction à titre d’honoraires ou de débours.

EXPIRATION ET CONDITIONS

46. Expiration de la convention

46.01 La présente convention sera en vigueur tant que toutes les obligations qu’elle contient n’auront pas été remplies et que la Cour ordonne qu’elle soit terminée.

47. Modifications

47.01 Sauf disposition contraire expresse de la présente convention, aucune modification ne sera apportée à celle-ci, y compris aux annexes, à moins que les parties y consentent par écrit et que la Cour l’approuve.

48. Incessibilité

48.01 Aucun montant payé en vertu des présentes ne peut faire l’objet d’une cession, et toute cession est nulle d’une nullité absolue, sauf disposition expresse dans les présentes. Si un élève externe est décédé ou est réputé frappé d’incapacité et que la réclamation a été approuvée, les indemnités dues seront versées à son représentant désigné ou à son représentant personnel, respectivement.

CONFIDENTIALITÉ

49. Confidentialité

49.01 Tout renseignement fourni, créé ou obtenu dans le cadre de la présente convention, qu'il soit écrit ou oral, sera traité de façon confidentielle par les parties et les avocats du groupe, les demandeurs, l'administrateur des réclamations et l'examinateur indépendant et ne sera pas utilisé à d'autres fins que celles du présent règlement, à moins que les parties n'en disposent autrement, que la présente convention ou la législation fédérale, provinciale ou territoriale applicable en matière de protection de la vie privée ne l'autorise ou que la Cour ne l'ordonne.

50. Destruction des renseignements et des documents du demandeur

50.01 L'administrateur des réclamations détruira, dans les deux (2) ans suivant le versement effectif de la totalité de l'indemnité, tous les renseignements et documents relatifs aux demandeurs qu'il a en sa possession, à moins que le demandeur, le représentant désigné ou le représentant personnel ne demande expressément la restitution de ces renseignements au cours de la période de deux (2) ans. Dès réception d'une telle demande, l'administrateur des réclamations transmettra au demandeur les renseignements exigés.

50.02 Dans les deux (2) ans suivant une décision de réexamen, l'examinateur indépendant détruira tous les renseignements et documents du demandeur en sa possession, à moins qu'un demandeur, un représentant désigné ou un représentant personnel ne demande spécifiquement la restitution de ces renseignements au cours de la période de deux (2) ans. Dès réception d'une telle demande, l'examinateur indépendant transmettra au demandeur les renseignements exigés.

50.03 Avant la destruction des documents, l'administrateur des réclamations et l'examinateur indépendant doivent établir une liste indiquant (i) le nom de l'élève externe, (ii) l'année ou les années scolaires où il a fréquenté le ou les pensionnats

et (iii) le ou les pensionnats indiens en raison desquels l'indemnité à la fréquentation d'externat a été versée, et la remettre au Canada. Nonobstant toute autre disposition de la présente convention, cette liste doit être conservée par le Canada de façon strictement confidentielle et ne peut être utilisée que dans le cadre d'une procédure judiciaire ou de règlement, le cas échéant, pour démontrer quelles personnes ont reçu l'indemnité liée à la fréquentation d'externat et pour quelle(s) année(s) scolaire(s) et concernant quel(s) pensionnat(s) indien(s), ce à quoi les parties conviendront sans autre preuve.

51. Confidentialité des négociations

51.01 À moins que les parties n'en conviennent autrement, l'engagement de confidentialité concernant les discussions et toutes les communications, écrites ou orales, faites dans le cadre et en marge des négociations débouchant sur les échanges de lettres d'offre et d'acceptation, et le présent accord restent en vigueur.

COOPÉRATION

52. Coopération avec le Canada

52.01 Dès la signature de la présente convention, les représentants des demandeurs et les avocats du groupe coopéreront avec le Canada et feront de leur mieux pour obtenir l'approbation de la présente convention par la Cour. Ils feront en outre des efforts raisonnables pour obtenir le soutien et la participation des membres du groupe des survivants et des membres du groupe des descendants en ce qui concerne toutes les présentes.

53. Annonces publiques

53.01 À la date convenue, les parties feront des annonces publiques visant à soutenir la présente convention et continueront de s'exprimer publiquement en faveur de celle-ci.

EN FOI DE QUOI les parties ont signé la présente convention ce ___ jour de mai 2021.

Pour les demandeurs

Waddell Phillips Professional Corporation, par
John K. Phillips
Avocat du groupe

Pour les demandeurs

Peter R. Grant Law Corporation, par
Peter R. Grant
Avocat du groupe

Pour les demandeurs

Diane Soroka Avocate Inc., par
Diane H. Soroka
Avocat du groupe

Pour les défendeurs

Annie Boudreau
Dirigeante principale des finances, des résultats et de l'exécution,
Relations Couronne-Autochtones et Affaires du Nord Canada

Modifié conformément à l'ordonnance du juge Harrington rendue le 3 juin 2015

Dossier de la Cour no T-1542-13

~~PROPOSITION DE~~ RECOURS COLLECTIF

FORMULAIRE 171A – Règle 171

COUR FÉDÉRALE

ENTRE :

LE CHEF SHANE GOTTFRIEDSON, en son nom et au nom de tous les membres des BANDES INDIENNES TK'EMLÚPS TE SECWÉPEMC et TK'EMLÚPS TE SECWÉPEMC,

LE CHEF GARRY FESCHUK, en son nom et au nom de tous les membres des BANDES INDIENNES SECHELT et SECHELT,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL~~,~~ ~~AARON JOE~~ et RITA POULSEN

LES DEMANDEURS

et

Sa Majesté la Reine du chef du Canada, représentée par LE PROCUREUR GÉNÉRAL DU CANADA

LE DÉFENDEUR

PREMIÈRE DÉCLARATION REMODIFIÉE

AU DÉFENDEUR

UNE PROCÉDURE JUDICIAIRE A ÉTÉ INTENTÉE CONTRE VOUS par les demandeurs. Vous trouverez dans les pages suivantes la plainte déposée contre vous.

SI VOUS SOUHAITEZ CONTESTER CETTE PROCÉDURE, vous ou un avocat vous représentant êtes tenu de préparer une défense en utilisant le formulaire 171B établi par les règles fédérales, de la signifier à l'avocat des plaignants ou, si les plaignants n'ont pas d'avocat, de la signifier aux plaignants, et de la déposer, avec preuve de signification, à un bureau local de cette Cour, DANS LES 30 JOURS suivant la signification de cette déclaration, si vous êtes signifié au Canada.

Si vous êtes signifié aux États-Unis, le délai pour signifier et déposer votre défense est de quarante jours. Si vous êtes signifié ailleurs qu'au Canada ou aux États-Unis, le délai de signification et de dépôt de votre défense est de soixante jours.

Vous pouvez demander des copies des règles fédérales, des renseignements sur les bureaux locaux de la Cour ou toute autre information utile à l'administrateur de la Cour à Ottawa (téléphone 613-992-4238) ou auprès de tous les bureaux locaux.

SI VOUS NE CONTESTEZ PAS LA PRÉSENTE PROCÉDURE, un jugement peut être rendu contre vous en votre absence et sans autre avis.

(Date)

Émis par :_____
(Préposé à l'enregistrement)

Adresse du bureau local :_____

À :

Sa Majesté la Reine du chef du Canada,
Le ministre des Affaires indiennes et du Nord canadien, et
Le procureur général du Canada
Ministère de la Justice
900 – 840 Howe Street
Vancouver, B.C. V6Z 2S9

REDRESSEMENT DEMANDÉ

Le groupe des survivants

1. Les représentants des demandeurs du groupe des survivants, en leur propre nom et au nom des membres du groupe des survivants, demandent :

(a) ~~une ordonnance qualifiant cette procédure de recours collectif conformément aux règles fédérales s'appliquant aux recours collectifs et les nommant en tant que représentants des demandeurs du groupe des survivants et de tout sous-groupe de ce groupe;~~

(b) une déclaration selon laquelle le Canada a manqué à ses obligations fiduciaires, constitutionnelles, statutaires et de common law envers les demandeurs et les autres membres du groupe des survivants en ce qui concerne l'objet, l'établissement, le financement, le fonctionnement, la supervision, le contrôle, l'entretien, la fréquentation obligatoire des membres du groupe des survivants et le soutien des pensionnats ~~recensés~~;

(c) une déclaration selon laquelle les membres du groupe des survivants ont des droits ancestraux de parler leurs langues traditionnelles, de s'adonner à leurs coutumes et pratiques religieuses traditionnelles et de se gouverner de leur manière traditionnelle;

(d) une déclaration selon laquelle le Canada a violé les droits linguistiques et culturels (droits ancestraux ou autres) ~~droits ancestraux~~ des membres du groupe des survivants;

(e) une déclaration selon laquelle la politique sur les pensionnats et les pensionnats ~~recensés~~ ont causé des dommages culturels, linguistiques et sociaux et un préjudice irréparable au groupe des survivants;

(f) une déclaration selon laquelle le Canada est responsable envers les représentants des demandeurs du groupe des survivants et les autres membres du groupe des survivants de préjudices causés par le non-respect des obligations fiduciaires, constitutionnelles, statutaires et de common law, ainsi que de droits ancestraux, de souffrances morales infligées intentionnellement, et de violations des conventions et des pactes internationaux, de même que du droit international, en ce qui concerne l'objectif, la création, le financement, le fonctionnement, la supervision, le contrôle et l'entretien, la fréquentation obligatoire par les membres du groupe des survivants ainsi que le soutien des pensionnats indiens ~~recensés~~;

(g) des dommages-intérêts généraux non pécuniaires pour violation d'obligations fiduciaires, d'obligations découlant de la Constitution, de la loi et de la common law, de droits ancestraux et d'infliction intentionnelle de souffrances morales, ainsi que pour violation de conventions et de pactes internationaux, et pour violation du

droit international, négligence et infliction intentionnelle de souffrances morales dont le Canada est responsable;

(h) des dommages-intérêts pécuniaires généraux et des dommages-intérêts spéciaux pour négligence, perte de revenu, perte de capacité lucrative, perte de perspectives économiques, perte de possibilités d'éducation, violation d'obligations fiduciaires, constitutionnelles, statutaires et de common law ainsi que de droits ancestraux et infliction intentionnelle de souffrances morales, des violations de conventions et de pactes internationaux, de même que des violations du droit international, y compris des montants pour couvrir le coût des soins, et pour restaurer, protéger et préserver le patrimoine linguistique et culturel des membres du groupe des survivants dont le Canada est responsable;

(i) des dommages-intérêts exemplaires et punitifs dont le Canada est responsable;

(j) des intérêts antérieurs et postérieurs au jugement;

(k) les frais de la présente action en justice; et

(l) tout autre redressement que cette honorable Cour jugera équitable.

Le groupe des descendants

2. Les représentants des demandeurs du groupe des descendants, en leur propre nom et au nom des membres du groupe des descendants, demandent :

(a) ~~une ordonnance qualifiant cette procédure de recours collectif conformément aux règles fédérales s'appliquant aux recours collectifs et les nommant en tant que représentants des demandeurs du groupe des descendants et de tout sous-groupe de ce groupe;~~

(b) une déclaration selon laquelle le Canada a manqué à ses obligations fiduciaires, constitutionnelles, statutaires et de common law envers les demandeurs et les autres membres du groupe des descendants en ce qui concerne l'objet, l'établissement, le financement, le fonctionnement, la supervision, le contrôle, l'entretien, la fréquentation obligatoire des membres du groupe des survivants et le soutien des pensionnats ~~recensés~~;

(c) une déclaration selon laquelle le groupe des descendants ont des droits ancestraux de parler leurs langues traditionnelles, de s'adonner à leurs coutumes et pratiques religieuses traditionnelles et de se gouverner de leur manière traditionnelle;

(d) une déclaration selon laquelle le Canada a violé les droits linguistiques et culturels (droits ancestraux ou autres) ~~droits ancestraux~~ des membres du groupe des descendants;

(e) une déclaration selon laquelle la politique sur les pensionnats et les pensionnats ~~recensés~~ ont causé des dommages culturels, linguistiques et sociaux et un préjudice irréparable au groupe des descendants;

(f) une déclaration selon laquelle le Canada est responsable envers les demandeurs et les autres membres du groupe des descendants de préjudices causés par le non-respect des obligations fiduciaires, constitutionnelles, statutaires et de common law, ainsi que de droits ancestraux, de violations des conventions et des pactes internationaux, et du droit international, en ce qui concerne l'objectif, la création, le financement, le fonctionnement, la supervision, le contrôle et l'entretien, la fréquentation obligatoire par les membres du groupe des survivants ainsi que le soutien des pensionnats ~~recensés~~;

(g) des dommages-intérêts généraux non pécuniaires pour violation d'obligations fiduciaires, d'obligations découlant de la Constitution, de la loi et de la common law, de droits ancestraux, ainsi que pour violation de conventions et de pactes internationaux, et pour violation du droit international, dont le Canada est responsable;

(h) des dommages-intérêts pécuniaires généraux et des dommages-intérêts spéciaux pour violation d'obligations fiduciaires, constitutionnelles, statutaires et de common law et des droits ancestraux, ainsi que des violations de conventions et de pactes internationaux, de même que des violations du droit international, y compris des montants pour couvrir le coût des soins, et pour restaurer, protéger et préserver le patrimoine linguistique et culturel des membres du groupe des survivants dont le Canada est responsable;

(i) des dommages-intérêts exemplaires et punitifs dont le Canada est responsable;

(j) des intérêts antérieurs et postérieurs au jugement;

(k) les frais de la présente action en justice; et

(l) tout autre redressement que cette honorable Cour jugera équitable;

Le groupe des bandes

3. Les représentants des demandeurs du groupe des bandes demandent :

(a) ~~une Ordonnance qualifiant cette procédure de recours collectif conformément aux règles fédérales s'appliquant aux recours collectifs et les nommant en tant que représentants des demandeurs du groupe des bandes;~~

(b) une déclaration selon laquelle la bande indienne Sechelt (appelée bande shíshálh ou shíshálh) et la bande Tk'emlúps, ainsi que tous les membres du groupe des bandes, ont des droits ancestraux existants, ~~au sens du paragraphe 35(1) de la *Loi constitutionnelle de 1982*~~ de parler leurs langues traditionnelles, de se livrer à leurs coutumes et pratiques religieuses traditionnelles et de se gouverner selon leur mode traditionnel;

(c) une déclaration selon laquelle le Canada a manqué à ses obligations fiduciaires, constitutionnelles, statutaires et de common law, ainsi qu'aux conventions et pactes internationaux et au droit international, envers les membres du groupe des bandes en ce qui concerne l'objet, l'établissement, le financement, le fonctionnement, la supervision, le contrôle, l'entretien, la fréquentation obligatoire des membres du groupe des survivants et le soutien des pensionnats SIRS (pensionnat indien de Sechelt) et KIRS (pensionnat indien de Kamloops) et d'autres pensionnats recensés;

(d) une déclaration selon laquelle la politique sur les pensionnats SIRS et KIRS ainsi que les pensionnats recensés ont causé des dommages culturels, linguistiques et sociaux et un préjudice irréparable au groupe des bandes;

(e) une déclaration selon laquelle le Canada a violé ou viole ~~les droits ancestraux,~~ les droits linguistiques et culturels des membres du groupe des bandes (droits ancestraux ou autres), ainsi que les conventions et les pactes internationaux de même que le droit international, du fait de la création, du financement, le fonctionnement, la supervision, le contrôle et l'entretien, la fréquentation obligatoire par les membres du groupe des survivants ainsi que le soutien des pensionnats recensés;

(f) une déclaration selon laquelle le Canada est responsable envers les membres du groupe des bandes de préjudices causés par le non-respect des obligations fiduciaires, constitutionnelles, statutaires et de common law, ainsi que de droits ancestraux, de violations des conventions et des pactes internationaux, et du droit international, en ce qui concerne l'objectif, la création, le financement, le fonctionnement, la supervision, le contrôle et l'entretien, la fréquentation obligatoire par les membres du groupe des survivants ainsi que le soutien des pensionnats recensés;

(g) des dommages-intérêts pécuniaires et non pécuniaires généraux et des dommages-intérêts spéciaux pour violation d'obligations fiduciaires, constitutionnelles, statutaires et de common law ainsi que de droits ancestraux, des violations de conventions et de pactes internationaux, de même que des violations du droit international, y compris des montants pour couvrir en continu le coût des soins de manière individuelle pour les membres du groupe des bandes, et pour restaurer, ainsi que les coûts de restauration, de protection et de préservation du patrimoine linguistique et culturel des bandes dont le Canada est responsable;

(h) la construction par le Canada de centres de guérison dans les communautés du groupe des bandes;

(i) des dommages-intérêts exemplaires et punitifs dont le Canada est responsable;

(j) des intérêts antérieurs et postérieurs au jugement;

(k) les frais de la présente action en justice; et

(l) tout autre redressement que cette honorable Cour jugera équitable.

DÉFINITIONS

4. Les définitions suivantes s'appliquent aux fins de la présente demande d'indemnisation :

(a) « Autochtone(s) », « Personne(s) autochtone(s) » ou « Enfant(s) autochtone(s) » désigne une ou plusieurs personnes dont les droits sont reconnus et confirmés par l'article 35 de la *Loi constitutionnelle* de 1982;

(b) « Droits ancestraux » désigne une partie ou la totalité des droits ancestraux et des droits issus de traités reconnus et confirmés par l'article 35 de la *Loi constitutionnelle* de 1982;

(c) « Loi » désigne la *Loi sur les Indiens*, L.R.C. de 1985, chapitre I-5 et ses versions antérieures, ainsi que les modifications qui y ont été apportées le cas échéant;

(d) « Agents » désigne les préposés, entrepreneurs, agents, dirigeants et employés du Canada ainsi que les opérateurs, gestionnaires, administrateurs, enseignants et employés de chacun des pensionnats indiens;

(e) « Convention » désigne la convention de règlement relative aux pensionnats indiens datée du 10 mai 2006, conclue par le Canada pour régler les demandes d'indemnisation relatives aux pensionnats indiens, telles qu'elles ont été approuvées dans les ordonnances rendues par les diverses administrations canadiennes;

(f) « Le groupe des bandes » désigne la bande indienne Tk'lúps te Secwépemc et la bande shíshálh et toute autre bande indienne autochtone qui :

(i) a ou avait des membres qui sont ou étaient membres du groupe des survivants, ou dont la communauté abrite un pensionnat; et

(ii) qui est spécifiquement ajoutée à la présente demande d'indemnisation avec un ou plusieurs pensionnats expressément désignés.

(g) « Canada » désigne la défenderesse, Sa Majesté la Reine du chef du Canada, représentée par le Procureur général du Canada;

(h) « Groupe » ou « membres du groupe » désignent tous les membres du groupe des survivants, du groupe des descendants et du groupe des bandes, tels que définis dans les présentes;

(i) « Période du recours » désigne les années allant de 1920 à ~~1979~~1997;

(j) « Préjudice culturel, linguistique et social » désigne les dommages ou les préjudices résultant de la création et de la mise en œuvre des pensionnats et de la politique relative aux pensionnats en matière d'éducation, de gouvernance, d'économie, de culture, de langue, de spiritualité et de coutumes sociales, de pratiques et de mode

de vie, de structures de gouvernance traditionnelles, ainsi que de sécurité et de bien-être communautaires et individuels des Autochtones;

(k) « Groupe des descendants » désigne la première génération de ~~toutes~~ les personnes ~~qui sont~~ des descendants des membres du groupe des survivants ou des personnes qui ont été légalement ou traditionnellement adoptées par un membre du groupe des survivants ou son conjoint;

(l) « Pensionnat(s) recensé(s) » désigne KIRS ou SIRS ~~ou tout autre~~ pensionnat ~~expressément désigné par un membre du groupe des bandes;~~

(m) « KIRS » désigne le pensionnat indien de Kamloops;

(n) « Pensionnats indiens » désigne tous les pensionnats indiens reconnus par la convention;

(o) « Politique sur les pensionnats indiens » désigne la politique du Canada relative à la mise en œuvre des pensionnats indiens;

(p) « SIRS » désigne le pensionnat indien de Sechelt;

(q) « Groupe de survivants » désigne tous les Autochtones qui ont fréquenté en tant qu'élève ou à des fins éducatives, quelle que soit la période un pensionnat indien ~~recensé~~, au cours de la période concernée par le recours collectif, à l'exclusion, pour tout membre du groupe, des périodes pour lesquelles ce membre a reçu une indemnité au titre du paiement d'expérience commune en vertu de la convention de règlement relative aux pensionnats indiens.

LES PARTIES

Les demandeurs

5. La demanderesse, Darlene Matilda Bulpit (née Joe), réside sur les terres de la bande shíshálh en Colombie-Britannique. Darlene Matilda Bulpit est née le 23 août 1948 et a fréquenté le SIRS pendant neuf ans, entre 1954 et 1963. Darlene Matilda Bulpit est proposée comme représentante des demandeurs du groupe des survivants.

6. Le demandeur, Frederick Johnson, réside sur les terres de la bande shíshálh en Colombie-Britannique. Frederick Johnson est né le 21 juillet 1960 et a fréquenté le SIRS pendant

dix ans, entre 1966 et 1976. Frederick Johnson est proposé comme représentant des demandeurs pour le groupe des survivants.

~~7. La demanderesse, Abigail Margaret August (née Joe), réside sur des terres de la bande shíshálh en Colombie-Britannique. Abigail Margaret August est née le 21 août 1954 et a fréquenté le SIRS pendant huit ans, entre 1959 et 1967. Abigail Margaret August est proposée comme représentante des demandeurs du groupe des survivants.~~

~~8. La demanderesse, Shelly Nadine Hoehn (née Joe), réside sur des terres de la bande shíshálh en Colombie-Britannique. Shelly Nadine Hoehn est née le 23 juin 1952 et a fréquenté le SIRS pendant huit ans, entre 1958 et 1966. Shelly Nadine Hoehn est proposée comme représentante des demandeurs du groupe des survivants.~~

9. La demanderesse, Daphne Paul, réside sur les terres de la bande shíshálh en Colombie-Britannique. Daphne Paul est née le 13 janvier 1948 et a fréquenté le SIRS pendant huit ans, entre 1953 et 1961. Daphne Paul est ~~proposée comme~~ représentante des demandeurs pour le groupe des survivants.

10. La demanderesse, Violet Catherine Gottfriedson, réside dans la réserve de la bande indienne Tk'emlúps te Secwépemc en Colombie-Britannique. Violet Catherine Gottfriedson est née le 30 mars 1945 et a fréquenté le KIRS pendant quatre ans, entre 1958 et 1962. Violet Catherine Gottfriedson est proposée comme représentante des demandeurs du groupe des survivants.

~~11. La demanderesse, Doreen Louise Seymour, réside dans la réserve de la bande indienne Tk'emlúps te Secwépemc en Colombie-Britannique. Doreen Louise Seymour est née le 7 septembre 1955 et a fréquenté le KIRS pendant cinq ans, entre 1961 et 1966. Doreen Louise Seymour est proposée comme représentante des demandeurs du groupe des survivants.~~

12. La demanderesse, Charlotte Anne Victorine Gilbert (née Larue), réside à Williams Lake en Colombie-Britannique. Charlotte Anne Victorine Gilbert est née le 24 mai 1952 et a fréquenté le KIRS pendant sept ans, entre 1959 et 1966. Charlotte Anne Victorine Gilbert est proposée comme représentante des demandeurs du groupe des survivants.

~~13. Le demandeur, Victor Fraser (également connu sous le nom de Victor Frezie), réside dans la réserve de la bande indienne Tk'emlúps te Secwépemc, en Colombie-Britannique. Victor Fraser est né le 11 juin 1957 et a fréquenté le SIRS pendant six ans, entre 1962 et 1968. Victor Fraser est proposé comme représentant des demandeurs pour le groupe des survivants.~~

14. La demanderesse, Diena Marie Jules, réside dans la réserve de la bande indienne Tk'emlúps te Secwépemc en Colombie-Britannique. Diena Marie Jules est née le 12 septembre 1955 et a fréquenté le KIRS pendant six ans, entre 1962 et 1968. Diena Marie Jules est ~~proposée comme~~ représentante des demandeurs du groupe des survivants.

~~15. Le demandeur, Aaron Joe, réside sur des terres de la bande shíshálh. Aaron Joe est né le 19 janvier 1972 et est le fils de Valerie Joe, qui a fréquenté le SIRS en tant qu'élève externe. Aaron Joe est proposé comme représentant des demandeurs pour le groupe des descendants.~~

16. La demanderesse, Rita Poulsen, réside sur des terres de la bande shíshálh. Rita Poulsen est née le 8 mars 1974 et est la filles de Randy Joe, qui a fréquenté le SIRS en tant qu'élève externe. Rita Poulsen est ~~proposée comme~~ représentante des demandeurs pour le groupe des descendants.

17. La demanderesse, Amanda Deanne Big Sorrel Horse, réside dans la réserve de la bande indienne Tk'emlúps te Secwépemc. Amanda Deanne Big Sorrel Horse est née le 26 décembre 1974 et est la fille de Jo-Anne Gottfriedson qui a fréquenté le KIRS pendant six ans

entre 1961 et 1967. Amanda Deanne Big Sorrel Horse est ~~proposée comme~~ représentante des demandeurs pour le groupe des descendants.

18. La bande indienne Tk'emlúps te Secwépemc et la bande shíshálh sont des « bandes » au sens de la Loi et elles ~~se proposent~~ toutes deux d'agir à titre de représentantes des demandeurs du groupe des bandes. Les membres du groupe des bandes représentent les intérêts collectifs et l'autorité de chacune de leurs communautés respectives.

19. Les demandeurs individuels ainsi que les membres proposés du groupe des survivants et des descendants sont en grande partie des membres de la bande shíshálh et de la bande indienne Tk'emlúps te Secwépemc, et des membres des Premières nations du Canada ou sont les fils et les filles de membres de ces communautés autochtones. Les demandeurs individuels et les membres du groupe des survivants et des descendants sont des personnes autochtones au sens de *l'article 35 de la Loi constitutionnelle de 1982.*

Le Défendeur

20. Dans cette procédure, le Canada est représenté par le Procureur général du Canada. Le procureur général du Canada représente les intérêts du Canada et du ministre des Affaires autochtones et du Développement du Nord canadien et des ministres qui l'ont précédé, qui étaient responsables des « Indiens » en vertu de l'article 91(24) de la *Loi constitutionnelle de 1867*, et qui étaient, à tous les moments importants, responsables de l'élaboration et de la mise en œuvre de la politique sur les pensionnats, ainsi que du maintien et du fonctionnement du KIRS et du SIRS.

EXPOSÉ DES FAITS

21. Ces dernières années, le Canada a reconnu les conséquences désastreuses de sa politique des pensionnats sur les peuples autochtones du Canada. La politique des pensionnats du Canada a été élaborée dans le but d'éradiquer la culture et l'identité autochtones et d'assimiler les peuples autochtones du Canada à la société euro-canadienne. Par cette politique, le Canada a détruit les fondements de l'identité de générations d'Autochtones et a causé des dommages incommensurables aux personnes et aux communautés.

22. Le bénéficiaire direct de la politique des pensionnats indiens était le Canada, car ses obligations seraient réduites en proportion du nombre, et des générations, d'Autochtones qui ne reconnaîtraient plus leur identité autochtone et réduiraient leurs revendications de droits en vertu de la Loi et des obligations fiduciaires, constitutionnelles, statutaires et de common law du Canada.

23. La politique des pensionnats a également été profitable au Canada, car elle a permis d'affaiblir les demandes d'indemnisation des peuples autochtones en ce qui concerne leurs terres et leurs ressources traditionnelles. Il en a résulté une séparation des peuples autochtones de leurs cultures, de leurs traditions et, en fin de compte, de leurs terres et de leurs ressources. Cela a permis l'exploitation de ces terres et ressources par le Canada, non seulement sans le consentement des peuples autochtones, mais aussi, contrairement à leurs intérêts, à la Constitution du Canada et à la Proclamation royale de 1763.

24. La réalité de cette injustice et les dommages qu'elle a causés sont désormais reconnus par le premier ministre, au nom du Canada, et par le règlement pancanadien des demandes d'indemnisation des personnes ayant *résidé dans* les pensionnats du Canada, dans le cadre de la convention mise en œuvre en 2007. En dépit de la confirmation de la réalité des torts et des préjudices causés, un grand nombre de membres des communautés autochtones du Canada ont été exclus de la convention, non

pas parce qu'ils n'ont pas *fréquenté* les pensionnats et subi des préjudices culturels, linguistiques et sociaux, mais simplement parce qu'ils n'étaient pas *résidents* dans les pensionnats.

25. Cette demande d'indemnisation est faite au nom des membres du groupe des survivants, c'est-à-dire ceux qui ont fréquenté un pensionnat indien ~~recensé~~ pour les préjudices culturels, linguistiques et sociaux résultant de cette fréquentation, ainsi qu'au nom du groupe des descendants, qui sont les descendants de première génération des membres du groupe des survivants, ainsi que du groupe des bandes, qui est constitué des communautés autochtones dans lesquelles se trouvaient les pensionnats indiens ~~recensés~~, ou auxquelles appartiennent leurs membres ~~et dans lesquelles vivent la majorité des membres~~ du groupe des survivants et des descendants.

26. Les demandes d'indemnisation des représentants des demandeurs proposés concernent les préjudices subis à la suite de leur *fréquentation* des pensionnats KIRS et SIRS et à leur exposition à la politique des pensionnats. Elles ne concernent pas les demandes d'indemnisation découlant de leur internat au KIRS ou au SIRS pour lequel une indemnisation spécifique a été versée en vertu de la convention. La présente demande vise à obtenir une indemnisation pour les victimes de cette politique dont les demandes ont été ignorées par le Canada et ont été exclues de l'indemnisation prévue par la convention.

Le système des pensionnats

27. Les pensionnats ont été créés par le Canada avant 1874, pour l'éducation des enfants autochtones. Au début du vingtième siècle, le Canada a conclu des conventions officielles avec diverses organisations religieuses (les « Églises ») pour l'exploitation des pensionnats. En vertu de ces conventions, le Canada contrôlait, réglementait, supervisait et dirigeait tous les aspects du fonctionnement des pensionnats. Les Églises ont assumé le fonctionnement quotidien de

nombreux pensionnats sous le contrôle, la supervision et la direction du Canada, qui leur versait une subvention *par tête*. En 1969, le Canada a pris en main la gestion de ces établissements.

28. À partir de 1920, la politique des pensionnats indiens prévoyait la *fréquentation* obligatoire des pensionnats pour tous les enfants autochtones âgés de 7 à 15 ans. Le Canada a retiré la plupart des enfants autochtones de leur foyer et de leur communauté, puis les a envoyés dans des pensionnats qui se trouvaient souvent très loin de chez eux. Cependant, il arrivait que des enfants autochtones vivent chez eux et dans leur communauté et soient obligés de fréquenter les pensionnats en tant qu'externes et non en tant qu'internes. Cette pratique concernait encore plus d'enfants au cours des dernières années de la politique des pensionnats. Durant leurs années en pensionnat, tous les enfants autochtones étaient confinés et privés de leur héritage, de leurs réseaux de soutien et de leur mode de vie, forcés d'adopter une langue étrangère ainsi qu'une culture qui leur était étrangère, et punis en cas de non-conformité.

29. L'objectif de la politique des pensionnats indiens était l'intégration et l'assimilation complètes des enfants autochtones dans la culture euro-canadienne ainsi que la suppression de leur langue, culture, religion et mode de vie traditionnels. Le Canada a intentionnellement causé les préjudices culturels, linguistiques et sociaux dont ont souffert les peuples et les nations autochtones du Canada. ~~En plus de la cruauté inhérente~~ à la fréquentation forcée par les membres du groupe des survivants dans le cadre de cette ~~même~~ politique des pensionnats, de nombreux enfants fréquentant les pensionnats ont également été victimes d'abus psychologiques, physiques, sexuels et émotionnels, qui se sont poursuivis jusqu'en 1997, date à laquelle le dernier pensionnat a été fermé.

30. Le Canada a fait preuve de déloyauté envers ses peuples autochtones en mettant en œuvre la politique des pensionnats dans son propre intérêt, y compris son intérêt économique, au

détriment et à l'exclusion des intérêts des Autochtones envers lesquels le Canada avait des obligations fiduciaires et constitutionnelles. Si elle réussit, l'éradication intentionnelle de l'identité, de la culture, de la langue ainsi que des pratiques spirituelles et ~~de la religion~~ autochtones, réduirait sur plusieurs générations le nombre de personnes auxquelles le Canada est redevable, parce qu'elles ne s'identifieraient plus comme autochtones et elles seraient moins susceptibles de revendiquer leurs droits en tant qu'autochtones.

Les conséquences de la politique des pensionnats sur les membres du recours collectif

La bande indienne Tk'emlúps

31. Tk'emlúpsemc, « le peuple du confluent », aujourd'hui connu sous le nom de bande indienne Tk'emlúps te Secwépemc, fait partie du peuple du plateau le plus septentrional et des peuples de langue salish de l'intérieur Secwépemc (Shuswap) de la Colombie-Britannique. La bande indienne Tk'emlúps a été établie sur une réserve aujourd'hui adjacente à la ville de Kamloops, où le KIRS a été établi par la suite. La plupart, voire la totalité, des élèves qui ont *fréquenté* le KIRS *en externes* étaient ou sont membres de la bande indienne Tk'emlúps, résidant ou ayant résidé dans la réserve.

32. Le secwepemctsin est la langue des Secwépemc, et c'est l'unique moyen par lequel les connaissances et l'expérience culturelles, écologiques et historiques du peuple Secwépemc sont comprises et transmises de génération en génération. C'est par la langue, les pratiques spirituelles et le passage de la culture et des traditions, y compris les rituels, les tambours, les danses, les chansons et les histoires, que les valeurs et les croyances du peuple Secwépemc sont comprises et transmises. Du point de vue des Secwépemc, tous les aspects du savoir des Secwépemc, y compris

leur culture, leurs traditions, leurs lois et leurs langues, sont fondamentalement et intégralement liés à leurs terres et à leurs ressources.

33. La langue, comme la terre, a été donnée aux Secwépemc par le Créateur pour communiquer avec le peuple et le monde naturel. Cette communication a créé une relation de réciprocité et de coopération entre les Secwépemc et le monde naturel qui leur a permis de survivre et de s'épanouir dans des environnements hostiles. Ces connaissances, transmises oralement à la génération suivante, contenaient les enseignements nécessaires au maintien de la culture, des traditions, des lois et de l'identité des Secwépemc.

34. Pour les Secwépemc, leurs pratiques spirituelles, leurs chants, leurs danses, leurs histoires orales, leurs récits et leurs cérémonies font partie intégrante de leur vie et de leur société. Il est absolument vital de maintenir ces pratiques et ces traditions. Leurs chants, leurs danses, leurs tambours et leurs cérémonies traditionnelles relient les Secwépemc à leur terre et leur rappellent continuellement leurs responsabilités envers la terre, les ressources et le peuple Secwépemc.

35. Les cérémonies et les pratiques spirituelles des Secwépemc, y compris leurs chants, leurs danses, leurs tambours ainsi que le passage des récits et de l'histoire, perpétuent leurs enseignements et leurs lois vitales concernant la récolte des ressources, y compris les plantes médicinales, le gibier et le poisson, de même que la protection et la préservation adéquates et respectueuses des ressources. À titre d'exemple, conformément aux lois Secwépemc, les Secwépemc chantent et prient avant de récolter toute nourriture, tout médicament et toute autre matière provenant de la terre, et font une offrande pour remercier le Créateur ainsi que les esprits pour tout ce qu'ils prennent. Les Secwépemc croient que tous les êtres vivants ont un esprit et qu'il faut leur témoigner le plus grand respect. Ce sont ces croyances vitales et intégrantes ainsi que ces

lois traditionnelles, de même que d'autres éléments de la culture et de l'identité secwépemc, que le Canada a voulu faire disparaître avec la politique des pensionnats.

La bande shíshálh

36. La nation shíshálh, une division des Premières nations salish de la côte, occupait à l'origine la partie sud de la côte sud de la Colombie-Britannique. Le peuple shíshálh a colonisé la région il y a des milliers d'années et a occupé environ 80 sites de villages sur un vaste territoire. Le peuple shíshálh est composé de quatre sous-groupes qui parlent la langue shashishalhem, qui est une langue distincte et unique, bien qu'elle fasse partie de la division salish du littoral de la langue salish.

37. La tradition shíshálh décrit la formation du monde shíshálh (histoire de Spelmulh). Au commencement, les esprits créateurs ont été envoyés par l'Esprit divin pour former le monde. Ils ont creusé des vallées laissant une plage le long de la crique de Porpoise Bay. Plus tard, les transformateurs, un corbeau mâle et un vison femelle, ont ajouté des détails en sculptant des arbres et en formant des bassins d'eau.

38. Le chant, la danse et le tambour font partie intégrante de la culture shíshálh et de ses pratiques spirituelles. Ils permettent d'établir un lien avec la terre et le Créateur et de transmettre l'histoire ainsi que les croyances du peuple. Par le chant et la danse, le peuple shíshálh racontait des histoires, bénissait des événements et pouvait même guérir. Leurs chants, leurs danses et leurs tambours marquent également les événements saisonniers importants qui font partie intégrante du peuple shíshálh. Les traditions comprennent également la fabrication et l'utilisation de masques, de paniers, de parures et d'outils pour la chasse et la pêche. Ce sont ces croyances vitales et intégrantes ainsi que ces lois traditionnelles, de même que d'autres éléments de la culture et de l'identité shíshálh, que le Canada a voulu faire disparaître avec la politique des pensionnats.

Les répercussions des pensionnats ~~recensés~~

39. Pour tous les enfants autochtones qui ont été forcés de fréquenter les pensionnats ~~recensés~~, une discipline stricte a été appliquée dans le cadre de la politique des pensionnats. À l'école, les enfants n'étaient pas autorisés à parler leur langue autochtone, même avec leurs parents, et les membres de ces communautés autochtones étaient donc forcés d'apprendre l'anglais.

40. La culture autochtone était rigoureusement supprimée par les administrateurs de l'école, conformément aux directives du Canada, et notamment à la politique des pensionnats. Au SIRS, les membres du peuple shishalh ~~convertis au catholicisme~~ ont été contraints de brûler ou de donner aux agents du Canada des totems, des insignes, des masques et autres « attirails des guérisseurs » séculaires et d'abandonner leurs potlatchs, leurs danses et leurs festivités hivernales, ainsi que d'autres éléments faisant partie intégrante de la culture et de la société autochtones des peuples shíshálh et Secwépemc.

41. Étant donné que le SIRS se trouvait dans la communauté shíshálh, ~~l'Église et~~ le ~~gouvernement~~ du Canada surveillaient, directement et par l'intermédiaire de leurs agents, les aînés, qui étaient sévèrement punis s'ils pratiquaient leur culture, parlaient leur langue ou la transmettaient aux jeunes générations. En dépit de cette surveillance, les membres du groupe ont essayé, souvent sans succès, de pratiquer, de protéger et de préserver leurs chants, leurs masques, leurs danses et leurs autres pratiques culturelles.

42. Les Tk'emlúps te Secwépemc ont subi un sort similaire en raison de leur voisinage avec le KIRS.

43. Les enfants qui fréquentaient les pensionnats ~~recensés~~ ont ~~été endoctrinés par le christianisme et~~ ont appris à avoir honte de leur identité, de leur culture, de leur spiritualité et de leurs pratiques autochtones. On les qualifiait, entre autres épithètes désobligeantes, de « sales

sauvages » et de « païens » et on leur apprenait à rejeter leur identité. Le mode de vie, les traditions, les cultures et les pratiques spirituelles autochtones des membres du recours collectif ont été supplantés par l'identité euro-canadienne qui leur a été imposée par le Canada dans le cadre de la politique des pensionnats indiens.

44. Cette mise en œuvre de la politique relative aux pensionnats indiens a causé un préjudice supplémentaire aux membres de la classe des survivants des pensionnats ~~recensés~~, à qui l'on avait enseigné à l'école que les enseignements traditionnels de leurs parents, de leurs grands-parents et de leurs aînés n'avaient aucune valeur et, dans certains cas, qu'il s'agissait de pratiques et de croyances « païennes », et qui, en rentrant chez eux à la fin de la journée scolaire rejetaient les enseignements de leurs parents, de leurs grands-parents et de leurs aînés.

45. Les attaques contre leurs traditions, leurs lois, leur langue et leur culture à travers la mise en œuvre de la politique des pensionnats indiens par le Canada, directement ou par l'intermédiaire de ses agents, ont continué à miner les membres individuels du groupe des survivants, causant une perte d'estime de soi, une dépression, une anxiété, des idées suicidaires, des suicides, des maladies physiques sans causes claires, des difficultés à être parents, des difficultés à maintenir des relations positives, l'abus de substances et la violence, entre autres préjudices et pertes, qui ont tous eu des répercussions sur le groupe des descendants.

46. Les membres du groupe des bandes ont perdu, en partie ou en totalité, leur viabilité économique traditionnelle, leur autonomie gouvernementale et leurs lois, leur langue, leur assise territoriale et leurs enseignements fondés sur la terre, leurs pratiques spirituelles traditionnelles de même que leurs pratiques religieuses, ainsi que le sens intégral de leur identité collective.

47. La politique des pensionnats, mise en œuvre par l'intermédiaire des pensionnats ~~recensés~~, a dévasté culturellement, linguistiquement et socialement les communautés du groupe des bandes et a modifié leur mode de vie traditionnel.

Le règlement du Canada avec les anciens internes des pensionnats indiens

48. Depuis la fermeture des pensionnats ~~recensés~~ ~~dans les années 1970~~ jusqu'à la fin des années 1990, les communautés autochtones du Canada ont dû faire face aux préjudices et aux souffrances de leurs membres, conséquence de la politique des pensionnats, sans aucune considération de la part du Canada. À cette époque, les survivants des pensionnats ont commencé à parler de plus en plus ouvertement des conditions horribles et des abus qu'ils ont subis, ainsi que des conséquences dramatiques que cela a eues sur leur vie. De plus, de nombreux survivants se sont suicidés ou ont fait de l'automédication jusqu'à en décéder. Ces décès ont dévasté non seulement les membres du groupe des survivants et du groupe des descendants, mais aussi la vie et la stabilité des communautés représentées par le groupe des bandes.

49. En janvier 1998, le Canada a publié une déclaration de réconciliation, par laquelle il admettait les erreurs de la politique sur les pensionnats indiens et s'en excusait. Le Canada a admis que la politique des pensionnats avait été conçue pour assimiler les Autochtones et qu'il avait eu tort de poursuivre cet objectif. Les demandeurs avancent que la déclaration de réconciliation du Canada constitue une admission par le Canada des faits et des obligations énoncés aux présentes et qu'elle constitue un argument valable pour la demande de dommages-intérêts des demandeurs, en particulier les dommages-intérêts punitifs.

50. La déclaration de réconciliation stipule, en partie, ce qui suit :

Nous ne pouvons malheureusement pas être fiers de la façon dont nous avons traité les Autochtones par le passé. Une attitude fondée sur un sentiment de supériorité raciale et culturelle a conduit à la suppression de la culture et des valeurs autochtones. En tant que pays, nous portons le fardeau des actions passées qui ont eu pour effet d'affaiblir l'identité des peuples autochtones, de faire disparaître leurs langues ainsi que leurs cultures et de rendre illégales leurs pratiques spirituelles. Nous devons admettre les conséquences de ces actions sur les nations autrefois autonomes qui ont été divisées, déstructurées, restreintes ou même détruites par la spoliation des territoires traditionnels, par la réinstallation des Autochtones et par certains articles de la loi sur les Indiens. Nous devons admettre que ces actions ont eu pour résultat de miner les systèmes politiques, économiques et sociaux des peuples et des nations autochtones.

Compte tenu des séquelles historiques, la force et l'endurance des peuples autochtones, qui ont su préserver leur diversité et leur identité historiques, sont remarquables. Le gouvernement du Canada exprime aujourd'hui officiellement à tous les Autochtones du Canada son profond regret pour les actions passées du gouvernement fédéral qui ont conduit à ces pages sombres de l'histoire de nos relations.

Un des volets de notre relation avec les Autochtones qui requiert une attention particulière durant cette période est le système des pensionnats. Ce système a séparé de nombreux enfants de leur famille et de leur communauté et les a empêchés de parler leur propre langue et de connaître leur patrimoine et leur culture. Dans certains cas, il a laissé des séquelles en ce qui concerne la souffrance et le désespoir qui se répercutent encore aujourd'hui dans les communautés autochtones. Malheureusement, certains enfants ont été victimes d'abus physiques et sexuels.

Le gouvernement du Canada reconnaît le rôle qu'il a joué dans la conception et l'administration de ces écoles. Nous tenons à dire aux personnes qui ont vécu le drame des abus physiques et sexuels dans les pensionnats indiens et qui ont porté ce fardeau en croyant que, d'une certaine façon, cela était leur faute, que ce qu'elles ont vécu n'aurait jamais dû se produire. Nous présentons nos plus sincères excuses à ceux d'entre vous qui ont subi ces événements dramatiques dans les pensionnats indiens. En ce qui concerne les séquelles du programme des pensionnats, le gouvernement du Canada propose de travailler avec les Premières nations, les Inuits, les Métis, les Églises et les autres parties intéressées pour résoudre les problèmes de longue date qui doivent être réglés. Nous devons travailler ensemble sur une stratégie permettant d'aider les personnes et les communautés à surmonter les conséquences de cette triste page de notre histoire...

> *La réconciliation est un processus continu. En renouvelant notre partenariat, nous devons veiller à ce que les erreurs qui ont marqué notre relation passée ne se répètent pas. Le gouvernement du Canada reconnaît que les politiques visant à assimiler les Autochtones, hommes et femmes, ne permettent pas de créer une communauté forte...*

51. Le 10 mai 2006 ou vers cette date, le Canada a signé une convention visant à indemniser principalement les personnes ayant *été internes* dans les pensionnats indiens.

52. La convention prévoit deux types d'indemnisation individuelle : le paiement d'expérience commune (« PEC ») pour le fait d'avoir été interne dans un pensionnat, et une indemnisation fondée sur un processus d'évaluation indépendant (« PEI ») pour offrir des indemnités pour certains sévices subis et les préjudices causés par ces sévices.

53. Le PEC consistait en une indemnité pour les anciens *internes* d'un pensionnat d'un montant de 10 000 $ pour la première année scolaire ou partie d'une année scolaire et de 3 000 $ supplémentaires pour chaque année scolaire ou partie d'année scolaire suivante d'*internat*. Le PEC était versé aux internes, car il avait été admis que l'expérience de l'assimilation était préjudiciable et devait faire l'objet d'une indemnisation, indépendamment du fait que l'élève ait subi des violences physiques, sexuelles ou autres pendant son internat. L'autre indemnisation était versée dans le cadre du PEI. Le PEC n'était offert qu'aux anciens internes alors que, dans certains cas, le PEI était offert non seulement aux anciens internes, mais aussi aux autres jeunes qui se trouvaient légalement dans les locaux d'un pensionnat, y compris les anciens externes.

54. La mise en œuvre de la convention marquait la première fois que le Canada acceptait de verser une indemnisation pour les préjudices culturels, linguistiques et sociaux. Le Canada a refusé de verser une indemnité aux membres du groupe des survivants, à savoir les élèves qui ont *fréquenté* les ~~pensionnats recensés ou d'autres~~ pensionnats, mais qui n'étaient pas *internes*.

55. La convention a été approuvée par les cours supérieures provinciales et territoriales de la Colombie-Britannique au Québec, en passant par les Territoires du Nord-Ouest, le Territoire du Yukon et le Nunavut, et la convention a été mise en œuvre à compter du 20 septembre 2007.

56. Le 11 juin 2008, le premier ministre Stephen Harper, a présenté ses excuses (« excuses ») au nom du Canada, reconnaissant ainsi les torts causés par la politique canadienne en matière de pensionnats indiens :

> *Durant plus d'un siècle, les pensionnats indiens ont séparé plus de 150 000 enfants autochtones de leurs familles et de leurs communautés. Dans les années 1870, le gouvernement fédéral, en partie pour respecter son obligation d'éduquer les enfants autochtones, a commencé à jouer un rôle dans le développement et l'administration de ces écoles.* ***Les deux principaux objectifs du système des pensionnats étaient de retirer et d'isoler les enfants de l'influence de leur foyer, de leur famille, de leurs traditions et de leur culture, et de les assimiler à la culture dominante.*** *Ces objectifs reposaient sur l'hypothèse que les cultures et les croyances spirituelles autochtones étaient inférieures et n'avaient pas la même valeur. En fait, certains voulaient, comme il a été dit de façon tristement célèbre,* ***« tuer les Indiens dans l'œuf »****. Aujourd'hui, nous sommes conscients que cette politique d'assimilation était erronée, qu'elle a causé de grands préjudices et qu'elle n'a pas sa place dans notre pays. [****souligné****]*

57. En présentant ces excuses, le Premier ministre a reconnu certains faits importants concernant la politique des pensionnats indiens et son impact sur les enfants autochtones :

> *Le gouvernement du Canada a mis sur pied un système d'éducation dans lequel de très jeunes enfants étaient souvent retirés de force de leur foyer, parfois emmenés loin de leur communauté. Beaucoup étaient mal nourris, habillés et logés. Tous ont été privés des soins et de l'éducation de leurs parents, grands-parents et communautés. Les langues et les pratiques culturelles des Premières nations, des Inuits et des Métis étaient interdites dans ces écoles. Ce qui est tragique, c'est que certains de ces enfants sont morts pendant qu'ils fréquentaient les pensionnats et que d'autres ne sont jamais rentrés chez eux.*
>
> *Le gouvernement reconnaît maintenant que les conséquences de la politique des pensionnats indiens ont été extrêmement négatives et que*

> *cette politique a eu des répercussions durables et dévastatrices sur la culture, le patrimoine et la langue autochtones.*
>
> *Les conséquences des pensionnats indiens ont contribué aux problèmes sociaux qui existent encore aujourd'hui dans de nombreuses communautés.*
>
> * * *
>
> *Nous sommes conscients aujourd'hui que nous avons eu tort de séparer les enfants de cultures et de traditions riches et vivantes, que cela a créé un vide dans de nombreuses vies et communautés, et nous nous excusons de l'avoir fait. Nous réalisons aujourd'hui qu'en séparant les enfants de leurs familles, nous avons empêché un grand nombre d'entre eux d'élever convenablement leurs propres enfants et avons semé les graines pour les générations suivantes, et nous sommes désolés d'avoir agi ainsi. Nous sommes aujourd'hui conscients que, bien trop souvent, ces institutions ont donné lieu à des abus ou à des négligences et n'étaient pas suffisamment contrôlées, et nous sommes désolés de ne pas avoir su vous protéger. Non seulement vous avez souffert de ces abus pendant votre enfance, mais en devenant parents, vous n'avez pas pu empêcher vos propres enfants de subir la même expérience, et nous en sommes désolés.*
>
> *Le fardeau de cette expérience pèse sur vos épaules depuis bien trop longtemps. Ce fardeau nous incombe en tant que gouvernement et en tant que pays. Aujourd'hui, il n'y a aucune chance qu'au Canada, le genre de mentalités qui ont conduit au système des pensionnats indiens puisse à nouveau exister. Vous essayez depuis longtemps de vous relever de cette expérience et, de manière très concrète, nous nous joignons maintenant à vous dans cette quête. Le gouvernement du Canada présente des excuses sincères aux peuples autochtones de ce pays et leur demande de lui pardonner d'avoir si gravement manqué à ses obligations envers eux.*

58. Malgré les excuses et le fait que le Canada ait reconnu avoir agi injustement, ainsi que l'appel à la reconnaissance des communautés autochtones du Canada et de la *Commission de vérité et de réconciliation* dans son rapport provisoire de février 2012, le fait que le Canada ait exclu le groupe des survivants de la convention témoigne de son manque de considération vis-à-vis des membres du groupe des survivants. Le Canada continue, comme il l'a fait des années 1970 jusqu'en 2006 concernant les « élèves internes », de nier les préjudices subis par les demandeurs individuels et les membres du groupe des survivants, des descendants et des bandes.

Le manquement du Canada à ses obligations envers les membres des recours collectifs

59. Depuis l'élaboration de la politique sur les pensionnats jusqu'à sa mise en œuvre sous forme de fréquentation forcée des pensionnats recensés, le Canada a gravement manqué à ses obligations envers les membres du groupe des survivants et, ce faisant, a détruit les fondements de l'identité individuelle des membres du groupe des survivants, a volé le patrimoine des membres du groupe des descendants et a infligé des pertes incalculables aux membres du groupe des bandes.

60. Les membres du groupe des survivants, les membres du groupe des descendants et les membres du groupe des bandes ont tous souffert du dysfonctionnement familial, de la pénalisation ou de la suppression des cérémonies traditionnelles ainsi que de la perte de la structure de gouvernance héréditaire qui leur permettait de gouverner leurs peuples et leurs terres.

61. Pendant qu'ils fréquentaient le pensionnat recensé, les membres du groupe des survivants étaient extrêmement vulnérables, et le Canada avait envers eux les plus grandes responsabilités fiduciaires, morales, statutaires, constitutionnelles et de common law, y compris, mais sans s'y limiter, l'obligation de protéger les droits autochtones ainsi que leur culture, leur langue et leur manière de vivre. Le Canada n'a pas respecté ces obligations et a manqué en particulier à sa responsabilité d'assurer la sécurité et le bien-être des survivants pendant leur séjour dans les pensionnats recensés.

Les obligations du Canada

62. Le Canada était responsable de l'élaboration et de la mise en œuvre de tous les aspects de la politique relative aux pensionnats indiens, y compris de tous les volets opérationnels et administratifs. Bien que les Églises aient ~~souvent~~ servi <u>d'agents du Canada</u> pour l'aider à réaliser ses objectifs, ces objectifs et la manière dont ils sont réalisés relèvent des obligations du Canada. Le Canada était responsable de :

(a) l'administration de la Loi et des lois qui l'ont précédée ainsi que de toutes les autres lois relatives aux Autochtones et de tous les règlements promulgués en vertu de ces lois et des lois qui les ont précédées au cours de la période visée par le recours;

(b) la gestion, le fonctionnement et l'administration du ministère des Affaires indiennes et du Nord canadien et de ses prédécesseurs et des ministères et départements connexes, ainsi que les décisions prises par ces ministères et services;

(c) la construction, le fonctionnement, l'entretien, la propriété, le financement, l'administration, la supervision, l'inspection et la vérification des pensionnats ~~recensés~~, ainsi que la création, la conception et la mise en œuvre du programme d'éducation des Autochtones qui les fréquentent;

(d) la sélection, le contrôle, la formation, la supervision et la réglementation des personnes responsables des pensionnats ~~recensés~~, y compris leurs employés, préposés, agents et mandataires, ainsi que des soins, de l'éducation, du contrôle et du bien-être des Autochtones qui fréquentent les pensionnats recensés;

(e) la préservation, la valorisation, le respect des droits autochtones et la non-ingérence, y compris le droit de garder et de pratiquer leur culture, leur spiritualité, leur langue et leurs traditions et le droit d'apprendre pleinement leur culture, leur spiritualité, leur langue et leurs traditions auprès de leur famille, de leur famille élargie et de leur communauté; et

(f) la prise en charge et la supervision de tous les membres du groupe des survivants pendant qu'ils fréquentaient les pensionnats recensés au cours de la période concernée par le recours.

63. De plus, le Canada s'est engagé, à chaque occasion importante, à respecter le droit international en ce qui concerne le traitement de son peuple, obligations qui constituent des engagements minimums envers les peuples autochtones du Canada, y compris les groupes de survivants, de descendants et de bandes, et qui ont été violées. Plus particulièrement, les violations commises par le Canada englobent le non-respect des conditions et de l'esprit de :

(a) la *Convention pour la prévention et la répression des crimes de génocide*, 78 U.N.T.S. 277, entrée en vigueur le 12 janvier 1951, et plus particulièrement l'article 2(b), (c) et (e) de cette convention, en procédant de manière intentionnelle à la destruction de la culture des enfants et des communautés autochtones, causant des préjudices culturels, psychologiques, émotionnels et physiques profonds et permanents au groupe;

(b) la *Déclaration des droits de l'enfant* (1959)? Résolution AG 1386 (XIV), 14 N.U. GAOR Supp. (No 16) à 19, N.U. Doc. A/4354 en ne fournissant pas aux enfants

autochtones les moyens nécessaires à leur épanouissement normal, tant sur le plan matériel que spirituel, et en ne leur offrant pas la possibilité de gagner leur vie et de se protéger contre toute forme d'exploitation;

(c) la *Convention sur les droits de l'enfant,* Résolution AG 44/25, annexe, 44 NU GAOR Supp. (No 49) à 167, N.U. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989), et plus particulièrement les articles 29 et 30 de cette convention, en ne fournissant pas aux enfants autochtones une éducation visant à développer le respect de leurs parents, de leur identité culturelle, de leur langue et de leurs valeurs, et en niant le droit des enfants autochtones de jouir de leur propre culture, de professer et de pratiquer leur propre religion et d'utiliser leur propre langue;

(d) le *Pacte international relatif aux droits civils et politiques*, Résolution AG 2200A (XXI), 21 N.U. GAOR Supp. (No 16) à 52, N.U. Doc. A/6316 (1966), 999 U.N.T.S. 171, entrée en vigueur le 23 mars 1976, et plus particulièrement les articles 1 et 27 de cette convention, en portant atteinte aux droits des membres du recours collectif de conserver et de pratiquer leur culture, leur spiritualité, leur langue et leurs traditions, au droit d'apprendre pleinement leur culture, leur spiritualité, leur langue et leurs traditions auprès de leurs familles, de leurs familles élargies et de leurs communautés, et au droit d'enseigner leur culture, leur spiritualité, leur langue et leurs traditions à leurs propres enfants, petits-enfants, familles élargies et communautés.

(e) la *Déclaration américaine des droits et devoirs de l'homme*, OEA (Organisation des États Américains) Résolution XXX, adoptée lors de la neuvième conférence internationale des États américains (1948), reproduite dans les *Basic Documents Pertaining to Human Rights in the Inter-American System (documents généraux relatifs aux droits de l'homme dans le système interaméricain),* OEA/Ser.L.V//II.82 doc 6 rev.1 à 17 (1992), et en particulier l'article XIII, en violant le droit des membres du groupe de participer à la vie culturelle de leur communauté.

(f) la *Déclaration des Nations Unies sur les droits des peuples autochtones,* Résolution AG 61/295, N.U. Doc. A/RES/61/295 (13 sept. 2007), 46 I.L.M. 1013 (2007), entérinée par le Canada le 12 novembre 2010, et plus particulièrement l'article 8, 2(d), qui s'engage à fournir des mécanismes efficaces de réparation pour l'assimilation forcée.

64. Les obligations du Canada en vertu du droit international servent de référence pour les devoirs du Canada en common law, les obligations statutaires, fiduciaires, constitutionnelles et autres, et une violation des obligations internationales susmentionnées est une preuve ou constitue une violation en vertu du droit national.

Violation des obligations fiduciaires et constitutionnelles

65. Le Canada a des obligations constitutionnelles et une relation fiduciaire avec les peuples autochtones du Canada. Le Canada a créé, planifié, établi, mis en place, initié, géré, financé, supervisé, contrôlé et réglementé les pensionnats ~~recensés~~ et a élaboré la politique sur les pensionnats. Par ces actes, et en vertu de la *Loi constitutionnelle de 1867, de la Loi constitutionnelle de 1982*, et des dispositions de la Loi, telle que modifiée, le Canada a assumé le pouvoir et l'obligation d'agir en qualité de fiduciaire en ce qui concerne l'éducation et le bien-être des membres du groupe.

66. Les obligations constitutionnelles du Canada comprennent l'obligation de préserver l'honneur de la Couronne dans toutes ses relations avec les peuples autochtones, y compris les membres du groupe. Cette obligation découle de l'affirmation de la souveraineté de la Couronne dès le premier contact et se poursuit dans le cadre des relations postérieures à la signature des traités. C'est et cela reste une obligation de la Couronne et c'était une obligation de la Couronne à chaque occasion importante. L'honneur de la Couronne est un principe juridique qui exige de la Couronne qu'elle agisse à chaque occasion importante dans ses relations avec les peuples autochtones, depuis le contact jusqu'aux relations post-traités, de la manière la plus honorable possible afin de protéger les intérêts des peuples autochtones.

67. En vertu de ses obligations fiduciaires, le Canada est tenu d'agir en tant que protecteur des droits ancestraux des membres du groupe, y compris la protection et la préservation de leur langue, de leur culture et de leur mode de vie, ainsi que l'obligation de prendre des mesures de réparation pour rétablir la culture, l'histoire et le statut des demandeurs, ou de les aider à le faire. À tout le moins, l'obligation du Canada envers les Autochtones comprenait l'obligation de ne pas réduire délibérément le nombre des bénéficiaires envers lesquels le Canada avait des obligations.

68. Les obligations fiduciaires du Canada et les autres obligations imposées par le mandat constitutionnel assumé par le Canada s'étendent au groupe des descendants parce que l'objectif de la prise en charge de l'éducation du groupe des survivants était d'éradiquer la culture et l'identité de ces enfants autochtones, leur enlevant ainsi leur capacité, à l'âge adulte, de transmettre aux générations suivantes les bases linguistiques, spirituelles, culturelles et comportementales de leur peuple, ainsi que leur capacité d'établir des relations avec leur famille et leur communauté et, en fin de compte, leur capacité de s'identifier comme des Autochtones envers qui le Canada avait des obligations.

69. Les obligations fiduciaires et constitutionnelles du Canada s'étendent à la catégorie des bandes parce que la politique sur les pensionnats avait pour but, et a effectivement eu pour effet, de miner et de chercher à détruire le mode de vie établi et apprécié par ces nations dont les identités étaient et sont considérées comme collectives.

70. Le Canada a agi dans son propre intérêt et à l'encontre des intérêts des enfants autochtones, non seulement en étant déloyal envers les enfants et les communautés autochtones qu'il avait le devoir de protéger, mais en les trahissant en plus. Le Canada a exercé à tort son pouvoir discrétionnaire et son autorité sur les Autochtones, et en particulier sur les enfants, pour son seul bénéfice. Le Canada a appliqué une partie ou la totalité de la politique des pensionnats pour faire disparaître ce qu'il considérait comme le « problème indien ». Plus précisément, le Canada cherchait à se libérer de ses responsabilités morales et financières à l'égard des Autochtones, des dépenses et des inconvénients liés au fait de devoir composer avec des cultures, des langues, des habitudes et des valeurs différentes de l'héritage euro-canadien prédominant au Canada, ainsi que des défis découlant des revendications territoriales.

71. En violation de ses obligations fiduciaires, constitutionnelles, statutaires et de common law envers les groupes de survivants, de descendants et de bandes, le Canada n'a pas réparé, et continue sur la même voie, les préjudices causés par ses agissements abusifs, ses manquements et ses négligences. Plus précisément, le Canada n'a pas pris de mesures adéquates pour réparer les préjudices culturels, linguistiques et sociaux subis par les survivants, les descendants et les membres des bandes, et ce, malgré le fait que le Canada ait reconnu le caractère abusif de la politique des pensionnats indiens depuis 1998.

Violation des droits autochtones

72. Les peuples shíshálh et Tk'emlúps, et de fait tous les membres du groupe des bandes, dont descendent les demandeurs individuels, ont pratiqué des lois, des coutumes et des traditions qui faisaient partie intégrante de leurs sociétés distinctives avant le contact avec les Européens. En particulier, avant le contact avec les Européens, ces nations ont soutenu leurs membres individuels, leurs communautés et leurs cultures distinctives en parlant leurs langues et en pratiquant leurs coutumes et traditions.

73. Durant la période où les membres du groupe des survivants ont fréquenté les pensionnats ~~recensés~~, conformément à la politique sur les pensionnats, on leur a appris à parler anglais, on les a punis pour avoir utilisé leurs langues traditionnelles et on leur a fait honte de leur langue et de leur mode de vie traditionnels. Par conséquent, en raison de leur fréquentation des pensionnats ~~recensés~~, la capacité des membres survivants du recours collectif à parler leurs langues traditionnelles et à pratiquer leur shíshálh, leur Tk'emlúps et d'autres activités spirituelles, religieuses et culturelles a été gravement compromise et, dans certains cas, entièrement perdue. Ces membres du recours collectif se sont vus refuser la capacité de faire valoir et de jouir de leurs

droits ancestraux, tant individuellement que dans le contexte de leur expression collective au sein des bandes, parmi lesquels figurent, sans s'y limiter, certaines particularités :

(a) les activités culturelles, spirituelles et traditionnelles autochtones (shíshálh, Tk'emlúps et autres) ont été perdues ou altérées;

(b) les structures sociales traditionnelles, y compris l'autorité égale des dirigeants masculins et féminins, ont été perdues ou altérées;

(c) les langues shíshálh, tk'emlúps et autres langues autochtones ont été perdues ou altérées;

(d) les compétences parentales traditionnelles des shíshálh, des Tk'emlúps et des Autochtones ont été perdues ou altérées;

(e) les compétences des shíshálh, des Tk'emlúps et des autres Autochtones en matière de cueillette, de récolte, de chasse et de préparation des aliments traditionnels ont été perdues ou altérées; et,

(f) le shíshálh, le Tk'emlúps et les croyances spirituelles autochtones ont été perdus ou altérés.

74. L'ingérence dans les droits ancestraux du groupe des survivants a entraîné la même perte pour leurs descendants et leurs communautés, à savoir les groupes de descendants et de bandes, ce qui était le résultat recherché par le Canada.

75. Le Canada avait, à tout moment important, et continue d'avoir l'obligation de protéger les droits ancestraux des membres des recours collectifs, y compris pour ce qui est de la mise en œuvre de leurs pratiques spirituelles et de la protection traditionnelle de leurs terres et de leurs ressources, ainsi que l'obligation de ne pas miner ou entraver les droits ancestraux des demandeurs individuels et des membres des recours collectifs. Le Canada a manqué à ces obligations, sans justification, à travers sa politique en matière de pensionnats.

Infliction intentionnelle de souffrances morales

76. La conception et la mise en œuvre de la politique des pensionnats en tant que programme d'assimilation visant à éradiquer la culture autochtone constituaient une conduite flagrante, extrême et scandaleuse qui était manifestement calculée pour provoquer les dommages culturels, sociaux et linguistiques, ainsi que les souffrances morales découlant de ces dommages, qui ont été effectivement subis par les membres des groupes de survivants et de descendants.

Négligence donnant lieu à des abus spirituels, ~~physiques, sexuels,~~ émotionnels et mentaux

77. Par l'intermédiaire de ses mandataires, le Canada a fait preuve de négligence et a manqué à ses obligations de diligence envers le groupe des survivants, dont voici quelques exemples :

(a) il a omis de présélectionner et de sélectionner comme il se doit les personnes ~~à qui il a délégué~~ la gestion des pensionnats recensés et qu'il a embauchées directement ou par l'intermédiaire de ses mandataires, de superviser et de contrôler comme il se doit les activités des pensionnats ~~recensés~~ et de protéger les enfants autochtones contre les abus spirituels, ~~physiques, sexuels,~~ émotionnels et mentaux commis dans les pensionnats ~~recensés~~; par conséquent, les membres du groupe des survivants ont subi de tels abus et le Canada en est responsable;

(b) il n'a pas réagi de manière appropriée ou n'a pas réagi du tout à la divulgation des abus commis dans les pensionnats ~~recensés~~ et, en fait, il a couvert ces abus et supprimé les informations relatives à ces abus; et

(c) il n'a pas reconnu les préjudices subis et n'en a pas tenu compte lorsqu'ils se sont produits, afin de prévenir d'autres préjudices et, dans la mesure du possible, d'offrir aux victimes de ces préjudices un traitement adapté.

Responsabilité du fait d'autrui

78. Par l'intermédiaire de ses mandataires, le Canada a violé son obligation de diligence envers le groupe des survivants, ce qui a entraîné des préjudices pour ce groupe, et il est responsable du fait d'autrui pour toutes les violations et tous les abus commis en son nom.

79. De plus, ou à titre subsidiaire, le Canada est responsable du fait d'autrui pour négligence de l'exécution des obligations fiduciaires, constitutionnelles, statutaires et de common law de ses agents.

80. De même, les demandeurs tiennent le Canada pour seul responsable de la création et de la mise en œuvre de la Politique sur les pensionnats indiens et qui plus est :

a. Les demandeurs renoncent expressément à tout droit qu'ils pourraient avoir d'obtenir du Canada, ou de toute autre partie, toute partie des pertes subies par les demandeurs qui pourrait être imputable à la faute ou à la responsabilité d'un tiers et pour laquelle le Canada pourrait raisonnablement être en droit de réclamer à un ou plusieurs tiers une contribution, une indemnité ou une répartition en common law, en équité ou en vertu de la loi sur la *négligence* de la Colombie-Britannique, R.S.B.C. 1996 c 333, telle que modifiée; et

b. Les demandeurs ne chercheront pas à obtenir de toute partie, autre que le Canada, une partie des pertes qui ont été réclamées, ou auraient pu être réclamées, auprès de tiers.

Préjudices

81. En raison de la violation des obligations fiduciaires, constitutionnelles, statutaires et de common law, de l'infliction intentionnelle de souffrances morales et des violations des droits autochtones par le Canada et ses agents, pour lesquels le Canada est responsable du fait d'autrui, les membres du groupe des survivants, y compris les représentants des demandeurs, ont souffert de préjudices et de blessures, notamment :

(a) la perte de la langue, de la culture, de la spiritualité et de l'identité autochtone;

(b) des préjudices émotionnels et psychologiques

(c) l'isolement de leur famille, de leur communauté et de leur Nation

(d) la privation des éléments fondamentaux d'une éducation, y compris l'alphabétisation de base;

(e) une dégradation de la santé mentale et émotionnelle, pouvant aller jusqu'à un handicap permanent;

(f) une incapacité à faire confiance aux autres, à nouer ou à entretenir des relations intimes, à participer à une vie familiale normale ou à maîtriser sa colère;

(g) une tendance à la toxicomanie;

(h) l'isolement de la communauté, de la famille, du conjoint et des enfants;

(i) une altération de la capacité à apprécier et à participer à des activités récréatives, sociales, culturelles, sportives et professionnelles;

(j) une altération de la capacité à fonctionner sur le lieu de travail et une altération permanente de la capacité à gagner un revenu;

(k) la privation de l'éducation et des compétences nécessaires pour obtenir un emploi rémunéré;

(l) la nécessité d'un traitement psychologique, psychiatrique et médical continu pour les maladies et autres troubles résultant de l'expérience des pensionnats;

(m) le dysfonctionnement sexuel;

(n) la dépression, l'anxiété et le dysfonctionnement émotionnel

(o) les tendances suicidaires;

(p) la douleur et la souffrance;

(q) la perte d'estime de soi et les sentiments de dévalorisation, de honte, de peur et de solitude;

(r) les cauchemars, les retours en arrière et les problèmes de sommeil;

(s) la peur, l'humiliation et l'embarras en tant qu'enfant et adulte;

(t) la confusion et la désorientation sexuelles en tant qu'enfant et jeune adulte;

(u) l'incapacité à exprimer ses émotions d'une manière normale et saine;

(v) la perte de la capacité à participer aux pratiques et aux devoirs culturels ou à s'en acquitter;

(w) la perte de la capacité à vivre dans leur communauté et leur nation; et

(x) une douleur et une souffrance émotionnelles et psychologiques constantes et intenses.

82. En conséquence de la violation des obligations fiduciaires, constitutionnelles, statutaires et de common law, ainsi que de l'infliction intentionnelle de dommages et de la violation des droits ancestraux par le Canada et ses agents, pour lesquels le Canada est responsable du fait d'autrui, les membres du groupe des descendants, y compris les représentants des demandeurs, ont subi des dommages et des préjudices, notamment :

(a) leurs relations avec les membres survivants du groupe ont été altérées, endommagées et faussées en raison des expériences des membres survivants du groupe dans les pensionnats ~~recensés~~; et,

(b) leur culture et leurs langues ont été minées et, dans certains cas, éradiquées par, entre autres, comme il a été mentionné, l'assimilation forcée des membres du groupe des survivants à la culture euro-canadienne par l'intermédiaire des pensionnats ~~recensés~~.

83. En raison de la violation des obligations fiduciaires, constitutionnelles, statutaires et de common law, et de l'infliction intentionnelle de dommages et de la violation des droits ancestraux par le Canada et ses agents, pour lesquels le Canada est responsable du fait d'autrui, le groupe des bandes a souffert de la perte de la capacité d'exercer pleinement ses droits ancestraux collectivement, y compris le droit d'avoir un gouvernement traditionnel fondé sur leurs propres langues, pratiques spirituelles, lois et pratiques traditionnelles et de voir ces traditions pleinement respectées par les membres des groupes de survivants et de descendants <u>ainsi que les générations suivantes</u>, toutes ces pertes étant directement liées aux pertes individuelles des dommages culturels, linguistiques et sociaux des membres des groupes de survivants et de descendants.

Motifs des dommages-intérêts punitifs et aggravés

84. Le Canada a délibérément planifié l'éradication de la langue, de la religion et de la culture des membres du groupe des survivants et des membres du groupe des descendants, ainsi que la disparition du groupe des bandes. Les actions étaient malveillantes et visaient à causer un préjudice, et compte tenu des circonstances, des dommages-intérêts punitifs et aggravés sont appropriés et nécessaires.

85. Les membres du groupe affirment que le Canada et ses agents étaient parfaitement au courant des nombreux abus physiques, psychologiques, émotionnels, culturels et sexuels dont étaient victimes les membres du groupe des survivants dans les pensionnats ~~recensés~~.

86. En dépit de cette information, le Canada a maintenu les pensionnats en activité et n'a pris aucune mesure, ou du moins aucune mesure raisonnable, pour protéger les membres survivants du recours collectif contre ces abus et les préjudices graves en résultant. Compte tenu des circonstances, le fait de ne pas avoir agi sur la base de ces informations pour protéger les enfants vulnérables confiés à la garde du Canada équivaut à une insouciance déréglée et téméraire concernant leur sécurité et rend les dommages-intérêts punitifs et aggravés à la fois appropriés et nécessaires.

Fondement juridique de la demande d'indemnisation

87. Les membres du groupe des survivants et des descendants sont des Indiens au sens de la *Loi sur les Indiens*, R.S.C. 1985, c. 1-5. Les membres du groupe des bandes sont des bandes composées d'indiens ainsi définis.

88. Les droits ancestraux des membres du recours collectif existaient et étaient pratiqués à toutes les époques concernées en vertu de la *Loi constitutionnelle de 1982,* article 35, soit l'annexe B de la Loi de 1982 sur le Canada (R.-U.), 1982, c 11.

89. À tous les moments importants, le Canada avait une obligation spéciale et constitutionnelle de diligence, de bonne foi, d'honnêteté et de loyauté envers les demandeurs et les membres du groupe en vertu des obligations constitutionnelles du Canada et de l'obligation du Canada d'agir dans l'intérêt supérieur des Autochtones et particulièrement des enfants autochtones qui étaient particulièrement vulnérables. Le Canada a violé ces obligations, causant ainsi un préjudice.

90. Les membres du groupe sont des descendants de peuples autochtones qui ont pratiqué leurs lois, coutumes et traditions respectives qui faisaient partie intégrante de leurs sociétés distinctes avant le contact avec les Européens. Plus précisément, et ce, avant le contact avec les Européens jusqu'à aujourd'hui, les peuples autochtones dont descendent les demandeurs et les

membres du recours collectif ont assuré la pérennité de leur peuple, de leurs communautés et de leur culture distinctive en appliquant leurs lois, coutumes et traditions respectives à l'ensemble de leur mode de vie, y compris la langue, la danse, la musique, les loisirs, l'art, la famille, le mariage et les responsabilités communautaires, ainsi que l'utilisation des ressources.

Constitutionnalité des articles de la *Loi sur les Indiens*

91. Les membres du recours collectif affirment que tous les articles de la Loi et de ses prédécesseurs, tous les règlements adoptés en vertu de la Loi et toutes les autres lois relatives aux Autochtones qui fournissent ou prétendent fournir l'autorité légale pour l'éradication des Autochtones par la destruction de leurs langues, de leur culture, de leurs pratiques, de leurs traditions et de leur mode de vie, violent les articles 25 et 35(1) de la *Loi constitutionnelle* de 1982, les articles 1 et 2 de la *Déclaration canadienne des droits*, L.R.C. 1985, ainsi que les articles 7 et 15 de la *Charte canadienne des droits et libertés* et doivent donc être considérés comme étant sans effet.

92. Le Canada a délibérément planifié l'éradication de la langue, de la spiritualité et de la culture des demandeurs et des membres du groupe.

93. Les actions du Canada étaient délibérées et malveillantes et compte tenu des circonstances, des dommages punitifs, exemplaires et aggravés sont appropriés et nécessaires.

94. Les demandeurs invoquent et se fondent sur les éléments suivants :

> *Loi sur les Cours fédérale*s, L.R.C., 1985, c. F-7, art. 17;
>
> *Règles des Cours fédérales,* DORS/98-106, Partie 5.1 Recours collectifs;
>
> *Loi sur la responsabilité civile de l'État et le contentieux administratif*, L.R.C. 1985, c. C-50, art. 3, 21, 22 et 23;
>
> *Charte canadienne des droits et libertés, art.* 7, 15 et 24;

Loi constitutionnelle de 1982, art. 25 et 35(1),

Loi sur la négligence (Colombie-Britannique), R.S.B.C. 1996, c. 333.

La Déclaration canadienne des droits, L.R.C. 1985, Annexe III, Préambule, art. 1 et 2 :

La Loi sur les Indiens, L.R.C. 1985, art. 2(1), 3, 18(2), 114-122 et ses prédécesseurs.

Traités internationaux :

Convention pour la prévention et la répression des crimes de génocide, 78 U.N.T.S. 277, entrée en vigueur le 12 janvier 1951;

Déclaration des droits de l'enfant (1959), Résolution AG 1386 (XIV), 14 N.U. GAOR Supp. (No 16) à 19, N.U. Doc. A/4354;

C*onvention sur les droits de l'enfant,* Résolution AG 44/25, annexe, 44 NU GAOR Supp. (No 49) à 167, N.U. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989);

Pacte international relatif aux droits civils et politiques, Résolution AG 2200A (XXI), 21 N.U. GAOR Supp. (No 16) à 52, N.U. Doc. A/6316 (1966), 999 U.N.T.S. 171, entrée en vigueur le 23 mars 1976;

Déclaration américaine des droits et devoirs de l'homme, OEA (Organisation des États Américains) Résolution XXX, adoptée lors de la neuvième conférence internationale des États américains (1948), reproduite dans les *Basic Documents Pertaining to Human Rights in the Inter-American System (documents généraux relatifs aux droits de l'homme dans le système interaméricain),* OEA/Ser.L.V//II.82 doc 6 rev.1 à 17 (1992), et

Déclaration des Nations Unies sur les droits des peuples autochtones, Résolution AG 61/295, N.U. Doc. A/RES/61/295 (13 sept. 2007), 46 I.L.M. 1013 (2007), entérinée par le Canada le 12 novembre 2010

Les demandeurs proposent que le procès ait lieu à Vancouver, en Colombie-Britannique.

Le 11 juin 2013

_____
Peter R. Grant, au nom de
tous les avocats des demandeurs

Avocats des demandeurs

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) Coordonnées et adresse pour la signification
) pour les demandeurs

Federal Court  Cour fédérale

Date : 20150618

Ordre du jour : T-1542-12

Citation : 2015 FC 766

Ottawa, Ontario 18 juin 2015

PRÉSENT : L'honorable juge Harrington

PROPOSITION DE RECOURS COLLECTIF

ENTRE :

LE CHEF SHANE GOTTFRIEDSON, EN SON NOM ET AU NOM DE TOUS LES MEMBRES DE LA BANDE INDIENNE TK'EMLÚPS TE SECWÉPEMC ET DE LA BANDE INDIENNE TK'EMLÚPS TE SECWÉPEMC, LE CHEF GARRY FESCHUK, EN SON NOM ET AU NOM DE TOUS LES MEMBRES DE LA BANDE INDIENNE SECHELTE ET DE LA BANDE INDIENNE SECHELTE, VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE ET RITA POULSEN

Les demandeurs

et

SA MAJESTÉ LA REINE DU CHEF DU CANADA

Le défendeur

ORDONNANCE

POUR LES RAISONS INVOQUÉES le 3 juin 2015, publiées sous le numéro 2015 FC 706;

LE TRIBUNAL ORDONNE ce qui suit :

1. L'instance susmentionnée est certifiée en tant que recours collectif aux conditions suivantes :

a. Les groupes sont définis comme suit :

Groupe des survivants : tous les Autochtones qui ont fréquenté en tant qu'élève ou à des fins éducatives, quelle que soit la période un pensionnat indien, au cours de la période concernée par le recours collectif, à l'exclusion, pour tout membre du groupe, des périodes pour lesquelles ce membre a reçu une indemnité au titre du paiement d'expérience commune en vertu de la convention de règlement relative aux pensionnats indiens.

Groupe des descendants : la première génération de toutes les personnes qui sont des descendants des membres du groupe des survivants ou des personnes qui ont été légalement ou traditionnellement adoptées par un membre du groupe des survivants ou son conjoint.

Groupe bandes : la bande indienne Tk'emlúps te Secwépemc et la bande indienne Sechelt et toute autre bande indienne qui :

(i) a ou avait des membres qui sont ou étaient membres du groupe des survivants, ou dont la communauté abrite un pensionnat; et

(ii) qui est spécifiquement ajoutée à la présente demande d'indemnisation avec un ou plusieurs pensionnats expressément désignés.

b. Les représentants des demandeurs sont :

Pour le groupe des survivants :

Violet Catherine Gottfriedson

Charlotte Anne Victorine Gilbert

Diena Marie Jules

Darlene Matilda Bulpit

Frederick Johnson

Daphne Paul

Pour le groupe des descendants :

Amanda Deanne Big Sorrel Horse

Rita Poulsen

Pour le groupe des bandes :

La bande indienne Tk'emlúps te Secwépemc

La bande indienne Sechelt

c. Les demandes d'indemnisation portent sur :

La violation des obligations fiduciaires et constitutionnelles, la violation des droits autochtones, l'infliction intentionnelle de souffrances mentales, la violation des conventions ou des pactes internationaux, la violation du droit international et la

négligence commise par le Canada ou en son nom et pour laquelle le Canada est considéré comme responsable.

d. Le redressement demandé est le suivant :

Par le groupe des survivants :

i. une déclaration selon laquelle le Canada a manqué à ses obligations fiduciaires, constitutionnelles, statutaires et de common law envers les représentants des demandeurs du groupe des survivants et les autres membres du groupe des survivants en ce qui concerne l'objet, l'établissement, le financement, le fonctionnement, la supervision, le contrôle, l'entretien, la fréquentation obligatoire des membres du groupe des survivants et le soutien des pensionnats indiens;

ii. une déclaration selon laquelle les membres du groupe des survivants ont des droits ancestraux de parler leurs langues traditionnelles, de s'adonner à leurs coutumes et pratiques religieuses traditionnelles et de se gouverner de leur manière traditionnelle;

iii. une déclaration selon laquelle le Canada a violé les droits linguistiques et culturels (droits ancestraux ou autres) du groupe des survivants;

iv. une déclaration selon laquelle la politique sur les pensionnats et les pensionnats indiens ont causé des dommages culturels, linguistiques et sociaux et un préjudice irréparable au groupe des survivants;

v. une déclaration selon laquelle le Canada est responsable envers les représentants des demandeurs du groupe des survivants et les autres membres du groupe des survivants de préjudices causés par le non-respect des obligations fiduciaires, constitutionnelles, statutaires et de common law, ainsi que de droits ancestraux, de souffrances morales infligées

intentionnellement, et de violations des conventions et des pactes internationaux, de même que du droit international, en ce qui concerne l'objectif, la création, le financement, le fonctionnement, la supervision, le contrôle et l'entretien, la fréquentation obligatoire par les membres du groupe des survivants ainsi que le soutien des pensionnats indiens;

vi. des dommages-intérêts généraux pour négligence, violation d'obligations fiduciaires, d'obligations découlant de la Constitution, de la loi et de la common law, de droits ancestraux et d'infliction intentionnelle de souffrances morales, ainsi que pour violation de conventions et de pactes internationaux, et pour violation du droit international, négligence et infliction intentionnelle de souffrances morales dont le Canada est responsable;

vii. des dommages-intérêts pécuniaires et des dommages-intérêts spéciaux pour négligence, perte de revenu, perte de capacité lucrative, perte de perspectives économiques, perte de possibilités d'éducation, violation d'obligations fiduciaires, constitutionnelles, statutaires et de common law ainsi que de droits ancestraux et pour infliction intentionnelle de souffrances morales, ainsi que des violations de conventions et de pactes internationaux, de même que des violations du droit international, y compris des montants pour couvrir le coût des soins, et pour restaurer, protéger et préserver le patrimoine linguistique et culturel des membres du groupe des survivants dont le Canada est responsable;

viii. des dommages-intérêts exemplaires et punitifs dont le Canada est responsable; et

ix. des intérêts et coûts antérieurs et postérieurs au jugement.

Par le groupe des descendants :

i. une déclaration selon laquelle le Canada a manqué à ses obligations fiduciaires, constitutionnelles, statutaires et de common law envers les représentants des demandeurs du groupe des descendants et les autres membres du groupe des descendants en ce qui concerne l'objet, l'établissement, le financement, le fonctionnement, la supervision, le contrôle, l'entretien, la fréquentation obligatoire des membres du groupe des survivants et le soutien des pensionnats recensés;

ii. une déclaration selon laquelle le groupe des descendants ont des droits ancestraux de parler leurs langues traditionnelles, de s'adonner à leurs coutumes et pratiques religieuses traditionnelles et de se gouverner de leur manière traditionnelle

iii. une déclaration selon laquelle le Canada a violé les droits linguistiques et culturels (droits ancestraux ou autres) du groupe des descendants;

iv. une déclaration selon laquelle la politique sur les pensionnats et les pensionnats recensés ont causé des dommages culturels, linguistiques et sociaux ainsi qu'un préjudice irréparable au groupe des descendants;

v. une déclaration selon laquelle le Canada est responsable envers les représentants des demandeurs du groupe des descendants et les autres membres du groupe des descendants pour les dommages causés par la violation de ses obligations fiduciaires et constitutionnelles et des droits autochtones, ainsi que par les violations des conventions et pactes internationaux et du droit international, en ce qui concerne l'objectif, la

création, le financement, le fonctionnement, la supervision, le contrôle et l'entretien, de même que la fréquentation obligatoire des pensionnats par les membres du groupe des survivants et le soutien de ces pensionnats;

vi. des dommages-intérêts généraux pour violation des obligations fiduciaires et constitutionnelles et des droits ancestraux, ainsi que des violations des conventions et pactes internationaux, de même que des violations du droit international, dont le Canada est responsable;

vii. des dommages-intérêts pécuniaires et dommages-intérêts spéciaux pour violation des obligations fiduciaires et constitutionnelles et des droits ancestraux, ainsi que des violations de conventions et de pactes internationaux, de même que des violations du droit international, y compris des montants pour couvrir le coût des soins, et pour restaurer, protéger et préserver le patrimoine linguistique et culturel des membres du groupe des survivants dont le Canada est responsable;

viii. des dommages-intérêts exemplaires et punitifs dont le Canada est responsable; et

ix. des intérêts et coûts antérieurs et postérieurs au jugement.

Par le groupe des bandes :

i. une déclaration selon laquelle la bande indienne Sechelt et la bande indienne Tk'emlúps te Secwépemc, ainsi que tous les membres du groupe des bandes ont des droits ancestraux de parler leurs langues traditionnelles, de s'adonner à leurs coutumes et pratiques religieuses traditionnelles et de se gouverner de leur manière traditionnelle;

ii. une déclaration selon laquelle le Canada a manqué à ses obligations fiduciaires, constitutionnelles, statutaires et de common law, ainsi qu'aux conventions et pactes internationaux et au droit international, envers les membres du groupe des bandes en ce qui concerne l'objet, l'établissement, le financement, le fonctionnement, la supervision, le contrôle, l'entretien, la fréquentation obligatoire des membres du groupe des survivants et le soutien des pensionnats SIRS (pensionnat indien de Sechelt) et KIRS (pensionnat indien de Kamloops) et d'autres pensionnats recensés;

iii. une déclaration selon laquelle la politique sur les pensionnats SIRS et KIRS ainsi que les pensionnats recensés ont causé des dommages culturels, linguistiques et sociaux et un préjudice irréparable au groupe des bandes;

iv. une déclaration selon laquelle le Canada a violé ou viole les droits ancestraux, les droits linguistiques et culturels des membres du groupe des bandes (droits ancestraux ou autres), ainsi que les conventions et les pactes internationaux de même que le droit international, du fait de la création, du financement, le fonctionnement, la supervision, le contrôle et l'entretien, la fréquentation obligatoire par les membres du groupe des survivants ainsi que le soutien des pensionnats recensés;

v. une déclaration selon laquelle le Canada est responsable envers les membres du groupe des bandes de préjudices causés par le non-respect des obligations fiduciaires et constitutionnelles ainsi que de droits ancestraux, de même que de violations des conventions et des pactes internationaux, et du droit international, en ce qui concerne l'objectif, la création, le

financement, le fonctionnement, la supervision, le contrôle et l'entretien, la fréquentation obligatoire par les membres du groupe des survivants ainsi que le soutien des pensionnats recensés;

vi. des dommages-intérêts non pécuniaires et pécuniaires ainsi que des dommages-intérêts spéciaux pour violation des obligations fiduciaires et constitutionnelles et des droits ancestraux, ainsi que des violations des conventions et des pactes internationaux, de même que des violations du droit international, y compris des montants pour couvrir en continu le coût des soins de manière individuelle pour les membres du groupe des bandes, et pour restaurer, ainsi que les coûts de restauration, de protection et de préservation du patrimoine linguistique et culturel des bandes dont le Canada est responsable;

vii. La construction et l'entretien de centres de guérison et d'éducation dans les communautés du groupe des bandes, ainsi que d'autres centres ou opérations susceptibles d'atténuer les pertes subies et que cette honorable Cour pourrait juger appropriés et justes;

viii. des dommages-intérêts exemplaires et punitifs dont le Canada est responsable; et

ix. des intérêts et coûts antérieurs et postérieurs au jugement.

e. Les questions communes de droit ou de fait sont les suivantes :

a. Dans le cadre de l'objectif, du fonctionnement ou de la gestion de l'un des pensionnats au cours de la période concernée par le recours collectif, le défendeur a-t-il manqué à une obligation fiduciaire envers les survivants,

les descendants et le groupe de la bande, ou l'un d'entre eux, de ne pas détruire leur langue et leur culture?

b. Dans le cadre de l'objectif, du fonctionnement ou de la gestion de l'un des pensionnats au cours de la période concernée par le recours collectif, le défendeur a-t-il violé les droits culturels ou linguistiques, qu'il s'agisse de droits ancestraux ou autres, du groupe des survivants, des descendants et des bandes, ou de l'un d'entre eux?

c. Dans le cadre de l'objectif, du fonctionnement ou de la gestion de l'un des pensionnats au cours de la période concernée par le recours collectif, le défendeur a-t-il manqué à un devoir de diligence envers le groupe des survivants de les protéger de tout préjudice psychologique pouvant donner lieu à des poursuites judiciaires?

d. Dans le cadre de l'objectif, du fonctionnement ou de la gestion de l'un des pensionnats au cours de la période concernée par le recours collectif, le défendeur a-t-il manqué à un devoir de diligence envers le groupe des survivants de les protéger de tout préjudice psychologique pouvant donner lieu à des poursuites judiciaires?

e. Si la réponse à l'un des points (a)-(d) ci-dessus est positive, la Cour peut-elle faire une évaluation globale des préjudices subis par le groupe dans le cadre du procès sur les questions communes?

f. Si la réponse à l'un des points (a)-(d) ci-dessus est positive, le défendeur s'est-il rendu coupable d'une conduite qui justifie l'attribution de dommages-intérêts punitifs; et

g. Si la réponse au point (f) ci-dessus est positive, quel montant de dommages-intérêts punitifs devrait être accordé?

f. Les définitions suivantes s'appliquent à la présente ordonnance :

a. « Autochtone(s) », « Personne(s) autochtone(s) » ou « Enfant(s) autochtone(s) » désigne une ou plusieurs personnes dont les droits sont reconnus et confirmés par l'article 35 de la *Loi constitutionnelle* de 1982;

b. « Droits ancestraux » désigne une partie ou la totalité des droits ancestraux et des droits issus de traités reconnus et confirmés par l'article 35 de la *Loi constitutionnelle* de *1982*;

c. « Loi » désigne la *Loi sur les Indiens*, L.R.C. de 1985, chapitre I-5 et ses versions antérieures, ainsi que les modifications qui y ont été apportées le cas échéant;

d. « Convention » désigne la convention de règlement relative aux pensionnats indiens datée du 10 mai 2006, conclue par le Canada pour régler les demandes d'indemnisation relatives aux pensionnats indiens, telles qu'elles ont été approuvées dans les ordonnances rendues par les diverses administrations canadiennes;

e. « Canada » désigne la défenderesse, Sa Majesté la Reine;

f. « Période du recours » désigne les années 1920 à 1997;

g. « Préjudice culturel, linguistique et social » désigne les dommages ou les préjudices résultant de la création et de la mise en œuvre des pensionnats et de la politique relative aux pensionnats en matière d'éducation, de gouvernance, d'économie, de culture, de langue, de spiritualité et de coutumes sociales, de pratiques et de mode de vie, de structures de gouvernance traditionnelles, ainsi que de sécurité et de bien-être communautaires et individuels des Autochtones;

h. « Pensionnat(s) recensé(s) » désigne KIRS ou SIRS ou tout autre pensionnat expressément désigné en tant que membre du groupe des bandes;

i. « KIRS » désigne le pensionnat indien de Kamloops;

j. « Pensionnats » désigne tous les pensionnats indiens reconnus en vertu de la convention et figurant à l'annexe A jointe à la présente ordonnance, laquelle annexe peut être modifiée le cas échéant par ordonnance de la Cour;

k. « Politique sur les pensionnats indiens » désigne la politique du Canada relative à la mise en œuvre des pensionnats indiens; et

l. « SIRS » désigne le pensionnat indien de Sechelt.

g. La forme et le contenu des avis aux membres du groupe doivent être approuvés par cette Cour. Les membres du groupe des survivants et des descendants auront jusqu'au 30 octobre 2015 pour se retirer, ou tout autre délai que cette Cour fixera. Les membres

du groupe des bandes auront 6 mois pour décider de participer à partir de la date de publication de l'avis comme indiqué par la Cour, ou tout autre délai fixé par la Cour.

h. L'une ou l'autre des parties peut demander à la Cour de modifier la liste des pensionnats figurant à l'annexe A aux fins de la présente procédure.

« Sean Harrington »

Juge

ANNEXE A
conformément à l'ordonnance du juge Harrington

LISTE DES PENSIONNATS

Pensionnats de la Colombie-Britannique

Ahousaht
Alberni
Cariboo (St. Joseph's, William's Lake)
Christie (Clayoquot, Kakawis)
Coqualeetza de 1924 à 1940
Cranbrook (St. Eugene's, Kootenay)
Kamloops
Île Penelakut
Lejac (Fraser Lake)
Lower Post
St George's (Lytton)
St. Mary's (Mission)
St. Michael's (foyer pour filles d'Alert Bay, foyer pour garçons d'Alert Bay)
Sechelt
St. Paul's (Squamish, North Vancouver)
Port Simpson (Foyer pour filles de Crosby)
Kitimaat
Anahim Lake Dormitory (de septembre 1968 à juin 1977)

Pensionnats de l'Alberta

Assumption (Hay Lake)
Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)
Crowfoot (Blackfoot, St. Joseph's, Ste. Trinité)
Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)
Edmonton (Poundmaker, remplacé par Red Deer Industrial)
Ermineskin (Hobbema)
Holy Angels (Fort Chipewyan, École des Saint-Anges)
Fort Vermilion (St. Henry's)
Joussard (St. Bruno's)
Lac La Biche (Notre Dame des Victoires)
Petit lac des Esclaves (St. Peter's)
Morley (Stony/Stoney, a remplacé l'orphelinat McDougall)
Old Sun (Blackfoot)
Sacré-Cœur (Peigan, Brocket)
St. Albert (Youville)
Augustine (Smokey-River)
St. Cyprian (Maison du jubilé de la reine Victoria, Peigan)
St. Joseph's (High River, Dunbow)
St. Mary's (Blood, Immaculée Conception)
St. Paul's (Blood)
Sturgeon Lake (Calais, St. Francis Xavier)
Wabasca (St. John's)
Whitefish Lake (St. Andrew's)
Grouard jusqu'à décembre 1957
Sarcee (St. Barnabas)

Pensionnats de la Saskatchewan

Beauval (Lac la Plonge)
File Hills
Gordon's
Lac La Ronge (voir Prince Albert)
Lebret (Qu'Appelle, Whitecalf, Lycée St. Paul)
Marieval (Cowesess, Crooked Lake)

Muscowequan (Lestock, Touchwood)
Onion Lake Anglican (voir Prince Albert)
Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)
Regina
Round Lake
St. Anthony's (Onion Lake, Sacred Heart)
St. Michael's (Duck Lake)
St. Philip's
Sturgeon Landing (remplacé par Guy Hill, MB)
Thunderchild (Delmas, St. Henri)
Crowstand
Fort Pelly
Externat fédéral de Cote Improved (de septembre 1928 à juin 1940)

Pensionnats du Manitoba

Assiniboia (Winnipeg)
Birtle
Brandon
Centre de formation professionnelle de Churchill
Cross Lake (St. Joseph's, Norway House)
Dauphin (remplacé par McKay)
Elkhorn (Washakada)
Fort Alexander (Pine Falls)
Guy Hill (Clearwater, The Pas, anciennement Sturgeon Landing, SK)
McKay (The Pas, remplacé par Dauphin)
Norway House
Pine Creek (Campeville)
Portage la Prairie
Sandy Bay
Foyer Notre Dame (Norway House Catholic, foyer de Jack River, remplacé par Jack River Annex à Cross Lake)

Pensionnats de l'Ontario

Bishop Horden Hall (Moose Fort, Moose Factory)

Cecilia Jeffrey (Kenora, Shoal Lake)
Chapleau (St. Joseph's)
Fort Frances (St. Margaret's)
McIntosh (Kenora)
Institut Mohawk
Mount Elgin (Muncey, St. Thomas)
Pelican Lake (Pelican Falls)
Poplar Hill
St. Anne's (Fort Albany)
St. Mary's (Kenora, St. Anthony's)
Shingwauk
École espagnole pour garçons (Charles Garnier, St. Joseph's)
École espagnole pour filles (St. Joseph's, St. Peter's, St. Anne's)
St. Joseph's/Fort William
Lycée de Stirland Lake (Académie de Wahbon Bay) du 1er septembre 1971 au 30 juin 1991
Lycée de Cristal Lake (du 1er septembre 1976 au 30 juin 1986)

Pensionnats du Québec

Amos
Fort George (anglican)
Fort George (catholique romain)
La Tuque
Point Bleue
Sept-Îles
Foyers fédéraux à Great Whale River
Foyers fédéraux à Port Harrison
Foyers fédéraux à George River
Foyer fédéral de Payne Bay (Bellin)
Foyers à Fort George (du 1er septembre 1975 au 30 juin 1978)
Foyers à Mistassini (du 1er septembre 1971 au 30 juin 1978)

Pensionnats de la Nouvelle-Écosse

Shubenacadie

Pensionnats du Nunavut

Chesterfield Inlet (Joseph Bernier, Turquetil Hall)
Foyers fédéraux à Panniqtuug/Pangnirtang
Foyers fédéraux à Broughton Island/Qikiqtarjuaq
Foyers fédéraux à Cape Dorset Kinngait
Foyers fédéraux à Eskimo Point/Arviat
Foyers fédéraux à Igloolik/Iglulik
Foyers fédéraux à Baker Lake/Qamani'tuaq
Foyers fédéraux à Pond Inlet/Mittimatalik
Foyers fédéraux à Cambridge Bay
Foyers fédéraux à Lake Harbour
Foyers fédéraux à Belcher Islands
Foyers fédéraux à Frobisher Bay/Ukkivik
Foyer-tente fédéral à Coppermine

Pensionnats des Territoires du Nord-Ouest

Aklavik (Immaculée Conception)
Aklavik (All Saints)
Fort McPherson (Fleming Hall)
Ford Providence (Sacré-Cœur)
Fort Resolution (St. Joseph's)
Fort Simpson (Bompas Hall)
Fort Simpson (Lapointe Hall)
Fort Smith (Breynat Hall)
HayRiver (St. Peter's)
Inuvik (Grollier Hall)
Inuvik (Stringer Hall)
Yellowknife (Akaitcho Hall)
Fort Smith – Grandin College
Foyer fédéral à Fort Franklin

Pensionnats du Yukon

Carcross (Chooulta)
Yukon Hall (Whitehorse/foyer protestant)

Coudert Hall (foyer Whitehorse/foyer scolaire – remplacé par Yukon Hall)
Mission baptiste de Whitehorse
Pensionnat esquimau de Shingle Point
Foyer de St. Paul’s de septembre 1920 à juin 1943

ANNEXE C

PROCESSUS DE RÉCLAMATIONS RELATIF AU PAIEMENT DES INDEMNITÉS LIÉES À LA FRÉQUENTATION D'EXTERNAT

Principes régissant l'administration des réclamations

1. Les principes suivants régissent l'administration des réclamations (« Principes du processus de réclamation ») :

    a. le processus de réclamation doit être rapide, peu coûteux, convivial, sensible aux aspects culturels et tenir compte des traumatismes subis;

    b. le processus de réclamation doit minimiser le fardeau des demandeurs dans la poursuite de leurs réclamations;

    c. le processus de réclamation doit limiter toute probabilité de nouveau traumatisme au cours du processus de réclamation;

    d. l'administrateur des réclamations et l'examinateur indépendant doivent supposer qu'un réclamant agit honnêtement et de bonne foi, sauf preuve raisonnable du contraire;

    e. l'administrateur des réclamations et l'examinateur indépendant tireront toutes les conclusions raisonnables et favorables possibles en faveur du demandeur.

2. Les principes du processus de réclamation ci-dessus doivent être appliqués tout au long du processus de réclamation, y compris lors de tout réexamen.

Critère d'admissibilité

3. Conformément à la convention de règlement, un demandeur a droit au paiement d'une indemnité liée à la fréquentation d'externat et sa réclamation sera approuvée, si le demandeur satisfait aux critères d'admissibilité suivants :

    a. la réclamation concerne un ancien élève externe qui était vivant le 30 mai 2005;

b. la réclamation est faite en raison de la fréquentation par cet élève externe d'un pensionnat indien figurant à l'annexe E pendant l'ensemble ou une partie d'une année scolaire pour laquelle il n'a pas reçu de paiement d'expérience commune en vertu de la CRRPI, n'a pas reçu et ne recevra pas d'indemnité en vertu du règlement McLean, et n'a pas reçu d'indemnité en vertu de tout autre règlement concernant une école figurant à l'annexe K du règlement McLean;

c. la réclamation est remise à l'administrateur des réclamations avant la date limite de réclamation ultime.

Réception de réclamations

4. Pour demander un paiement d'indemnité liée à la fréquentation d'externat, tout demandeur doit remplir un formulaire de réclamation et le remettre à l'administrateur des réclamations avant la date limite des réclamations, par voie électronique ou en copie papier, selon les modalités établies par l'administrateur des réclamations.

5. Nonobstant la date limite de réclamation, un demandeur peut remettre un formulaire de réclamation accompagné d'une réclamation d'extension de la date limite de réclamation à l'administrateur des réclamations après la date limite de réclamation, mais avant la date limite ultime de réclamation. En aucun cas, l'administrateur des réclamations n'acceptera de formulaires de réclamation après la date limite ultime de réclamation, sauf dans les cas spécifiquement prévus par les présentes et par le processus de réclamation successorale décrit à l'annexe D.

6. L'administrateur des réclamations devra fournir au demandeur une confirmation de la réception de la réclamation.

7. L'administrateur des réclamations numérisera toutes les demandes en copie papier et conservera des copies électroniques qui seront utilisées uniquement aux fins prévues par les présentes.

8. L'administrateur des réclamations examinera chaque réclamation afin de s'assurer qu'elle est dûment remplie. En cas d'absence de toute information requise sur le

formulaire de réclamation, le rendant ainsi incomplet, notamment en ce qui concerne une demande d'extension du délai de réclamation, l'administrateur des réclamations doit contacter le demandeur et pour lui demander de fournir les informations manquantes ou de lui remettre à nouveau le formulaire de réclamation. Le demandeur disposera de 60 jours, à compter de la date où l'administrateur des réclamations lui fait parvenir une telle demande, pour remettre à nouveau son formulaire de réclamation, peu importe si la date limite ultime des réclamations est dépassée.

9. L'administrateur des réclamations doit, sans prendre d'autres mesures, rejeter toute réclamation faite à l'égard d'une personne décédée le 29 mai 2005 ou avant.

Informations fournies par le Canada

10. L'administrateur des réclamations fournira au Canada une copie de chaque réclamation pour toute personne qui était vivante le 30 mai 2005. Ces copies ne seront utilisées qu'aux fins prévues par les présentes.

11. Le Canada examinera la réclamation en fonction de toute l'information en sa possession afin de :

    a. établir si la personne en cause dans la réclamation ou l'exécuteur, le représentant ou l'héritier ayant présenté une réclamation à sa place a reçu un paiement d'expérience commune en vertu de la CRRPI pour l'une des années scolaires visées par la réclamation;

    b. établir si la personne en cause dans la réclamation ou l'exécuteur, le représentant ou l'héritier ayant présenté une réclamation s'est vu refusé une demande de paiement d'expérience commune en vertu de la CRRPI pour l'une des années scolaires visées par la réclamation;

    c. établir si la personne ou l'exécuteur, le représentant ou l'héritier ayant présenté une réclamation à sa place a reçu un paiement d'expérience commune en vertu d'un règlement concernant un des pensionnats figurant

à l'annexe K du règlement McLean pour l'une de ces mêmes années scolaires visées par la réclamation;

d. établir si la personne en cause a fréquenté une école ne figurant pas sur la liste 1 ou la liste 2 de l'annexe E pour l'une ou l'autre des années scolaires visées par la réclamation ;

e. examiner toute autre information pouvant être pertinente pour une réclamation relative à une école figurant sur la liste 2 de l'annexe E.

12. Afin de s'assurer que la réclamation n'est pas refusée uniquement parce que le demandeur s'est trompé sur l'année ou les années scolaires au cours desquelles il a fréquenté un pensionnat à titre d'élève externe, le Canada examinera les dossiers de fréquentation du ou des pensionnats indiens visés par la réclamation pour les cinq années scolaires précédant et suivant l'année ou les années scolaires mentionnées dans la réclamation. Si, à la suite de ce processus, il s'avère que la personne en question était un élève externe au cours d'une ou de plusieurs années scolaires non réclamées, cette information sera fournie à l'administrateur des réclamations et la réclamation sera évaluée comme si elle comprenait cette ou ces années scolaires.

13. Le Canada peut transmettre à l'administrateur des réclamations toute information ou tout document confirmant ou infirmant la fréquentation d'un pensionnat à titre d'élève externe de la personne en cause dans les 45 jours suivant la réception d'une réclamation de l'administrateur des réclamations, mais il s'efforcera de le faire le plus rapidement possible afin de ne pas retarder sa décision relative à toute réclamation.

Évaluation par l'administrateur des réclamations

14. Lorsque la réclamation concerne une personne qui s'est vue refuser une demande de paiement d'expérience commune en vertu de la CRRPI pour une des années scolaires mentionnées dans la réclamation au motif qu'elle a fréquenté le ou les pensionnats indiens, mais n'y a pas résidé, peu importe le ou les pensionnats indiens cités dans la réclamation, l'administrateur des réclamations considérera que la réclamation est présumée valide, sous réserve des dispositions ci-dessous.

15. Pour toutes les autres réclamations, l'administrateur des réclamations déterminera d'abord si la réclamation est faite à l'égard d'un élève externe, conformément à la procédure suivante :

    a. lorsque la réclamation concerne un ou plusieurs pensionnats indiens figurant sur la liste 1 de l'annexe E au cours des périodes précisées dans cette liste, et que le formulaire de réclamation indique de façon positive que la réclamation concerne un individu qui a fréquenté le pensionnat en tant qu'élève externe, l'administrateur des réclamations considérera la réclamation comme étant présumée valide, sous réserve des dispositions ci-dessous;

    b. lorsque la réclamation ne concerne qu'un ou plusieurs pensionnats indiens figurant sur la liste 2 de l'annexe E au cours des périodes précisées dans cette liste, et que le demandeur fournit une déclaration solennelle indiquant que l'individu visé par la réclamation était un élève externe et précisant le lieu de résidence de celui-ci pendant la période où cette personne était un élève externe, l'administrateur des réclamations examinera la réclamation et tout renseignement fourni par le Canada en vertu des paragraphes 11 à 13 ci-dessus. À moins que le Canada ait fourni des preuves positives démontrant, selon la prépondérance des probabilités, que la personne n'était pas un élève externe, la réclamation sera présumée valide, sous réserve des dispositions ci-dessous;

    c. lorsque la réclamation ne nomme aucun pensionnat indien figurant à l'annexe E, l'administrateur des réclamations fera tout son possible pour déterminer la possibilité d'une erreur ou d'une erreur de nom dans le nom d'un pensionnat indien, notamment, en contactant le demandeur, le cas échéant. L'administrateur des réclamations doit corriger ces erreurs ou erreurs de nom. Si l'administrateur des réclamations est convaincu que la réclamation ne concerne aucun des pensionnats indiens énumérés à l'annexe E, il doit rejeter la réclamation.

16. L’administrateur des réclamations examinera toute information fournie par le Canada en vertu des paragraphes 11 à 13 ci-dessus ainsi que toute information en sa possession dans le cadre du règlement McLean. Si l’administrateur des réclamations estime qu’il existe des preuves positives démontrant, selon la prépondérance des probabilités, que pour toutes les années scolaires indiquées dans le formulaire de réclamation, la personne en cause ou l’exécuteur, le représentant ou l’héritier ayant présenté une réclamation à sa place :

    a. a reçu un paiement d’expérience commune en vertu de la CRRPI ;

    b. a reçu une indemnité dans le cadre de l’accord de McLean ;

    c. a reçu une indemnité dans le cadre de tout autre règlement concernant une école figurant à l’annexe K du règlement McLean ;

    d. a fréquenté une école qui ne figure pas à l’annexe E ;

    e. ou toute combinaison des alinéas (a), (b), (c), ou (d).

    l’administrateur des réclamations doit rejeter la réclamation.

17. L’administrateur des réclamations informera tout demandeur dont la réclamation est rejetée en lui remettant une lettre en utilisant le moyen de communication choisi par le demandeur :

    a. indiquant clairement les raisons pour lesquelles la réclamation a été rejetée;

    b. dans l’éventualité où le demandeur a le droit de demander un réexamen :

        i. informant le demandeur de son droit de demander un réexamen, de la procédure de demande de réexamen et de tout délai applicable;

        ii. informant le demandeur de son droit d’avoir recours à l’assistance gratuite des avocats du groupe et de son droit d’avoir recours, à ses frais, à l’assistance d’un autre avocat de son choix;

iii. accompagnée des copies de toutes les informations et de tous les documents ayant été pris en compte dans le cadre de la décision de l'administrateur des réclamations de rejeter la réclamation.

Réexamen

18. Un demandeur dont la réclamation est rejetée parce que :

    a. sa réclamation concerne une école dont l'administrateur des réclamations est convaincu qu'elle n'est pas un pensionnat indien figurant à l'Annexe E ;

    b. ou sa réclamation est faite au nom d'une personne décédée le 29 mai 2005 ou à une date antérieure,

    n'a pas le droit de demander un réexamen.

19. Un demandeur dont la réclamation est refusée pour toute autre raison a le droit de demander un réexamen à l'examinateur indépendant. L'avis d'intention de demander un réexamen doit être remis à l'examinateur indépendant dans les 60 jours suivant la date de la décision de l'administrateur des réclamations.

20. Le Canada n'a en aucun cas le droit de demander un réexamen.

21. Les demandeurs qui sollicitent un réexamen ont le droit, sans avoir à engager de frais, d'être représentés par un avocat du groupe aux fins du réexamen, ou de faire appel, à leurs frais, à un autre avocat de leur choix.

22. L'examinateur indépendant fournira au demandeur un accusé de réception concernant l'avis d'intention de demander un réexamen et fournira au Canada une copie de cet avis.

23. L'examinateur indépendant informera le demandeur qu'il a le droit de présenter de nouvelles preuves lors du réexamen. Le demandeur dispose de 60 jours pour présenter toute nouvelle preuve lors du réexamen, moyennant toute autre extension

raisonnable du délai que le réclamant peut demander et que l'examinateur indépendant peut accorder.

24. L'examinateur indépendant fournira au Canada toute nouvelle preuve présentée par le demandeur et le Canada aura le droit de fournir des informations supplémentaires à l'examinateur indépendant qui doit à toute nouvelle preuve fournie dans les 60 jours.

25. L'examinateur indépendant étudiera alors chaque réclamation, notamment les documents justificatifs, *de novo*, et rendra une décision conformément aux principes du processus de réclamation énoncés ci-dessus. L'examinateur indépendant devra en particulier :

    a. présumer qu'un demandeur agit honnêtement et de bonne foi, en l'absence de motifs raisonnables du contraire;

    b. tirer toutes les conclusions raisonnables et favorables possibles en faveur du demandeur.

26. Si l'examinateur indépendant décide que la réclamation doit être acceptée, l'administrateur des réclamations et le demandeur en seront informés, et l'administrateur des réclamations paiera le demandeur sans délai.

27. Si l'examinateur indépendant décide du rejet de la réclamation, il en informera le demandeur en lui adressant une lettre par le moyen de communication de son choix :

    a. indiquant clairement les raisons pour lesquelles la réclamation a été rejetée;

    b. accompagnée des copies de toutes les informations et de tous les documents ayant été pris en compte dans le cadre de la décision de l'examinateur indépendant de rejeter la réclamation.

28. Toutes les demandes de réexamen doivent faire l'objet d'une décision de l'examinateur indépendant dans les 30 jours suivant la réception de tout document de réponse fourni par le Canada ou l'expiration du délai accordé au Canada pour fournir des documents de réponse, selon la première éventualité. Si le demandeur

ne présente pas de nouvelles preuves lors du réexamen, l’examinateur indépendant doit rendre sa décision dans les 30 jours suivant l’expiration du délai accordé au demandeur pour fournir lesdites preuves. Les délais prévus dans cette section peuvent être modifiés par entente entre les avocats du groupe et le Canada, en consultation avec l’examinateur indépendant.

29. La décision de l’examinateur indépendant est définitive et sans appel.

Annexe D

PROCESSUS DE RÉCLAMATIONS SUCCESSORALES RELATIF AU PAIEMENT DES INDEMNITÉS LIÉES À LA FRÉQUENTATION D'EXTERNAT

Lorsqu'il y a un exécuteur, un administrateur ou un liquidateur

1. Le demandeur doit :

    a. remplir le formulaire de réclamations approprié;

    b. fournir la preuve que l'élève externe est décédé;

    c. fournir une preuve de la date du décès de l'élève externe;

    d. fournir la preuve qu'il a été nommé exécuteur, administrateur ou liquidateur.

2. Le formulaire de réclamation doit contenir des dispositions relatives à l'exonération, à l'indemnisation et à l'exonération de responsabilité à l'endroit du Canada, des demandeurs, des avocats du recours collectif, de l'administrateur des réclamations et de l'examinateur indépendant.

3. L'administrateur des réclamations évaluera la réclamation conformément au processus de réclamation.

4. Le paiement de toute réclamation approuvée sera versé à « la succession » de l'élève externe décédé.

Lorsqu'il n'y a pas d'exécuteur, d'administrateur ou de liquidateur

5. Le demandeur doit :

    a. remplir le formulaire de réclamations approprié;

    b. fournir la preuve que l'élève externe est décédé;

    c. fournir une preuve de la date du décès de l'élève externe;

    d. fournir une attestation ou une déclaration selon laquelle l'élève externe n'avait pas de testament et qu'aucun exécuteur, administrateur ou liquidateur n'a été nommé par la Cour;

e. fournir une preuve du lien de parenté avec l'élève externe, qui peut être sous forme de l'attestation ou de la déclaration d'un tiers;

f. fournir une attestation ou une déclaration du demandeur selon laquelle il n'y a pas d'héritier(s) de rang supérieur;

g. dresser la liste de toutes les personnes (le cas échéant) ayant la même priorité en tant qu'héritiers que le demandeur;

h. fournir le consentement écrit de toutes les personnes (le cas échéant) ayant le même rang que le demandeur dans l'ordre de priorité des héritiers afin que le demandeur puisse soumettre une réclamation au nom de l'élève externe décédé.

6. Le formulaire de réclamation doit contenir des dispositions relatives à l'exonération, à l'indemnisation et à l'exonération de responsabilité à l'endroit du Canada, des demandeurs, des avocats du recours collectif, de l'administrateur des réclamations et de l'examinateur indépendant.

7. L'administrateur des réclamations évaluera la réclamation conformément au processus de réclamation. Celui-ci n'effectuera de paiement que pour une réclamation approuvée ou communiquera une réclamation rejetée avec un droit de réexamen conformément aux dispositions ci-dessous. Dans les cas où la réclamation est rejetée sans droit de réexamen, l'administrateur des réclamations informera le demandeur conformément à la procédure normale à laquelle il est sujet.

8. Si l'administrateur des réclamations ne reçoit aucune autre réclamation concernant le même élève externe décédé avant la date limite ultime des réclamations, celui-ci doit :

a. dans le cas d'une réclamation approuvée, payer le demandeur;

b. dans le cas d'une réclamation rejetée, informer le demandeur du rejet de la réclamation conformément au paragraphe 17 du processus de réclamation. Le demandeur peut solliciter un réexamen conformément au processus de réclamation.

9. Si l’administrateur des réclamations reçoit une autre réclamation concernant le même élève externe décédé avant la date limite ultime des réclamations et que le demandeur est l’exécuteur, l’administrateur ou le liquidateur de la succession, l’administrateur des réclamations rejettera la réclamation de tout demandeur qui n’est pas l’exécuteur, l’administrateur ou le liquidateur, sans droit de réexamen.

10. Si une ou plusieurs réclamations supplémentaires concernant le même élève externe décédé sont soumises à l’administrateur des réclamations avant la date limite ultime des réclamations par un demandeur n’étant ni exécuteur testamentaire ni du même rang que le ou les précédents demandeurs dans l’ordre de priorité des héritiers, l’administrateur des réclamations devra communiquer avec le demandeur réputé avoir le dernier rang dans l’ordre de priorité des héritiers afin de s’enquérir si ce dernier conteste l’existence d’un hériter d’un rang supérieur. Si l’existence d’un héritier ayant un rang supérieur est contestée, l’affaire sera renvoyée à l’examinateur indépendant pour qu’il détermine lequel des demandeurs a priorité afin de désigner ce dernier comme représentant légal de l’élève externe défunt. La décision de l’examinateur indépendant est définitive, sans aucun droit d’appel ou d’examen judiciaire. L’examinateur indépendant doit informer l’administrateur des réclamations de sa décision, puis l’administrateur des réclamations doit :

    a. dans le cas d’une réclamation approuvée, payer le représentant désigné;

    b. dans le cas d’une réclamation rejetée, informer le demandeur du rejet de la réclamation conformément au paragraphe 17 du processus de réclamation. Le représentant désigné peut solliciter un réexamen conformément au processus de réclamation.

11. Si une ou plusieurs réclamations supplémentaires concernant le même élève externe décédé sont soumises à l’administrateur des réclamations avant la date limite ultime des réclamations par un demandeur n’étant pas exécuteur testamentaire, mais étant du même rang que le ou les demandeurs précédents dans l’ordre de priorité des héritiers, l’administrateur des réclamations devra rejeter toutes les réclamations et en aviser tous les demandeurs en bonne et due forme. Compte tenu de la date limite de

soumission des réclamations, les demandeurs qui ont soumis des réclamations concurrentes auront alors trois mois pour soumettre une nouvelle réclamation signée par tous les demandeurs précédemment concurrents désignant un représentant légal pour leur compte ainsi que pour tout autre héritier. Dès réception de la nouvelle réclamation, l'administrateur des réclamations doit :

a. dans le cas d'une réclamation approuvée, payer le représentant désigné;

b. dans le cas d'une réclamation rejetée, informer le demandeur du rejet de la réclamation conformément au paragraphe 17 du processus de réclamation. Le représentant désigné peut solliciter un réexamen conformément au processus de réclamation.

Ordre de priorité des héritiers

12. L'ordre de priorité des héritiers correspond à celui prévu par les dispositions de la *Loi sur les Indiens* relatives à la distribution des biens ab intestat; tous les termes ont la même définition que celle qui figure dans la *Loi sur les Indiens*.

13. L'ordre de priorité des héritiers, du premier au dernier, est le suivant :

a. l'époux ou le conjoint de fait survivant;

b. les enfants;

c. les petits-enfants;

d. les parents;

e. les frères et sœurs;

f. les enfants des frères et sœurs.

Annexe E – Liste des pensionnats indiens concernés par le processus réclamation

Liste 1 – Pensionnats avec des élèves externes confirmés

Pensionnat	Emplacement	Date d'ouverture (1er janvier 1920 selon la période visée par le recours collectif ou plus tard, selon le cas)	Date de fermeture de l'école ou de transfert
Pensionnats de la Colombie-Britannique			
Alberni	Port Alberni (réserve Tseshaht)	1er janvier 1920 **Fermetures provisoires :** Du 2 juin 1917 au 1er décembre 1920 Du 21 février 1937 au 23 septembre 1940	31 août 1965
Cariboo (St. Joseph's, William's Lake)	Williams Lake	1er janvier 1920	28 février 1968
Christie (Clayoquot, Kakawis)	Tofino	1er janvier 1920	30 juin 1983
Kamloops	Kamloops (réserve indienne de Kamloops)	1er janvier 1920	31 août 1969
Kuper Island	Île Kuper	1er janvier 1920	31 août 1968
Lejac (Fraser Lake)	Fraser Lake (sur la réserve)	1er janvier 1920	31 août 1976
Lower Post	Lower Post (sur la réserve)	1er septembre 1951	31 août 1968
St. George's (Lytton)	Lytton	1er janvier 1920	31 août 1972
St. Mary's (Mission)	Mission	1er janvier 1920	31 août 1973
Sechelt	Sechelt (sur la réserve)	1er janvier 1920	31 août 1969
St. Paul's (Squamish, North Vancouver)	Squamish, North Vancouver	1er janvier 1920	31 août 1959
Pensionnats de l'Alberta			
Assumption (Hay Lake)	Assumption (Hay Lakes)	1er février 1951	8 septembre 1968

Pensionnat	**Emplacement**	**Date d'ouverture (1er janvier 1920 selon la période visée par le recours collectif ou plus tard, selon le cas)**	**Date de fermeture de l'école ou de transfert**
Blue Quills	Réserve de Saddle Lake (de 1898 à 1931) St. Paul (de 1931 à 1990)	1er janvier 1920	31 janvier 1971
Crowfoot (Blackfoot, St. Joseph's, Ste. Trinité)	Cluny	1er janvier 1920	31 décembre 1968
Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)	Desmarais, Wabasca/Wabisca	1er janvier 1920	31 août 1964
Ermineskin (Hobbema)	Hobbema (réserve indienne d'Ermineskin)	1er janvier 1920	31 mars 1969
Holy Angels (Fort Chipewyan, École des Saint-Anges)	Fort Chipewyan	1er janvier 1920	31 août 1956
Fort Vermillion (St. Henry's)	Fort Vermillion	1er janvier 1920	31 août 1964
Joussard (St. Bruno's)	Lesser Slave Lake	1920	31 octobre 1969
Morley (Stony/Stoney, a remplacé l'orphelinat McDougall)	Morley (réserve indienne Stony)	1er septembre 1922	31 juillet 1969
Old Sun (Blackfoot)	Gleichen (Blackfoot Reserve)	1er janvier 1920 **Fermetures provisoires :** De 1922 à février 1923 Du 26 juin 1928 au 17 février 1931	30 juin 1971
Sacred Heart (Peigan, Brocket)	Brocket (réserve indienne de Peigan)	1er janvier 1920	30 juin 1961
St. Cyprian (Queen Victoria's Jubliee Home, Peigan)	Brocket (réserve indienne de Peigan)	1er janvier 1920 **Fermeture provisoire :** Du 1er septembre 1953 au 12 octobre 1953	30 juin 1961

Pensionnat	Emplacement	Date d'ouverture (1er janvier 1920 selon la période visée par le recours collectif ou plus tard, selon le cas)	Date de fermeture de l'école ou de transfert
St. Mary's (Blood, Immaculate Conception)	Cardston (réserve indienne Blood)	1920 **Fermeture provisoire :** Du 1er septembre 1965 au 6 janvier 1966	31 août 1969
St. Paul's (Blood)	Cardston (réserve indienne Blood)	1er janvier 1920	31 août 1965
Sturgeon Lake (Calais, St. Francis Xavier)	Calais	1er janvier 1920	31 août 1959
Wabasca (St. John's)	Wabasca Lake	1er janvier 1920	31 août 1965
Whitefish Lake (St. Andrew's)	Whitefish Lake	1er janvier 1920	30 juin 1950
Grouard	West side of Lesser Slave Lake, Grouard	1er janvier 1920	30 septembre 1957
Pensionnats de la Saskatchewan			
Beauval (Lac la Plonge)	Beauval	1er janvier 1920	31 août 1968
File Hills	Balcarres	1er janvier 1920	30 juin 1949
Gordon's	Punnichy (réserve Gordon's)	1er janvier 1920 **Fermetures provisoires :** Du 30 juin 1947 au 14 octobre 1949 Du 25 janvier 1950 au 1er septembre 1953	31 août 1968

Pensionnat	Emplacement	Date d'ouverture (1er janvier 1920 selon la période visée par le recours collectif ou plus tard, selon le cas)	Date de fermeture de l'école ou de transfert
Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	Lebret	1er janvier 1920 **Fermeture provisoire :** Du 13 novembre 1932 au 29 mai 1936	31 août 1968
Marieval (Cowesess, Crooked Lake)	Réserve Cowesess	1er janvier 1920	31 août 1969
Muscowequan (Lestock, Touchwood)	Lestock	1er janvier 1920	31 août 1968
Prince Albert (Onion Lake Anglican, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	Onion Lake/Lac La Ronge/Prince Albert	1er janvier 1920	31 août 1968
St. Anthony's (Onion Lake, Sacred Heart)	Onion Lake	1er janvier 1920	31 mars 1969
St. Michael's (Duck Lake)	Duck Lake	1er janvier 1920	31 août 1968
St. Philip's	Kamsack	16 avril 1928	31 août 1968
Pensionnats du Manitoba			
Assiniboia (Winnipeg)	Winnipeg	2 septembre 1958	31 août 1967
Brandon	Brandon	1920 **Fermeture provisoire :** Du 1er juillet 1929 au 18 juillet 1930	31 août 1968
Churchill Vocational Centre	Churchill	9 septembre 1964	30 juin 1973
Cross Lake (St. Joseph's, Norway House)	Cross Lake	1er janvier 1920	30 juin 1969
Fort Alexander (Pine Falls)	Réserve nº 3 de Fort Alexander, à proximité de Pine Falls	1er janvier 1920	1er septembre 1969

Pensionnat	**Emplacement**	**Date d'ouverture (1er janvier 1920 selon la période visée par le recours collectif ou plus tard, selon le cas)**	**Date de fermeture de l'école ou de transfert**
Guy Hill (Clearwater, the Pas, anciennement Sturgeon Landing, SK)	Clearwater Lake	5 septembre 1952	31 août 1968
Norway House	Norway House	1er janvier 1920 **Fermeture provisoire :** Du 29 mai 1946 au 1er septembre 1954	30 juin 1967
Pine Creek (Camperville)	Camperville	1er janvier 1920	31 août 1969
Portage la Prairie	Portage la Prairie	1er janvier 1920	31 août 1960
Sandy Bay	Sandy Bay Reserve	1er janvier 1920	30 juin 1970
Pensionnats de l'Ontario			
Bishop Horden Hall (Moose Fort, Moose Factory)	Île Moose	1er janvier 1920	31 août 1964
Cecilia Jeffrey (Kenora, Shoal Lake)	Lac Shoal	1er janvier 1920	31 août 1965
Fort Frances (St. Margaret's)	Fort Frances	1er janvier 1920	31 août 1968
McIntosh (Kenora)	McIntosh	27 mai 1925	30 juin 1969
Pelican Lake (Pelican Falls)	Sioux Lookout	1er septembre 1927	31 août 1968
Poplar Hill	Poplar Hill	1er septembre 1962	30 juin 1989
St. Anne's (Fort Albany)	Fort Albany	1er janvier 1920	30 juin 1976
St. Mary's (Kenora, St. Anthony's)	Kenora	1er janvier 1920	31 août 1968
Spanish Boys' School (Charles Garnier, St. Joseph's)	Spanish	1er janvier 1920	30 juin 1958
Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	Spanish	1er janvier 1920	30 juin 1962

Pensionnat	Emplacement	Date d'ouverture (1er janvier 1920 selon la période visée par le recours collectif ou plus tard, selon le cas)	Date de fermeture de l'école ou de transfert
Pensionnats du Québec			
Fort George (anglican)	Fort George	1er septembre 1933 **Fermeture provisoire :** Du 26 janvier 1943 au 9 juillet 1944	31 août 1971
Fort George (catholique romain)	Fort George	1er septembre 1937	30 juin 1978
Point Bleue	Point Bleue	6 octobre 1960	31 août 1968
Sept-Îles	Sept-Îles	2 septembre 1952	31 août 1969
Pensionnats de la Nouvelle-Écosse			
Shubenacadie	Shubenacadie	1er septembre 1929	30 juin 1967
Pensionnats des Territoires du Nord-Ouest			
Aklavik (Immaculate Conception)	Aklavik	1er juillet 1926	30 juin 1959
Aklavik (All Saints)	Aklavik	1er août 1936	31 août 1959
Fort Providence (Sacred Heart)	Fort Providence	1er janvier 1920	30 juin 1960
Fort Resolution (St. Joseph's)	Fort Resolution	1er janvier 1920	31 décembre 1957
Hay River (St. Peter's)	Hay River	1er janvier 1920	31 août 1937
Pensionnats du Yukon			
Carcross (Chooutla)	Carcross	1er janvier 1920 **Fermeture provisoire :** Du 15 juin 1943 au 1er septembre 1944	30 juin 1969
Whitehorse Baptist Mission	Whitehorse	1er septembre 1947	30 juin 1960
Shingle Point Eskimo Residential School	Shingle Point	16 septembre 1929	31 août 1936

Liste 2 – Pensionnats où il n'y a pas d'élèves externes connus

Pensionnat	Emplacement	Date d'ouverture (1er janvier 1920 selon la période visée par le recours collectif ou plus tard, selon le cas)	Date de fermeture ou de transfert
Pensionnats de la Colombie-Britannique			
Ahousaht	Ahousaht (réserve Maktosis)	1er janvier 1920	26 janvier 1940
Coqualeetza de 1924 à 1940	Chilliwack	1er janvier 1924	30 juin 1940
Cranbrook (St. Eugene's, Kootenay)	Cranbrook (sur la réserve)	1er janvier 1920	23 juin 1965
St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	Alert Bay (sur la réserve)	1er janvier 1920	31 août 1960
Pensionnats de l'Alberta			
Edmonton (Poundmaker, anciennement Red Deer Industrial)	St. Albert	1er mars 1924 **Fermetures provisoires :** Du 1er juillet 1946 au 1er octobre 1946 Du 1er juillet 1951 au 5 novembre 1951	31 août 1960
Lesser Slave Lake (St. Peter's)	Lesser Slave Lake	1er janvier 1920	30 juin 1932
St. Albert (Youville)	St. Albert, Youville	1er janvier 1920	30 juin 1948
Sarcee (St. Barnabas)	Sarcee Junction, T'suu Tina (réserve indienne Sarcee)	1er janvier 1920	30 septembre 1921
Pensionnats de la Saskatchewan			
Round Lake	Broadview	1er janvier 1920	31 août 1950
Sturgeon Landing (remplacé par Guy Hill, MB)	Sturgeon Landing	1er septembre 1926	21 octobre 1952
Thunderchild (Delmas, St. Henri)	Delmas	1er janvier 1920	13 janvier 1948
Pensionnats du Manitoba			
Birtle	Birtle	1er janvier 1920	30 juin 1970

Pensionnat	**Emplacement**	**Date d'ouverture (1er janvier 1920 selon la période visée par le recours collectif ou plus tard, selon le cas)**	**Date de fermeture ou de transfert**
Dauphin (anciennement McKay)	The Pas/Dauphin	Voir McKay ci-dessous	Voir McKay ci-dessous
Elkhorn (Washakada)	Elkhorn	1er janvier 1920 **Fermeture provisoire :** De 1920 au 1er septembre 1923	30 juin 1949
McKay (The Pas, remplacé par Dauphin)	The Pas/Dauphin	1er janvier 1920 **Fermeture provisoire :** Du 19 mars 1933 au 1er septembre 1957	31 août 1968
Pensionnats de l'Ontario			
Chapleau (St. John's)	Chapleau	1er janvier 1920	31 juillet 1948
Mohawk Institute	Brantford	1er janvier 1920	31 août 1968
Mount Elgin (Muncey, St. Thomas)	Muncey	1er janvier 1920	30 juin 1946
Shingwauk	Sault Ste. Marie	1er janvier 1920	30 juin 1970
St. Joseph's/Fort William	Fort William	1er janvier 1920	1er septembre 1968
Stirland Lake High School (Wahbon Bay Academy)	Stirland Lake	1er septembre 1971	30 juin 1991
Cristal Lake High School	Stirland Lake	1er septembre 1976	30 juin 1986
Pensionnats du Québec			
Amos	Amos	1er octobre 1955	31 août 1969
La Tuque	La Tuque	1er septembre 1963	30 juin 1970

ANNEXE F

PLAN DE LA SOCIÉTÉ DE REVITALISATION POUR LES ÉLÈVES EXTERNES

Les parties ont convenu de procéder au règlement des réclamations du groupe des survivants et du groupe des descendants (« survivants », « descendants ») dans le cadre du recours collectif *Gottfriedson c. Canada*. En vertu de la convention de règlement, les parties ont convenu que le Canada versera 50 millions de dollars pour créer la Société de revitalisation pour les élèves externes (la « société »). Les parties conviennent que la société a pour but de soutenir les survivants et les descendants dans le cadre d'activités et de programmes relatifs à la guérison, au bien-être, à l'éducation, à la langue, à la culture, à l'héritage et à la commémoration.

L'argent sera utilisé par la société pour financer des activités et des programmes au profit des survivants et des descendants ayant pour objectifs de :

a. revitaliser et protéger les langues autochtones des survivants et des descendants;

b. protéger et revitaliser les cultures autochtones des survivants et des descendants;

c. rechercher la guérison et le bien-être des survivants et des descendants;

d. protéger le patrimoine autochtone des survivants et des descendants;

e. promouvoir l'éducation et la commémoration.

Les activités et les programmes ne sauraient faire double emploi à ceux du gouvernement du Canada. Des subventions seront accordées aux survivants et aux descendants pour financer des activités et des programmes destinés à favoriser la guérison et à remédier aux pertes de langues, de culture, de bien-être et de patrimoine que les survivants ont subies lorsqu'ils fréquentaient les pensionnats indiens en tant qu'élèves externes.

La société sera constituée en vertu de la *Societies Act* de la Colombie-Britannique avant la date de mise en œuvre et sera dûment enregistrée auprès de chaque gouvernement au Canada dans la mesure requise par ceux-ci. La société disposera de 5 à

11 administrateurs. L’un de ces administrateurs sera nommé par le gouvernement du Canada, mais ne sera employé par ce dernier. Les parties veilleront à ce que les autres administrateurs assurent une représentation régionale adéquate dans tout le Canada.

La société aura un personnel administratif restreint et fera appel à des consultants financiers pour lui fournir des conseils en matière d’investissement. Une fois les fonds investis, les dépenses de la Société seront financées par les revenus de placement.

Conseil consultatif

Les administrateurs seront encadrés par un conseil consultatif composé de personnes nommées par les administrateurs, qui s’assureront de la représentation régionale, la compréhension et la connaissance de la perte et de la revitalisation des langues, des cultures, du bien-être et du patrimoine autochtones.

Le conseil consultatif donnera son avis aux administrateurs sur toutes les activités des administrateurs quant aux activités de la société, y compris en ce qui concerne l’élaboration et la mise en œuvre d’une politique pour les demandes de financement de la société dans le cadre de celles-ci.

ANNEXE G

ORDONNANCE

LA COUR ORDONNE ce qui suit :

1. L'action susmentionnée est approuvée en tant que recours collectif aux conditions suivantes :

   a. Le groupe (membres du recours collectif) est défini comme suit :

      La bande indienne Tk'emlúps te Secwépemc, la bande indienne de Secheltm et toute autre bande qui :

      (i) a ou avait des membres qui sont ou ont été membres du groupe des survivants, ou dont la communauté abrite un pensionnat indien;

      (ii) est spécifiquement ajoutée à cette réclamation avec un ou plusieurs pensionnats spécifiquement déterminés.

   b. Les représentants demandeurs de ce groupe sont :

      la bande indienne de Tk'emlúps te Secwépemc;

      la bande indienne de Sechelt.

   c. Les réclamations sont fondées sur :

      Des manquements à des obligations fiduciaires et constitutionnelles, la violation de droits ancestraux, des violations de conventions ou de pactes internationaux, des violations du droit international commise par le Canada ou pour son compte dont le Canada est redevable.

   d. Les mesures de redressement demandées par le recours collectif sont les suivantes :

      i. une déclaration portant que la bande indienne de Sechelt et la bande

indienne Tk'emlúps te Secwépemc ainsi que tous les membres du groupe ont des droits ancestraux de parler leurs langues traditionnelles, d'observer leurs coutumes traditionnelles et leurs pratiques religieuses;

ii. une déclaration portant que le Canada avait des obligations fiduciaires, constitutionnelles, d'origine législative et en common law envers les membres du recours collectif, qu'il a manqué à ces obligations et qu'il a violé des conventions et des pactes internationaux ainsi que le droit international, en rapport avec les fins, l'établissement, le financement, le fonctionnement, la supervision, le contrôle, l'entretien et le soutien du PIS, du PIK et d'autres pensionnats indiens déterminés;

iii. une déclaration portant que la politique relative aux pensionnats, le PIK, le PIS et les pensionnats déterminés ont causé des dommages culturels, linguistiques et sociaux et un tort irréparable aux membres du recours collectif;

iv. une déclaration portant que le Canada a violé ou viole les droits linguistiques et culturels (ancestraux ou autres) des membres du recours collectif ainsi que des violations de conventions et de pactes internationaux et des violations du droit international comme conséquence de son établissement, son financement, son administration, sa supervision, son contrôle, son entretien et son soutien de la politique relative aux pensionnats et les pensionnats déterminés et du fait que le Canada a obligé les survivants à les fréquenter;

v. une déclaration portant que le Canada est responsable envers les membres du recours collectif des dommages causés par son manquement à des obligations fiduciaires et constitutionnelles, d'origine législative et en common law, et par sa violation de droits ancestraux ainsi que par des violations de conventions et

de pactes internationaux et des violations du droit international, en rapport avec les fins, l'établissement, le financement, l'administration, la supervision, le contrôle, l'entretien et le soutien des pensionnats déterminés et leur fréquentation obligatoire par les membres du groupe des survivants;

vi. les dommages-intérêts non pécuniaires et pécuniaires et les dommages-intérêts spéciaux dont le Canada est redevable pour manquement à des obligations fiduciaires et constitutionnelles et violation de droits ancestraux ainsi que pour violations de conventions et de pactes internationaux et violations du droit international, y compris des montants pour défrayer le coût de soins en cours et pour restaurer, protéger et préserver le patrimoine linguistique et culturel du groupe;

vii. la construction et l'entretien de centres de guérison et d'éducation au sein des collectivités appartenant au groupe et les autres centres ou activités susceptibles d'atténuer les pertes subies et que la Cour estime indiqués et justes, le cas échéant;

viii. les dommages-intérêts exemplaires et punitifs dont le Canada est redevable;

ix. des intérêts et les dépens avant et après jugement.

e. Les questions communes de fait ou de droit sont les suivantes :

a. Du fait des fins, du fonctionnement ou de la gestion de l'un quelconque des pensionnats durant la période visée par le recours collectif, le défendeur a-t-il manqué à une obligation fiduciaire qu'il avait envers le groupe de ne pas détruire leur langue et leur culture?

b. Du fait des fins, du fonctionnement ou de la gestion de l'un quelconque des pensionnats durant la période visée par le recours collectif, le défendeur a-t-il violé les droits culturels ou les droits linguistiques, ancestraux ou autres, du groupe;

c. Si la réponse à l'une quelconque des questions énoncées ci-dessus aux alinéas a) à b) est oui, la Cour peut-elle procéder à une détermination globale du montant des dommages subis par le groupe dans le cadre du procès relatif aux questions communes?

d. Si la réponse à l'une quelconque des questions énoncées ci-dessus aux alinéas a) à d) est oui, le défendeur s'est-il rendu coupable d'une conduite qui justifie l'octroi de dommages-intérêts punitifs?

e. Si la réponse à la question énoncée ci-dessus à l'alinéa d) est oui, quel montant de dommages-intérêts punitifs devrait être accordé?

f. Les définitions suivantes s'appliquent à la présente ordonnance :

a. « Autochtone(s) » ou « enfants autochtone(s) » Une ou des personnes dont les droits sont reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982*.

b. « Droit ancestral » ou « droits ancestraux » Tous les droits ancestraux et issus de traités reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982*.

c. « Convention » La Convention de règlement relative aux pensionnats indiens datée du 10 mai 2006 conclue par le Canada pour régler les

réclamations relatives à des pensionnats approuvée dans les ordonnances accordées dans divers ressorts partout au Canada.

d. « Canada » La défenderesse, Sa Majesté la Reine.

e. « Période visée par le recours collectif » La période de 1920 à 1997.

f. « Dommages culturels, linguistiques et sociaux » Le dommage ou le préjudice que la création et la mise en œuvre de pensionnats et l'élaboration et la mise en œuvre de la politique relative aux pensionnats a causé aux coutumes, aux pratiques et au mode de vie éducatifs, gouvernementaux, économiques, culturels, linguistiques, spirituels et sociaux, aux structures de gouvernance traditionnelles ainsi qu'à la sécurité et au bien-être communautaire et individuel des Autochtones.

g. « Pensionnat(s) déteminés(s) » Le PIK et le PIS ou tout autre pensionnat désigné expressément comme membre du groupe des bandes.

h. « PIK » Le pensionnat indien de Kamloops.

i. « Pensionnats » Tous les pensionnats indiens reconnus en vertu de la Convention et énumérés à l'annexe A jointe à la présente ordonnance, laquelle annexe peut être modifiée de temps à autre par ordonnance de la Cour.

j. « Politique relative aux pensionnats » La politique du Canada concernant la mise en œuvre des pensionnats indiens.

k. « Survivants » Tous les autochtones qui ont fréquenté un pensionnat indien en tant qu'élève ou à des fins éducatives pendant une période quelconque au cours de la période visée par le recours collectif, à l'exclusion, pour tout survivant

individuel, des périodes pour lesquelles celui-ci a reçu une indemnité au moyen du paiement d'expérience commune en vertu de la convention de règlement. Pour plus de précision, les survivants sont tous ceux qui étaient membres du groupe de survivants précédemment certifié dans le cadre de cette affaire, dont les réclamations ont été réglées selon les conditions établies par la convention de règlement signée le [DATE] et approuvée par la Cour fédérale le [DATE];

l. « PIS » Le pensionnat indien de Sechelt.

g. Les membres du recours collectif sont les bandes indiennes demanderesses ainsi que les bandes indiennes qui se sont inscrites avant la date limite d'inscription fixée précédemment par la Cour.

h. L'une ou l'autre des parties peut demander à ce tribunal de modifier la liste des pensionnats indiens figurant à l'annexe « A » ci-jointe, aux fins de cette affaire.

Juge

ANNEXE « A »
jointe à l'ordonnance du juge MacDonald

LISTE DES PENSIONNATS

Pensionnats de la Colombie-Britannique

Ahousaht
Alberni
Cariboo (St. Joseph's, William's Lake)
Christie (Clayoquot, Kakawis)
Coqualeetza de 1924 à 1940
Cranbrook (St. Eugene's, Kootenay)
Kamloops
Île Kuper
Lejac (Fraser Lake)
Lower Post
St George's (Lytton)
St. Mary's (Mission)
St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)
Sechelt
St. Paul's (Squamish, North Vancouver)
Port Simpson (Crosby Home for Girls)
Kitimaat
Anahim Lake Dormitory (de septembre 1968 à juin 1977)

Pensionnats de l'Alberta

Assumption (Hay Lake)
Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)
Crowfoot (Blackfoot, St. Joseph's, Ste. Trinité)
Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)
Edmonton (Poundmaker, anciennement Red Deer Industrial)
Ermineskin (Hobbema)
Holy Angels (Fort Chipewyan, École des Saint-Anges)
Fort Vermilion (St. Henry's)
Joussard (St. Bruno's)
Lac La Biche (Notre Dame des Victoires)
Lesser Slave Lake (St. Peter's)

Morley (Stony/Stoney, a remplacé l'orphelinat McDougall)
Old Sun (Blackfoot)
Sacred Heart (Peigan, Brocket)
St. Albert (Youville)
St. Augustine (Smokey-River)
St. Cyprian (Queen Victoria's Jubilee Home, Peigan)
St. Joseph's (High River, Dunbow)
St. Mary's (Blood, Immaculate Conception)
St. Paul's (Blood)
Sturgeon Lake (Calais, St. Francis Xavier)
Wabasca (St. John's)
Whitefish Lake (St. Andrew's)
Grouard jusqu'en décembre 1957
Sarcee (St. Barnabas)

Pensionnats de la Saskatchewan
Beauval (Lac la Plonge)
File Hills
Gordon's
Lac La Ronge (voir Prince Albert)
Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)
Marieval (Cowesess, Crooked Lake)
Muscowequan (Lestock, Touchwood)
Onion Lake Anglican (voir Prince Albert)
Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)
Regina
Round Lake
St. Anthony's (Onion Lake, Sacred Heart)
St. Michael's (Duck Lake)
St. Philip's
Sturgeon Landing (remplacé par Guy Hill, MB)
Thunderchild (Delmas, St. Henri)
Crowstand
Fort Pelly
Cote Improved Federal Day School (septembre 1928 à juin 1940)

Pensionnats du Manitoba

Assiniboia (Winnipeg)

Birtle

Brandon

Churchill Vocational Centre

Cross Lake (St. Joseph's, Norway House)

Dauphin (anciennement McKay)

Elkhorn (Washakada)

Fort Alexander (Pine Falls)

Guy Hill (Clearwater, the Pas, anciennement Sturgeon Landing, SK)

McKay (The Pas, remplacé par Dauphin)

Norway House

Pine Creek (Campeville)

Portage la Prairie

Sandy Bay

Notre Dame Hostel (Norway House Catholic, Jack River Hostel, remplacé par Jack River Annex à Cross Lake)

Pensionnats de l'Ontario

Bishop Horden Hall (Moose Fort, Moose Factory)

Cecilia Jeffrey (Kenora, Shoal Lake)

Chapleau (St. John's)

Fort Frances (St. Margaret's)

McIntosh (Kenora)

Mohawk Institute

Mount Elgin (Muncey, St. Thomas)

Pelican Lake (Pelican Falls)

Poplar Hill

St. Anne's (Fort Albany)

St. Mary's (Kenora, St. Anthony's)

Shingwauk

Spanish Boys' School (Charles Garnier, St. Joseph's)

Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)

St. Joseph's/Fort William

Stirland Lake High School (Wahbon Bay Academy) du 1er septembre 1971 au 30 juin 1991
Cristal Lake High School (du 1er septembre 1976 au 30 juin 1986)

Pensionnats du Québec

Amos
Fort George (anglican)
Fort George (catholique romain)
La Tuque
Point Bleue
Sept-Îles
Foyers fédéraux à Great Whale River
Foyers fédéraux à Port Harrison
Foyers fédéraux à George River
Foyer fédéral à Payne Bay (Bellin)
Fort George Hostels (du 1er septembre 1975 au 30 juin 1978)
Mistassini Hostels (du 1er septembre 1971 au 30 juin 1978)

Pensionnats de la Nouvelle-Écosse

Shubenacadie

Pensionnats du Nunavut

Chesterfield Inlet (Joseph Bernier, Turquetil Hall)
Foyers fédéraux à Panniqtuug/Pangnirtang
Foyers fédéraux à Broughton Island/Qikiqtarjuaq
Foyers fédéraux à Cape Dorset Kinngait
Foyers fédéraux à Eskimo Point/Arviat
Foyers fédéraux à Igloolik/Iglulik
Foyers fédéraux à Baker Lake/Qamani'tuaq
Foyers fédéraux à Pond Inlet/Mittimatalik
Foyers fédéraux à Cambridge Bay
Foyers fédéraux à Lake Harbour
Foyers fédéraux à Belcher Islands
Foyers fédéraux à Frobisher Bay/Ukkivik
Federal Tent Hostel à Coppermine

Pensionnats des Territoires du Nord-Ouest

Aklavik (Immaculate Conception)

Aklavik (All Saints)

Fort McPherson (Fleming Hall)

Ford Providence (Sacred Heart)

Fort Resolution (St. Joseph's)

Fort Simpson (Bompas Hall)

Fort Simpson (Lapointe Hall)

Fort Smith (Breynat Hall)

HayRiver (St. Peter's)

Inuvik (Grollier Hall)

Inuvik (Stringer Hall)

Yellowknife (Akaitcho Hall)

Fort Smith -Grandin College

Foyer fédéral à Fort Franklin

Pensionnats du Yukon

Carcross (Chooulta)

Yukon Hall (Whitehorse/Protestant Hostel)

Coudert Hall (Whitehorse Hostel/Student Residence - remplacé par Yukon Hall)

Whitehorse Baptist Mission

Shingle Point Eskimo Residential School

St. Paul's Hostel de septembre 1920 à juin 1943

ANNEXE H

Modifié en vertu de l'ordonnance du Juge McDonald
Fait _____

Dossier nº T-1542-13

RECOURS COLLECTIF

FORMULE 171A - Règle 171

COUR FÉDÉRALE

ENTRE :

CHEF SHANE GOTTFRIEDSON, au nom de la BANDE INDIENNE DE TK'EMLÚPS TE SECWÉPEMC et

CHEF GARRY FESCHUK, au nom de la BANDE INDIENNE DE SECHELT

DEMANDEURS

et

Sa Majesté la Reine du chef du Canada, représentée par
LE PROCUREUR GÉNÉRAL DU CANADA

DÉFENDERESSE

DEUXIÈME DÉCLARATION MODIFIÉE

AU DÉFENDEUR

UNE INSTANCE A ÉTÉ INTRODUITE CONTRE VOUS par le demandeur. La cause d'action est exposée dans les pages suivantes.

SI VOUS DÉSIREZ CONTESTER L'INSTANCE, vous-même ou un avocat vous représentant devez préparer une défense selon la formule 171B des Règles des Cours fédérales, la signifier à l'avocat du demandeur ou, si ce dernier n'a pas retenu les services d'un avocat, au demandeur lui-même, et la déposer, accompagnée de la preuve de sa signification, à un bureau local de la Cour, DANS LES TRENTE JOURS suivant la date à laquelle la présente déclaration vous est signifiée, si la signification est faite au Canada.

Si la signification est faite aux États-Unis d'Amérique, vous avez quarante jours pour signifier et déposer votre défense. Si la signification est faite en dehors du Canada et des États-Unis d'Amérique, le délai est de soixante jours.

Des exemplaires des Règles des Cours fédérales ainsi que les renseignements concernant les bureaux locaux de la Cour et autres renseignements utiles peuvent être obtenus, sur demande, de l'administrateur de la Cour, à Ottawa (no de téléphone 613-992-4238), ou à tout bureau local.

SI VOUS NE CONTESTEZ PAS L'INSTANCE, un jugement peut être rendu contre vous en votre absence sans que vous receviez d'autres avis.

(Date)

Délivré par :_____
(Fonctionnaire du greffe)

Adresse du bureau local :_____

À :

Sa Majesté la Reine du chef du Canada,
au ministre des Affaires indiennes et du Nord canadien et
au procureur général du Canada
Ministère de la Justice
900 - 840 Howe Street
Vancouver, B.C. V6Z 2S9

MESURES DE REDRESSEMENT DEMANDÉES

1. Les représentants demandeurs, au nom des collectivités indiennes de Tk'emlúps te Secwépemc et de Sechelt, et au nom des membres du recours collectif, demandent :

(a) une déclaration selon laquelle la bande indienne de Sechelt (désignée sous le nom de bande shíshálh ou shíshálh) et la bande Tk'emlúps, ainsi que tous les membres du groupe des bandes indiennes du recours collectif autorisé par la Cour, ont le droit ancestral de parler leurs langues traditionnelles et de se livrer à leurs coutumes et pratiques religieuses traditionnelles;

(b) une déclaration portant que le Canada avait des obligations fiduciaires, constitutionnelles, d'origine législative et en common law envers les membres du recours collectif, qu'il a manqué à ces obligations et qu'il violé des conventions et des pactes internationaux ainsi que le droit international, en rapport avec les fins, l'établissement, le financement, le fonctionnement, la supervision, le contrôle, l'entretien et le soutien du PIS, du PIK et d'autres pensionnats indiens déterminés;

(c) une déclaration portant que la politique relative aux pensionnats, le PIK, le PIS et les pensionnats déterminés ont causé des dommages culturels, linguistiques et sociaux et un tort irréparable aux membres du recours collectif;

(d) une déclaration portant que le Canada a violé ou viole les droits linguistiques et culturels (ancestraux ou autres) des membres du recours collectif, ainsi que des violations de conventions et de pactes internationaux et des violations du droit international comme conséquence de son établissement, son financement, son administration, sa supervision, son contrôle, son entretien et son soutien de la politique relative aux pensionnats et les pensionnats déterminés et du fait que le Canada a obligé les membres du groupe des survivants à les fréquenter;

(e) une déclaration portant que le Canada est responsable envers les membres du recours collectif des dommages causés par son manquement à des obligations fiduciaires et constitutionnelles, d'origine législative et en common law, et par sa violation de droits ancestraux ainsi que par des violations de conventions et de pactes internationaux et des violations du droit international, en rapport avec les fins, l'établissement, le financement, l'administration, la supervision, le contrôle, l'entretien et le soutien des pensionnats déterminés et leur fréquentation obligatoire par les membres du groupe des survivants;

(f) les dommages-intérêts généraux non pécuniaires et pécuniaires et les dommages-intérêts spéciaux dont le Canada est redevable pour manquement à des obligations fiduciaires, constitutionnelles, d'origine législative et en common law et violation de droits ancestraux, ainsi que pour violations de conventions et de pactes internationaux et violations du droit international, en plus des montants pour rembourser le coût de soins en cours et l'élaboration de plans de bien-être pour les

membres du recours collectif ainsi que les coûts de la restauration, de la protection et de la préservation du patrimoine linguistique et culturel du groupe des bandes;

(g) la construction par le Canada de centres de guérison au sein des collectivités appartenant au groupe ;

(h) les dommages-intérêts exemplaires et punitifs dont le Canada est redevable;

(i) les intérêts avant et après jugement ;

(j) les coûts de la présente action;

(k) toute autre réparation que la Cour pourrait estimer juste.

DÉFINITIONS

2. Les définitions suivantes s'appliquent aux fins de la présente réclamation :

(a) « Autochtone(s) » ou « enfants autochtone(s) » Une ou des personnes dont les droits sont reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982*.

(b) « Droit ancestral » ou « droits ancestraux » Tous les droits ancestraux et issus de traités reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982*.

(c) « Loi » désigne la *Loi sur les Indiens*, L.R.C. 1985, c I-5 et ses prédécesseures, modifiées le cas échéant ;

(d) « Agents » désigne les fonctionnaires, les sous-traitants, les agents et les employés du Canada ainsi que les exploitants, les gestionnaires, les administrateurs, les enseignants et le personnel de chacun des pensionnats;

(e) « Convention » désigne la convention de règlement relative aux pensionnats indiens datée du 10 mai 2006 conclue par le Canada pour régler les réclamations relatives à des pensionnats approuvée dans les ordonnances accordées dans divers ressorts partout au Canada.

(f) « Groupe » désigne la bande indienne Tk'emlúps te Secwépemc et la bande shíshálh et toute autre bande indienne autochtone qui :

(i) a ou avait des membres qui sont ou ont été membres du groupe des survivants, ou dont la communauté abrite un pensionnat indien;

(ii) est spécifiquement ajouté la présente demande avec un ou plusieurs pensionnats spécifiquement déterminés.

(g) « Canada » La défenderesse, Sa Majesté la Reine du chef du Canada, représentée par le Procureur général du Canada ;

(h) « Période visée par le recours » désigne la période allant de 1920 à 1997 ;

(i) « Dommages culturels, linguistiques et sociaux » Le dommage ou le préjudice que la création et la mise en œuvre de pensionnats et l'élaboration et la mise en œuvre de la politique relative aux pensionnats a causé aux coutumes, aux pratiques et au mode de vie éducatifs, gouvernementaux, économiques, culturels, linguistiques, spirituels et sociaux, aux structures de gouvernance traditionnelles ainsi qu'à la sécurité et au bien-être communautaire et individuel des Autochtones.

(j) « Pensionnat(s) déteminé(s) » désigne le pensionnat PIK et le pensionnat PIS ;

(k) « PIK » Le pensionnat indien de Kamloops.

(l) « Pensionnats » Tous les pensionnats indiens reconnus en vertu de la Convention ;

(m) « Politique relative aux pensionnats » La politique du Canada concernant la mise en œuvre des pensionnats indiens.

(n) « PIS » Le pensionnat indien de Sechelt ;

(o) « Survivants » désigne tous les Autochtones ayant fréquenté un pensionnat en tant qu'élève ou à des fins éducatives pendant une période quelconque au cours de la période visée par le recours collectif, excepté tout membre individuel du recours collectif, des périodes au cours desquelles ce membre du recours collectif a reçu une indemnité au titre de paiement d'expérience commune en vertu de la convention de règlement relative aux pensionnats indiens. Pour plus de précision, les survivants sont tous ceux qui étaient membres du groupe de survivants précédemment certifié dans le cadre de cette affaire, dont les réclamations ont été réglées selon les conditions établies par la convention de règlement signée le [DATE] et approuvée par la Cour fédérale le [DATE].

LES PARTIES

Les demandeurs

3. La bande indienne Tk'emlúps te Secwépemc et la bande shíshálh sont des bandes indiennes autochtones et elles agissent toutes deux en tant que représentants demandeurs du groupe. Les membres du recours collectif représentent les intérêts collectifs et l'autorité de chacune de leurs communautés respectives.

Le défendeur

4. Le Canada est représenté dans cette procédure par le Procureur général du Canada. Le procureur général du Canada représente les intérêts du Canada et du Ministre des Affaires autochtones et du Nord Canada ainsi que des ministres responsables « Indiens » l'ayant précédé en vertu de l'article 91 (24) de la *Loi constitutionnelle* de 1867, et qui étaient, à toutes les époques en cause, responsables de l'élaboration et de la mise en œuvre de la politique relative aux pensionnats, ainsi que de l'entretien et du fonctionnement du PIK et du PIS.

EXPOSÉ DES FAITS

5. Au cours des dernières années, le Canada a reconnu l'impact dévastateur de sa politique relative aux pensionnats sur les peuples autochtones du Canada. La politique relative aux pensionnats du Canada a été conçue afin d'éradiquer la culture et l'identité autochtones et d'assimiler les peuples autochtones du Canada à la société eurocanadienne. Par cette politique, le Canada a sapé les fondements de l'identité de générations de peuples autochtones et a causé des dommages incommensurables aux personnes ainsi qu'aux communautés.

6. Le Canada a directement bénéficié de la politique relative aux pensionnats était le Canada, car ses obligations en ont été allégées, proportionnellement au nombre de générations et d'Autochtones qui ont cessé de reconnaître leur identité autochtone et ainsi moins exercé leurs droits garantis par la Loi et par les obligations fiduciaires et constitutionnelles, d'origine législative et en common law du Canada.

7. Le Canada a également bénéficié de la politique relative aux pensionnats, celle-ci ayant servi à affaiblir les revendications des peuples autochtones sur leurs terres et ressources traditionnelles. Le résultat a été la séparation des peuples autochtones de leurs cultures, de leurs traditions et finalement de leurs terres et de leurs ressources. Cette situation a rendu possible l'exploitation de ces terres et de ces

ressources par le Canada, non seulement sans le consentement des peuples autochtones, mais aussi, contrairement à leurs intérêts, à la Constitution du Canada et à la Proclamation royale de 1763.

8. La vérité de ce tort et les dommages causés ont maintenant été reconnus par le Premier ministre au nom du Canada, et par le règlement pancanadien des réclamations des personnes qui *ont résidé dans* les pensionnats du Canada en vertu de la convention de règlement ayant pris effet en 2007. Malgré la vérité et la reconnaissance du tort et des dommages causés, de nombreux membres des communautés autochtones du Canada ont été exclus de cette convention, non pas parce qu'ils n'ont pas *fréquenté* les pensionnats et subi des dommages culturels, linguistiques et sociaux, mais simplement parce qu'ils n'ont pas *résidé dans* des pensionnats.

9. La présente réclamation est présentée au nom des membres du recours collectif, composé de communautés autochtones au sein desquelles les pensionnats étaient situés, ou dont les membres sont ou étaient des survivants.

Le système de pensionnats

10. Les pensionnats ont été créés par le Canada avant 1874, en vue de l'éducation des enfants autochtones. Dès le début du vingtième siècle, le Canada a commencé à conclure des accords officiels avec diverses organisations religieuses (les « Églises ») pour assurer le fonctionnement des pensionnats. En vertu de ces accords, le Canada contrôlait, réglementait, supervisait et dirigeait tous les aspects du fonctionnement des pensionnats. Les Églises ont assuré le fonctionnement quotidien de nombreux pensionnats sous le contrôle, la supervision et la direction du Canada, pour lesquels le Canada a versé aux Églises une subvention *par personne*. En 1969, le Canada a directement repris le contrôle des opérations.

11. À partir de 1920, la politique des pensionnats prévoit la *fréquentation* obligatoire dans des pensionnats pour tous les enfants autochtones âgés de 7 à 15 ans. Le Canada a retiré la plupart des enfants autochtones de leur foyer et de leur communauté pour les déplacer dans des pensionnats qui se trouvaient souvent très loin. Cependant, dans certains cas, des enfants autochtones vivaient dans leurs foyers et au sein de leurs communautés; ceux-là devaient quand même fréquenter les pensionnats, mais en tant qu'élèves externes et non en tant que pensionnaires. Cette pratique a touché un nombre encore plus grand d'enfants au cours des dernières années de la politique relative aux pensionnats. Une fois dans un pensionnat, tous les enfants autochtones ont été confinés et privés de leur héritage, de leurs réseaux de soutien et de leur mode de vie; forcés d'adopter une langue étrangère et une culture qui leur était étrangère et punis en cas de manquement.

12. L'objectif de la politique relative aux pensionnats était l'intégration et l'assimilation complètes des enfants autochtones dans la culture eurocanadienne ainsi que l'effacement de leur langue, culture, religion et mode de vie traditionnels. Le Canada a voulu causer les dommages culturels, linguistiques et sociaux qui ont porté préjudice aux peuples et aux nations autochtones du Canada.

13. Le Canada a choisi d'être déloyal envers ses peuples autochtones, en mettant en œuvre la politique relative aux pensionnats dans son propre intérêt, notamment son intérêt économique, et au détriment et en ne tenant pas compte des intérêts des personnes autochtones envers lesquels le Canada avait des obligations fiduciaires et constitutionnelles. L'éradication intentionnelle de l'identité, de la culture, de la langue et des pratiques spirituelles autochtones, dans la mesure où elle est réussie, entraîne une réduction des obligations dues par le Canada en proportion du nombre d'individus, sur plusieurs générations, qui ne s'identifieraient plus comme autochtones et qui seraient moins susceptibles de revendiquer leurs droits en tant que personnes autochtones.

Les effets de la politique relative aux pensionnats sur les membres du recours collectif

La bande indienne Tk'emlúps

14. Les Tk'emlúpsemc, « le peuple du confluent », actuellement connus sous le nom de bande indienne Tk'emlúps te Secwépemc, sont des membres du peuple vivant le plus au nord du Plateau et des peuples Salish du continent de langue secwépemc (Shuswap) de la Colombie-Britannique. La bande indienne Tk'emlúps s'est établie sur une réserve actuellement adjacente à la ville de Kamloops, où le PIK a été établi par la suite.

15. Le secwepemctsin est la langue des Secwépemc. Il s'agit de l'unique moyen unique par lequel les connaissances et l'expérience culturelles, écologiques et historiques du peuple Secwépemc sont comprises et transmises entre les générations. C'est à travers la langue, les pratiques spirituelles et le passage de la culture et des traditions, notamment les rituels, le tambour, la danse, les chansons et les histoires, que les valeurs et les croyances du peuple Secwépemc sont comprises et partagées. Selon les Secwépemc, tous les aspects du savoir Secwépemc, notamment leur culture, leurs traditions, leurs lois et leurs langues, sont intégralement et essentiellement liés à leurs terres et à leurs ressources.

16. La langue, tout comme la terre, a été donnée aux Secwépemc par le Créateur afin de permettre la communication avec le peuple et le monde naturel. Cette communication a créé une relation de réciprocité et de coopération entre les Secwépemc et le monde naturel qui leur a permis de survivre et de s'épanouir dans des environnements difficiles. Ce savoir, transmis oralement de génération en génération, contenait les enseignements nécessaires au maintien de la culture, des traditions, des lois et de l'identité secwépemc.

17. Pour les Secwépemc, leurs pratiques spirituelles, leurs chants, leurs danses, leurs histoires orales, leurs récits et leurs cérémonies faisaient partie intégrante de leur vie et de leur société. Il est

absolument vital de conserver ces pratiques et traditions. Leurs chants, leurs danses, leurs percussions et leurs cérémonies traditionnelles relient les Secwépemc à leur terre et leur rappellent continuellement leurs responsabilités envers la terre, les ressources et le peuple Secwépemc.

18. Les cérémonies et pratiques spirituelles des Secwépemc, notamment leurs chants, leurs danses, leurs percussions et la transmission de leurs contes et de leur histoire, perpétuent leurs enseignements vitaux et leurs lois concernant la récolte des ressources, notamment des plantes médicinales, la chasse du gibier et la pêche du poisson, ainsi que la protection et la préservation respectueuses des ressources. Par exemple, conformément aux lois Secwépemc, les Secwépemc chantent et prient avant de récolter toute nourriture, tout médicament et toute autre matière provenant de la terre, et font une offrande pour remercier le Créateur et les esprits pour tout ce qu'ils prennent. Les Secwépemc croient que tous les êtres vivants ont un esprit et qu'il faut leur témoigner le plus grand respect. Ce sont ces croyances vitales et intégrales et ces lois traditionnelles, ainsi que d'autres éléments de la culture et de l'identité secwépemc, que le Canada a cherché à détruire avec la politique relative aux pensionnats.

La bande Shíshálh

19. La nation shíshálh, une branche des Premières nations salish de la côte, occupait à l'origine la partie sud de la côte de la Colombie-Britannique. Le peuple shíshálh s'est installé dans la région il y a des milliers d'années et regroupait environ 80 villages établis sur une vaste étendue de terre. Le peuple shíshálh se compose de quatre sous-groupes qui parlent la langue shashishalhem, qui est une langue distincte et unique, même si elle fait partie de la branche des Salish de la côte des langues salish.

20. La tradition shíshálh décrit la formation du monde shíshálh (l'histoire de Spelmulh). Tout commence par les esprits créateurs, envoyés par l'Esprit divin pour former le monde, ceux-ci ont creusé des vallées laissant une plage le long du bras de la Baie Porpoise. Plus tard, les transformateurs, un corbeau mâle et un vison femelle, ont ajouté des détails en sculptant des arbres et en formant des bassins d'eau.

21. La culture shíshálh comprend des chants, des danses et des percussions qui font partie intégrante de la culture et des pratiques spirituelles de ce peuple; elles constituent un lien avec la terre et le Créateur et permettent la transmission de son histoire et de ses croyances. Le peuple shíshálh avait recours au chant et à la danse pour raconter des histoires, bénir des événements et même à des fins de guérison. Leurs chants, danses et percussions symbolisent également les événements saisonniers majeurs qui font partie intégrante de la vie des Shíshálh. Leurs traditions comprennent également la fabrication et l'utilisation de masques, de paniers, de parures et d'outils pour la chasse et la pêche. Ce sont ces croyances vitales et intégrales et ces lois traditionnelles, ainsi que d'autres éléments de la culture et de l'identité shíshálh, que le Canada a cherché à détruire avec la politique relative aux pensionnats.

L'impact des pensionnats

22. Conformément à la politique relative aux pensionnats, une discipline stricte a été appliquée à tous les enfants autochtones ayant été contraints de fréquenter les pensionnats. À l'école, les enfants n'étaient pas autorisés à parler leur langue autochtone, même à leurs parents. Par conséquent, les membres de ces communautés autochtones étaient contraints d'apprendre l'anglais.

23. Conformément aux directives du Canada, notamment la politique relative aux pensionnats, la culture autochtone était strictement réprimée par les administrateurs de l'école. Au PIS, les membres des shishalh ont été contraints de brûler ou de donner aux agents du Canada des

mâts totémiques, des ornements, des masques et autres « objets chamaniques » et d'abandonner leurs potlatchs, leurs danses et leurs festivités hivernales, ainsi que d'autres éléments faisant partie intégrante de la culture et de la société autochtones des peuples shíshálh et Secwépemc.

24. Étant donné que le PIS était physiquement situé dans la communauté shíshálh, le Canada, à la fois directement et par l'intermédiaire de ses agents, surveillait les aînés et punissait ceux-ci sévèrement lorsqu'ils pratiquaient leur culture, parlaient leur langue ou transmettaient celles-ci aux générations futures. Malgré cette surveillance étroite, les membres du peuple shíshálh ont lutté, souvent sans succès, pour pratiquer, protéger et préserver leurs chansons, leurs masques, leurs danses et leurs autres pratiques culturelles.

25. Les Tk'emlúps te Secwépemc ont subi un sort semblable en raison de leur proximité avec le PIK.

26. On a inculqué aux enfants des pensionnats la honte de leur identité, de leur culture, de leur spiritualité et de leurs pratiques autochtones. On les qualifiait, entre autres épithètes méprisantes, de « sales sauvages » et de « païens » et on leur apprenait même à renoncer à leur identité. Le mode de vie, les traditions, les cultures et les pratiques spirituelles autochtones des membres du recours collectif ont été supplantés par l'identité eurocanadienne qui leur a été imposée par le Canada dans le cadre de la politique relative aux pensionnats.

27. Les membres du recours collectif ont perdu, en tout ou en partie, leur viabilité économique traditionnelle, leur autonomie gouvernementale et leurs lois, leur langue, leur assise territoriale et leurs enseignements fondés sur la terre, leurs pratiques spirituelles et religieuses traditionnelles, ainsi que le sens de leur identité collective.

28. La politique relative aux pensionnats, mise en œuvre par le biais des pensionnats, a dévasté les communautés du groupe sur les plans culturel, linguistique et social tout en modifiant leur mode de vie traditionnel.

Règlement entre le Canada et les anciens élèves pensionnaires

29. Depuis la fermeture des pensionnats jusqu'à la fin des années 1990, les communautés autochtones du Canada ont dû composer avec les dommages et les souffrances de leurs membres à la suite de la politique relative aux pensionnats, sans obtenir aucune reconnaissance de la part du Canada. Au cours de cette période, les survivants des pensionnats ont commencé à parler de plus en plus ouvertement des conditions horribles et des abus qu'ils ont subis, ainsi que de l'impact dramatique que ceux-ci ont eu sur leur vie. Durant ce temps, de nombreux survivants se sont suicidés ou ont se sont automédicamentés au point d'en mourir. Ces décès ont dévasté la vie et la stabilité des communautés représentées par le groupe.

30. En janvier 1998, le Canada a publié une déclaration de réconciliation présentant des excuses et reconnaissant l'échec de la politique relative aux pensionnats. Le Canada a reconnu que la politique relative aux pensionnats avait pour but d'assimiler les peuples autochtones et qu'il avait eu tort de poursuivre cet objectif. Les demandeurs plaident que la déclaration de réconciliation du Canada est une admission par le Canada des faits et des obligations énoncés dans les présentes et qu'elle est pertinente à la demande de dommages-intérêts des Demandeurs, en particulier les dommages-intérêts punitifs.

31. La déclaration de réconciliation affirme, en partie, ce qui suit :

> *Malheureusement, notre histoire en ce qui concerne le traitement des peuples autochtones est bien loin de nous inspirer de la fierté. Des attitudes empreintes de sentiments de supériorité raciale et culturelle ont mené à une*

> *répression de la culture et des valeurs autochtones. En tant que pays, nous sommes hantés par nos actions passées qui ont mené à l'affaiblissement de l'identité des peuples autochtones, à la disparition de leurs langues et de leurs cultures et à l'interdiction de leurs pratiques spirituelles. Nous devons reconnaître les conséquences de ces actes sur les nations qui ont été fragmentées, perturbées, limitées ou même anéanties par la dépossession de leurs territoires traditionnels, par la relocalisation des peuples autochtones et par certaines dispositions de la Loi sur les Indiens. Nous devons reconnaître que ces actions ont eu pour effet d'éroder les régimes politiques, économiques et sociaux des peuples et des nations autochtones.*
>
> *Avec ce passé comme toile de fond, on ne peut que rendre hommage à la force et à l'endurance remarquables des peuples autochtones qui ont préservé leur diversité et leur identité historique. Le gouvernement du Canada adresse aujourd'hui officiellement ses plus profonds regrets à tous les peuples autochtones du Canada à propos des gestes passés du gouvernement fédéral, qui ont contribué aux difficiles passages de l'histoire de nos relations.*
>
> *Un des aspects de nos rapports avec les peuples autochtones durant cette période, le système des écoles résidentielles, mérite une attention particulière. Ce système a séparé de nombreux enfants de leur famille et de leur collectivité et les a empêchés de parler leur propre langue, ainsi que d'apprendre leurs coutumes et leurs cultures. Dans les pires cas, il a laissé des douleurs et des souffrances personnelles qui se font encore sentir aujourd'hui dans les collectivités autochtones. Tragiquement, certains enfants ont été victimes de sévices physiques et sexuels.*
>
> *Le gouvernement reconnaît le rôle qu'il a joué dans l'instauration et l'administration de ces écoles. Particulièrement pour les personnes qui ont subi la tragédie des sévices physiques et sexuels dans des pensionnats, et pour celles qui ont porté ce fardeau en pensant, en quelque sorte, en être responsables, nous devons insister sur le fait que ce qui s'est passé n'était pas de leur faute et que cette situation n'aurait jamais dû se produire. À tous ceux d'entre vous qui ont subi cette tragédie dans les pensionnats, nous exprimons nos regrets les plus sincères. Afin de panser les blessures laissées par le régime des pensionnats, le gouvernement du Canada propose de travailler avec les Premières nations, les Inuits, les Métis, les communautés religieuses et les autres parties concernées pour résoudre les problèmes de longue date auxquels ils ont à faire face. Nous devons travailler ensemble pour trouver une stratégie de guérison en vue d'aider les personnes et les collectivités à affronter les conséquences de cette triste période de notre histoire…*

32. La réconciliation est un processus permanent. En renouvelant notre partenariat, nous devons veiller à ce que les erreurs qui ont marqué notre relation passée ne se reproduisent pas. Le

gouvernement du Canada reconnaît que les politiques visant à assimiler les peuples autochtones, hommes et femmes, n'étaient pas le moyen de bâtir une communauté forte… Le 11 juin 2008, le premier ministre Stephen Harper a présenté, au nom du Canada, des excuses (« Excuses ») reconnaissant les torts causés par la politique relative aux pensionnats indiens du Canada :

> *Pendant plus d'un siècle, les pensionnats indiens ont séparé plus de 150 000 enfants autochtones de leurs familles et de leurs communautés. Dans les années 1870, en partie afin de remplir son obligation d'instruire les enfants autochtones, le gouvernement fédéral a commencé à jouer un rôle dans l'établissement et l'administration de ces écoles.* ***Le système des pensionnats indiens visait deux objectifs principaux : isoler les enfants et les soustraire à l'influence de leurs foyers, de leurs familles, de leurs traditions et de leur culture, et les intégrer par l'assimilation dans la culture dominante.*** *Ces objectifs reposaient sur l'hypothèse que les cultures et les croyances spirituelles des Autochtones étaient inférieures. D'ailleurs, certains cherchaient, selon une expression devenue tristement célèbre,* ***« à tuer l'Indien au sein de l'enfant ».*** *Aujourd'hui, nous reconnaissons que cette politique d'assimilation était erronée, qu'elle a fait beaucoup de mal et qu'elle n'a aucune place dans notre pays. [****l'italique et les caractères gras sont de l'auteur****]*

33. Dans ses excuses, le premier ministre a reconnu certains faits importants concernant la politique des pensionnats et son impact sur les enfants autochtones :

> *Le gouvernement du Canada a érigé un système d'éducation dans le cadre duquel de très jeunes enfants ont souvent été arrachés à leurs foyers et, dans bien des cas, emmenés loin de leurs communautés. Bon nombre d'entre eux étaient mal nourris, mal vêtus et mal logés. Tous ont été privés des soins et du soutien de leurs parents et des membres de leurs communautés. Les langues et cultures des Premières nations, des Inuits et des Métis étaient interdites dans ces écoles. Malheureusement, certains de ces enfants sont morts en pension et d'autres ne sont jamais retournés chez eux.*
>
> *Le gouvernement reconnaît aujourd'hui que les conséquences de la politique sur les pensionnats indiens ont été très néfastes et que cette politique a causé des dommages durables à la culture, au patrimoine et à la langue autochtones.*
>
> *L'héritage laissé par les pensionnats indiens a contribué à des problèmes sociaux qui persistent dans de nombreuses communautés aujourd'hui.*
>
> * * *

> *Nous reconnaissons maintenant que nous avons eu tort de couper les enfants de leur culture et de leurs traditions riches et vivantes, créant ainsi un vide dans tant de vies et de communautés, et nous nous excusons d'avoir agi ainsi. Nous reconnaissons maintenant qu'en séparant les enfants de leurs familles, nous avons réduit la capacité de nombreux anciens élèves à élever adéquatement leurs propres enfants et avons scellé le sort des générations qui ont suivi, et nous nous excusons d'avoir agi ainsi. Nous reconnaissons maintenant que, beaucoup trop souvent, ces institutions donnaient lieu à des cas de sévices ou de négligence et n'étaient pas contrôlées de manière adéquate, et nous nous excusons de ne pas avoir su vous protéger. En plus d'avoir vous-mêmes subi ces mauvais traitements pendant votre enfance, une fois devenus parents à votre tour, vous avez été impuissants à éviter le même sort à vos enfants, et nous le regrettons.*
>
> *Le fardeau de cette expérience pèse sur vos épaules depuis beaucoup trop longtemps. Ce fardeau nous revient directement, en tant que gouvernement et en tant que pays. Il n'y a pas de place au Canada pour que les attitudes qui ont inspiré le système de pensionnats indiens puissent prévaloir à nouveau. Vous tentez de vous remettre de cette épreuve depuis longtemps, et d'une façon très concrète, nous vous rejoignons maintenant dans ce cheminement. Le gouvernement du Canada présente ses excuses les plus sincères aux peuples autochtones du Canada pour avoir si profondément manqué à son devoir envers eux, et leur demande pardon.*

Le manquement du Canada à ses obligations envers les membres du recours collectif

34. De par l'élaboration de la politique relative aux pensionnats et par son exécution, soit la fréquentation forcée des pensionnats, le Canada a causé des pertes inestimables aux membres du recours collectif.

35. Les membres du recours collectif ont tous été affectés par la répression ou l'élimination de leurs cérémonies traditionnelles et par la perte de la structure de gouvernance héréditaire sur laquelle ils comptaient pour gouverner leurs peuples et leurs terres.

Les obligations du Canada

36. Le Canada était responsable de l'élaboration et de la mise en œuvre de tous les aspects de la politique relative aux pensionnats, notamment tout ce qui avait trait au fonctionnement et à l'administration des pensionnats. Les Églises ont servi d'agents du Canada afin de l'aider à

atteindre ses objectifs; le Canada étant responsable de ces objectifs et des moyens mis en œuvre en vue de leur réalisation. Le Canada était responsable de :

(a) l'administration de la Loi et des lois qui l'ont précédée ainsi que de toutes les autres lois relatives aux Autochtones et de tous les règlements promulgués en vertu de ces lois et de celles qui les ont précédées pendant la période visée par le recours;

(b) la gestion, du fonctionnement et de l'administration du ministère des Affaires indiennes et du Nord canadien et de ses prédécesseurs et des ministères et services connexes, ainsi que les décisions prises par ces ministères et services;

(c) la construction, du fonctionnement, de l'entretien, de la propriété, du financement, de l'administration, de la supervision, de l'inspection et de la vérification des pensionnats ainsi que de la création, la conception et la mise en œuvre du programme d'éducation visant les Autochtones qui les ont fréquentés;

(d) la sélection, du contrôle, de la formation, de la supervision et de la réglementation des exploitants des pensionnats, notamment leurs employés, préposés, agents et mandataires, et de la prise en charge, l'éducation, le contrôle et le bien-être des autochtones qui fréquentaient les pensionnats;

(e) la préservation, de la promotion, de la conservation et l'absence d'interférence avec les droits ancestraux, dont le droit de conserver et pratiquer leur culture, leur spiritualité, leur langue et leurs traditions, ainsi que le droit d'apprendre pleinement leur culture, leur spiritualité, leur langue et leurs traditions auprès de leur famille, de leur famille élargie et de leur communauté;

(f) la prise en charge et la surveillance de tous les survivants pendant qu'ils fréquentaient les pensionnats au cours de la période visée par le recours.

37. De plus, le Canada s'est engagé, pendant toute la période en cause, à respecter le droit international en ce qui concerne le traitement de sa population, ces obligations, qui ont été violées, constituant un engagement minimal envers les peuples autochtones du Canada, dont les membres du recours collectif. Plus spécifiquement, les violations commises par le Canada concernent le non-respect des dispositions et de l'esprit de :

(a) la *Convention pour la prévention et la répression du crime de génocide*, 78 RTNU 277 (entrée en vigueur : 12 janvier 1951), et en particulier l'article 2(b), (c) et (e) de cette convention, en s'engageant dans la destruction intentionnelle de la culture des enfants et des communautés autochtones, causant des blessures culturelles profondes et permanentes au groupe du recours collectif;

(b) la *Déclaration des droits de l'enfant*, Rés AG 1386 (XIV), Doc off AGNU, 14e session, supp n° 16, Doc NU A/4354 (1959) 19 en ne fournissant pas aux enfants autochtones les moyens nécessaires de se développer de façon normale, matériellement et spirituellement, et en ne les mettant pas en mesure de gagner leur vie et de les protéger contre l'exploitation;

(c) la *Convention relative aux Droits de l'enfant*, Rés AG 44/25, annexe, Doc off AGNU, 44e session, supp no 49, Doc NU A/44/49 (1989) 167; 1577 RTNU 3; 28 ILM 1456 (1989), et en particulier les articles 29 et 30 de cette convention, en ne fournissant pas aux enfants autochtones une éducation visant à inculquer le respect de leurs parents, de leur identité culturelle, de leur langue et de leurs valeurs, et en niant le droit des enfants autochtones d'avoir leur propre vie culturelle, de professer et de pratiquer leur propre religion et d'employer leur propre langue;

(d) le *Pacte international relatif aux droits civils et politiques*, Rés AG 2200A (XXI), Doc off ANGU, 21e session, supp n° 16, Doc NU A/6316 (1966) 52, 999 RTUN 171 (entrée en vigueur : 23 mars 1976), en particulier les articles 1 et 27 de ce pacte, en portant atteinte aux droits des membres du recours collectif de conserver et de pratiquer leur culture, leur spiritualité, leur langue et leurs traditions, au droit d'apprendre pleinement leur culture, leur spiritualité, leur langue et leurs traditions auprès de leur famille, de leur famille élargie et de leur communauté et au droit d'enseigner leur culture, leur spiritualité, leur langue et leurs traditions à leurs propres enfants, petits-enfants, à leurs familles élargies et à leurs communautés;

(e) la *Déclaration américaine des droits et devoirs de l'homme*, Rés OEA XXX, adoptée par la neuvième Conférence internationale des États américains (1948), réimprimée dans les *Documents de base sur les droits de l'homme dans le Système Interaméricain*, OEA/Ser.L.V//II.82 doc 6 rév 1 (1992) 17, et en particulier l'article XIII, en violant le droit des membres du recours collectif de participer à la vie culturelle de leur communauté;

(f) la *Déclaration des Nations Unies sur les droits des peuples autochtones,* Rés AG 61/295, Doc NU A/RES/61/295 (13 sept. 2007), 46 ILM 1013 (2007), signée par le Canada le 12 novembre 2010, et en particulier l'article 8, 2(d), qui l'engage à mettre en place des mécanismes de recours efficaces en cas d'assimilation forcée.

38. En vertu de la présomption de conformité du droit canadien au droit international, une violation des obligations prévues par ce dernier constitue une preuve de la violation du droit interne.

Violation des obligations fiduciaires et constitutionnelles

39. Le Canada a des obligations constitutionnelles et une relation fiduciaire avec les peuples autochtones du Canada. Le Canada a créé, planifié, établi, mis en place, inauguré, exploité, financé, supervisé, contrôlé et réglementé les pensionnats et a établi la politique relative aux

pensionnats. Compte tenu de ces lois, et en vertu de la *Loi constitutionnelle de 1867*, de la *Loi constitutionnelle de 1982* et des dispositions de la Loi, telle que révisée, le Canada avait une obligation fiduciaire envers les membres du recours collectif.

40. Parmi les devoirs constitutionnels du Canada, on peut citer l'obligation de préserver l'honneur de la Couronne dans toutes ses relations avec les peuples autochtones, y compris avec les membres du recours collectif. Cette obligation est née avec l'affirmation de la souveraineté de la Couronne dès le premier contact et se poursuit dans le cadre des relations suivant les traités. Cette obligation est et demeure une obligation de la Couronne et était une obligation de la Couronne lors de toute la période en cause. L'honneur de la Couronne est un principe juridique qui exige que la Couronne agisse en tout temps de la manière la plus honorable possible afin de protéger les intérêts des peuples autochtones dans ses relations avec ceux-ci, depuis le premier contact et après la signature de traités.

41. Les obligations fiduciaires du Canada l'obligeaient à agir en tant que protecteur des droits ancestraux des membres du recours collectif, à savoir la protection et la préservation de leur langue, de leur culture et de leur mode de vie, et l'obligation de prendre des mesures correctives afin de rétablir la culture, l'histoire et le statut des demandeurs, ou de les aider à le faire. À tout le moins, l'obligation du Canada envers les peuples autochtones comprenait l'obligation de ne pas réduire délibérément le nombre de bénéficiaires envers lesquels le Canada avait des obligations.

42. Les obligations fiduciaires et constitutionnelles du Canada s'étendent au recours collectif, car la politique relative aux pensionnats avait pour but de miner et de chercher à détruire le mode de vie de ces nations dont les identités étaient et sont considérées comme collectives.

43. Le Canada a agi dans son propre intérêt et à l'encontre des intérêts des enfants autochtones, non seulement en étant déloyal envers ces enfants et les communautés autochtones,

mais il les a également trahis alors qu'il avait le devoir de protéger. Le Canada a abusé de son pouvoir discrétionnaire et de son autorité sur les peuples autochtones, en particulier sur les enfants, pour son propre bénéfice. La politique relative aux pensionnats indiens a été mise en œuvre par le Canada, en tout ou en partie, pour éradiquer ce que le Canada considérait comme le « problème indien ». En l'espèce, le Canada a cherché à se défaire de ses responsabilités morales et financières envers les peuples autochtones, des dépenses et des inconvénients liés à la cohabitation avec des cultures, des langues, des habitudes et des valeurs différentes de l'héritage eurocanadien prédominant du Canada, et des enjeux découlant des revendications territoriales.

44. Le Canada, en violation de ses obligations fiduciaires, constitutionnelles, légales et de common law à l'égard du groupe de recours collectif, a manqué, et continue de manquer, à réparer adéquatement les dommages causés par ses actes, manquements et omissions. En particulier, le Canada n'a pas pris de mesures adéquates pour réparer les dommages culturels, linguistiques et sociaux subis par les membres du recours collectif, en dépit du fait que le Canada admette depuis 1998 le caractère répréhensible de la politique relative aux pensionnats.

Violation des droits ancestraux

45. Avant leur contact avec les Européens, les peuples shíshálh, Tk'emlúps et tous les membres du recours collectif, disposaient de lois, de coutumes et de traditions faisant partie intégrante de leurs sociétés distinctes. Plus particulièrement, et cela depuis une époque antérieure au contact avec les Européens, ces nations ont soutenu leurs membres, leurs communautés et leurs cultures distinctes en parlant leurs langues et en pratiquant leurs coutumes et leurs traditions.

46. En raison de la politique relative aux pensionnats indiens, les membres du recours collectif se sont vus refuser la possibilité de jouir de leurs droits ancestraux et de les exercer de façon collective au sein de leurs bandes, compte tenu, mais sans s'y limiter, des éléments suivants :

(a) les activités culturelles, spirituelles et traditionnelles shíshálh, tk'emlúps et autochtones ont été perdues ou altérées;

(b) les structures sociales traditionnelles, y compris le partage égal de l'autorité entre les dirigeants masculins et féminins, ont été perdues ou altérées;

(c) les langues shíshálh, tk'emlúps et d'autres langues autochtones ont été perdues ou altérées;

(d) les formes traditionnelles de parentalité shíshálh, Tk'emlúps et d'autres peuples autochtones ont été perdues ou altérées;

(e) le savoir-faire en matière de cueillette, de culture, de chasse et de préparation d'aliments traditionnels shíshálh, Tk'emlúps et d'autres peuples autochtones a été perdu ou altéré;

(f) les croyances spirituelles shíshálh, tk'emlúps autochtones ont été perdues ou altérées ;

47. De tout temps, le Canada avait et continue d'avoir l'obligation de protéger les droits ancestraux des membres du recours collectif, notamment le droit d'exercer leurs pratiques spirituelles et à la protection traditionnelle de leurs terres et de leurs ressources, ainsi que l'obligation de ne pas transgresser ou entraver les droits ancestraux des membres du recours collectif. Par sa politique relative aux pensionnats indiens, le Canada a manqué à ces devoirs, et ce sans justification.

Responsabilité du fait d'autrui

48. Le Canada est responsable du fait d'autrui pour avoir négligé les obligations fiduciaires, constitutionnelles, d'origine législative et en common law de ses agents.

49. De plus, les demandeurs tiennent le Canada pour seul responsable de la création et de la mise en œuvre de la politique relative aux pensionnats indiens et, en outre :

a. les demandeurs renoncent expressément à tout droit qu'ils pourraient avoir de recouvrer du Canada, ou de toute autre partie, toute partie de la perte des demandeurs qui pourrait être attribuable à la faute ou à la responsabilité d'un tiers et pour laquelle le Canada pourrait raisonnablement être en droit de réclamer à un ou plusieurs tiers une contribution, une indemnité ou une répartition en common law, en équité ou en vertu de la *Negligence Act*, RSBC. 1996, c. 333, ainsi modifiée; et

b. Les demandeurs ne chercheront pas à recouvrer d'une tierce partie, autre que le Canada, une partie de leurs pertes réclamées, ou qui auraient pu être réclamées à d'autres tiers.

Dommages

50. En raison de la violation des obligations fiduciaires, constitutionnelles, d'origine législative et en common law, et de la violation des droits autochtones par le Canada et ses agents, pour lesquels le Canada est responsable du fait d'autrui, les membres du groupe du recours collectif se sont vus privés de la possibilité d'exercer pleinement leurs droits autochtones collectivement, notamment le droit d'avoir un gouvernement traditionnel fondé sur leurs propres langues, pratiques spirituelles, lois et pratiques traditionnelles.

Motifs des dommages-intérêts punitifs et majorés

51. Le Canada a délibérément planifié l'éradication de la langue, de la religion et de la culture des membres du recours collectif. Ces actions étaient malveillantes et destinées à causer un préjudice, et dans les circonstances, les dommages-intérêts punitifs et majorés sont appropriés et nécessaires.

Fondement juridique de la réclamation

52. Les membres du recours collectif sont des bandes indiennes autochtones.

53. Les droits ancestraux des membres du recours collectif existaient et étaient exercés en vertu de l'article 35 de la *Loi constitutionnelle de 1982*, soit l'annexe B de la *Loi de 1982 sur le Canada* (R-U), 1982, c. 11, pour toute la période concernée par cette dernière.

54. Lors de cette période, le Canada avait envers les demandeurs et les membres du recours collectif une obligation spéciale et constitutionnelle de diligence, de bonne foi, d'honnêteté et de loyauté en vertu des obligations constitutionnelles du Canada et de son obligation d'agir dans l'intérêt supérieur des peuples autochtones et surtout des enfants autochtones particulièrement vulnérables. Le Canada a manqué à ces obligations, causant ainsi un préjudice.

55. Les membres du recours collectif appartiennent à des peuples autochtones qui disposaient de leurs lois, coutumes et traditions respectives, celles-ci faisant partie intégrante de leurs sociétés distinctes avant leur contact avec les Européens. Plus particulièrement, et depuis une époque antérieure au contact avec les Européens jusqu'à aujourd'hui, les peuples autochtones constituant les membres du recours collectif ont assuré la subsistance de leur peuple, de leurs communautés et de leur culture distincte en exerçant leurs lois et en pratiquant leurs coutumes et traditions respectives, parties intégrantes de leur mode de vie, qui comprennent la langue, la danse, la musique, les loisirs, l'art, la famille, le mariage et les responsabilités envers la communauté, ainsi que l'utilisation des ressources.

Constitutionnalité des articles de la *Loi sur les Indiens*

56. Les membres du recours collectif plaident que tout article de la Loi et des lois qui l'ont précédée, tout règlement adopté en vertu de la Loi et toute autre loi relative aux peuples autochtones qui fournit ou prétend fournir l'autorité légale pour l'éradication des peuples autochtones par la destruction de leurs langues, de leur culture, de leurs pratiques, de leurs traditions et de leur mode de vie, est en violation des articles 25 et 35(1) de la *Loi constitutionnelle de 1982*, des articles 1 et 2 de la *Déclaration canadienne des droits*, L.R.C. 1985, ainsi que les articles 7 et 15 de la *Charte canadienne des droits et libertés*, et doivent par conséquent être considérés comme n'ayant aucune force exécutoire.

57. Le Canada a délibérément planifié l'éradication de la langue, de la spiritualité et de la culture des demandeurs et des membres du recours collectif.

58. Les actions du Canada étaient délibérées et malveillantes et, dans ces circonstances, des dommages-intérêts punitifs, exemplaires et majorés sont appropriés et nécessaires.

59. Les demandeurs plaident et s'appuient sur les éléments suivants :

Loi sur les Cours fédérales, LRC., 1985, c. F-7, article 17 ;

Règles des Cours fédérales, DORS/98-106, partie 5.1 Recours collectifs ;

Loi sur la responsabilité civile de l'État et le contentieux administratif, LRC 1985, c. C-50, articles 3, 21, 22, et 23 ;

Charte canadienne des droits et libertés, articles 7, 15 ;

Loi constitutionnelle de 1982, articles 25 et 35(1),

Déclaration canadienne des droits, LRC 1985, app. III, préambule, articles 1 et 2 ;

Loi sur les Indiens, LRC 1985, articles 2(1), 3, 18(2), 114-122 et ses prédécesseures.

Traités internationaux :

Convention pour la prévention et la répression du crime de génocide, 78 RTNU 277 (entrée en vigueur : 12 janvier 1951);

Déclaration des droits de l'enfant, Rés AG 1386 (XIV), Doc off AGNU, 14e session, supp n° 16, Doc NU A/4354 (1959) 19;

Convention relative aux Droits de l'enfant, Rés AG 44/25, annexe, Doc off AGNU, 44e session, supp no 49, Doc NU A/44/49 (1989) 167; 1577 RTUN 3; 28 ILM 1456 (1989);

Pacte international relatif aux droits civils et politiques, Rés AG 2200A (XXI), Doc off AGNU, 21e session, supp no 16, Doc NU A/6316 (1966) 52, 999 RTUN 171 (entrée en vigueur : 23 mars 1976);

Déclaration américaine des droits et devoirs de l'homme, Rés OEA XXX, adoptée par la neuvième Conférence internationale des États américains (1948), réimprimée dans les *Documents de base sur les droits de l'homme dans le Système Interaméricain*, OEA/Ser.L.V//II.82 doc 6 rév 1 (1992) 17;

Déclaration des Nations Unies sur les droits des peuples autochtones, Rés AG 61/295, Doc off AGNU A/RES/61/295 (13 sept. 2007), 46 ILM 1013 (2007), signée par le Canada le 12 novembre 2010.

Les demandeurs proposent que cette action soit entendue à Vancouver, en Colombie-Britannique.

le 30 avril 2021

_____
Peter R. Grant, au nom de
tous les avocats des demandeurs.

Avocats des demandeurs

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Diane Soroka

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dhs@dsoroka.com

Federal Court | Cour fédérale

Date: 20150618

Docket: T-1542-12

Citation: 2015 FC 766

Ottawa, Ontario, June 18, 2015

PRESENT: The Honourable Mr. Justice Harrington

PROPOSED CLASS ACTION

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND AND THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE SECHELT INDIAN BAND AND THE SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE AND RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

ORDER

FOR REASONS GIVEN on 3 June 2015, reported at 2015 FC 706;

THIS COURT ORDERS that:

1. The above captioned proceeding shall be certified as a class proceeding with the following conditions:

a. The Classes shall be defined as follows:

Survivor Class: all Aboriginal persons who attended as a student or for educational purposes for any period at a Residential School, during the Class Period, excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the Indian Residential Schools Settlement Agreement.

Descendant Class: the first generation of persons descended from Survivor Class Members or persons who were legally or traditionally adopted by a Survivor Class Member or their spouse.

Band Class: the Tk'emlúps te Secwépemc Indian Band and the Sechelt Indian Band and any other Indian Band(s) which:

(i) has or had some members who are or were members of the Survivor Class, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically Identified Residential Schools.

b. The Representative Plaintiffs shall be:

For the Survivor Class:

Violet Catherine Gottfriedson

Charlotte Anne Victorine Gilbert

Diena Marie Jules

Darlene Matilda Bulpit

Frederick Johnson

Daphne Paul

For the Descendant Class:

Amanda Deanne Big Sorrel Horse

Rita Poulsen

For the Band Class:

Tk'emlúps te Secwépemc Indian Band

Sechelt Indian Band

c. The Nature of the Claims are:

Breaches of fiduciary and constitutionally mandated duties, breach of Aboriginal Rights, intentional infliction of mental distress, breaches of International Conventions and/or Covenants, breaches of international law, and negligence committed by or on behalf Canada for which Canada is liable.

d. The Relief claimed is as follows:

By the Survivor Class:

i. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties to the Survivor Class Representative Plaintiffs and the other Survivor Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools;

ii. a Declaration that members of the Survivor Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

iii. a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) of the Survivor Class;

iv. a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Survivor Class;

v. a Declaration that Canada is liable to the Survivor Class Representative Plaintiffs and other Survivor Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties, and Aboriginal Rights and for the intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose,

establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Residential Schools;

vi. general damages for negligence, breach of fiduciary, constitutionally-mandated, statutory and common law duties, Aboriginal Rights and intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, for which Canada is liable;

vii. pecuniary damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, loss of educational opportunities, breach of fiduciary, constitutionally-mandated, statutory and common law duties, Aboriginal Rights and for intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Survivor Class for which Canada is liable;

viii. exemplary and punitive damages for which Canada is liable; and

ix. pre-judgment and post-judgment interest and costs.

By the Descendant Class:

i. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties owed to the Descendant Class Representative Plaintiffs and the other Descendant Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools;

ii. a Declaration that the Descendant Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner

iii. a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) of the Descendant Class;

iv. a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Descendant Class;

v. a Declaration that Canada is liable to the Descendant Class Representative Plaintiffs and other Descendant Class members for the damages caused by its breach of fiduciary and constitutionally-mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at, and support of, the Residential Schools;

vi. general damages for breach of fiduciary and constitutionally-mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, for which Canada is liable;

vii. pecuniary damages and special damages for breach of fiduciary and constitutionally-mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Descendant Class for which Canada is liable;

viii. exemplary and punitive damages for which Canada is liable; and

ix. pre-judgment and post-judgment interest and costs.

By the Band Class:

i. a Declaration that the Sechelt Indian Band and Tk'emlúps te Secwépemc Indian Band, and all members of the Band Class, have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

ii. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties, as well as breaches of International Conventions and Covenants, and breaches of international law, to the Band Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance,

obligatory attendance of Survivor Class members at, and support of, the SIRS and the KIRS and other Identified Residential Schools;

iii. a Declaration that the Residential Schools Policy and the KIRS, the SIRS and Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Band Class;

iv. a Declaration that Canada was or is in breach of the Band Class members' linguistic and cultural rights, (Aboriginal Rights or otherwise), as well as breaches of International Conventions and Covenants, and breaches of international law, as a consequence of its establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Residential Schools Policy, and the Identified Residential Schools;

v. a Declaration that Canada is liable to the Band Class members for the damages caused by its breach of fiduciary and constitutionally mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;

vi. non-pecuniary and pecuniary damages and special damages for breach of fiduciary and constitutionally mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the ongoing cost

of care and development of wellness plans for members of the bands in the Band Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Band Class for which Canada is liable;

vii. The construction and maintenance of healing and education centres in the Band Class communities and such further and other centres or operations as may mitigate the losses suffered and that this Honourable Court may find to be appropriate and just;

viii. exemplary and punitive damages for which Canada is liable; and

ix. pre-judgment and post-judgment interest and costs.

e. The Common Questions of Law or Fact are:

a. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a fiduciary duty owed to the Survivor, Descendant and Band Class, or any of them, not to destroy their language and culture?

b. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach the cultural and/or linguistic rights, be they Aboriginal Rights or otherwise of the Survivor, Descendant and Band Class, or any of them?

c. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a fiduciary duty owed to the Survivor Class to protect them from actionable mental harm?

d. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a duty of care owed to the Survivor Class to protect them from actionable mental harm?

e. If the answer to any of (a)-(d) above is yes, can the Court make an aggregate assessment of the damages suffered by the Class as part of the common issues trial?

f. If the answer to any of (a)-(d) above is yes, was the Defendant guilty of conduct that justifies an award of punitive damages; and

g. If the answer to (f) above is yes, what amount of punitive damages ought to be awarded?

f. The following definitions apply to this Order:

a. "Aboriginal(s)", "Aboriginal Person(s)" or "Aboriginal Child(ren)" means a person or persons whose rights are recognized and affirmed by the *Constitution Act* , 1982, s. 35;

b. "Aboriginal Right(s)" means any or all of the Aboriginal and treaty rights recognized and affirmed by the *Constitution Act, 1982*, section. 35;

c. "Act" means the *Indian Act*, R.S.C. 1985, c. I-5 and its predecessors as have been amended from time to time;

d. "Agreement" means the Indian Residential Schools Settlement Agreement dated May 10, 2006 entered into by Canada to settle claims relating to Residential Schools as approved in the orders granted in various jurisdictions across Canada;

e. "Canada" means the Defendant, Her Majesty the Queen;

f. "Class Period" means 1920 to 1997;

g. "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the educational, governmental, economic, cultural, linguistic, spiritual and social customs, practices and way of life, traditional governance structures, as well as to the community and individual security and wellbeing, of Aboriginal Persons;

h. "Identified Residential School(s)" means the KIRS or the SIRS or any other Residential School specifically identified as a member of the Band Class;

i. "KIRS" means the Kamloops Indian Residential School;

j. "Residential Schools" means all Indian Residential Schools recognized under the Agreement and listed in Schedule "A" appended to this Order

which Schedule may be amended from time to time by Order of this Court.;

k. "Residential Schools Policy" means the policy of Canada with respect to the implementation of Indian Residential Schools; and

l. "SIRS" means the Sechelt Indian Residential School.

g. The manner and content of notices to class members shall be approved by this Court. Class members in the Survivor and Descendent class shall have until October 30, 2015 in which to opt-out, or such other time as this Court may determine. Members of the Band Class will have 6 months within which to opt-in from the date of publication of the notice as directed by the Court, or other such time as this Court may determine.

h. Either party may apply to this Court to amend the list of Residential Schools set out in Schedule "A" for the purpose of these proceedings.

"Sean Harrington"
Judge

SCHEDULE "A"
to the Order of Justice Harrington

LIST OF RESIDENTIAL SCHOOLS

British Columbia Residential Schools

Ahousaht

Alberni

Cariboo (St. Joseph's, William's Lake)

Christie (Clayoquot, Kakawis)

Coqualeetza from 1924 to 1940

Cranbrook (St. Eugene's, Kootenay)

Kamloops

Kuper Island

Lejac (Fraser Lake)

Lower Post

St George's (Lytton)

St. Mary's (Mission)

St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)

Sechelt

St. Paul's (Squamish, North Vancouver)

Port Simpson (Crosby Home for Girls)

Kitimaat

Anahim Lake Dormitory (September 1968 to June 1977)

Alberta Residential Schools

Assumption (Hay Lake)

Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)

Crowfoot (Blackfoot, St. Joseph's, Ste. Trinité)

Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)

Edmonton (Poundmaker, replaced Red Deer Industrial)

Ermineskin (Hobbema)

Holy Angels (Fort Chipewyan, École des Saint-Anges)

Fort Vermilion (St. Henry's)

Joussard (St. Bruno's)

Lac La Biche (Notre Dame des Victoires)

Lesser Slave Lake (St. Peter's)

Morley (Stony/Stoney, replaced McDougall Orphanage)

Old Sun (Blackfoot)

Sacred Heart (Peigan, Brocket)

St. Albert (Youville)

St. Augustine (Smokey-River)

St. Cyprian (Queen Victoria's Jubilee Home, Peigan)

St. Joseph's (High River, Dunbow)

St. Mary's (Blood, Immaculate Conception)

St. Paul's (Blood)

Sturgeon Lake (Calais, St. Francis Xavier)

Wabasca (St. John's)

Whitefish Lake (St. Andrew's)

Grouard to December 1957

Sarcee (St. Barnabas)

Saskatchewan Residential Schools

Beauval (Lac la Plonge)

File Hills

Gordon's

Lac La Ronge (see Prince Albert)

Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)

Marieval (Cowesess, Crooked Lake)

Muscowequan (Lestock, Touchwood)

Onion Lake Anglican (see Prince Albert)

Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)

Regina

Round Lake

St. Anthony's (Onion Lake, Sacred Heart)

St. Michael's (Duck Lake)

St. Philip's

Sturgeon Landing (replaced by Guy Hill, MB)

Thunderchild (Delmas, St. Henri)

Crowstand

Fort Pelly

Cote Improved Federal Day School (September 1928 to June 1940)

Manitoba Residential Schools

Assiniboia(Winnipeg)

Birtle

Brandon

Churchill Vocational Centre

Cross Lake (St. Joseph's, Norway House)

Dauphin (replaced McKay)

Elkhorn (Washakada)

Fort Alexander (Pine Falls)

Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)

McKay (The Pas, replaced by Dauphin)

Norway House

Pine Creek (Campeville)

Portage la Prairie

Sandy Bay

Notre Dame Hostel (Norway House Catholic, Jack River Hostel, replaced Jack River Annex at Cross Lake)

Ontario Residential Schools

Bishop Horden Hall (Moose Fort, Moose Factory)

Cecilia Jeffrey (Kenora, Shoal Lake)

Chapleau (St. Joseph's)

Fort Frances (St. Margaret's)

McIntosh (Kenora)

Mohawk Institute

Mount Elgin (Muncey, St. Thomas)

Pelican Lake (Pelican Falls)

Poplar Hill

St. Anne's (Fort Albany)

St. Mary's (Kenora, St. Anthony's)

Shingwauk

Spanish Boys' School (Charles Garnier, St. Joseph's)

Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)

St. Joseph's/Fort William

Stirland Lake High School (Wahbon Bay Academy) from September 1, 1971 to June 30, 1991

Cristal Lake High School (September 1, 1976 to June 30, 1986)

Quebec Residential Schools

Amos

Fort George (Anglican)

Fort George (Roman Catholic)

La Tuque

Point Bleue

Sept-Îles

Federal Hostels at Great Whale River

Federal Hostels at Port Harrison

Federal Hostels at George River

Federal Hostel at Payne Bay (Bellin)

Fort George Hostels (September 1, 1975 to June 30, 1978)

Mistassini Hostels (September 1, 1971 to June 30, 1978)

Nova Scotia Residential Schools

Shubenacadie

Nunavut Residential Schools

Chesterfield Inlet (Joseph Bernier, Turquetil Hall)

Federal Hostels at Panniqtuug/Pangnirtang

Federal Hostels at Broughton Island/Qikiqtarjuaq

Federal Hostels at Cape Dorset Kinngait

Federal Hostels at Eskimo Point/Arviat

Federal Hostels at Igloolik/Iglulik

Federal Hostels at Baker Lake/Qamani'tuaq

Federal Hostels at Pond Inlet/Mittimatalik

Federal Hostels at Cambridge Bay

Federal Hostels at Lake Harbour

Federal Hostels at Belcher Islands

Federal Hostels at Frobisher Bay/Ukkivik

Federal Tent Hostel at Coppermine

Northwest Territories Residential Schools

Aklavik (Immaculate Conception)

Aklavik (All Saints)

Fort McPherson (Fleming Hall)

Ford Providence (Sacred Heart)

Fort Resolution (St. Joseph's)

Fort Simpson (Bompas Hall)

Fort Simpson (Lapointe Hall)

Fort Smith (Breynat Hall)

HayRiver-(St. Peter's)

Inuvik (Grollier Hall)

Inuvik (Stringer Hall)

Yellowknife (Akaitcho Hall)

Fort Smith -Grandin College

Federal Hostel at Fort Franklin

Yukon Residential Schools

Carcross (Chooulta)

Yukon Hall (Whitehorse/Protestant Hostel)

Coudert Hall (Whitehorse Hostel/Student Residence -replaced by Yukon Hall)

Whitehorse Baptist Mission

Shingle Point Eskimo Residential School

St. Paul's Hostel from September 1920 to June 1943

Amended Pursuant to the Order of Justice Harrington Made June 3, 2015

Court File No. T-1542-13

~~**PROPOSED**~~ **CLASS PROCEEDING**

FORM 171A - Rule 171

FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND and the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL~~, AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by THE ATTORNEY GENERAL OF CANADA

DEFENDANT

FIRST RE-AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

(Date)

Issued by:_____
(Registry Officer)

Address of local office:_____

TO:

Her Majesty the Queen in Right of Canada,
Minister of Indian Affairs and Northern Development, and
Attorney General of Canada
Department of Justice
900 - 840 Howe Street
Vancouver, B.C. V6Z 2S9

RELIEF SOUGHT

The Survivor Class

1. The Representative Plaintiffs of the Survivor Class, on their own behalf, and on behalf of the members of the Survivor Class, claim:

(a) ~~an Order certifying this proceeding as a Class Proceeding pursuant to the Federal Court Class Proceedings Rules ("CPR") and appointing them as Representative Plaintiffs for the Survivor Class and any appropriate subgroup of that Class~~;

(b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the Plaintiffs and the other Survivor Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the ~~Identified~~ Residential Schools;

(c) a Declaration that members of the Survivor Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

(d) a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) ~~Aboriginal Rights~~ of the Survivor Class;

(e) a Declaration that the Residential Schools Policy and the ~~Identified~~ Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Survivor Class;

(f) a Declaration that Canada is liable to the Survivor Class Representative Plaintiffs and other Survivor Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties, and Aboriginal Rights and for the intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the ~~Identified~~ Residential Schools;

(g) non-pecuniary general damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights and intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law,, negligence and intentional infliction of mental distress for which Canada is liable;

(h) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, loss of educational opportunities, breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights and and intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Survivor Class for which Canada is liable;

(i) exemplary and punitive damages for which Canada is liable ;

(j) prejudgment and post-judgment interest;

(k) the costs of this action; and

(l) such further and other relief as this Honourable Court may deem just.

The Descendant Class

2. The Representative Plaintiffs of the Descendant Class, on their own behalf and on behalf of the members of the Descendant Class, claim:

(a) ~~an Order certifying this proceeding as a Class Proceeding pursuant to the CPR and appointing them as Representative Plaintiffs for the Descendant Class and any appropriate subgroup of that Class~~;

(b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the Plaintiffs and the other Descendant Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the ~~Identified~~ Residential Schools;

(c) a Declaration that the Descendant Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

(d) a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) ~~Aboriginal Rights~~ of the Descendant Class;

(e) a Declaration that the Residential Schools Policy and the ~~Identified~~ Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Descendant Class;

(f) a Declaration that Canada is liable to the Plaintiffs and other Descendant Class members for the damages caused by its breach of fiduciary, constitutionally-

mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the ~~Identified~~ Residential Schools;

(g) non-pecuniary general damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, for which Canada is liable;

(h) pecuniary general damages and special damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Descendant Class for which Canada is liable;

(i) exemplary and punitive damages for which Canada is liable;

(j) pre-judgment and post-judgment interest;

(k) the costs of this action; and

(l) such further and other relief as this Honourable Court may deem just;

The Band Class

3. The Representative Plaintiffs of the Band Class claim:

(a) ~~an Order certifying this proceeding as a Class Proceeding pursuant to the CPR and appointing them as Representative Plaintiffs for the Band Class~~;

(b) a Declaration that the Sechelt Indian Band (referred to as the shíshálh or shíshálh band) and Tk'emlúps Band, and all members of the Band Class, have ~~existing~~ Aboriginal Rights ~~within the meaning of s. 35(1) of the *Constitution Act, 1982*~~ to speak their traditional languages and engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

(c) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties as well as breaches of International Conventions and Covenants, and breaches of international law, to the Band Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the SIRS and the KIRS and other Identified Residential Schools;

(d) a Declaration that the Residential Schools Policy and the KIRS, the SIRS and Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Band Class;

(e) a Declaration that Canada was or is in breach of the Band Class members' linguistic and cultural rights, (Aboriginal Rights or otherwise), as well as breaches of International Conventions and Covenants, and breaches of international law, as a consequence of its establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Residential Schools Policy, and the Identified Residential Schools; ~~Aboriginal Rights;~~

(f) a Declaration that Canada is liable to the Band Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;

(g) non-pecuniary and pecuniary general damages and special damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the ongoing cost of care and development of wellness plans for individual members of the bands in the Band Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Bands for which Canada is liable;

(h) the construction of healing centres in the Band Class communities by Canada;

(i) exemplary and punitive damages for which Canada is liable;

(j) pre-judgment and post-judgment interest;

(k) the costs of this action; and

(l) such further and other relief as this Honourable Court may deem just.

DEFINITIONS

4. The following definitions apply for the purposes of this Claim:

(a) "Aboriginal(s)", "Aboriginal Person(s)" or "Aboriginal Child(ren)" means a person or persons whose rights are recognized and affirmed by the *Constitution Act*, 1982, s. 35;

(b) "Aboriginal Right(s)" means any or all of the aboriginal and treaty rights recognized and affirmed by the *Constitution Act*, 1982, s. 35;

(c) "Act" means the *Indian Act*, R.S.C. 1985, c. I-5 and its predecessors as have been amended from time to time;

(d) "Agents" means the servants, contractors, agents, officers and employees of Canada and the operators, managers, administrators and teachers and staff of each of the Residential Schools;

(e) "Agreement" means the Indian Residential Schools Settlement Agreement dated May 10, 2006 entered into by Canada to settle claims relating to Residential Schools as approved in the orders granted in various jurisdictions across Canada;

(f) "Band Class" means the Tk'emlúps te Secwépemc Indian Band and the shíshálh band and any other Aboriginal Indian Band(s) which:

(i) has or had some members who are or were members of the Survivor Class, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically identified Residential Schools.

(g) "Canada" means the Defendant, Her Majesty the Queen in right of Canada as represented by the Attorney General of Canada;

(h) "Class" or "Class members" means all members of the Survivor Class, Descendant Class and Band Class as defined herein;

(i) "Class Period" means 1920 to ~~1979~~1997;

(j) "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the educational, governmental, economic, cultural, linguistic, spiritual and social customs, practices and way of life, traditional governance structures, as well as to the community and individual security and wellbeing, of Aboriginal Persons;

(k) "Descendant Class" means the first generation of ~~all~~ persons ~~who are~~ descended from Survivor Class members or persons who were legally or traditionally adopted by a Survivor Class Member or their spouse;

(l) "Identified Residential School(s)" means the KIRS or the SIRS ~~or any other~~ Residential School ~~specifically identified by a member of the Band Class~~;

(m) "KIRS" means the Kamloops Indian Residential School;

(n) "Residential Schools" means all Indian Residential Schools recognized under the Agreement;

(o) "Residential Schools Policy" means the policy of Canada with respect to the implementation of Indian Residential Schools;

(p) "SIRS" means the Sechelt Indian Residential School;

(q) "Survivor Class" means all Aboriginal persons who attended as a student or for educational purposes for any period at ~~an Identified~~ Residential School, during the Class Period excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the Indian Residential Schools Settlement Agreement.

THE PARTIES

The Plaintiffs

5. The Plaintiff, Darlene Matilda Bulpit (nee Joe) resides on shíshálh band lands in British Columbia. Darlene Matilda Bulpit was born on August 23, 1948 and attended the SIRS for nine years, between the years 1954 and 1963. Darlene Matilda Bulpit is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

6. The Plaintiff, Frederick Johnson resides on shíshálh band lands in British Columbia. Frederick Johnson was born on July 21, 1960 and attended the SIRS for ten years, between the years 1966 and 1976. Frederick Johnson is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~7. The Plaintiff, Abigail Margaret August (nee Joe) resides on shíshálh band lands in British Columbia. Abigail Margaret August was born on August 21, 1954 and attended the SIRS for eight years, between the years 1959 and 1967. Abigail Margaret August is a proposed Representative Plaintiff for the Survivor Class.~~

~~8. The Plaintiff, Shelly Nadine Hoehne (nee Joe) resides on shíshálh band lands in British Columbia. Shelly Nadine Hoehne was born on June 23, 1952 and attended the SIRS for eight years, between the years 1958 and 1966. Shelly Nadine Hoehne is a proposed Representative Plaintiff for the Survivor Class.~~

9. The Plaintiff, Daphne Paul resides on shíshálh band lands in British Columbia. Daphne Paul was born on January 13, 1948 and attended the SIRS for eight years, between the years 1953 and 1961. Daphne Paul is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

10. The Plaintiff, Violet Catherine Gottfriedson resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Violet Catherine Gottfriedson was born on March 30, 1945 and attended the KIRS for four years, between the years 1958 and 1962. Violet Catherine Gottfriedson is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~11. The Plaintiff, Doreen Louise Seymour resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Doreen Louise Seymour was born on September 7, 1955 and attended the KIRS for five years, between the years 1961 and 1966. Doreen Louise Seymour is a proposed Representative Plaintiff for the Survivor Class.~~

12. The Plaintiff, Charlotte Anne Victorine Gilbert (nee Larue) resides in Williams Lake in British Columbia. Charlotte Anne Victorine Gilbert was born on May 24, 1952 and attended the KIRS for seven years, between the years 1959 and 1966. Charlotte Anne Victorine Gilbert is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~13. The Plaintiff, Victor Fraser (also known as Victor Frezie) resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Victor Fraser was born on June 11, 1957~~

~~and attended the KIRS for six years, between the years 1962 and 1968. Victor Fraser is a proposed Representative Plaintiff for the Survivor Class.~~

14. The Plaintiff, Diena Marie Jules resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Diena Marie Jules was born on September 12, 1955 and attended the KIRS for six years, between the years 1962 and 1968. Diena Marie Jules is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~15. The Plaintiff, Aaron Joe, resides on shíshálh band lands. Aaron Joe was born on January 19, 1972 and is the son of Valerie Joe, who attended the SIRS as a day scholar. Aaron Joe is a proposed Representative Plaintiff for the Descendant Class.~~

16. The Plaintiff, Rita Poulsen, resides on shíshálh band lands. Rita Poulsen was born on March 8, 1974 and is the daughter of Randy Joe, who attended the SIRS as a day scholar. Rita Poulsen is a ~~proposed~~ Representative Plaintiff for the Descendant Class.

17. The Plaintiff, Amanda Deanne Big Sorrel Horse resides on the Tk'emlúps te Secwépemc Indian Band reserve. Amanda Deanne Big Sorrel Horse was born on December 26, 1974 and is the daughter of Jo-Anne Gottfriedson who attended the KIRS for six years between the years 1961 and 1967. Amanda Deanne Big Sorrel Horse is a ~~proposed~~ Representative Plaintiff for the Descendant Class.

18. The Tk'emlúps te Secwépemc Indian Band and the shíshálh band are "bands" as defined by the Act and they both ~~propose to~~ act as Representative Plaintiffs for the Band Class. The Band Class members represent the collective interests and authority of each of their respective communities.

19. The individual Plaintiffs and the proposed Survivor and Descendant Class members are largely members of the shíshálh band and Tk'emlúps Indian Band, and members of Canada's First Nations and/or are the sons and daughters of members of these Aboriginal collectives. The individual Plaintiffs and Survivor and Descendant Class members are Aboriginal Persons within the meaning of the *Constitution Act, 1982,* s. 35.

The Defendant

20. Canada is represented in this proceeding by the Attorney General of Canada. The Attorney General of Canada represents the interests of Canada and the Minister of Aboriginal Affairs and Northern Development Canada and predecessor Ministers who were responsible for "Indians" under s.91(24) of the *Constitution Act, 1867*, and who were, at all material times, responsible for the formation and implementation of the Residential Schools Policy, and the maintenance and operation of the KIRS and the SIRS.

STATEMENT OF FACTS

21. Over the course of the last several years, Canada has acknowledged the devastating impact of its Residential Schools Policy on Canada's Aboriginal Peoples. Canada's Residential Schools Policy was designed to eradicate Aboriginal culture and identity and assimilate the Aboriginal Peoples of Canada into Euro-Canadian society. Through this policy, Canada ripped away the foundations of identity for generations of Aboriginal People and caused incalculable harm to both individuals and communities.

22. The direct beneficiary of the Residential Schools Policy was Canada as its obligations would be reduced in proportion to the number, and generations, of Aboriginal Persons who would no longer recognize their Aboriginal identity and would reduce their claims to rights

under the Act and Canada's fiduciary, constitutionally-mandated, statutory and common law duties.

23. Canada was also a beneficiary of the Residential Schools Policy, as the policy served to weaken the claims of Aboriginal Peoples to their traditional lands and resources. The result was a severing of Aboriginal People from their cultures, traditions and ultimately their lands and resources. This allowed for exploitation of those lands and resources by Canada, not only without Aboriginal Peoples' consent but also, contrary to their interests, the Constitution of Canada and the Royal Proclamation of 1763.

24. The truth of this wrong and the damage it has wrought has now been acknowledged by the Prime Minister on behalf of Canada, and through the pan-Canadian settlement of the claims of those who *resided at* Canada's Residential Schools by way of the Agreement implemented in 2007. Notwithstanding the truth and acknowledgement of the wrong and the damages caused, many members of Canada's Aboriginal communities were excluded from the Agreement, not because they did not *attend* Residential Schools and suffer Cultural, Linguistic and Social Damage, but simply because they did not *reside at* Residential Schools.

25. This claim is on behalf of the members of the Survivor Class, namely those who attended a~~an Identified~~ Residential School for the Cultural, Linguistic and Social Damage occasioned by that attendance, as well as on behalf of the Descendant Class, who are the first generation descendants of those within the Survivor Class, and the Band Class, consisting of the Aboriginal communities within which the ~~Identified~~ Residential Schools were situated, or whose members belong to ~~and within which the majority of~~ the Survivor and Descendant Class ~~members live~~.

26. The claims of the ~~proposed~~ Representative Plaintiffs are for the harm done to the Representative Plaintiffs as a result of members of the Survivor Class *attending* the KIRS and the SIRS and being exposed to the operation of the Residential Schools Policy and do not include the claims arising from residing at the KIRS or the SIRS for which specific compensation has been paid under the Agreement. This claim seeks compensation for the victims of that policy whose claims have been ignored by Canada and were excluded from the compensation in the Agreement.

The Residential School System

27. Residential Schools were established by Canada prior to 1874, for the education of Aboriginal Children. Commencing in the early twentieth century, Canada began entering into formal agreements with various religious organizations (the "Churches") for the operation of Residential Schools. Pursuant to these agreements, Canada controlled, regulated, supervised and directed all aspects of the operation of Residential Schools. The Churches assumed the day-to-day operation of many of the Residential Schools under the control, supervision and direction of Canada, for which Canada paid the Churches a *per capita* grant. In 1969, Canada took over operations directly.

28. As of 1920, the Residential Schools Policy included compulsory *attendance* at Residential Schools for all Aboriginal Children aged 7 to 15. Canada removed most Aboriginal Children from their homes and Aboriginal communities and transported them to Residential Schools which were often long distances away. However, in some cases, Aboriginal Children lived in their homes and communities and were similarly required to attend Residential Schools as day students and not residents. This practice applied to even more children in the later years

of the Residential Schools Policy. While at Residential School, all Aboriginal Children were confined and deprived of their heritage, their support networks and their way of life, forced to adopt a foreign language and a culture alien to them and punished for non-compliance.

29. The purpose of the Residential Schools Policy was the complete integration and assimilation of Aboriginal Children into the Euro-Canadian culture and the obliteration of their traditional language, culture, religion and way of life. Canada set out and intended to cause the Cultural, Linguistic and Social Damage which has harmed Canada's Aboriginal Peoples and Nations. ~~In addition to the inherent cruelty of the~~ As a result of Canada's requirements for the forced attendance of the Survivor Class members under the Residential Schools Policy ~~itself~~, many children attending Residential Schools were also subject to spiritual, physical, sexual and emotional abuse, all of which continued until the year 1997, when the last Residential School was closed.

30. Canada chose to be disloyal to its Aboriginal Peoples, implementing the Residential Schools Policy in its own self-interest, including economic self-interest, and to the detriment and exclusion of the interests of the Aboriginal Persons to whom Canada owed fiduciary and constitutionally-mandated duties. The intended eradication of Aboriginal identity, culture, language, and spiritual practices ~~and religion~~, to the extent successful, results in the reduction of the obligations owed by Canada in proportion to the number of individuals, over generations, who would no longer identify as Aboriginal and who would be less likely to make claims to their rights as Aboriginal Persons.

The Effects of the Residential Schools Policy on the Class Members

Tk'emlúps Indian Band

31. Tk'emlúpsemc, 'the people of the confluence', now known as the Tk'emlúps te Secwépemc Indian Band are members of the northernmost of the Plateau People and of the Interior-Salish Secwépemc (Shuswap) speaking peoples of British Columbia. The Tk'emlúps Indian Band was established on a reserve now adjacent to the City of Kamloops, where the KIRS was subsequently established. Most, if not all, of the students who *attended*, but did not *reside at* the KIRS were or are members of the Tk'emlúps Indian Band, resident or formerly resident on the reserve.

32. Secwepemctsin is the language of the Secwépemc, and it is the unique means by which the cultural, ecological, and historical knowledge and experience of the Secwépemc people is understood and conveyed between generations. It is through language, spiritual practices and passage of culture and traditions including their rituals, drumming, dancing, songs and stories, that the values and beliefs of the Secwépemc people are captured and shared. From the Secwépemc perspective all aspects of Secwépemc knowledge, including their culture, traditions, laws and languages, are vitally and integrally linked to their lands and resources.

33. Language, like the land, was given to the Secwépemc by the Creator for communication to the people and to the natural world. This communication created a reciprocal and cooperative relationship between the Secwépemc and the natural world which enabled them to survive and flourish in harsh environments. This knowledge, passed down to the next generation orally, contained the teachings necessary for the maintenance of Secwépemc culture, traditions, laws and identity.

34. For the Secwépemc, their spiritual practices, songs, dances, oral histories, stories and ceremonies were an integral part of their lives and societies. These practices and traditions are

absolutely vital to maintain. Their songs, dances, drumming and traditional ceremonies connect the Secwépemc to their land and continually remind the Secwépemc of their responsibilities to the land, the resources and to the Secwépemc people.

35. Secwépemc ceremonies and spiritual practices, including their songs, dances, drumming and passage of stories and history, perpetuate their vital teachings and laws relating to the harvest of resources, including medicinal plants, game and fish, and the proper and respectful protection and preservation of resources. For example, in accordance with Secwépemc laws, the Secwépemc sing and pray before harvesting any food, medicines, and other materials from the land, and make an offering to thank the Creator and the spirits for anything they take. The Secwépemc believe that all living things have spirits and must be shown utmost respect. It was these vital, integral beliefs and traditional laws, together with other elements of Secwépemc culture and identity, that Canada sought to destroy with the Residential Schools Policy.

Shíshálh band

36. The shíshálh Nation, a division of the Coast Salish First Nations, originally occupied the southern portion of the lower coast of British Columbia. The shíshálh People settled the area thousands of years ago, and occupied approximately 80 village sites over a vast tract of land. The shíshálh People are made up of four sub-groups that speak the language of Shashishalhem, which is a distinct and unique language, although it is part of the Coast Salish Division of the Salishan Language.

37. Shíshálh tradition describes the formation of the shíshálh world (Spelmulh story). Beginning with the creator spirits, who were sent by the Divine Spirit to form the world, they

carved out valleys leaving a beach along the inlet at Porpoise Bay. Later, the transformers, a male raven and a female mink, added details by carving trees and forming pools of water.

38. The shíshálh culture includes singing, dancing and drumming as an integral part of their culture and spiritual practices, a connection with the land and the Creator and passing on the history and beliefs of the people. Through song and dance the shíshálh People would tell stories, bless events and even bring about healing. Their songs, dances and drumming also signify critical seasonal events that are integral to the shíshálh. Traditions also include making and using masks, baskets, regalia and tools for hunting and fishing. It was these vital, integral beliefs and traditional laws, together with other elements of the shíshálh culture and identity, that Canada sought to destroy with the Residential Schools Policy.

The Impact of the ~~Identified~~ Residential schools

39. For all of the Aboriginal Children who were compelled to attend the ~~Identified~~ Residential Schools, rigid discipline was enforced as per the Residential Schools Policy. While at school, children were not allowed to speak their Aboriginal language, even to their parents, and thus members of these Aboriginal communities were forced to learn English.

40. Aboriginal culture was strictly suppressed by the school administrators in compliance with the policy directives of Canada including the Residential Schools Policy. At the SIRS, ~~converts to Catholicism~~ members of shishalh were forced to burn or give to the agents of Canada centuries-old totem poles, regalia, masks and other "paraphernalia of the medicine men" and to abandon their potlatches, dancing and winter festivities, and other elements integral to the Aboriginal culture and society of the shíshálh and Secwépemc peoples.

41. Because the SIRS was physically located in the shíshálh community, ~~thechurch and~~Canada's ~~government~~ eyes, both directly and through its Agents, were upon the elders and they were punished severely for practising their culture or speaking their language or passing this on to future generations. In the midst of that scrutiny, the Class members struggled, often unsuccessfully, to practice, protect and preserve their songs, masks, dancing or other cultural practices

42. The Tk'emlúps te Secwépemc suffered a similar fate due to their proximity to the KIRS.

43. The children at the ~~Identified~~ Residential Schools were ~~indoctrinated into Christianity, and~~ taught to be ashamed of their Aboriginal identity, culture, spirituality and practices. They were referred to as, amongst other derogatory epithets, "dirty savages" and "heathens" and taught to shun their very identities. The Class members' Aboriginal way of life, traditions, cultures and spiritual practices were supplanted with the Euro-Canadian identity imposed upon them by Canada through the Residential Schools Policy.

44. This implementation of the Residential Schools Policy further damaged the Survivor Class members of the ~~Identified~~ Residential Schools, who returned to their homes at the end of the school day and, having been taught in the school that the traditional teachings of their parents, grandparents and elders were of no value and, in some cases, "heathen" practices and beliefs, would dismiss the teachings of their parents, grandparents and elders.

45. The assault on their traditions, laws, language and culture through the implementation of the Residential Schools Policy by Canada, directly and through its

Agents, has continued to undermine the individual Survivor Class members, causing a loss of self-esteem, depression, anxiety, suicidal ideation, suicide, physical illnesses without clear causes, difficulties in parenting, difficulties in maintaining positive relationships, substance abuse and violence, among other harms and losses, all of which has impacted the Descendant Class.

46. The Band Class members have lost, in whole or in part, their traditional economic viability, self-government and laws, language, land base and land-based teachings, traditional spiritual practices and religious practices, and the integral sense of their collective identity.

47. The Residential Schools Policy, delivered through the ~~Identified~~ Residential Schools, wrought cultural, linguistic and social devastation on the communities of the Band Class and altered their traditional way of life.

Canada's Settlement with Former Residential School Residents

48. From the closure of the ~~Identified~~ Residential Schools ~~in the 1970's~~ until the late 1990's, Canada's Aboriginal communities were left to battle the damages and suffering of their members as a result of the Residential Schools Policy, without any acknowledgement from Canada. During this period, Residential School survivors increasingly began speaking out about the horrible conditions and abuse they suffered, and the dramatic impact it had on their lives. At the same time, many survivors committed suicide or self-medicated to the point of death. The deaths devastated not only the members of the Survivor Class and the Descendant Class, but also the life and stability of the communities represented by the Band Class.

49. In January 1998, Canada issued a Statement of Reconciliation acknowledging and apologizing for the failures of the Residential Schools Policy. Canada admitted that the Residential Schools Policy was designed to assimilate Aboriginal Persons and that it was wrong to pursue that goal. The Plaintiffs plead that the Statement of Reconciliation by Canada is an admission by Canada of the facts and duties set out herein and is relevant to the Plaintiffs' claim for damages, particularly punitive damages.

50. The Statement of Reconciliation stated, in part, as follows:

> *Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the results of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.*
>
> *Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the Federal Government which have contributed to these difficult pages in the history of our relationship together.*
>
> *One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School System. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continued to reverberate in Aboriginal communities to this date. Tragically, some children were the victims of physical and sexual abuse.*

> *The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at Residential Schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at Residential Schools, we are deeply sorry. In dealing with the legacies of the Residential School program, the Government of Canada proposes to work with First Nations, Inuit, Metis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of this sad era of our history...*
>
> *Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong community...*

51. On or about May 10, 2006, Canada entered into the Agreement to provide compensation primarily to those who *resided at* Residential Schools.

52. The Agreement provides for two types of individualized compensation: the Common Experience Payment ("CEP") for the fact of having resided at a Residential School, and compensation based upon an Independent Assessment Process ("IAP"), to provide compensation for certain abuses suffered and harms these abuses caused.

53. The CEP consisted of compensation for former *residents* of a Residential School in the amount of $10,000 for the first school year or part of a school year and a further $3,000 for each subsequent school year or part of a school year of *residence* at a Residential School. The CEP was payable based upon residence at a Residential School out of a recognition that the experience of assimilation was damaging and worthy of compensation, regardless of whether a student experienced physical, sexual or other abuse while at the Residential School. Compensation for the latter was payable through the IAP. The CEP was available only to former

residents of a Residential School while, in some cases, the IAP was available not only to former residents but also other young people who were lawfully on the premises of a Residential School, including former day students.

54. The implementation of the Agreement represented the first time Canada agreed to pay compensation for Cultural, Linguistic and Social Damage. Canada refused to incorporate compensation for members of the Survivor Class, namely, those students who *attended* the ~~Identified Residential Schools, or other~~ Residential Schools, but who did not *reside* there.

55. The Agreement was approved by provincial and territorial superior courts from British Columbia to Quebec, and including the Northwest Territories, Yukon Territory and Nunavut, and the Agreement was implemented beginning on September 20, 2007.

56. On June 11, 2008, Prime Minister Stephen Harper on behalf of Canada, delivered an apology ("Apology") that acknowledged the harm done by Canada's Residential Schools Policy:

> *For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities. In the 1870's, the federal government, partly in order to meet its obligation to educate Aboriginal children, began to play a role in the development and administration of these schools.* ***Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture.*** *These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said,* ***"to kill the Indian in the child".*** *Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country.* ***[emphasis added]***

57. In this Apology, the Prime Minister made some important acknowledgments regarding the Residential Schools Policy and its impact on Aboriginal Children:

> *The Government of Canada built an educational system in which very young children were often forcibly removed from their homes, often taken far from their communities. Many were inadequately fed, clothed and housed. All were deprived of the care and nurturing of their parents, grandparents and communities. First Nations, Inuit and Métis languages and cultural practices were prohibited in these schools. Tragically, some of these children died while attending residential schools and others never returned home.*
>
> *The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language.*
>
> *The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.*
>
> * * *
>
> *We now recognize that it was wrong to separate children from rich and vibrant cultures and traditions, that it created a void in many lives and communities, and we apologize for having done this. We now recognize that, in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow, and we apologize for having done this. We now recognize that, far too often, these institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you. Not only did you suffer these abuses as children, but as you became parents, you were powerless to protect your own children from suffering the same experience, and for this we are sorry.*
>
> *The burden of this experience has been on your shoulders for far too long. The burden is properly ours as a Government, and as a country. There is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again. You have been working on recovering from this experience for a long time and in a very real sense, we are now joining you on this journey. The Government of Canada sincerely apologizes and asks the forgiveness of the Aboriginal peoples of this country for failing them so profoundly.*

58. Notwithstanding the Apology and the acknowledgment of wrongful conduct by Canada, as well as the call for recognition from Canada's Aboriginal communities and from the *Truth and Reconciliation Commission* in its Interim Report of February 2012, the exclusion of

the Survivor Class from the Agreement by Canada reflects Canada's continued failure to members of the Survivor Class. Canada continues, as it did from the 1970s until 2006 with respect to 'residential students', to deny the damage suffered by the individual Plaintiffs and the members of the Survivor, Descendant and Band Classes.

Canada's Breach of Duties to the Class Members

59. From the formation of the Residential Schools Policy to its execution in the form of forced attendance at the ~~Identified~~ Residential Schools, Canada utterly failed the Survivor Class members, and in so doing, destroyed the foundations of the individual identities of the Survivor Class members, stole the heritage of the Descendant Class members and caused incalculable losses to the Band Class members.

60. The Survivor Class members, Descendant Class members and Band Class members have all been affected by family dysfunction, a crippling or elimination of traditional ceremonies, and a loss of the hereditary governance structure which allowed for the ability to govern their peoples and their lands.

61. While attending the ~~Identified~~ Residential School the Survivor Class members were utterly vulnerable, and Canada owed them the highest fiduciary, moral, statutory, constitutionally-mandated and common law duties, which included, but were not limited to, the duty to protect Aboriginal Rights and prevent Cultural, Linguistic and Social Damage. Canada breached these duties, and failed in its special responsibility to ensure the safety and well-being of the Survivor Class while at the ~~Identified~~ Residential Schools.

Canada's Duties

62. Canada was responsible for developing and implementing all aspects of the Residential Schools Policy, including carrying out all operational and administrative aspects of Residential Schools. While the Churches were ~~often~~used as Canada's Agents to assist Canada in carrying out its objectives, those objectives and the manner in which they were carried out were the obligations of Canada. Canada was responsible for:

(a) the administration of the Act and its predecessor statutes as well as all other statutes relating to Aboriginal Persons and all Regulations promulgated under these Acts and their predecessors during the Class Period;

(b) the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessors and related Ministries and Departments, as well as the decisions taken by those ministries and departments;

(c) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of the ~~Identified~~ Residential Schools and for the creation, design and implementation of the program of education for Aboriginal Persons in attendance;

(d) the selection, control, training, supervision and regulation of the operators of the ~~Identified~~ Residential Schools, including their employees, servants, officers and agents, and for the care and education, control and well being of Aboriginal Persons attending the ~~Identified~~ Residential Schools;

(e) preserving, promoting, maintaining and not interfering with Aboriginal Rights, including the right to retain and practice their culture, spirituality, language and traditions and the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities; and

(f) the care and supervision of all members of the Survivor Class while they were in attendance at the ~~Identified~~ Residential Schools during the Class Period.

63. Further, Canada has at all material times committed itself to honour international law in relation to the treatment of its people, which obligations form minimum commitments to Canada's Aboriginal Peoples, including the Survivor, Descendant and Band Classes, and which have been breached. In particular, Canada's breaches include the failure to comply with the terms and spirit of:

(a) the *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277, entered into force Jan. 12, 1951,, and in particular Article 2(b), (c) and (e) of that convention, by engaging in the intentional destruction of the culture of Aboriginal Children and communities, causing profound and permanent cultural, psychological, emotional and physical injuries to the Class;

(b) the *Declaration of the Rights of the Child* (1959) G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 by failing to provide Aboriginal Children with the means necessary for normal development, both materially and spiritually, and failing to put them in a position to earn a livelihood and protect them against exploitation;

(c) the *Convention on the Rights of the Child*, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989), and in particular Articles 29 and 30 of that convention, by failing to provide Aboriginal Children with education that is directed to the development of respect for their parents, their cultural identities, language and values, and by denying the right of Aboriginal Children to enjoy their own cultures, to profess and practise their own religions and to use their own languages;

(d) the *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, in particular Articles 1 and 27 of that convention, by interfering with Class members' rights to retain and practice their culture, spirituality, language and traditions, the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities and the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities.

(e) the *American Declaration of the Rights and Duties of Man*, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System,* OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992), and in particular Article XIII, by violating Class members' right to take part in the cultural life of their communities.

(f) the *United Nations Declaration on the Rights of Indigenous Peoples,* G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007), endorsed by Canada 12 November 2010, and in particular article 8, 2(d), which commits to the provision of effective mechanisms for redress for forced assimilation.

64. Canada's obligations under international law inform Canada's common law, statutory, fiduciary, constitutionally-mandated and other duties, and a breach of the aforementioned international obligations is evidence of, or constitutes, a breach under domestic law.

Breach of Fiduciary and Constitutionally-Mandated Duties

65. Canada has constitutional obligations to, and a fiduciary relationship with, Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated the ~~Identified~~ Residential Schools and established the Residential Schools Policy. Through these acts, and by virtue of the *Constitution Act 1867*, the *Constitution Act, 1982*, and the provisions of the Act, as amended, Canada assumed the power and obligation to act in a fiduciary capacity with respect to the education and welfare of Class members.

66. Canada's constitutional duties include the obligation to uphold the honour of the Crown in all of its dealings with Aboriginal Peoples, including the Class members. This obligation arose with the Crown's assertion of sovereignty from the time of first contact and continues through post-treaty relationships. This is and remains an obligation of the Crown and was an obligation on the Crown at all material times. The honour of the Crown is a legal principle which requires the Crown to operate at all material times in its relations with Aboriginal Peoples from contact to post-treaty in the most honourable manner to protect the interests of the Aboriginal Peoples.

67. Canada's fiduciary duties obliged Canada to act as a protector of Class members' Aboriginal Rights, including the protection and preservation of their language, culture and their way of life, and the duty to take corrective steps to restore the Plaintiffs' culture, history and status, or assist them to do so. At a minimum, Canada's duty to Aboriginal Persons included the duty not to deliberately reduce the number of the beneficiaries to whom Canada owed its duties.

68. Canada's fiduciary duties and the duties otherwise imposed by the constitutional mandate assumed by Canada extend to the Descendant Class because the purpose of the assumption of control over the Survivor Class education was to eradicate from those Aboriginal Children their culture and identity, thereby removing their ability, as adults, to pass on to succeeding generations the linguistic, spiritual, cultural and behavioural bases of their people, as well as to relate to their families and communities and, ultimately, their ability to identify themselves as Aboriginal Persons to whom Canada owed its duties.

69. The fiduciary and constitutional duties owed by Canada extend to the Band Class because the Residential Schools Policy was intended to, and did, undermine and seek to destroy the way of life established and enjoyed by these Nations whose identities were and are viewed as collective.

70. Canada acted in its own self-interest and contrary to the interests of Aboriginal Children, not only by being disloyal to, but by actually betraying the Aboriginal Children and communities whom it had a duty to protect. Canada wrongfully exercised its discretion and power over Aboriginal People, and in particular children, for its own benefit. The Residential Schools Policy was pursued by Canada, in whole or in part, to eradicate what Canada saw as the "Indian Problem". Namely, Canada sought to relieve itself of its moral and financial responsibilities for Aboriginal People, the expense and inconvenience of dealing with cultures, languages, habits and values different from Canada's predominant Euro-Canadian heritage, and the challenges arising from land claims.

71. In breach of its ongoing fiduciary, constitutionally-mandated, statutory and common law duties to the Survivor, Descendant and Band Classes, Canada failed, and continues to fail, to

adequately remediate the damage caused by its wrongful acts, failures and omissions. In particular, Canada has failed to take adequate measures to ameliorate the Cultural, Linguistic and Social Damage suffered by the Survivor, Descendant and Band Classes, notwithstanding Canada's admission of the wrongfulness of the Residential Schools Policy since 1998.

Breach of Aboriginal Rights

72. The shíshálh and Tk'emlúps people, and indeed all members of the Band Class, from whom the individual Plaintiffs have descended have exercised laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans, these Nations have sustained their individual members, communities and distinctive cultures by speaking their languages and practicing their customs and traditions.

73. During the time when Survivor Class members attended the ~~Identified~~ Residential Schools, in compliance with the Residential Schools Policy, they were taught to speak English, were punished for using their traditional languages and were made ashamed of their traditional language and way of life. Consequently, by reason of the attendance at the ~~Identified~~ Residential Schools, the Survivor Class members' ability to speak their traditional languages and practice their shíshálh, Tk'emlúps, and other, spiritual, religious and cultural activities was seriously impaired and, in some cases, lost entirely. These Class members were denied the ability to exercise and enjoy their Aboriginal Rights, both individually and in the context of their collective expression within the Bands, some particulars of which include, but are not limited to:

(a) shíshálh, Tk'emlúps and other Aboriginal cultural, spiritual and traditional activities have been lost or impaired;

(b) the traditional social structures, including the equal authority of male and female leaders have been lost or impaired;

(c) the shíshálh, Tk'emlúps and other Aboriginal languages have been lost or impaired;

(d) traditional shíshálh, Tk'emlúps and Aboriginal parenting skills have been lost or impaired;

(e) shíshálh, Tk'emlúps and other Aboriginal skills for gathering, harvesting, hunting and preparing traditional foods have been lost or impaired; and,

(f) shíshálh, Tk'emlúps and Aboriginal spiritual beliefs have been lost or impaired.

74. The interference in the Aboriginal Rights of the Survivor Class has resulted in that same loss being suffered by their descendants and communities, namely the Descendant and Band Classes, all of which was the result sought by Canada.

75. Canada had at all material times and continues to have a duty to protect the Class members' Aboriginal Rights, including the exercise of their spiritual practices and traditional protection of their lands and resources, and an obligation not to undermine or interfere with the individual Plaintiffs' and Class members' Aboriginal Rights. Canada has failed in these duties, without justification, through its Residential Schools Policy.

Intentional Infliction of Mental Distress

76. The design and implementation of the Residential Schools Policy as a program of assimilation to eradicate Aboriginal culture constituted flagrant, extreme and outrageous conduct which was plainly calculated to result in the Cultural, Social and Linguistic Damage, and the mental distress arising from that damage, which was actually suffered by the members of the Survivor and Descendant Classes.

Negligence giving rise to Spiritual, ~~Physical, Sexual,~~ Emotional and Mental Abuse

77. Through its Agents, Canada was negligent and in breach of its duties of care to the Survivor Class, particulars of which include, but are not limited to, the following:

(a) it failed to adequately screen and select the individuals ~~to whom it delegated~~ who it hired either directly or through its ~~a~~Agents for the operation of the ~~Identified~~ Residential Schools, to adequately supervise and control the operations of the ~~Identified~~ Residential Schools, and to protect Aboriginal children from spiritual, ~~physical, sexual~~, emotional and mental abuse at the ~~Identified~~ Residential Schools, and as a result, such abuses did occur to Survivor Class members and Canada is liable for such abuses;

(b) it failed to respond appropriately or at all to disclosure of abuses in the ~~Identified~~ Residential Schools, and in fact, covered up such abuse and suppressed information relating to those abuses; and

(c) it failed to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed.

Vicarious Liability

78. Through its Agents, Canada breached its duty of care to the Survivor Class resulting in damages to the Survivor Class and is vicariously liable for all of the breaches and abuses committed on its behalf.

79. Further, or in the alternative, Canada is vicariously liable for the negligent performance of the fiduciary, constitutionally-mandated, statutory and common law duties of its Agents.

80. Additionally, the Plaintiffs hold Canada solely responsible for the creation and implementation of the Residential Schools Policy and, furthermore:

a. The Plaintiffs expressly waive any and all rights they may possess to recover from Canada, or any other party, any portion of the Plaintiffs' loss that may be attributable to the fault or liability of any third-party and for which Canada might reasonably be entitled to claim from any one or more third-party for contribution,

indemnity or an apportionment at common law, in equity, or pursuant to the British Columbia *Negligence Act*, R.S.B.C. 1996, c. 333, as amended; and

b. The Plaintiffs will not seek to recover from any party, other than Canada, any portion of their losses which have been claimed, or could have been claimed, against any third-parties.

Damages

81. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of mental distress and the breaches of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Survivor Class members, including the Representative Plaintiffs, suffered injury and damages including:

(a) loss of language, culture, spirituality, and Aboriginal identity;

(b) emotional and psychological harm;

(c) isolation from their family, community and Nation;

(d) deprivation of the fundamental elements of an education, including basic literacy;

(e) an impairment of mental and emotional health, in some cases amounting to a permanent disability;

(f) an impaired ability to trust other people, to form or sustain intimate relationships, to participate in normal family life, or to control anger;

(g) a propensity to addiction;

(h) alienation from community, family, spouses and children;

(i) an impaired ability to enjoy and participate in recreational, social, cultural, athletic and employment activities;

(j) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;

(k) deprivation of education and skills necessary to obtain gainfully employment;

(l) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the Residential School experience;

(m) sexual dysfunction;

(n) depression, anxiety and emotional dysfunction;

(o) suicidal tendencies;

(p) pain and suffering;

(q) loss of self-esteem and feelings of degradation, shame, fear and loneliness;,

(r) nightmares, flashbacks and sleeping problems;

(s) fear, humiliation and embarrassment as a child and adult;

(t) sexual confusion and disorientation as a child and young adult;

(u) impaired ability to express emotions in a normal and healthy manner;

(v) loss of ability to participate in, or fulfill, cultural practices and duties;

(w) loss of ability to live in their community and Nation; and

(x) constant and intense emotional, psychological pain and suffering.

82. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of harm and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Descendant Class members, including the Representative Plaintiffs, suffered injury and damages including:

(a) their relationships with Survivor Class members were impaired, damaged and distorted as a result of the experiences of Survivor Class members in the ~~Identified~~ Residential Schools; and,

(b) their culture and languages were undermined and in some cases eradicated by, amongst other things, as pleaded, the forced assimilation of Survivor Class members into Euro-Canadian culture through the operation of the ~~Identified~~ Residential Schools.

83. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of harm and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Band Class has suffered from the loss of the ability to fully exercise their Aboriginal Rights collectively, including the right to have a traditional government based on their own languages, spiritual practices, traditional laws

and practices and to have those traditions fully respected by the members of the Survivor and Descendant Classes and subsequent generations, all of which flowed directly from the individual losses of the Survivor Class and Descendant Class members' Cultural, Linguistic and Social Damage.

Grounds for Punitive and Aggravated Damages

84. Canada deliberately planned the eradication of the language, religion and culture of Survivor Class members and Descendant Class members, and the destruction of the Band Class. The actions were malicious and intended to cause harm, and in the circumstances punitive and aggravated damages are appropriate and necessary.

85. The Class members plead that Canada and its Agents had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses of Survivor Class members that were occurring at the ~~Identified~~ Residential Schools.

86. Despite this knowledge, Canada continued to operate the Residential Schools and took no steps, or in the alternative no reasonable steps, to protect the Survivor Class members from these abuses and the grievous harms that arose as a result. In the circumstances, the failure to act on that knowledge to protect vulnerable children in Canada's care amounts to a wanton and reckless disregard for their safety and renders punitive and aggravated damages both appropriate and necessary.

Legal Basis of Claim

87. The Survivor and Descendant Class members are Indians as defined by the *Indian Act*, R.S.C. 1985, c. 1-5. The Band Class members are bands made up of Indians so defined.

88. The Class members' Aboriginal Rights existed and were exercised at all relevant times pursuant to the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

89. At all material times, Canada owed the Plaintiffs and Class members a special and constitutionally-mandated duty of care, good faith, honesty and loyalty pursuant to Canada's constitutional obligations and Canada's duty to act in the best interests of Aboriginal People and especially Aboriginal Children who were particularly vulnerable. Canada breached those duties, causing harm.

90. The Class members descend from Aboriginal Peoples who have exercised their respective laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans to the present, the Aboriginal Peoples from whom the Plaintiffs and Class members descend have sustained their people, communities and distinctive culture by exercising their respective laws, customs and traditions in relation to their entire way of life, including language, dance, music, recreation, art, family, marriage and communal responsibilities, and use of resources.

Constitutionality of Sections of the *Indian Act*

91. The Class members plead that any section of the Act and its predecessors and any Regulation passed under the Act and any other statutes relating to Aboriginal Persons that provide or purport to provide the statutory authority for the eradication of Aboriginal People through the destruction of their languages, culture, practices, traditions and way of life, are in violation of sections 25 and 35(1) of the *Constitution Act* 1982, sections 1 and 2 of the *Canadian*

Bill of Rights, R.S.C. 1985, as well as sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* and should therefore be treated as having no force and effect.

92. Canada deliberately planned the eradication of the language, spirituality and culture of the Plaintiffs and Class members.

93. Canada's actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

94. The Plaintiffs plead and rely upon the following:

Federal Courts Act, R.S.C., 1985, c. F-7, s. 17;

Federal Courts Rules, SOR/98-106, Part 5.1 Class Proceedings;

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, ss. 3, 21, 22, and 23;

Canadian Charter of Rights and Freedoms, ss. 7, 15 and 24;

Constitution Act, 1982, ss. 25 and 35(1),

Negligence Act (British Columbia), R.S.B.C. 1996, c. 333;

The Canadian Bill of Rights, R.S.C. 1985, App. III, Preamble, ss. 1 and 2;

The Indian Act, R.S.C. 1985, ss. 2(1), 3, 18(2), 114-122 and its predecessors.

International Treaties:

Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force Jan. 12, 1951;

Declaration of the Rights of the Child (1959), G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354;

Convention on the Rights of the Child, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989);

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976;

American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System,* OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992); and

United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007), endorsed by Canada 12 November 2010.

The plaintiffs propose that this action be tried at Vancouver, BC.

June 11th, 2013

Peter R. Grant, on behalf of
all Solicitors for the Plaintiffs

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TAB 2

Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL, ~~AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

AFFIDAVIT OF CHARLOTTE ANNE VICTORINE GILBERT

(Motion for Settlement Approval)

I, Charlotte Anne Victorine Gilbert, of the City of Williams Lake, in the Province of British Columbia, MAKE OATH AND SAY:

1. I am a representative plaintiff in this action and, as such, have knowledge of the matters to which I hereinafter depose. Where the matters referenced in this affidavit are based on information I have received from others, I have stated the source of the information, and believe such information to be true.

2. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement executed June 4, 2021, which will, if approved, resolve the claims of the Survivor and Descendant Class Members in this class action.

Appointment as a representative plaintiff

3. On June 18, 2015, Justice Harrington certified this case as a class action and appointed Violet Catherine Gottfriedson, Diena Marie Jules, Darlene Matilda Bulpit, Daphne Paul, Frederick Johnson and me as representative plaintiffs for the Survivor Class. Tragically, Violet Catherine Gottfriedson and Frederick Johnson have both since passed away. I understand that my role as a representative plaintiff has been to represent the best interests of the Survivor Class, and I have fulfilled this role to the best of my ability since the lawsuit was started.

4. My history as a survivor of Kamloops Indian Residential School ("**KIRS**"), the harms that I endured as a result of my time at KIRS, and my reasons for starting this case are set out in detail in the affidavit I swore on November 7, 2013 in support of the motion for certification. I have included here only a summary of that information.

My background

5. I was born on May 24, 1952, at the Williams Lake Hospital in Williams Lake, British Columbia. My biological parents were Agatha Thomas and Gabriel Larue.

6. My name when I was born was Charlotte Anne Victorine LaRue. When I was approximately 15 years old, my name was changed to Charlotte Anne Victorine Gilbert.

7. I am now an Elder of the Williams Lake Indian Band, with three children and six grandchildren. I identify as Secwépemc.

My history as a survivor of Kamloops Indian Residential School

8. I started attending KIRS in approximately 1959, when I was seven years old. I continued to attend KIRS until approximately 1966, when I was fourteen years old.

9. During my first year at KIRS, I lived in the school residence for a few weeks because my grandmother went away. For the rest of the time that I attended KIRS, I lived with my grandmother, meaning that I was a "Day Scholar" and did not reside at KIRS like the resident students.

10. During school, KIRS staff treated resident students and Day Scholars the same. They expected that all students speak only English. It was forbidden to speak any Indigenous language at any time. I regularly witnessed other students being punished for speaking their languages. KIRS staff would ridicule them or force them to stand in the corner or wear a dunce hat.

11. Because of what we were taught by KIRS staff, I started to believe that anyone speaking an Indigenous language was doing something wrong. As a result, I stopped speaking Secwepemctsín soon after I started attending KIRS and began speaking only English, even at home with my grandmother. I lost my fluency in Secwepemctsín very quickly.

12. It was also forbidden to practice my culture while at KIRS. I saw students being singled out and punished for any behaviours which KIRS staff thought were traditional practices. I was told by the staff at KIRS that this was because Europeans had come to save the "Indians" because we were heathens and savages.

13. I started to believe the negative and demeaning things that KIRS staff taught me about Indigenous people. I quickly lost my pride in being Secwépemc. Instead, I felt embarrassed by, and ashamed of, my culture. I thought of myself as a heathen.

14. By the time I was eleven years old, I had stopped the majority of the Secwépemc cultural practices that I learned from my family and friends as a child.

15. After leaving KIRS, I continued to struggle with my self-identity as an adult. I felt ashamed to be Secwépemc and of the colour of my skin. I was also embarrassed of my family, especially when they did anything cultural or traditional. For a long time, I had no interest in participating in any Secwépemc customs or tradition.

16. KIRS made me believe that speaking Secwepemctsín was a bad thing. As a result, I stopped speaking Secwepemctsín – not only did I lose the words themselves, but I also lost an important connection to my people and my heritage. I have never fully regained my desire to learn my language. I am only now as an Elder starting to pick up words and phrases.

17. I have struggled for many years to cope with my feelings of defeat and worthlessness, which were caused by how KIRS staff treated me. I attended the five-week residential Qual-aun Program: Moving Beyond Traumas of Our Past, through TsowTun Le Lum, which is a First Nations substance abuse treatment centre in Lantzville, British Columbia, to work on these feelings. It was important to me to go through that program and use First Nations healing methods, as part of rebuilding my Secwépemc identity.

The proposed settlement

18. During the negotiation process, I discussed the proposed settlement with Peter Grant and Cory Wanless, two members of the Class Counsel team. They informed me about the terms of the proposed settlement before it was signed and answered my questions.

19. I have also reviewed the Settlement Agreement myself, and I understand it, and what it will mean for Survivor Class Members if it is approved by the Court.

20. I understand the major terms of the Settlement Agreement to be as follows:

a. each eligible Survivor Class Member who makes a claim will receive a $10,000 Day Scholar Compensation Payment, with no deductions for legal fees or anything else;

b. an eligible Survivor Class Member is anybody who attended one of the Residential Schools listed at Schedule "E" as a Day Scholar for even part of a school year (so long as they have not already received compensation for that school year as part of another lawsuit);

c. for any Day Scholar who has died since May 30, 2005, but who would otherwise be eligible, their descendants/heirs will be eligible to make a claim for a Day Scholar Compensation Payment in their name;

d. there will be no limit on the total number of Survivor Class Members who can receive Day Scholar Compensation Payments – all approved claims will be paid in full;

e. both the claims process and the estate claims process will be simple and accessible. Claimants will not be required to provide a narrative or supporting documentation for their claim, and will receive the benefit of the doubt wherever possible;

f. claimants will have the right to seek reconsideration if their claims are denied and will be provided with free legal assistance for their reconsideration claims;

g. Canada will not have any right to seek reconsideration;

h. Canada will be subject to strict timelines to respond to claims;

i. the claim period will be open for 21 months;

j. a $50 million Day Scholars Revitalization Fund will be established to support healing, wellness, education, language, culture, heritage, and commemoration projects for the benefit of Survivor and Descendant Class Members;

k. the Day Scholars Revitalization Fund will be Indigenous-led, and will be operated by a not-for-profit Revitalization Society that is independent of Canada;

l. once the Revitalization Society is operational, a policy will be developed and implemented to assess applications to obtain project funding from the Revitalization Fund;

m. the Revitalization Society's expenses will be funded from investment income, maximizing the amounts to be spent on projects for the benefit of Survivor and Descendant Class Members;

n. in exchange for the compensation set out above, the claims of the Survivors and Descendants will be dismissed, and the Survivor and Descendant Class Members will "release" Canada from any other liability relating to their attendance or their parents' attendance, respectively, at Residential Schools; and

o. the Band Class claims will continue to be litigated.

21. This settlement, like any settlement in a lawsuit, is not a "victory" for the Class Members – it is a compromise. But I believe that it is a fair and reasonable compromise, and I ask the Court to approve the settlement because I believe that it is in the best interests of the Survivor Class Members.

22. When I spoke at the June 7, 2021, press conference with Minister Bennett and my co-plaintiffs Diena Jules and Rita Poulsen, to announce the settlement publicly for the first time, I said that no amount of money could make right what happened to us. I continue to stand by those words. My experiences attending KIRS, an institution which was designed to take away my language and culture, and to weaken my bonds with my family, my community, and my Indigenous identity, changed my life. I continue to live with the impacts of these experiences every day. Money cannot undo that. Still, the benefits in the proposed settlement mean recognition, as well as some compensation, for our loss of language and culture as Day Scholars, with the added positive outcome of removing the many risks and delays that would come with continuing to fight in court.

23. As a former educator and now as an Elder, I also particularly appreciate the importance of the funding that the Revitalization Fund will provide for projects to promote healing, wellness, education, language, culture, heritage, and commemoration for Survivors and Descendants. Again, although money by itself cannot restore our language, culture and heritage, I believe that putting this money in the hands of Indigenous people to support Survivors and Descendants is an important first step towards reconciliation and will help our Descendants.

24. Another important aspect of the settlement is that it will mean that Survivors receive compensation as fast as possible. Many Day Scholars are elderly, and many have already died since this litigation was started, including Violet Gottfriedson and Frederick Johnson, two of the original plaintiffs. Although it is good that the estate claims process will provide benefits for heirs of deceased Day Scholars, the best case scenario is to get compensation payments in the hands of living Survivors as soon as possible. The settlement accomplishes this, not just by bringing an end to the court battle, but also by creating a claims process which is simple and will work quickly.

25. Class Counsel understood that the Representative Plaintiffs, including me, wanted to prioritize reaching a settlement for a claims process that would be simple, easy to access, and have a low burden of proof for all Class Members, so that no Day Scholar would be left behind. I think that the Settlement Agreement accomplishes this, and I am happy that the settlement is designed so that Survivors will benefit from a claims process that is designed to protect and support them. In particular, they will not have to write a personal narrative about their time at Residential School or find supporting documentation from their Residential School days to make a claim.

26. Even now, after many years and all the work that I have put into healing, it is painful to revisit my experiences at KIRS. Talking or writing about it, or reading documents from that time, can have serious negative impacts on my mental health. I know from talking to other Survivors that this is a nearly universal experience. It was very important to me and the other Representative Plaintiffs that any settlement in this lawsuit would minimize the amount of re-traumatization that Survivors will have to experience in order to make claims and receive compensation.

27. The settlement also means that, finally, Day Scholars will receive recognition of what we endured at Residential Schools, after we were excluded from the Common Experience Payment

under the Indian Residential Schools Settlement Agreement. I think this recognition will help all Survivor Class Members along their personal journeys toward healing and closure. Just as importantly, I think it will be another meaningful step as Canada continues along the journey to reconciliation with Indigenous peoples.

28. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement, and for no other or improper purpose.

SWORN before me at the City of Williams Lake, in the Province of British Columbia, on this 23rd day of August, 2021.

Commissioner for Taking Affidavits

KIRK DRESSLER
Barrister & Solicitor
2104 South Lakeside Dr.
Williams Lake, BC V2G 5G4
Phone: 250-303-1362

CHARLOTTE ANNE VICTORINE GILBERT

TAB 3

Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL, ~~AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

AFFIDAVIT OF DIENA MARIE JULES

(Motion for Settlement Approval)

I, Diena Marie Jules, of the City of Kamloops, in the Province of British Columbia, MAKE OATH AND SAY:

1. I am a representative plaintiff in this action and, as such, have knowledge of the matters to which I hereinafter depose. Where the matters referenced in this affidavit are based on information I have received from others, I have stated the source of the information, and believe such information to be true.

2. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement executed June 4, 2021, which will, if approved, resolve the claims of the Survivor and Descendant Class Members in this class action.

Appointment as a representative plaintiff

3. On June 18, 2015, Justice Harrington certified this case as a class action and appointed Violet Catherine Gottfriedson, Charlotte Ann Victorine Gilbert, Darlene Matilda Bulpit, Daphne Paul, Frederick Johnson and me as representative plaintiffs for the Survivor Class. Tragically, Violet Catherine Gottfriedson and Frederick Johnson have both since passed away. I understand that my role as a representative plaintiff has been to represent the best interests of the Survivor Class, and I have fulfilled this role to the best of my ability since the lawsuit was started.

4. My history as a survivor of Kamloops Indian Residential School ("**KIRS**"), the harms that I endured as a result of my time at KIRS, and my reasons for starting this case are set out in detail in the affidavit I swore on November 7, 2013 in support of the motion for certification. I have included here only a summary of that information.

My background

5. I was born on September 12, in Kamloops, British Columbia. My parents are Mary Jules and the late Clarence Jules. I am proud to say that I have two daughters and five grandchildren.

6. I have been a member of the Tk'emlúps te Secwépemc Indian Band for my entire life, and I am now an Elder in my community. For many years, I was a primary school teacher, and then the Education Department Manager for our First Nation.

My history as a survivor of Kamloops Indian Residential School

7. I started attending KIRS in 1962, when I had just turned seven years old. I was a Day Scholar for five years and a resident for one year. I think of these years as the dark ages of my life.

8. Before I started attending KIRS, I spoke both English and Secwepemctsín at home. Several of my cousins, aunts, and uncles lived with my family in our home, and we all spoke Secwepemctsín to each other often, so I had a good understanding of the language.

9. My family, as well as community members, taught me our Secwépemc history and stories and Secwépemc cultural practices. I learned how to gather traditional food, how to hunt and fish, how to create traditional Secwépemc medicines, and how to sing our traditional Secwepemctsín songs. My grandparents would take me to the sweat lodge several times a year, and I participated in other cultural ceremonies frequently as well.

10. Once I started attending KIRS, my ability to speak and understand Secwepemctsín began to deteriorate. I only heard Secwepemctsín spoken when I was home. At KIRS, not only did I hear English spoken all day, but I was told by the KIRS staff that speaking Secwepemctsín was a heathen activity.

11. I witnessed other students slapped across the face by KIRS staff members and called "heathen" and "pagan" for speaking their native languages. I was also told by other children at the school that children who were caught speaking their native language would be sent to see Sister Superior or one of the Administrators and were strapped as punishment.

12. Because I saw other students get in trouble for speaking their native language, I came to understand that speaking my language was wrong. I started to feel ashamed to speak

Secwepemctsín. By the time I was in my late teens, even though I had previously been fairly fluent, I could only speak a few words in Secwepemctsín.

13. KIRS also taught me that our traditional ways as Secwépemc people were wrong and that I should be more "white". The teachers and nuns called me "heathen" and "dumb Indian" and told me that our traditional cultural and spiritual practices were "devil worshipping".

14. Because of these teachings, I started to feel helpless and ashamed of who I was as Secwépemc. Although I had been so lucky that my parents, grandparents and other family taught me so much about my culture as a child, I started to question all of it. Once my cultural practices no longer felt right to me, I also began to feel as though I did not belong with Secwépemc people, or anywhere for that matter. It felt as though I was stuck in a nowhere land.

15. I have suffered an overall loss of self-esteem, self-worth and cultural pride due to how I was treated as KIRS, which has impacted the rest of my life.

16. As an adult, I have worked hard to recover my sense of self-worth and my connection to my community. In recent years, I have also worked to regain my language, but I only know a few words. I feel this loss every day, because I understand now that speaking Secwepemctsín defines who we are as Secwépemc people. Our language connects us to our land, our history, and our community, and I lost those connections when my Secwepemctsín language and culture were taken from me by my experiences at KIRS.

The proposed settlement

17. During the negotiation process, I discussed the proposed settlement with Peter Grant and Cory Wanless, two members of the Class Counsel team. They informed me about the terms of the proposed settlement before it was signed, and answered my questions.

18. I have also reviewed the Settlement Agreement myself, and I understand it, and what it will mean for Survivor Class Members if it is approved by the Court.

19. I understand the major terms of the Settlement Agreement to be as follows:

a. each eligible Survivor Class Member who makes a claim will receive a $10,000 Day Scholar Compensation Payment, with no deductions for legal fees or anything else;

b. an eligible Survivor Class Member is anybody who attended one of the Residential Schools listed at Schedule "E" as a Day Scholar for even part of a school year (so long as they have not already received compensation for that school year as part of another lawsuit);

c. for any Day Scholar who has died since May 30, 2005, but who would otherwise be eligible, their descendants/heirs will be eligible to make a claim for a Day Scholar Compensation Payment in their name;

d. there will be no limit on the total number of Survivor Class Members who can receive Day Scholar Compensation Payments – all approved claims will be paid in full;

e. both the claims process and the estate claims process will be simple and accessible. Claimants will not be required to provide a narrative or supporting documentation for their claim, and will receive the benefit of the doubt wherever possible;

f. claimants will have the right to seek reconsideration if their claims are denied and will be provided with free legal assistance for their reconsideration claims;

g. Canada will not have any right to seek reconsideration;

h. Canada will be subject to strict timelines to respond to claims;

i. the claim period will be open for 21 months;

j. a $50 million Day Scholars Revitalization Fund will be established to support healing, wellness, education, language, culture, heritage, and commemoration projects for the benefit of Survivor and Descendant Class Members;

k. the Day Scholars Revitalization Fund will be Indigenous-led, and will be operated by a not-for-profit Revitalization Society that is independent of Canada;

l. once the Revitalization Society is operational, a policy will be developed and implemented to assess applications to obtain project funding from the Revitalization Fund;

m. the Revitalization Society's expenses will be funded from investment income, maximizing the amounts to be spent on projects for the benefit of Survivor and Descendant Class Members;

n. in exchange for the compensation set out above, the claims of the Survivors and Descendants will be dismissed, and the Survivor and Descendant Class Members will "release" Canada from any other liability relating to their attendance or their parents' attendance, respectively, at Residential Schools; and

o. the Band Class claims will continue to be litigated.

20. The reason that I wanted to join this lawsuit as a plaintiff was to help find a way to hold Canada accountable for leaving Day Scholars behind. My entire life has been shaped by my time as a Day Scholar at KIRS, but the Indian Residential Schools Settlement Agreement did not recognize that. It did not recognize what Day Scholars endured when we were forced to attend institutions which were designed to take away our language and culture, and to weaken our bonds with our families, our communities, and our Indigenous identities. If it is approved, the settlement will accomplish what we set out to do – get Day Scholars the recognition we deserve, along with some compensation.

21. Although the legacy of residential schools cannot be erased or healed with any amount of money, when I consider the potential benefits and downsides of continuing with the lawsuit, I believe that this settlement is a fair and reasonable compromise of our claims. The settlement will remove the many risks and delays that would come with continuing to fight in court, and the compensation for Survivor and Descendant Class Members will be significant and meaningful. I ask the Court to approve the settlement because I believe that it is in the best interests of the Survivor Class Members.

22. As a former educator and now as an Elder, I also particularly appreciate the importance of the funding that the Revitalization Fund will provide for projects to promote healing, wellness, education, language, culture, heritage, and commemoration for Survivors and Descendants. Again, although money by itself cannot restore our language, culture and heritage, I believe that putting this money in the hands of Indigenous people to support Survivors and Descendants is important and will change lives.

23. One key aspect of the settlement is that it is structured to get compensation to Survivors quickly and easily. Many Day Scholars are elderly, and many have already died since this litigation was started, including two of the original plaintiffs, Violet Gottfriedson and Frederick Johnson. The estate claims process is an important benefit for the estates of deceased Day Scholars, but the Representative Plaintiffs all agreed that the best case scenario is to get compensation payments in the hands of living Survivors as soon as possible. The simple and efficient claims process in the settlement will help to make that happen.

24. The simple claims process, with no personal narrative or supporting documentation requirement, is particularly important because it means that more Survivors will actually be able to access compensation. Even now, after many years and all the work that I have put into healing, it is painful to revisit my experiences at KIRS. Talking or writing about it, or reading documents from that time, impacts me no matter how much I have tried to recover from that damage.. I know from talking to other Survivors that this is a common experience, and I know people who ended up not making claims under the Indian Residential Schools Settlement Agreement because they did not want to relive their trauma.

25. It was a priority for me and the other Representative Plaintiffs that any settlement in this lawsuit would minimize the amount of re-traumatization that Survivors would have to experience to make claims, in order to maximize the number of claims that are actually made. I am happy that the settlement reflects this priority, and that the principles which govern the claims process are focused on protecting and supporting Survivors.

26. When I spoke at the June 7, 2021, press conference with Minister Bennett and my co-plaintiffs Charlotte Gilbert and Rita Poulsen, I said that our focus now must be on restoring our

communities, and our children, and their children. I hope that this settlement and this time represent an opportunity for Class Members to heal, and to feel that we are continuing to advance along the road toward justice and reconciliation.

27. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement, and for no other or improper purpose.

SWORN before me at the City of Kamloops, in the Province of British Columbia, this 23rd day of August, 2021.

A Commissioner for Taking Affidavits within British Columbia

R. L. DAVID HUGHES
Barrister & Solicitor
Forward Law LLP
1370 Summit Drive, Unit B
Kamloops, BC V2C 1T8
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DIENA MARIE JULES

TAB 4

Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL, ~~AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

AFFIDAVIT OF DAPHNE PAUL

(Motion for Settlement Approval)

I, Daphne Paul, of the Town of Sechelt, in the Province of British Columbia, MAKE OATH AND SAY:

1. I am a representative plaintiff in this action and, as such, have knowledge of the matters to which I hereinafter depose. Where the matters referenced in this affidavit are based on information I have received from others, I have stated the source of the information, and believe such information to be true.

2. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement executed June 4, 2021, which will, if approved, resolve the claims of the Survivor and Descendant Class Members in this class action.

Appointment as a representative plaintiff

3. On June 18, 2015, Justice Harrington certified this case as a class action and appointed Violet Catherine Gottfriedson, Charlotte Ann Victorine Gilbert, Darlene Matilda Bulpit, Diena Marie Jules, Frederick Johnson and me as representative plaintiffs for the Survivor Class. Tragically, Violet Catherine Gottfriedson and Frederick Johnson have both since passed away. I understand that my role as a representative plaintiff has been to represent the best interests of the Survivor Class, and I have fulfilled this role to the best of my ability since the lawsuit was started.

4. My history as a survivor of Sechelt Indian Residential School ("**SIRS**"), the harms that I endured as a result of my time at SIRS, and my reasons for starting this case are set out in detail in the affidavit I swore on November 12, 2013 in support of the motion for certification. I have included here only a summary of that information.

My background

5. I am a member of shíshálh First Nation. I was born on January 13, 1948, in my maternal grandfather's house on the Sechelt Indian Reserve. My parents, Seraphine Paul and Joseph Paul, are now both deceased.

6. I have two Indigenous names. I inherited the name Mait-lan [phonetic] from my maternal grandmother, Madeline August, which is the translation for her name in sháshíshálhem, our native language as shíshálh people.

7. My second aboriginal name, Sel-pan, was passed down to me by my mother. Her full name was Seraphine, but she was called Sarah for short. Sel-pan is a Sháshíshálhem translation of her name.

My history as a survivor of Sechelt Indian Residential School

8. As a little girl, my grandmother Madeline took care of me during the day while my parents worked. I called her granny, and she would speak to me in sháshíshálhem all day long as we baked bread, and made jams, jellies and hard candies. I learned to understand sháshíshálhem from speaking with her, and with my many cousins who were always hanging around granny's house, and with my grandfather's friends who would whittle and smoke tobacco and speak sháshíshálhem while sitting on the steps of the reserve church.

9. I started attending SIRS as a Day Scholar when I was only five and a half years old. I lived at my parents' house in Sechelt while I attended SIRS, and then in Grade 8, I left SIRS and went to public school.

10. Some of my cousins also attended SIRS while I was a student there. Very soon after I started attending SIRS, I saw my cousins Richard Baptiste and Marshall Billy get in trouble for speaking to me in sháshíshálhem. They were forced to kneel in punishment for over an hour. So, right away when I started at SIRS, I got the message that I should be afraid to speak sháshíshálhem.

11. Later, when I would accidentally speak sháshíshálhem at SIRS, some of the staff pulled my hair and slapped my head. They did the same thing to other students as well. They told all of us to only speak English and not to speak any "Indian language" – this message was reinforced

almost every day. I never asked why we were not allowed to speak our Indigenous languages because I was afraid that I would be punished.

12. When I was about 10 years old, I remember my parents and other shíshálh Elders talking about not speaking to their children in sháshíshálhem because we were "supposed" to speak English all the time. I believe that this came from their knowledge of how we were treated at SIRS if we did not speak only English.

13. The effect of the rules and punishment from SIRS staff was that I stopped speaking sháshíshálhem because I was afraid to get in trouble. Because I put my language aside, my ability to speak it faded more and more every year. Along with our language, we were not permitted to practice our cultural traditions at SIRS, so my culture also fell by the wayside.

14. By the time I left SIRS for grade 8, I felt ashamed of my shíshálh culture and my sháshíshálhem language. I did not want anyone hearing me speak our language and tried to suppress a lot of my own cultural identity because I felt that it was bad to be aboriginal. At public school, I did not want people to know at all that I was an aboriginal person.

15. I went through most of my life after SIRS feeling that I was a "dumb, stupid Indian", like the staff told me. Attending SIRS made me feel that I was not worthy of love or affection because I was Indigenous, that I was not even a person. I carried those damaging feelings of inadequacy for many years. One of my coping mechanisms was alcohol use, and this negatively affected my relationships with my own children.

16. In recent years, I have started to attend language groups and culture nights organized by shíshálh First Nation Elders. This is where I am re-learning my sháshíshálhem language. I have

also been working in the community's preschool, with children who are learning to speak sháshíshálhem. It makes me feel good to hear our children speaking our language, and they help me remember some Sháshíshálhem words I knew as a child.

17. I have also been trying to get in touch with my shíshálh spirituality which I lost when I was at SIRS, including by going to the shíshálh Longhouse.

18. Realizing how much I lost my sháshíshálhem language and identity has been personally devastating for me. I lost pieces of myself when I went to SIRS, and it has been the work of a lifetime to try to rebuild myself.

The proposed settlement

19. During the negotiation process, I discussed the proposed settlement with Peter Grant and Cory Wanless, two members of the Class Counsel team. They informed me about the terms of the proposed settlement before it was signed and answered my questions.

20. I have also reviewed the Settlement Agreement myself, and I understand it, and what it will mean for Survivor Class Members if it is approved by the Court.

21. I understand the major terms of the Settlement Agreement to be as follows:

a. each eligible Survivor Class Member who makes a claim will receive a $10,000 Day Scholar Compensation Payment, with no deductions for legal fees or anything else;

b. an eligible Survivor Class Member is anybody who attended one of the Residential Schools listed at Schedule "E" as a Day Scholar for even part of a school year (so

long as they have not already received compensation for that school year as part of another lawsuit);

c. for any Day Scholar who has died since May 30, 2005, but who would otherwise be eligible, their descendants/heirs will be eligible to make a claim for a Day Scholar Compensation Payment in their name;

d. there will be no limit on the total number of Survivor Class Members who can receive Day Scholar Compensation Payments – all approved claims will be paid in full;

e. both the claims process and the estate claims process will be simple and accessible. Claimants will not be required to provide a narrative or supporting documentation for their claim, and will receive the benefit of the doubt wherever possible;

f. claimants will have the right to seek reconsideration if their claims are denied and will be provided with free legal assistance for their reconsideration claims;

g. Canada will not have any right to seek reconsideration;

h. Canada will be subject to strict timelines to respond to claims;

i. the claim period will be open for 21 months;

j. a $50 million Day Scholars Revitalization Fund will be established to support healing, wellness, education, language, culture, heritage, and commemoration projects for the benefit of Survivor and Descendant Class Members;

k. the Day Scholars Revitalization Fund will be Indigenous-led, and will be operated by a not-for-profit Revitalization Society that is independent of Canada;

l. once the Revitalization Society is operational, a policy will be developed and implemented to assess applications to obtain project funding from the Revitalization Fund;

m. the Revitalization Society's expenses will be funded from investment income, maximizing the amounts to be spent on projects for the benefit of Survivor and Descendant Class Members;

n. in exchange for the compensation set out above, the claims of the Survivors and Descendants will be dismissed, and the Survivor and Descendant Class Members will "release" Canada from any other liability relating to their attendance or their parents' attendance, respectively, at Residential Schools; and

o. the Band Class claim will continue to be litigated.

22. When I first became involved with this lawsuit as a proposed representative plaintiff for Day Scholar Survivors, we were reacting to the fact that Day Scholars were excluded from the Indian Residential Schools Settlement Agreement Common Experience Payment ("CEP").

23. Even though I do not believe that any amount of money can "fix" the loss of language and culture that Day Scholars experienced, or undo the effects of Residential Schools, I also do not believe that it is right that Day Scholars did not receive any recognition much less compensation for what we endured when we were forced to attend institutions designed to take away our language and culture, and to weaken our bonds with our families, our communities, and our Indigenous identities.

24. We have stayed motivated over the many years of this lawsuit so far by our drive to make sure that Day Scholars are no longer excluded, and we have said many times that the goal of the

lawsuit, including any settlement, would be "no Day Scholar left behind". I am supportive of this proposed settlement because I think it accomplishes that goal, and is in the best interests of the Survivor Class Members.

25. If it is approved, the settlement will mean that Day Scholars and our descendants will finally get the recognition that we deserve, along with some compensation. It will also mean that we will no longer be subject to the many risks and delays that could come with pushing the case on to trial. Taking into consideration the potential benefits and downsides of continuing to fight the lawsuit in court, as compared to the benefits and downsides of the settlement, I believe that this settlement is a fair and reasonable compromise.

26. As a starting point for making sure that no Day Scholar will be left behind, it was important for any settlement to recognize that we have already lost many Day Scholars since the original exclusion from the CEP, including two of the original plaintiffs, Violet Gottfriedson and Frederick Johnson. That is why it is significant that the estate claims process in this settlement has the same eligibility cut-off date as the CEP did (May 30, 2005) – although those Day Scholars never got to receive the benefit, it is important and meaningful that their heirs will at least be able to receive something in recognition of the experiences of those we have lost.

27. The Plaintiffs' position that "No Day Scholar will be left behind" also means that I was not prepared to accept a settlement that would make it too difficult for Survivors and Descendants to actually make claims for benefits and compensation – having a pot of money available does not mean much if it is too hard to access it. I am very happy that the claims process and estate claims process in this proposed settlement are simple and will be accessible and fast-moving. Most importantly, nobody will have to revisit the traumatizing details of their Residential School

experiences in order to make a claim, and there are strict timelines in place to make sure that it does not take too long for claims to be processed, meaning that it will be easier for Survivors to make claims and they will receive compensation as soon as possible.

28. In addition to the value of the direct compensation to Survivor Class Members, I think it is important that the Revitalization Fund is a benefit which looks to the future. I also think that, beyond the $50 million investment, there is value in the fact that the Fund will be led and directed by Indigenous people, and that the projects which will be funded will support not just individuals, but the entire community of Survivors and Descendants for years to come. As Indigenous people, we all benefit when our communities are focused on promoting healing and wellness, and commemorating/educating about our Indigenous languages, cultures and heritage.

29. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement, and for no other or improper purpose.

SWORN before me at the Town of Sechelt, in the Province of British Columbia, this 23rd day of August, 2021.

A Commissioner for Taking Affidavits within British Columbia

DAPHNE PAUL

Peter R. Grant
Peter Grant Law
Box 12137
#407-808 Nelson Street
Vancouver B.C. V6Z 2H2

TAB 5

Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL, ~~AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

AFFIDAVIT OF DARLENE MATILDA BULPIT

(Motion for Settlement Approval)

I, Darlene Matilda Bulpit, of the Village of Halfmoon Bay, in the Province of British Columbia, MAKE OATH AND SAY:

1. I am a representative plaintiff in this action and, as such, have knowledge of the matters to which I hereinafter depose. Where the matters referenced in this affidavit are based on information I have received from others, I have stated the source of the information, and believe such information to be true.

2. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement executed June 4, 2021, which will, if approved, resolve the claims of the Survivor and Descendant Class Members in this class action.

Appointment as a representative plaintiff

3. On June 18, 2015, Justice Harrington certified this case as a class action and appointed Violet Catherine Gottfriedson, Charlotte Ann Victorine Gilbert, Darlene Matilda Bulpit, Daphne Paul, Frederick Johnson and me as representative plaintiffs for the Survivor Class. Tragically, Violet Catherine Gottfriedson and Frederick Johnson have both since passed away. I understand that my role as a representative plaintiff has been to represent the best interests of the Survivor Class, and I have fulfilled this role to the best of my ability since the lawsuit was started.

4. My history as a survivor of Sechelt Indian Residential School ("**SIRS**"), the harms that I endured as a result of my time at SIRS, and my reasons for starting this case are set out in detail in the affidavit I swore on November 12, 2013 in support of the motion for certification. I have included here only a summary of that information.

My background

5. I was born on August 23, 1948, at what was then known as Deserted Bay Indian Reserve, which is now part of Sechelt Indian Government District, which is a remote area far up Porpoise Bay Inlet near Princess Louisa Inlet.

6. I am a member of shíshálh Nation, like my parents, Johnny Dixon and Madeline Augustine, were before me. I retired from my work as the Nation's fisheries technician in 2019.

7. I have two sons, and three grandchildren.

My history as a survivor of Sechelt Indian Residential School

8. sháshíshálhem, which is the native language of our shíshálh people, was an important part of my childhood. Speaking our language was encouraged by my parents and other family members. In fact, when my grandfather Joseph Dixon lived with us, he only spoke to us in sháshíshálhem as a way to encourage us to speak our language . Because of this, I had a good understanding of sháshíshálhem and could speak some of it as well.

9. I also grew up surrounded by our cultural traditions. My father and other male members of my family including my brothers, Jamie and Doug Dixon, taught me how to hunt deer and to fish. My father would also go gathering medicinal plants and take groups of us with him. I learned so much from him as a child about medicinal plants, including their names in sháshíshálhem and uses and preparations for them. Frog leaves, for example, were used for boils. Little snowberries were used for warts.

10. My mother and other female members of my family, including my aunt Carrie Joe, and my aunt Amelia Louie, taught me how to pick berries, make jams, can salmon, fruits and vegetables, and how to cook and be hospitable. Community members, including our neighbours, also taught me many of these things.

11. I attended SIRS beginning when I was 6 years old, until I was 15 years old. I was never a resident of the school, and always attended as a Day Scholar.

12. We were taught in English at SIRS. We were not supposed to speak our sháshíshálhem language at all, and the SIRS staff would punish students when they caught us speaking our

language. I remember hearing the teachers say, "Stop talking your language!" and "If I catch you speaking that again you'll be punished!", and I also regularly saw and heard other students be disciplined for speaking their own native language. This treatment happened everywhere at SIRS, on the playground, in the dining room, or anywhere on the school grounds.

13. Many of the staff were native French speakers, and they spoke French to each other. I thought it was very unfair that the staff members could speak to each other in a different language, but we were punished for speaking our native languages. I got the clear message that speaking a language other than English was allowed, but speaking an Indigenous language was wrong and would be punished. This made me feel confused, mad, and too scared to even try to speak sháshíshálhem, even with my family members who attended SIRS at the same time as I did.

14. I never spoke my language at SIRS because of hearing the way that SIRS staff reacted and witnessing the punishments that other students got. I was very afraid of being ridiculed and punished by the staff, and I saw that other students were affected in the same way as I was.

15. I also stopped practicing my culture while I attended SIRS, because of the same fear that I had about speaking my language. When I was younger, I would do some cultural activities when I went home from SIRS at night, but I stopped doing this more and more as I got older.

16. Because we were constantly attacked at SIRS for speaking sháshíshálhem or expressing any connection to our shíshálh identity, I felt like the staff there were trying to break who I was as a shíshálh person.. As a result, I taught myself to carry on like I had no culture at all, and I learned not to associate myself with being shíshálh. Eventually, I lost my connection with my shíshálh identity almost completely.

17. My experiences at SIRS caused me to internalize a message that I was no good, not worthy, and that the shishalh part of myself was not valid, something positive, or to be valued. I have spent many years throughout my life since my time at SIRS working hard on overcoming that message, and building up my self-esteem, self-worth, and cultural pride, which has been a difficult process.

18. Over the past several years, I have also made the decision to try to get my language back. I have language tapes that I listen to, and I can recognize some words now like I could when I was a child, but I am not fluent.

19. Other than some of my rediscovered language skills, I have had very little connection with my shíshálh culture as an adult. As a result, it was very difficult for me to teach my children about their Indigenous heritage, and I feel sadness that I had to pass my loss on to them.

The proposed settlement

20. During the negotiation process, I discussed the proposed settlement with Peter Grant and Cory Wanless, two members of the Class Counsel team. They informed me about the terms of the proposed settlement before it was signed, and answered my questions.

21. I have also reviewed the Settlement Agreement myself, and I understand it, and what it will mean for Survivor Class Members if it is approved by the Court.

22. I understand the major terms of the Settlement Agreement to be as follows:

a. each eligible Survivor Class Member who makes a claim will receive a $10,000 Day Scholar Compensation Payment, with no deductions for legal fees or anything else;

b. an eligible Survivor Class Member is anybody who attended one of the Residential Schools listed at Schedule "E" as a Day Scholar for even part of a school year (so long as they have not already received compensation for that school year as part of another lawsuit);

c. for any Day Scholar who has died since May 30, 2005, but who would otherwise be eligible, their descendants/heirs will be eligible to make a claim for a Day Scholar Compensation Payment in their name;

d. there will be no limit on the total number of Survivor Class Members who can receive Day Scholar Compensation Payments – all approved claims will be paid in full;

e. both the claims process and the estate claims process will be simple and accessible. Claimants will not be required to provide a narrative or supporting documentation for their claim, and will receive the benefit of the doubt wherever possible;

f. claimants will have the right to seek reconsideration if their claims are denied and will be provided with free legal assistance for their reconsideration claims;

g. Canada will not have any right to seek reconsideration;

h. Canada will be subject to strict timelines to respond to claims;

i. the claim period will be open for 21 months;

j. a $50 million Day Scholars Revitalization Fund will be established to support healing, wellness, education, language, culture, heritage, and commemoration projects for the benefit of Survivor and Descendant Class Members;

k. the Day Scholars Revitalization Fund will be Indigenous-led, and will be operated by a not-for-profit Revitalization Society that is independent of Canada;

l. once the Revitalization Society is operational, a policy will be developed and implemented to assess applications to obtain project funding from the Revitalization Fund;

m. the Revitalization Society's expenses will be funded from investment income, maximizing the amounts to be spent on projects for the benefit of Survivor and Descendant Class Members;

n. in exchange for the compensation set out above, the claims of the Survivors and Descendants will be dismissed, and the Survivor and Descendant Class Members will "release" Canada from any other liability relating to their attendance or their parents' attendance, respectively, at Residential Schools; and

o. the Band Class claims will continue to be litigated.

23. SIRS, like all Indian Residential Schools, was an institution which was designed to take away our language and culture, and to weaken our bonds with our families, our communities, and our Indigenous identities. It is often said that the types of losses that we suffered because of Residential Schools are not the types of losses that money can fix. I agree with this, but after considering everything that I have learned and been told by Class Counsel about the potential benefits and risks of going to trial, weighed against the benefits and concessions in the settlement, I support the proposed settlement.

24. This settlement will finally provide recognition of Day Scholars' loss of language and culture that happened because of Residential Schools, in addition to providing some compensation for those losses. It is not a perfect solution, but I do feel that it is a fair and reasonable compromise and an important step toward justice.

25. Almost a decade ago, this lawsuit was started because our Nations were driven to address the unfairness of Day Scholars having been excluded from the Indian Residential Schools Settlement Agreement Common Experience Payment ("CEP"). We wanted justice for Day Scholars, and we wanted to make sure that no Day Scholars would continue to be excluded from recognition and compensation after this lawsuit was resolved.

26. I am pleased that this proposed settlement is guided by the Plaintiffs' position that 'No Day Scholar will be left behind". For example, the claims process in this settlement has the same eligibility cut-off date as the Indian Residential School Settlement Agreement negotiated in 2007.which is any Day Scholar alive as of May 30, 2005 is eligible or their descendants if they have died before this Settlement is approved. This is in recognition of the fact that we have lost many Day Scholars since the original exclusion from the CEP, including two of the original plaintiffs, Violet Gottfriedson and Frederick Johnson. Although those deceased Day Scholars were never able to receive compensation, they are still being included in the settlement by allowing their heirs to claim on behalf of their estates.

27. As another example, one of the biggest priorities when negotiating the settlement was to have a claims process that would be simple, easy to access, and have a low burden of proof for all Class Members. I think that the Settlement Agreement accomplishes this, and I think that Survivor Class Members will find that it is straight-forward to make a claim, and that approved claims will be paid out quickly.

28. The pain of my experiences at SIRS will never go away. Talking or writing about it, or reading documents from that time, can have serious negative impacts on my mental health. I know from talking to other Survivors that doing things like writing personal narratives about their

Residential School days is almost always a big emotional burden. That is why it was very important to me and the other Representative Plaintiffs that the claims process in this settlement would not require Survivors to provide a personal narrative about their time at Residential School or find supporting documentation from their Residential School days to make a claim, which will hopefully help them avoid that emotional burden.

29. I continue to feel pain about how my experiences at SIRS have echoed down the generations of my family. When I went from being a young girl speaking sháshíshálhem and surrounded by strong cultural traditions to being completely alienated from my shíshálh identity, that had had very serious negative impacts on my ability to pass my sháshíshálhem language and culture down to my children and other young people in our Nation. I think that the Revitalization Fund, which will provide funding for projects to promote healing, wellness, education, language, culture, heritage, and commemoration for Survivors and Descendants, is a suitable way to address these types of losses.

30. The projects funded by the Revitalization Fund will support not just individuals, but the entire community of Survivors and Descendants for years to come. As Indigenous people, we all benefit when our communities are focused on promoting healing and wellness, and commemorating/educating about our Indigenous languages, cultures and heritage.

31. Overall, I think this settlement is in the best interests of the Survivor Class Members, and I ask the Court to approve the settlement so that it can take effect.

32. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement, and for no other or improper purpose.

SWORN before me at the Town of Sechelt, in the Province of British Columbia, this 25 day of August, 2021.

Commissioner for Taking Affidavits

Darlene Matilda Bulpit

DARLENE MATILDA BULPIT

Peter R. Grant
Peter Grant Law
Box 12137
#407-808 Nelson Street
Vancouver B.C. V6Z 2H2

TAB 6

Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL, ~~AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

AFFIDAVIT OF RITA POULSEN
(Motion for Settlement Approval)

I, Rita Poulsen, of the Village of Halfmoon Bay, in the Province of British Columbia, MAKE OATH AND SAY:

1. I am a representative plaintiff in this action and, as such, have knowledge of the matters to which I hereinafter depose. Where the matters referenced in this affidavit are based on information I have received from others, I have stated the source of the information, and believe such information to be true.

2. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement executed June 4, 2021, which will, if approved, resolve the claims of the Survivor and Descendant Class Members in this class action.

Appointment as a representative plaintiff

3. On June 18, 2015, Justice Harrington certified this case as a class action and appointed Amanda Deanne Big Sorrel Horse and myself as representative plaintiffs for the Descendant Class. I understand that my role as a representative plaintiff has been to represent the best interests of the Descendant Class, and I have fulfilled this role to the best of my ability since the lawsuit was started.

4. My history as a child of a survivor of Sechelt Indian Residential School ("**SIRS**"), the harms that I endured as a result of my father's time as a Day Scholar at SIRS, and my reasons for starting this case are set out in detail in the affidavit I swore on November 12, 2103 in support of the motion for certification. I have included here only a summary of that information.

My background

5. I was born on March 8, 1974 and was raised in Sechelt, British Columbia. I am a member of the shíshálh Nation.

6. My parents are Randy Joe and Lanie Schroeder. I am the eldest of their three daughters. Samantha Eden Baker and Tina Belia Joe are my sisters.

Impact of SIRS on me and my family

7. My father was a Day Scholar at SIRS. My parents never spoke sháshíshálhem, which is the language of our shíshálh people, with me or my sisters, so we grew up only learning and speaking English. My mother told me that we "lost" our Indigenous language because SIRS would not allow it.

8. In addition to not speaking our language, I was not raised in our traditional ways and I never learned traditional skills and aspects of shíshálh culture. For example, I was not taught to hunt or fish, and as a result I lost the experience of being "on the land" and water with my family as my grandparents and their parents were before them.

9. Some of the older members of my family, including my grandfather William Joe and my late great-uncle Benny Joe, did tell me and my sisters stories about our history as shíshálh people, and tried to speak sháshíshálhem around us. But my parents, especially my father, never did so.

10. My father was very emotionally distant from his children when we were growing up, and it was difficult for us to form connections with him. I believe that part of the distance between us was the lack of our traditional language as a common ground. sháshíshálhem is an important aspect of being shíshálh, and without access to our language, our people cannot truly understand the levels and depths of meanings of relationships between people, and between people and the world around us.

11. When I got older, I became more curious about my language and culture. As a high school student, I asked my father why he did not speak sháshíshálhem. He told me that he had spoken it at home as a child, but that students were not permitted to speak it at SIRS. He described feeling

"ripped off" because he did not learn about our language or culture and became detached from it. That was one of the few times when he shared anything with me about his experiences at SIRS.

12. When I was 21 years old, I began volunteering with my late aunt, Donna Joe, who taught sháshíshálhem to children at different Sechelt schools, and I also began to learn. It was very difficult for me to learn sháshíshálhem, and I am still not a fluent speaker, but I now likely have the greatest command and understanding of the language of anyone of my generation in the shíshálh Nation. I am very passionate about our language, and I am proud to now work as a language teacher like my aunt.

13. I believe that our ability to learn sháshíshálhem is linked to our level of confidence as shíshálh people because our language is so much a part of our identities. A difficult cycle has formed, where our people are not proud of who they are as shíshálh, and therefore do not want to engage with our language, but the lack of language makes it difficult for them feel comfortable as shíshálh. I often tell my students that, without my Indigenous language, I feel like just another brown face.

14. At a spiritual level, knowing sháshíshálhem has brought me a sense of peace, and has increased my sense of meaning in life. Although I feel fortunate to have had a "second chance" to learn sháshíshálhem as an adult, I feel sad for all of the people like my father, who had their language and culture taken away from them at Residential School, and also for their children and families, who also had their language and culture taken away from them prematurely. Many of them will never know the full extent of our language and culture.

The proposed settlement

15. During the negotiation process, I discussed the proposed settlement with Peter Grant and Cory Wanless, two members of the Class Counsel team. They informed me about the terms of the proposed settlement before it was signed and answered my questions.

16. I have also reviewed the Settlement Agreement myself, and I understand it, and what it will mean for Survivor Class Members if it is approved by the Court.

17. I understand the major terms of the Settlement Agreement to be as follows:

a. each eligible Survivor Class Member who makes a claim will receive a $10,000 Day Scholar Compensation Payment, with no deductions for legal fees or anything else;

b. an eligible Survivor Class Member is anybody who attended one of the Residential Schools listed at Schedule "E" as a Day Scholar for even part of a school year (so long as they have not already received compensation for that school year as part of another lawsuit);

c. for any Day Scholar who has died since May 30, 2005, but who would otherwise be eligible, their descendants/heirs will be eligible to make a claim for a Day Scholar Compensation Payment in their name;

d. there will be no limit on the total number of Survivor Class Members who can receive Day Scholar Compensation Payments – all approved claims will be paid in full;

e. both the claims process and the estate claims process will be simple and accessible. Claimants will not be required to provide a narrative or supporting documentation for their claim, and will receive the benefit of the doubt wherever possible;

f. claimants will have the right to seek reconsideration if their claims are denied and will be provided with free legal assistance for their reconsideration claims;

g. Canada will not have any right to seek reconsideration;

h. Canada will be subject to strict timelines to respond to claims;

i. the claim period will be open for 21 months;

j. a $50 million Day Scholars Revitalization Fund will be established to support healing, wellness, education, language, culture, heritage, and commemoration projects for the benefit of Survivor and Descendant Class Members;

k. the Day Scholars Revitalization Fund will be Indigenous-led, and will be operated by a not-for-profit Revitalization Society that is independent of Canada;

l. once the Revitalization Society is operational, a policy will be developed and implemented to assess applications to obtain project funding from the Revitalization Fund;

m. the Revitalization Society's expenses will be funded from investment income, maximizing the amounts to be spent on projects for the benefit of Survivor and Descendant Class Members;

n. in exchange for the compensation set out above, the claims of the Survivors and Descendants will be dismissed, and the Survivor and Descendant Class Members will "release" Canada from any other liability relating to their attendance or their parents' attendance, respectively, at Residential Schools; and

o. the Band Class claim will continue to be litigated.

18. No lawsuit could change what happened to my father or to me or the children of Day Scholars, and there is no outcome of this lawsuit that could replace what we have lost. But within the limits of what can be achieved by a lawsuit, I believe that this settlement is a fair and reasonable compromise, and I ask the Court to approve the settlement because I believe that it is in the best interests of the Descendant Class Members.

19. My father's experiences attending SIRS, an institution which was designed to take away his language and culture, also resulted in a weakened bond between us, and prevented me from connecting with my language, culture and community. Although I have dedicated many years to building up these connections, I also know that I will have to continue putting in this work for the rest of my life. Money cannot remedy that loss of connection. Still, the benefits in the proposed settlement offer meaningful recognition of Descendants' loss of language and culture as a result of our parents' attendance at Residential School, as well as some compensation, with the added positive outcome of removing the many risks and delays that would come with continuing to fight in court.

20. Although money by itself cannot fix our loss of language and culture, I am a teacher, so I know how critical funding is for the promotion of healing, wellness, education, language, culture, heritage and commemoration. I believe that the $50 million Revitalization Fund is reasonable compensation to settle the claims of the Descendant Class Members, and that putting this money in the hands of Indigenous people to support Survivors and Descendants is important and will change lives.

21. I agreed to be a representative plaintiff in this class action lawsuit because I wanted to see Canada acknowledge Day Scholars and their descendants, so that we would no longer be left behind. I am pleased that this settlement will ensure that the harms and losses suffered by Day Scholars and their children are being recognized. I hope this recognition is the beginning of a time of justice and resolution for Day Scholars and their families, and that this settlement can help put us on a good path towards healing and towards revitalizing our languages and cultures, so that my children and grand-children will speak sháshíshálhem and be proud upholders of our culture.

22. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement, and for no other or improper purpose.

SWORN before me at the Town of Sechelt, in the Province of British Columbia, this 23rd day of August, 2021.

A Commissioner for Taking Affidavits within British Columbia

RITA POULSEN

Peter R. Grant
Peter Grant Law
Box 12137
#407-808 Nelson Street
Vancouver B.C. V6Z 2H2

TAB 7

Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL, ~~AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

AFFIDAVIT OF AMANDA DEANNE BIG SORREL HORSE

(Motion for Settlement Approval)

I, Amanda Deanne Big Sorrel Horse, of the City of Kamloops, in the Province of British Columbia, MAKE OATH AND SAY:

1. I am a representative plaintiff in this action and, as such, have knowledge of the matters to which I hereinafter depose. Where the matters referenced in this affidavit are based on information I have received from others, I have stated the source of the information, and believe such information to be true.

2. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement executed June 4, 2021, which will, if approved, resolve the claims of the Survivor and Descendant Class Members in this class action.

Appointment as a representative plaintiff

3. On June 18, 2015, Justice Harrington certified this case as a class action and appointed Rita Poulsen and me as representative plaintiffs for the Descendant Class. I understand that my role as a representative plaintiff has been to represent the best interests of the Descendant Class, and I have fulfilled this role to the best of my ability since the lawsuit was started.

4. My history as a child of a survivor of Kamloops Indian Residential School ("**KIRS**"), the harms that I endured as a result of my mother's time as a Day Scholar at KIRS, and my reasons for starting this case are set out in detail in the affidavit I swore on November 7, 2013 in support of the motion for certification. I have included here only a summary of that information.

My background

5. I was born on December 26, 1974, in Kamloops, British Columbia. My name at birth was Amanda Ahdemar. In 1996, I married Randy Big Sorrel Horse and I changed my name to Amanda Big Sorrel Horse.

6. My biological parents are Larry Ahdemar and Jo-Anne Gottfriedson. I have four children, three sons and one daughter. I am also raising my nephew.

Impact of KIRS on me and my family

7. My mother, Jo-Anne Gottfriedson, grew up on Kamloops Indian Reserve No. 1, and attended KIRS as a Day Scholar from approximately 1961 to 1967, except for half a year in approximately 1964.

8. My father, Larry Ahdemar, grew up on the Sandy Lake Indian Reserve, near Prince Albert, Saskatchewan. I understand from my father that he did not attend residential school.

9. My parents divorced when I was seven and I was primarily raised by my mother on the Kamloops Indian Reserve. Our home was difficult while I was growing up because my mother struggled with alcohol. When I became an adult, my mother told me that she used alcohol to bury her memories of the abuse and mistreatment she suffered while at KIRS.

10. Growing up, we spoke English at home almost exclusively, so I did not place much importance or significance on learning our language, Secwepemctsín. My mother and my maternal grandmother taught my siblings and myself a few words and phrases in Secwepemctsín, but not enough for us to be able to converse.

11. In addition to not speaking our language, my mother also did not teach us any traditional or cultural practices when I was a child. I observed my maternal grandparents and people in our community participating in traditional and cultural practices, but these practices were not a part of our household.

12. My maternal grandmother did try to teach me about our Aboriginal history and introduced me to various cultural practices, such as the sweatlodge, dances, berry picking, and art. But, since

these practices were not part of my household, I did not place any importance or value to them. Because my focus was on how my mother raised us, it did not matter to me that we did not practice our culture or traditions.

13. When I was a teenager, my mother began to reconnect with her Indigenous culture and she began to participate in sweatlodge ceremonies, and took me berry picking and root picking. Because I never learned the importance of our traditions and culture from a young age, these practices still seemed foreign to me and I did not connect with them.

14. My mother has only recently begun to tell me about her experiences at KIRS. She describes their effect on her life as "a big loss". This big loss also echoed down into my generation. Residential school stripped my mother of her language and culture, meaning that my siblings and I did not have the benefit of growing up learning our language and being raised in our traditional ways. Without these fundamental connections to my Indigenous heritage, I did not grow up feeling proud to be Indigenous, and that loss continues to affect me to this day.

15. As an adult, I have worked hard to learn and to reclaim my language, including taking Secwepemctsín classes in university. Also while I was in university, I started to participate more in traditional and cultural practices. My husband is very traditional, and he helped me a lot with this learning, and forming these connections to my Indigenous identity.

16. I still grieve for the time that I lost earlier in my life, when my mother was hiding from her residential school experiences and that prevented her from being able to show me our culture and way of life. Learning things as an adult is valuable, but it is never the same as the knowing that comes from being raised in something from childhood. For example, I now have a good

understanding of our language, but I continue to be hesitant and insecure about my language skills. As a result, I am not confident enough to teach Secwepemctsín to my children, so they feel our family's big loss as well.

The proposed settlement

17. During the negotiation process, I discussed the proposed settlement with Peter Grant and Cory Wanless, two members of the Class Counsel team. They informed me about the terms of the proposed settlement before it was signed, and answered my questions.

18. I have also reviewed the Settlement Agreement myself, and I understand it, and what it will mean for Descendant Class Members if it is approved by the Court.

19. I understand the major terms of the Settlement Agreement to be as follows:

a. each eligible Survivor Class Member who makes a claim will receive a $10,000 Day Scholar Compensation Payment, with no deductions for legal fees or anything else;

b. an eligible Survivor Class Member is anybody who attended one of the Residential Schools listed at Schedule "E" as a Day Scholar for even part of a school year (so long as they have not already received compensation for that school year as part of another lawsuit);

c. for any Day Scholar who has died since May 30, 2005, but who would otherwise be eligible, their descendants/heirs will be eligible to make a claim for a Day Scholar Compensation Payment in their name;

d. there will be no limit on the total number of Survivor Class Members who can receive Day Scholar Compensation Payments – all approved claims will be paid in full;

e. both the claims process and the estate claims process will be simple and accessible. Claimants will not be required to provide a narrative or supporting documentation for their claim, and will receive the benefit of the doubt wherever possible;

f. claimants will have the right to seek reconsideration if their claims are denied and will be provided with free legal assistance for their reconsideration claims;

g. Canada will not have any right to seek reconsideration;

h. Canada will be subject to strict timelines to respond to claims;

i. the claim period will be open for 21 months;

j. a $50 million Day Scholars Revitalization Fund will be established to support healing, wellness, education, language, culture, heritage, and commemoration projects for the benefit of Survivor and Descendant Class Members;

k. the Day Scholars Revitalization Fund will be Indigenous-led, and will be operated by a not-for-profit Revitalization Society that is independent of Canada;

l. once the Revitalization Society is operational, a policy will be developed and implemented to assess applications to obtain project funding from the Revitalization Fund;

m. the Revitalization Society's expenses will be funded from investment income, maximizing the amounts to be spent on projects for the benefit of Survivor and Descendant Class Members;

n. in exchange for the compensation set out above, the claims of the Survivors and Descendants will be dismissed, and the Survivor and Descendant Class Members will "release" Canada from any other liability relating to their attendance or their parents' attendance, respectively, at Residential Schools; and

o. the Band Class claims will continue to be litigated.

20. My mother's experiences attending KIRS, an institution which was designed to take away her language and culture, caused her "big loss", which in turn led to loss for me because it prevented me from connecting with my language, culture and community. I have worked hard as an adult to build up these connections, but I worry that I will never feel fully comfortable with Secwepemctsín, and my identity as Secwépemc.

21. Although no amount of money can fully compensate us for the loss of our language and culture—and the resulting negative impact on our Indigenous identities—I understand that settlements in lawsuits are compromises, and I believe that this settlement is a fair and reasonable compromise of our claims.

22. In particular, I believe that the benefits in the proposed settlement offer recognition for Descendants' loss of language and culture as a result of our parents' attendance at Residential School, as well as some compensation, with the added positive outcome of removing the many risks and delays that would come with continuing to fight in court. I ask the Court to approve the settlement because I believe that it is in the best interests of the Descendant Class Members.

23. Losses like the ones that we have suffered can never be compensated for by money, but money does help us to do the important work of promoting healing and wellness, commemorating

our losses, and providing education about language, culture, and heritage. I think that the $50 million Revitalization Fund is a fitting and appropriate way to settle the claims of the Descendant Class Members, and that putting this money in the hands of Indigenous people to support Survivors and Descendants is important and will change lives.

24. When I first became involved with this lawsuit almost a decade ago, it was because I thought it was important that Day Scholars and their descendants no longer be left behind. This settlement is part of that, and part of our collective journey toward reconciliation and healing from the legacy of residential schools.

25. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement, and for no other or improper purpose.

SWORN before me at the City of Kamloops, Province of British Columbia, this 23rd day of August, 2021

A Commissioner for Taking Affidavits within British Columbia

R. L. DAVID HUGHES
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Amanda Deanne Big Sorrel Horse

TAB 8

Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND and the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL~~, AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

AFFIDAVIT OF PETER GRANT

(Motion for Settlement Approval)

I, Peter Grant, of the Town of Gibsons in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am counsel with Peter R. Grant Law Corporation, co-Class Counsel in this action, and, as such, have knowledge of the matters to which I hereinafter depose. Where the matters referenced in this affidavit are based on information I have received from others, I have stated the source of the information, and believe such information to be true.

2. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement executed June 4, 2021 (the "Settlement Agreement"), which will, if approved, resolve the claims of the Survivor and Descendant Class Members in this class action. Unless otherwise defined, capitalized terms in this affidavit have the meanings set out in the Settlement Agreement.

3. Nothing in this affidavit is intended to, or does, waive solicitor-client privilege over Class Counsel's discussions with the Plaintiffs or any other Class Members. Specifically, no part of this Affidavit may be relied upon by the Defendant in the Band Class litigation and this affidavit is presented solely for the purpose of the motion for approval of the Settlement Agreement on behalf of the Survivor and Descendant Classes. This Affidavit is specifically filed without prejudice to the positions to be taken on behalf of the Band Class in this litigation.

4. I have represented survivors of Indian Residential Schools in litigation since 1994 when I was first asked to sue Canada and the Anglican Church for assaults which occurred at St. George's Indian Residential School in Lytton, British Columbia in *FSM v. Clarke et al.* I also represented Willy Blackwater and 27 other survivors of Alberni Indian Residential School in *Blackwater v. Plint et al*, a case that went to the Supreme Court of Canada. As part of my work as legal counsel for these plaintiffs as well as over 100 other Residential School survivors prior to my work on this case, I became familiar with the history of Indian Residential schools including the historical work of Dr. J. R. Millar who wrote *Shingwauk's Vision* and Dr. John Milloy who wrote Chapter 10 of the Royal Commission on Aboriginal Peoples' Report regarding Residential Schools (1996), *Suffer the Little Children*, a special report on residential schools that Dr. Milloy drafted for RCAP and *A National Crime*, a leading historical work on the Indian Residential Schools.

5. I also relied on Dr. Milloy's work in the certification of this proceeding as a class action and worked with Dr. Milloy on an expert report for the trial which had been scheduled for September 2021.

6. Based on this experience and knowledge, I summarize the history of the Indian Residential Schools in this Affidavit but wish to confirm that I am summarizing matters which I believe are, in many respects, no longer in dispute and am not presenting myself as an expert historian.

FACTUAL BACKGROUND

Indian Residential Schools in Canada

7. For over 100 years, the Government of Canada ("Canada") funded, oversaw and operated a system of Indian residential schools ("Residential Schools") in "a systematic, government-sponsored attempt to destroy Aboriginal cultures and languages and to assimilate Aboriginal peoples so that they no longer existed as distinct peoples."[1]

8. According to the Truth and Reconciliation Commission, "Canada's residential school system for Aboriginal children was an education system in name only for much of its existence. These residential schools were created for the purpose of separating Aboriginal children from their families, in order to minimize and weaken family ties and cultural linkages, and to indoctrinate children into a new culture—the culture of the legally dominant Euro-Christian."[2]

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[1] Honouring the Truth, Reconciling for the Future, Summary of the Final Report of the Truth and Reconciliation Commission of Canada, ("TRC Summary Report") p. 153, https://publications.gc.ca/collections/collection_2015/trc/IR4-7-2015-eng.pdf

[2] TRC Summary Report, p. v.

9. The Truth and Reconciliation Commission concluded that Canada's assimilationist policy towards Aboriginal people, including the establishment and operation of Residential Schools, was cultural genocide.[3]

10. In support of the motion for certification of this action as a class proceeding, the plaintiffs adduced an affidavit from Dr. John Milloy, a Canadian history professor who specializes in the relationship between the Canadian government and Aboriginal peoples and has written the authoritative work on the history of the Residential School System *A National Crime.* In his affidavit, Dr. Milloy provided expert evidence regarding, *inter alia*, the origins of the Residential School system and the development and content of Canada's Residential School policy. A copy of Dr. Milloy's affidavit, with exhibits removed, is attached hereto as Exhibit "A" to this my affidavit and relevant portions of Dr. Milloy's evidence are summarized below.

11. While Residential Schools were often operated by churches and religious orders, they were created and operated under the authority and pursuant to supervision and direction of Canada. Canada began funding the operation of Residential Schools starting as early as 1868. By 1892, through Orders-In-Council, Canada exercised control over Residential Schools by requiring school management to conform to the rules of the Indian Department in the operation of Residential Schools as a condition of receiving funding.

12. In 1920, the beginning of the class period in this Class Action, the Parliament of Canada amended the *Indian Act* to make it compulsory for "every Indian child" between the ages of 7 and 15 to attend either a Residential School or other federally established school, as determined by Canada. In 1930, the upper age for mandatory school attendance was increased to 16. Parents who

[3] TRC Summary Report, p. 1.

refused to send their children to Residential School could be fined or imprisoned. Truant children could be arrested without a warrant and conveyed to school. Canada granted truant officers broad powers to enforce the *Act*, including the "authority to enter any place where he has reason to believe that there are Indian children".

13. Canada maintained control over Residential Schools until the last Residential School closed in 1997.

14. Canada has acknowledged the assimilationist intent of Residential Schools and the harm done to students who attended these schools. On June 11, 2008, the then-Prime Minister of Canada, the Right Honourable Stephen Harper, made a Statement of Apology to former students of Indian Residential Schools, on behalf of the Government of Canada ("the Harper Apology"), In that apology, he stated that "[t]wo primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said, "to kill the Indian in the child"."[4] In the apology, Canada recognized that "the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language."[5]

[4] "Statement of Apology to former students of Indian Residential Schools" of the Right Honourable Stephen Harper on behalf of Canada, June 11, 2008, ("Statement of Apology") https://www.rcaanc-cirnac.gc.ca/eng/1100100015644/1571589171655

[5] Statement of Apology

Day Scholars at Residential Schools

15. While most students who attended Residential Schools resided at the schools, some students attended as day students – these students are often referred to a "Residential School Day Scholars", or "Day Scholars". Unlike resident students, Day Scholars did not live at Residential Schools – they attended as students during the day only.

16. While there were Day Scholars at various Residential Schools throughout the Class Period, the number of students attending Residential Schools as Day Scholars increased significantly in the post-World War II period, before tapering off in the 1960s through 1980s, owing first to the conversion of Indian Residential Schools into administratively separate Indian Day Schools and residences (the so-called "administrative split"), and second to the closure of Residential Schools outright.

17. In many cases, Day Scholars came from Indigenous communities that had or were located near Residential Schools, which allowed Day Scholars to return home at night. For example, Kamloops Indian Residential School was located in Tk'emlúps te Secwépemc, (" Tk'emlúps") and Sechelt Indian Residential School was located in shíshálh Nation ("shíshálh"). I have been informed by former Chief Shane Gottfriedson of Tk'emlúps and former Chief Garry Feschuk of shíshálh, as well as the Representative Plaintiffs from both communities and do verily believe that, in both cases, a large number of children from each community attended Residential Schools as Day Scholars.

18. Based on the evidence of the Representative Plaintiffs in their affidavits, evidence given during cross-examination on affidavits filed in support of certification, the instructions that they provided to us, and the presentations that they made to Tom Isaac, the Minister's Special

Representative in the 2016-2018 negotiations, the daytime and classroom experiences of Residential School Day Scholars were similar to those experienced by all other children who attended Residential Schools. As the Representative Plaintiffs testified, and as Dr. Milloy opined in his affidavit, the Day Scholars were subjected to a concerted effort to assimilate them, and to eradicate their traditional ontology, language, spirituality and culture. In the classroom, and in their experiences at Residential Schools generally, Day Scholars were subjected to the same treatment, curriculum, and pedagogy as all other children at Residential Schools.

19. The adults who were entrusted with educating Day Scholars instead punished and abused Day Scholars for speaking their languages, and denigrated, prohibited, and insulted their cultural beliefs and practices. In their affidavits filed in support of certification and on this Motion, the Representative Plaintiffs describe the kinds of impacts and harms suffered by Day Scholars as a result of their attendance at Residential Schools, in particular loss of language and culture.

Indian Residential Schools Settlement Agreement and the exclusion of Day Scholars from the Common Experience Payment

20. I was one of the group of lawyers who represented over 1,200 individual Residential School survivors along with Leonard S. Marchand and other counsel from across Canada during the negotiations of the Indian Residential School Settlement Agreement ("IRSSA"). Our group was known as Independent Counsel and is a party to IRSSA. My co-counsel in this case, John Phillips and Diane Soroka were also involved in the negotiations of that settlement agreement. I know the contents of IRSSA as one of negotiating counsel and also as the representative for Independent Counsel on the National Administration Committee ("NAC") that has supervised the implementation of IRSSA.

21. In 2006, Canada, representatives for Residential School survivors and various religious organizations entered a comprehensive settlement agreement known as the IRSSA to resolve outstanding litigation arising from the long and tragic history of sexual, physical, and psychological abuse and other harms suffered by thousands of First Nations, Métis and Inuit children in Indian Residential Schools. The stated purpose of IRSSA was to provide a "fair, comprehensive and lasting resolution of the legacy of Residential Schools" and to promote "healing, education, truth and reconciliation and commemoration."

22. Compensation under IRSSA for individual Residential School survivors took two forms. First, survivors who *resided at* a Residential School were eligible for a lump sum Common Experience Payment ("CEP") in recognition of the general harm suffered by virtue of attending and residing at Residential Schools.[6] Second, survivors who suffered sexual abuse and/or serious physical abuse arising from or connected to the operation of a Residential School could apply for compensation through the Individual Assessment Process ("IAP").[7]

23. Day Scholars were eligible to apply for compensation through IAP for sexual abuse and/or serious physical abuse, but were specifically excluded from receiving the Common Experience Payment because they did not live at Residential Schools. Day Scholars who did apply for a CEP received rejection letters stating that they were not eligible for CEP because they were Day Scholars.

24. At the time of IRSSA, and throughout their pleadings in this litigation as well, Canada's position has been that, because Day Scholars were not taken from their families and forced to

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[6] Indian Residential School Settlement Agreement ("IRSSA"), article 5.02 https://www.residentialschoolsettlement.ca/IRS%20Settlement%20Agreement-%20ENGLISH.pdf

[7] Schedule D: Independent Assessment Process (IAP) for Continuing Indian Residential School Abuse Claims, https://www.residentialschoolsettlement.ca/Schedule_D-IAP.PDF

reside at Residential Schools, their experiences differed from that of residents of Residential Schools, and therefore they were not entitled to the same compensation.

HISTORY OF THIS ACTION

Origins of the Day Scholar litigation

25. The exclusion of Day Scholars from the CEP portion of IRSSA, and the general failure to provide any form of compensation for the common experiences of students who attended Residential Schools during the day only caused significant anger and frustration amongst Day Scholars, their families and their communities.

26. After speaking with former Chiefs Shane Gottfriedson and Garry Feschuk, of Tk'emlúps and shíshálh, respectively, I learned that this anger was strongly felt by Day Scholarsin their communities, both of which had a Residential School on their reserve lands, and consequently had a large number of community members who attended as Day Scholars.

27. In late 2010, in response to the frustration in their communities, Chief Feschuk and Chief Gottfriedson had the first of many discussions about the Day Scholars from their communities who had been left out, and who had not received any recognition or compensation for having attended Residential Schools. During this conversation, they decided that they and their Nations would come together to fight on behalf of Day Scholars, including by taking legal action. Chief and Council for Tk'emlúps and shíshálh have played a key leadership role in the fight for justice for Day Scholars ever since.

28. Shortly after, Chief Gottfriedson contacted Kamloops lawyer Leonard S. Marchand (now Justice Marchand) to discuss legal options. Prior to his call to the bench, and eventually his

elevation as the first Indigenous Justice of the British Columbia Court of Appeal, Justice Marchand was a lawyer in private practice with a stalwart reputation for representing survivors in civil claims regarding historic child abuse in institutional settings, including Residential Schools. After the IRSSA, he acted for many survivors particularly in the Yukon and Northwest Territories in their claims for compensation through the IAP. As he was close to Tk'emlúps, he was well aware of the frustration felt by Day Scholars at Tk'emlúps for being kept out of the Common Experience compensation.

29. Leonard S. Marchand reached out to John Phillips and myself to discuss the possibility of joining together as a legal team to bring a claim on behalf of the Day Scholars who had not received a Common Experience Payment under IRSSA. All three of us had worked in various capacities on the negotiation and implementation of IRSSA, and knew the issues well. In IRSSA negotiations: I had acted as lead negotiator for Independent Counsel; John Phillips had acted as lead negotiator for the Assembly of First Nations ("AFN"); and Leonard S. Marchand was a key part of the Independent Counsel negotiation team. Additionally, Leonard S. Marchand had served on the Oversight Committee for the Independent Assessment Process and the Selection Committee for the Truth and Reconciliation Commission.

30. In November 2011, Leonard S. Marchand, John Phillips and I (the "Legal Team") were formally retained by Tk'emlúps and shíshálh to develop a strategy regarding a potential class proceeding on behalf of Day Scholars who attended Residential Schools. We met with Chief and Council, Elders, community members, and Day Scholars, first in Tk'emlúps, and then in shíshálh. We heard from Day Scholars the harms they suffered as a result of their time at Residential Schools – particularly in the form of lost language and culture – as well as the anger they felt at having been left out of the CEP portion of IRSSA. We also heard about the horrific legacy of Residential

Schools generally, and the damage the schools had wrought across both generations and communities.

31. In 2011 and 2012, the Legal Team developed the legal strategy that led to this Action. At the time, we knew that the hurdles we faced would be formidable. Key legal risks included:

a. **Limitation defences**: based on my previous experience as plaintiffs' lawyer in *Blackwater v. Plint*, I was keenly aware that the entire Day Scholars claim risked being defeated by a limitations defence. In *Blackwater*, Chief Justice Brenner of the Supreme Court of British Columbia held that any claims other than those of a sexual nature regarding treatment of students at a Residential School were subject to a general two year limitation period.[8] A subsequent decision by the Court of Appeal for British Columbia explicitly left open the question of whether a limitation period could bar a claim brought for loss of language and culture caused by attendance at a Residential School.[9]

b. **Novel claim regarding loss of Indigenous language and culture**: To my knowledge, at the time that the Action was commenced, it was the first time a lawsuit in Canada had asserted a claim for damages for the loss of Indigenous language and culture. The novelty of the legal claim added substantial risk.

c. **Risks regarding commonality:** We fully expected Canada to argue (as they did throughout the proceeding) that the individual experiences of Day Scholars located at different Residential Schools located in vastly different regions of Canada, over

[8] *Blackwater v. Plint*, 2001 BCSC 997 at paras 260-281 https://canlii.ca/t/4x3t
[9] *Blackwater v. Plint*, 2003 BCCA 671 at para 82 https://canlii.ca/t/1g24f

a time period that stretched over 60 years, lacked sufficient commonality to be heard as a class proceeding under the *Federal Courts Rules.*

d. **Impact of IRSSA releases:** IRSSA was intended to be a final resolution of any and all claims relating to Residential Schools.[10] Accordingly, it contained a "deemed release" that purported to release the claims of all attendees at Residential Schools, including Day Scholars, "in relation to an Indian Residential School or the operation of Indian Residential Schools".[11] Similarly, many Day Scholars who sought to receive compensation through the IAP for sexual or serious physical abuse were required to sign a further "Final Legal Release" which further purported to release the signatory's claims "arising from or related to their "participation in program or activity associated with or offered at or through any Indian Residential School" and "the operation of Indian Residential Schools".[12] The existence of both the general deemed release and the IAP release created a further substantial risk to the claims of many Survivor Class and Descendant Class Members.

Commencement of the Action

32. The Action was commenced by way of a statement of claim filed in Federal Court on August 15, 2012, and was amended on June 11, 2013, and once after certification on June 26, 2015. Copies of these pleadings are included in the Motion Record.

[10] See *e.g.* the language used in the Preamble to IRSSA.
[11] IRSSA s. 11.01. The wording contained in IRSSA was implemented in the various Approval Orders issued by provincial superior courts which implemented IRSSA.
[12] Schedule "P" IAP Full Legal Release, https://www.residentialschoolsettlement.ca/ScheduleP.pdf

33. The Action as originally filed sought relief on behalf of three proposed classes, which were defined at certification by Justice Harrington, as follows:

a. the Survivor Class, consisting of all Aboriginal persons who attended as a student or for educational purposes for any period at a Residential School, during the Class period, excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under IRSSA;

b. the Descendant Class, consisting of the first generation of persons descended from Survivor Class members or persons who were legally or traditionally adopted by a Survivor Class Member or their spouse; and

c. the Band Class, consisting of Tk'emlúps te Secwépemc Indian Band and the shíshálh band and any other Aboriginal Indian Bands(s) which:

(i) has or had some members who are or were members of the Survivor Class, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically identified Residential Schools.

Nature of the Claim

34. The lawsuit claims that the purpose, operation and management of the Indian Residential Schools destroyed Class Members' language and culture, violated their cultural and linguistic rights, and caused them other harms. The Action seeks, among other things, declarations and

compensation for loss of language and culture caused by Residential School Policy, including the forced attendance of the Survivor Class members at Residential Schools. In the case of the Survivor Class, the Action also seeks compensation for psychological harms caused by attending at Residential Schools.

Plaintiffs and Representative Plaintiffs

35. The Statement of Claim originally named thirteen plaintiffs as proposed representative plaintiffs for the Survivor and Descendant Classes. In the intervening years prior to the certification hearing, I was advised by several of the originally named plaintiffs that they decided not to continue to seek to be named as representative plaintiffs in part because of the psychological hardship caused by acting in such a capacity.

36. The Certification Order named the following as Representative Plaintiffs of the Survivor and Descendant Classes:

a. for the Survivor Class: Violet Catherine Gottfriedson, Charlotte Anne Victorine Gilbert, Diena Marie Jules, Darlene Matilda Bulpit, Frederick Johnson and Daphne Paul.

b. for the Descendant Class: Amanda Big Sorrel Horse and Rita Poulsen.

37. Tragically, Violet Gottfriedson passed away in April 2016, and Frederick Johnson passed away in January 2017. Their deaths impacted the other Representative Plaintiffs and the Legal Team deeply, and brought home the reality that the longer the litigation continued, the more Class Members would die without having received justice for, or acknowledgement of, the harm suffered by them at Residential Schools.

Early Procedural Motions

38. In 2013, Canada brought a motion to stay the Action pursuant to s. 50.1 of the *Federal Courts Act* on the grounds that it wished to bring third party claims against a number of churches and religious orders for contribution and indemnity. Canada took the position that the Federal Court did not have jurisdiction over the third party claims against the churches and religious orders, and therefore the action should be stayed. Canada's motion was unsuccessful, as was the subsequent appeal. As part of their response to Canada's attempt to stay the Action, the Plaintiffs amended their claim on June 11, 2013 to make clear that they were seeking only several liability against Canada limited to the damage caused by its own wrongs in the creation and management of the Residential School System, and not any damage for which the religious organizations may be liable.

39. Despite this amendment, Canada nonetheless filed third party claim against five religious organizations said to be involved in running the Residential Schools in Kamloops and Sechelt. These claims were struck by Justice Harrington on the basis that, even if the allegations therein were true, Canada has no claim against them as the Plaintiffs only sought redress against Canada severally, and therefore Canada would not be able to flow that liability through to third parties in whole or in part by way of contribution or indemnity.

Certification

40. The class action was certified on June 3, 2015 after a contentious and hard-fought certification motion.

41. Canada conducted extensive cross-examinations of all eleven of the proposed representative plaintiffs which led to the necessity for the plaintiffs to relive parts of their harrowing experiences – an experience that the each of the plaintiffs who were cross-examined told me they found traumatic.

42. During the four-day certification motion hearing, Canada took strong positions against the Plaintiffs' experts, moving unsuccessfully to strike the evidence of Dr. John Milloy and of Dr. Marianne Ignace, an expert in linguistics and in the Secwepemc language.

43. In its submissions at certification, Canada argued that the Action "fails to meet almost every component of the test, each of which must be satisfied for certification". In particular, at certification Canada argued that:

a. the claims are time-barred;

b. the claims were released pursuant to IRSSA;

c. the claims disclose no reasonable causes of action as the issue of Residential School was a policy decision of the Government of Canada, and the issue of good or bad policy is not justiciable;

d. the class definitions were overbroad and lacked any basis in fact;

e. the claims fail to define common issues that are capable of determination in common – instead each issue requires individual findings of fact and legal analysis;

f. a class proceeding was not a preferable procedure for the resolution of the claims for various reasons including that the claims would devolve into a determination of

a multitude of individual issues and that the determination of Aboriginal rights are incompatible with class action procedure;

44. Despite Canada's arguments against certification, Justice Harrington certified the Action as a class proceeding on June 3, 2015, and set the following Common Questions of Law or Fact to be determined at the Common Issues Trial:

a. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a fiduciary duty owed to the Survivor, Descendant and Band Class, or any of them, not to destroy their language and culture?

b. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach the cultural and/or linguistic rights, be they Aboriginal Rights or otherwise of the Survivor, Descendant and Band Class, or any of them?

c. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a fiduciary duty owed to the Survivor Class to protect them from actionable mental harm?

d. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a duty of care owed to the Survivor Class to protect them from actionable mental harm?

e. If the answer to any of (a)-(d) above is yes, can the Court make an aggregate assessment of the damages suffered by the Class as part of the common issues trial?

f. If the answer to any of (a)-(d) above is yes, was the Defendant guilty of conduct that justifies an award of punitive damages; and

g. If the answer to (f) above is yes, what amount of punitive damages ought to be awarded?

45. Canada did not appeal the order certifying the Action as a class proceeding.

Canada's defence of the Action

46. From the start, Canada took a hard line in its defence of the Action, which set the parties up for protracted and hard fought litigation. Throughout the litigation, Canada admitted little, and put the Plaintiffs to the strict proof of all aspects of their claim. The result was a long and difficult journey for the Plaintiffs and the Classes.

47. On September 8, 2015, Canada filed a Statement of Defence in which it:

a. denied that Canada had a "Residential School Policy";

b. denied that "Canada intended to eradicate Aboriginal languages, culture, identity or spiritual practices";

c. asserted that in the "establishment and operation of the Residential Schools… Canada acted with due care, in good faith and within its legislative authority, including its authority with respect to the education of Aboriginal children";

d. asserted that Canada wanted only that "all Aboriginal people to be able to participate fully in all aspects of Canadian society and that in pursuit of that goal it

required all Aboriginal children receive an education and that they be educated in English or French";

e. denied that there existed a fiduciary duty or obligation owed by Canada to the Aboriginal children it forced to attend at Residential Schools;

f. denied that the Representative Plaintiffs and members of the Survivor and Descendant Class were rights-holders of Aboriginal rights, and therefore could not advance a claim based in Aboriginal rights;

g. denied the "existence" of an Aboriginal right to language and culture;

h. sought to shift responsibility for Residential Schools exclusively to church organizations;

i. sought to rely on the releases contained in IRRSA as a total bar to the Action; and

j. asserted that the whole of the Action was statute-barred by limitations statues, and subject to the equitable doctrines of *laches* and acquiescence.

Joining of the Grand Council of the Crees

48. In 2016, The Grand Council of the Crees (Eeyou Istchee), under the leadership of former Grand Chief of the Grand Council of the Crees Matthew Coon Come, joined with Tk'emlúps and shíshálh in providing both leadership and litigation funding. The Grand Council of the Crees (Eeyou Istchee) is the political body that represents approximately 18,000 Crees of the James Bay region of Northern Quebec.

49. The Grand Council of the Crees' legal counsel, Diane Soroka, also joined the Class Counsel legal team at that time. She had represented the Grand Council of the Crees in the negotiation and implementation of IRSSA and also represented Independent Counsel on the IRSSA Oversight Committee.

First Round of Negotiations

50. On May 24, 2016, the Plaintiffs' representatives and counsel met with the Honourable Minister Carolyn Bennett, the Minister of Indigenous and Northern Affairs to impress upon her the urgent need to resolve the litigation in light of the advancing age of Day Scholars.

51. On October 20, 2016, Mister Bennett appointed Thomas Isaac, a lawyer at Cassels, Brock & Blackwell LLP, to be the Minister's Special Representative ("MSR") to conduct exploratory discussions with the Representative Plaintiffs and Class Counsel. Between January and July 2017, the MSR met with Representative Plaintiffs and Class Counsel ten times.

52. In March 2017, the Representative Plaintiffs put a framework for discussion on the table which proposed a settlement on the following terms: a) the same settlement benefits for the Survivor Class as had been provided by the Common Experience Payment for residents of Residential Schools ($10,000 for the first year of attendance at a Residential School and $3,000 for every year thereafter); b) the establishment of a trust fund for the benefit of the Day Scholar Descendant Class and c) a framework for resolving the Band Class claim. Owing to the number of deaths of members of the Survivor Class, including Representative Plaintiff Frederick Johnson who died shortly after the first negotiation session, the Representative Plaintiffs proposed resolving the claims of the Survivor and Descendant Class prior to resolving the claims of the Band Class.

53. Formal settlement negotiations began in February 2018 in Vancouver. Unfortunately, these negotiations were not fruitful.

54. After the February negotiation session, both parties agreed that mediation by the court in the form of judicial dispute resolution was necessary.

55. In May 2018, the Parties attended a three day judicial dispute resolution session mediated by Justice Harrington. Later, in November 2018, the Parties attended a further two day judicial dispute resolution session mediated by Justice Harrington.

56. By early 2019, the Parties had made little headway and settlement negotiations broke down as several areas of serious disagreement remained. In particular, Class Counsel knew that the Representative Plaintiffs would not agree to any of the following:

a. a capped, lump sum settlement. This issue was particularly important for the Representative Plaintiffs because, owing to gaps in the available documentary records, it was impossible to establish the exact number of Survivor Class members with precision.

b. the exclusion of all deceased Day Scholars. The Representative Plaintiffs felt strongly that any settlement ought to include all Day Scholars alive as of May 30, 2005 (the eligibility date for CEP under IRSSA).

c. the exclusion of all Day Scholars who had already received CEP, even if they had been both resident students and Day Scholars at different times.

d. the exclusion of any Day Scholars who had signed a release to gain access to the IAP.

e. resolving the Descendant and/or Band Class claims for nominal amounts. Although the Representative Plaintiffs sought to obtain a resolution particularly for the aging Survivor Class, it was not an option to do so at the expense of "selling out" the Descendant and Band Class Members.

Canada's Amended Statement of Defence

57. In April 2019, in response to the Directive on Civil Litigation Involving Indigenous Peoples issued by the former Minister of Justice and Attorney General of Canada, the Honourable Jody Wilson-Raybould, and at the request of the Representative Plaintiffs that Canada be granted leave to amend its defence, Canada filed an Amended Statement of Defence. While Canada abandoned or softened some of its more extreme positions and generally acknowledged that the operation of Residential Schools was a dark and painful chapter in Canada's history, Canada nonetheless repeated all of the defences set out in the original Statement of Defence, with the exception of the limitation period defences. In its Amended Statement of Defence, Canada maintained its position, amongst other things, that:

a. the experiences and treatment of Day Scholars varied so widely as to make a class action untenable,

b. in many cases, the Day Scholars' claims were released by the releases contained in IRSSA;

c. in establishing and operating Residential Schools, when measured against the standards of the day, Canada acted with due care and in good faith, and within its legislative authority;

d. Canada did not breach any fiduciary, statutory, constitutional or common law duties owed to the Class Members;

e. Canada did not breach the Aboriginal Rights of the Class Members in the operation of Residential Schools;

f. Canada did not owe a private law duty of care to protect members of the Survivor Class from intentional infliction of mental distress, and if it did, it did not breach the standard of care; and

g. any damages suffered by the Plaintiffs were not caused by Canada.

58. Canada's approach meant that a trial was necessary on all issues with the exception of limitation periods.

Preparation for trial

59. On November 13, 2019, Justice Barnes became Case Management Judge after Justice Harrington retired.

60. On January 16, 2020, Justice Barnes ordered that the trial of the Action would take place in Vancouver starting September 7, 2021 for a duration of 74 days.

61. On August 24, 2020, at the request of the Parties, the Court ordered that the common issues trial be bifurcated and that the common question of fact and law regarding aggregate damages, as

it pertains to the Band Class, be determined apart from, and subsequent to, the adjudication and determination of the other certified common questions to be determined at the common issues trial.

62. In the meantime, the parties had agreed to a pre-trial schedule, and had begun to prepare for trial. Over the following months, trial preparation began in earnest, with the parties taking the following steps:

a. **Common Issues Trial Plan:** The Plaintiffs delivered a Common Issues Trial Plan on March 20, 2020 in order to provide direction to the parties and the court regarding how the trial itself would be conducted. The parties subsequently delivered several responses, requests for further information and clarifications to this initial Common Issues Trial Plan.

b. **Documentary Discovery:** Canada disclosed almost 120,000 mostly historical documents in two tranches, the first delivered in January 2020 and the last in August 2020. The Representative Plaintiffs delivered Affidavits of Documents and accompanying productions on April 23, 2021.

c. **Expert Evidence:** the Representative Plaintiffs served reports from a number of experts including:

(i) Dr. John Milloy, an historian who provided evidence regarding the history of Residential Schools and Residential School Policy;

(ii) Dr. Marianne Ignace and Dr. Dwight Gardiner, two linguists with expertise in the shíshálh and Secwepemc languages to provide evidence regarding loss of language and culture caused by Residential Schools;

(iii) Dr. Onowa McIvor, an expert in the fields of Indigenous education, Indigenous languages and Indigenous language revitalization to provide evidence regarding loss of language and culture caused by Residential Schools across Canada; and

(iv) Drs. Peter Jaffe and David Wolfe, psychologists with expertise in issues affecting children and youth in an institutionalised setting who provided evidence regarding the psychological impacts of attending Residential Schools as Day Scholars. A number of Survivor Class members from across Canada were interviewed as part of the process of preparing this report.

The Plaintiffs' first expert report was delivered to Canada on October 30, 2020, and the last expert report was delivered on February 2, 2021. Additionally, the Parties also agreed to a protocol whereby their respective actuarial experts would provide a Joint Report to the court containing estimates regarding the size of the Survivor Class.

d. **Requests to Admit and Responses to Requests to Admit:** The Representative Plaintiffs delivered two rounds of lengthy Requests to Admit on December 2, 2019, and again on October 30, 2020. Canada likewise delivered a Request to Admit on June 30, 2020. The Parties also prepared and provided responses to these Requests to Admit. Canada did not agree to admit most of the Plaintiffs' Requests to Admit.

e. **Agreements regarding admissibility of historic documents**: Canada and Class Counsel engaged in productive discussions regarding an agreement that would govern the admissibility of historic documents in court.

f. **Examinations for Discovery:** The Plaintiffs elected to conduct their examinations for discovery in writing by delivering questions on March 15, 2021. As part of preparation for the written examination, Class Counsel reviewed the almost 120,000 documents produced by Canada. The Defendants elected to conduct examinations for discovery of the Representative Plaintiffs orally, and those were scheduled to take place between March 15 and April 9, 2021.

Second round settlement negotiations

63. In February 2021, I received a call from the MSR Thomas Isaac in which he asked to reactivate negotiations. I was wary as I knew, based on previous negotiations that, while discussions with the MSR had been productive, we had not received an offer that was even close to what the Representative Plaintiffs had sought as a reasonable settlement Mr. Isaac assured me that he now had instructions to put forward an offer that he thought the Representative Plaintiffs would find reasonable. The primary issues for negotiation were:

a. the amount of individual compensation for Day Scholar Survivor Class Members, and crucially, whether that compensation would be subject to an overall "cap";

b. the claims process, and the process of substantiating claims;

c. identifying Residential Schools that had, or might have had, Day Scholars that were to be covered by the settlement;

d. the impact of any individual or deemed releases contained within or signed as part of IRSSA;

e. whether the estates of Day Scholars who had died prior to settlement – and especially those who died after May 30, 2005, would be eligible for compensation;

f. recognition and compensation for the Descendant Class;

g. resolution of the Band Class, or alternatively, an agreement that would resolve the Survivor and Descendant Class claims but allow the Band Class to continue to trial.

64. Both Mr. Isaac and I were aware that time was of the essence given the approaching September 2021 trial date, that Examinations for Discovery of Survivor and Descendant class members and Canada's representative were scheduled for March and April 2021, and given the fact that Survivor Class members continued to die. Mr. Isaac and I agreed that the most productive way to assess whether there was a basis for settlement was for Canada to put its best offer forward right at the beginning so that I and other Class Counsel could have a meaningful discussion with the Representative Plaintiffs as to whether there was a basis to negotiate a settlement.

65. Throughout the litigation, and in settlement discussions, the Representative Plaintiffs made clear to myself and the other Class Counsel that the following negotiation objectives were to be prioritized:

a. **No Day Scholar Left Behind**: A primary purpose of the lawsuit was to include all Day Scholars who had been excluded from the CEP of IRSSA. This meant ensuring that all Day Scholars who died on or after May 30, 2005 be included in any settlement.

b. **A simple, streamlined and speedy claims process**: The Representative Plaintiffs recognized that many Day Scholars do not have records of their attendance at

school, and any onerous evidentiary requirement would result in Day Scholars being denied their claims. Similarly, if the claims process itself were too difficult, it would result in individuals with valid claims being left out.

c. **No cap**: the settlement should be negotiated on the basis of a compensation amount for each Survivor Class Member, not on an overall number for the Class as a whole. The Representative Plaintiffs were intent on avoiding a situation where the individual amount received by Survivors was dependant on how many Survivors applied.

d. **No reliance upon IRSSA releases**: the Representative Plaintiffs took the position that Day Scholars had been unjustly left out of IRSSA – the releases in IRSSA should not be used against the Survivors and Descendants.

e. **No prejudice to the Band Class**: the Representative Plaintiffs saw the importance of prioritizing the resolution of the claims of the Survivor and Descendant Class. At the same time, however, it was essential that the Band Class claim not be prejudiced out of a desire to resolve the Survivor and Descendant Class claims quickly.

B. Canada's offer to settle

66. Mr. Isaac presented the key points of Canada's offer to settle to Class Counsel on March 4, 2021 and confirmed its offer in writing on March 8, 2021, a copy of which is attached hereto as Exhibit "B". Mr. Isaac provided further clarification of Canada's offer to settle on March 10, 2021. The key parts of the settlement proposal were:

a. severance of the claims of the Band class from the claims of the Survivor and Descendant Classes. The settlement of the claims of the Survivor and Descendant classes would allow for the Band class claims to continue to be litigated and would be without prejudice to the Band Class claim;

b. the claims of the Survivor Class would be settled on the following terms:

(v) $10,000.00 payments to each eligible day scholar who attended an Indian Residential School (a list of eligible schools to be agreed upon) during the class period so long as they had not already received compensation for the same school year through the CEP of IRSSA or the McLean Federal Indian Day Schools Settlement;

(vi) Any Day Scholar who was alive as of May 30, 2005 or their "effective estates" were eligible to apply which was in accord with the IRSSA CEP eligibility date;

(vii) for any eligible day scholar who passed away on or after May 30, 2005, Canada will provide compensation to their effective estate, as applicable, in a manner to be negotiated by the parties;

(viii) funding for individual compensation will be uncapped to ensure that all eligible day scholars, or their effective estates, as applicable, who apply receive $10,000.00;

(ix) Canada will not rely on IRSSA releases, including the Independent Assessment Process releases, for the purposes of this settlement; and

(x) Canada will not seek any reduction for those day scholars, and the effective estates as applicable, who had received a CEP under IRSSA.

c. the Survivor and Descendant Class would be settled on the following terms:

(xi) Canada will fund $50,000,000.00 to support the establishment of a Foundation or Trust independent of the Government of Canada and established under appropriate not-for-profit legislation.

(xii) the Foundation or Trust will be open to members of the Survivor and Descendant classes to support healing, wellness, education, language, culture and commemoration activities;

(xiii) the Board of the Foundation or Trust should have national representation and should include one representative appointed by Canada who would not be a civil servant or retired civil servant.

67. Other elements of a proposed resolution were left to future negotiations, including:

a. all aspects of the claims process to apply for the $10,000 payment, including the process by which the family members of deceased Day Scholars could apply;

b. for the purposes of determining eligibility, determining a list of Residential Schools that had or could have had Day Scholars;

c. further details regarding the Foundation or Trust that would receive the $50,000,000.00 payment;

d. the terms of any release;

e. how to ensure that Survivor Class members had access to legal support through the claims process at no cost to them; and

f. payment of legal fees and disbursements.

68. It was my view, and I was informed that it was the view of the rest of the Class Counsel team, that Canada's offer addressed many of the unresolved issues from the previous settlement negotiations meaningfully, and that the offer represented the best possible settlement for the Survivor and Descendant Class that would have been available in this round of negotiations. In other words, Class Counsel knew that, if Canada's offer to settle was not accepted as a basis for negotiation, the parties would return to litigation, and would have to litigate a full trial in September, 2021 with all the risks that a trial entails, including the risk of further years of delays due to appeals.

69. Class Counsel were aware that a federal election might be called in 2021, possibly as early as the spring of 2021. The possibility of an election added considerable risk to the Plaintiffs' position. Once an election is called, representatives of the government of Canada are no longer able to negotiate the resolution of litigation until after the election has been held. Had an election been called prior to accepting Canada's offer, and finalizing it in a detailed and signed settlement agreement, it would have paused settlement negotiations for at least two to three months. Depending on which party won the election, the settlement position of Canada might have altered.

70. On receipt of Canada's offer, Class Counsel convened a series of meetings with the Representative Plaintiffs in which we gave an in-depth explanation of the terms of the settlement offer and answered any questions that they had. After extensive discussion with Class Counsel, and on hearing Class Counsel's recommendation, the Representative Plaintiffs for the Day

Scholars and the Descendant Class unanimously agreed to accept Canada's offer. Key in their consideration was the fact that the settlement achieved the core objectives of the lawsuit: namely, 1) all Day Scholars who had been left out of IRSSA CEP would be included, even those who had died in the intervening fourteen years and 2) it would serve as recognition that Canada Day Scholars also suffered harm as a result of attending Residential Schools.

71. On behalf of the Survivor and Descendant Class Representative Plaintiffs, I confirmed by letter acceptance of Canada's offer to settle on March 12, 2021.

Negotiations of the detailed terms of the Day Scholars Survivor and Descendant Class Settlement Agreement

72. Negotiations of the terms of the Day Scholars Survivor and Descendant Class Settlement Agreement, which took place between the acceptance of the offer to settle on March 12, 2021, and the signing of the Settlement Agreement on June 3 and 4, 2021, were vigorous but productive. The most contentious areas for discussion were:

a. the claims process, in particular what information/documentation claimants would need to provide in support, and the claims deadline;

b. the estates claim process for Day Scholars who had died between May 30, 2005 and present, and in particular who could apply on behalf of the deceased Day Scholars;

c. determining a list of Residential Schools that had or could have had Day Scholars, and that would be included in the Settlement Agreement;

d. the process for seeking reconsideration of claims that were rejected by the Claims Administrator;

e. the structure of the not for profit corporation entrusted with receiving and distributing the $50 million payment;

f. the wording of the releases; and

g. the necessary provisions and arrangements which would allow the settlement to proceed and the Band Class to continue litigating their claims, without prejudicing the rights of either party.

73. When the negotiations were nearing a final product which upheld the negotiation objectives of the Representative Plaintiffs, and which represented a fair and reasonable resolution of the Survivor and Descendant Class claims, Class Counsel convened a further series of meetings with the Representative Plaintiffs to give in-depth explanations of the terms of the proposed Settlement Agreement and to answer any questions they had.

74. After further discussion with Class Counsel, and on hearing Class Counsel's recommendation, the Representative Plaintiffs for the Survivor and Descendant Classes unanimously gave instructions to enter into the Settlement Agreement which was executed on June 4, 2021.

Indian Day Schools and the McLean Settlement

75. This claim should be distinguished from the matter of *McLean v. Canada*, bearing Federal Court File Number T-2169-16 (the "McLean Class Action"). At the same time that Canada

operated the Residential Schools, they also operated an administratively separate group of non-residential schools for the education of Indigenous children on reserve – these schools were known as Federal Indian Day Schools, or Day Schools. The McLean Class Action, and the McLean Settlement Agreement are regarding Day Schools.

76. What may appear to be overlap between the group of Residential Schools identified in IRSSA and the Certification Order in this Action, and the group of Day Schools identified in the McLean Settlement (at Schedule "K" of the McLean Settlement Agreement), is the result of the conversion of the former to the latter through the so-called "administrative split", most of which occurred in the 1960s. The administrative splits are reflected in the applicable end dates for these institutions in Schedule "E" of the Settlement Agreement in this Action, as well as the applicable opening dates for those institutions in Schedule "K" of the McLean Class Action.

77. Day School students who attended these Indian Day Schools were excluded from IRSSA completely, including the IAP, and therefore the McLean Class Action also advanced claims relating to sexual and/or physical abuse, and serious psychological harms, in addition to the loss of language and culture claims which are the basis of this Action.

THE SETTLEMENT AGREEMENT

78. The signing of the Settlement Agreement was announced publicly via a joint press conference of the parties on June 9, 2021.

79. The key terms of the Settlement Agreement are as follows:

a. each eligible Survivor Class Member who makes a claim will receive a $10,000 Day Scholar Compensation Payment, with no deductions for legal fees, costs of

administration, or any other reason (including Canada's commitment to ensure that there is no claw back of government collateral benefits resulting from receipt of a Day Scholar Compensation Payment);

b. an eligible Survivor Class Member is any Survivor Class Member who attended one of the Residential Schools listed at Schedule "E" to the Settlement Agreement as a Day Scholar for even part of a school year, so long as they have not already received compensation for that school year as part of IRSSA CEP or the *McLean* settlement;

c. Schedule "E" contains two lists of schools: List 1, comprising all of the Residential Schools confirmed in the historical record to have had Day Scholars; and List 2, comprising all of the Residential Schools which were not confirmed in the historical record not to have had Day Scholars (*i.e.* which may have had Day Scholars);

d. for any Day Scholar who has died since the CEP eligibility cut-off of May 30, 2005, but who would otherwise be an eligible Survivor Class Member, one of their descendants/heirs will be eligible to access the Estate Claims Process to make a claim for a Day Scholar Compensation Payment for distribution to the Day Scholar's estate;

e. the Estate Claims Process is designed so that, even where there is no legally designated estate representative, the descendants/heirs of eligible deceased Day Scholars can apply and receive compensation for distribution to the estate. Payment is not required to be made in the name of the Estate of the Day Scholar (which would limit payment to a legally designated estate representative), but rather can

be made directly to an heir for distribution to the estate, and a process has been designed to reconcile conflicts that may arise between heirs;

f. there is no cap on the number of Day Scholar Compensation Payments – all approved claims will be paid in full;

g. both the Claims Process and the Estate Claims Process are intended by both Parties to be simple and accessible to encourage all eligible individuals to make claims. This includes minimal requirements for supporting documentation, and in the case of claimants who attended one or more List 1 Residential Schools as a Day Scholar, no requirement whatsoever for supporting documentation;

h. the Claims Administrator is to ensure that its processes are simple, accessible, and trauma-informed, and to utilize its discretion in favour of the claimant wherever possible during the Claims Process;

i. the Claims Process explicitly mandates that presumptions must be made in favour of claimants, and allowances have been built in for difficulties associated with the time that has elapsed (*e.g.* Canada must consult its attendance records for the five years before and after the dates of attendance included in a claim form);

j. in order to avoid re-traumatization, no personal narrative setting out details of experiences at Residential School is required for any claimant under any circumstances;

k. claimants will have the right to seek reconsideration if their claims are denied on the merits, whereas Canada will have no right to seek reconsideration;

l. reconsideration will not be an appeal process, but rather a *de novo* process overseen by a Court-appointed Independent Reviewer, wherein claimants have the ability to adduce supporting documentation for their claims (but are not required to do so);

m. any claimant filing for reconsideration will be able to receive legal assistance at no cost from Class Counsel;

n. Canada will pay for all costs of claims administration, including reconsideration;

o. the claim period will be open for twenty-one months, with an additional three months during which claimants may file late;

p. a $50 million Day Scholars Revitalization Fund will be established to support healing, wellness, education, language, culture, heritage, and commemoration projects for the benefit of Survivor and Descendant Class Members;

q. the Day Scholars Revitalization Fund will be Indigenous-led, and will be operated by a not-for-profit Revitalization Society that is independent of Canada (save for one out of at least five directors who will be appointed by Canada);

r. once the Revitalization Society is operational, a policy will be developed and implemented to assess applications to obtain project funding from the Revitalization Fund;

s. the Revitalization Society's expenses will be funded from investment income, maximizing the amounts to be spent on projects for the benefit of Survivor and Descendant Class Members;

t. in exchange for the compensation set out above, the claims of the Survivors and Descendants will be dismissed, with prejudice, and the Survivor and Descendant Class Members will release Canada from any other liability relating to their attendance or their parents' attendance, respectively, at Residential Schools;

u. the terms of the Settlement Agreement are without prejudice to the ongoing litigation of the Band Class claims;

v. the Certification Order of Justice Harrington and the statement of claim will be amended to reflect that only the Band Class claims are proceeding.

Claim forms

80. Following the execution of the Settlement Agreement, the Parties have engaged in detailed negotiations, in consultation with the proposed Claims Administrator Deloitte LLP ("Deloitte"), to develop appropriate claim forms for the regular Claims Process and the Estate Claims Process, and anticipate that, if the Settlement Agreement is approved, the final draft claim forms will be presented to the Court for approval as soon as the Court's Approval Order becomes final.

81. The overriding concern with the development of the claim forms has been, and will continue to be, that they embody and uphold the Claims Process Principles from the Settlement Agreement, namely:

a. the Claims Process shall be expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed;

b. the Claims Process shall minimize the burden on the Claimants in pursuing their Claims;

c. the Claims Process shall mitigate any likelihood of re-traumatization through the Claims Process;

d. the Claims Administrator and Independent Reviewer shall assume that a Claimant is acting honestly and in good faith unless there is reasonable evidence to the contrary; and

e. the Claims Administrator and Independent Reviewer shall draw all reasonable and favourable inferences that can be drawn in favour of the Claimant.

82. Working within these principles, the focus of the claim form development process is on creating documents which will be simple and functional, which will minimize the burden of making a claim, and which will assist with making the claim process more navigable and transparent for claimants. To that end, the draft claim forms put forward for Court approval will have the following features:

a. plain language;

b. clear indications of which information will be shared with which audience (for example, ensuring that claimants understand that the information about Residential School attendance will be shared with Canada for purposes of claim assessment, but that the banking information is only requested for purposes of making payment, and therefore will not be shared with Canada); and

c. discussion of common points of confusion or errors – for example, explaining who the Claims Administrator is and what their role is, explaining how to correct errors or submit additional information, providing instructions about what to do if information is unknown or uncertain and indicating where guesses or estimates are sufficient.

83. To expedite the launch of the claims process following the Implementation Date, the Parties have worked on developing digital/online versions of the claim forms alongside the paper-based forms. This means that both avenues for making a claim (paper and online) will be available at the outset of the claim period, and also that significant thought and planning have gone into figuring out how the advantages of a digital format can be harnessed to assist claimants. For example, streaming questions at the beginning of both claim forms will ensure that claimants do not end up filling out the wrong form, and "if-then" logic will be used so that claimants never see the questions which do not apply to them. As another example, where a claimant is required to insert the name of the Residential School(s) attended, the digital/online claim form will contain a searchable map.

84. Both the paper and online claim forms will be translated into French, James Bay/Eastern Cree, Plains Cree, Dene, Ojibwe, Mi'kmaq and Inuktitut.

Revitalization Society

85. The Day Scholars Revitalization Society was incorporated on August 20, 2021, under the *Societies Act* of British Columbia. We worked with the Representative Plaintiffs to obtain their instructions on the form of organization and, with the assistance of Merrill Shepherd, an experienced solicitor in working with First Nations on establishing funding mechanisms, we recommended and the Representative Plaintiffs approved a Not for Profit Corporation incorporated under British Columbia law which will be registered in each jurisdiction across Canada. Matthew Coon Come, the Grand Council of the Crees' (Eeyou Istchee) representative on the DSEC also played a vital role in this process.

86. We have instructed Mr. Shepherd to incorporate the Not for Profit Corporation so that it is ready to establish a Board of Directors representing Indigenous peoples from across Canada who are or represent Day Scholars and Descendant Class members and so that it will be able to receive the $50 million within 30 days of the Implementation Date.

87. I, together with Diane Soroka, another Class Counsel, worked with our clients and Merrill Shepherd and obtained the Representative Plaintiffs approval for this form of structure. Attached hereto and marked as Exhibits "C" through "E" are:

a. the Certificate of Incorporation

b. the Constitution of the Society; and

c. the bylaws of the Society

THE SETTLEMENT AGREEMENT IS FAIR, REASONABLE AND IN THE BEST INTERESTS OF THE CLASS MEMBERS

Counsel's recommendation

88. Class Counsel recommend the Settlement Agreement as being in the best interests of the Survivor and Descendant Class Members based on our experiences and knowledge after litigating this case for almost a decade, as well as our extensive experience in class action litigation and Aboriginal law litigation. I have set out my background and experience earlier in this Affidavit. My legal background of my co-counsel, John Phillips and Diane Soroka, are set out in Exhibits "F" and "G" respectively to this my Affidavit.

89. As discussed above, all three of the lead counsel on the Class Counsel team (John Phillips, Diane Soroka, and me) were intimately involved with IRSSA, the largest class action settlement

in Canadian history. We know well what has worked effectively with IRSSA, and where there is room for improvement, and we incorporated those lessons learned into the process of negotiating the Settlement Agreement in this Action.

90. Our involvement with IRSSA also means that we came into this litigation with a strong understanding of the factual underpinnings of the Residential School system, which understanding has been further enhanced by the years of litigation. As also discussed above, the discovery process in this action was quite advanced by the time that the final negotiations regarding the Settlement Agreement had commenced, and almost all of the available evidence had already been reviewed and considered by Class Counsel in the context of trial preparation, which was then used to guide our decision-making during the settlement negotiations.

91. The Settlement Agreement was ultimately the result of lengthy, good faith, arm's-length bargaining. Although the final round of negotiations was completed efficiently, this was because of extensive negotiations which had taken place in previous years, which had clarified and refined the Parties' respective positions. For example, we were able to build on what came before when I urged Mr. Isaac to put on the table the full extent of the mandate right at the beginning when we recommenced negotiations early this year, so that we could get straight to the heart of negotiating a resolution and ensure that Survivors and Descendants were no longer kept waiting.

92. Class Counsel are confident that, especially in the context of preceding settlements like IRSSA and the McLean Settlement, which have irrevocably set the stage for any settlement of this Action, the Settlement Agreement constitutes a fair and reasonable resolution of the Survivor and Descendant Class claims.

Support for, and objections to, the settlement

93. All of the Representative Plaintiffs have indicated their support for the settlement, and have sworn affidavits in support of this motion.

94. I am advised by Councillor Jeanette Jules (Tk'emlúps representative on the Day Scholars Executive Committee or "DSEC"), Councillor Selina August (shíshálh representative on the DSEC), and Matthew Coon Come (Grand Council of the Crees (Eeyou Istchee) representative on the DSEC), that all three of the Funding Nations support the settlement and believe that it is a fair and reasonable way to resolve the individual Class Members' claims.

95. Throughout this litigation the DSEC has served as liaison with the Representative Plaintiffs, assisting with keeping them informed, facilitating their participation in the class action, and conveying their instructions to Class Counsel. The decision to accept this Settlement was a decision of the Representative Plaintiffs of the Survivor Class and the Descendant Class and three of them spoke at the June press conference explaining their support for the Settlement Agreement.

96. In accordance with Rules. 334.32-334.38 of the *Federal Courts Rules*, Class Counsel assisted Argyle, the court-appointed Notice Administrator, in effecting notice of the proposed settlement and settlement approval hearing. Particulars of these efforts are detailed in the Affidavit of Roanne Argyle, sworn August 23, 2021.

97. In addition to the Court-approved Notice Plan, Class Counsel provided notice of the Settlement Agreement to the provincial and territorial public guardians and trustees, by letters dated August 19 and 20, 2021. A copy of John Phillips' letter to the Public Guardian and Trustee of British Columbia (with enclosures removed) is attached hereto as Exhibit "H".

98. Out of an abundance of caution, Class Counsel also provided notice of the Settlement Agreement to the provincial and territorial provincial health insurers ("PHIs"), by letters dated July 16, 2021. A copy of John Phillips' letter to the British Columbia Medical Services Plan (with enclosures removed) is attached hereto as Exhibit "I". These letters set out Class Counsel's position that the PHIs' subrogated interests are not engaged, because the Survivor and Descendant Class claims in the Action are not about harms which would give rise to healthcare costs. As of the date of the swearing of this affidavit, none of the PHIs have advised Class Counsel that they are not in agreement with our position.

99. Class Counsel provided notice of the Settlement Agreement to the Assembly of First Nations ("AFN"), as well as to all the AFN Regional Chiefs, and a number of other leaders of Indigenous governance organizations, by letters dated July 16, 2021. As of the date of the swearing of this affidavit, none of these organizations have provided an official position on the Settlement Agreement.

100. I have been informed by Cory Wanless, a member of the Class Counsel team, that as of August 23, 2021, Class Counsel have received 34 statements from individuals who are or may be Class Members regarding their opinion of the Settlement Agreement. These statements are being served on Canada and filed with the Court in a separate, sealed brief to preserve individual privacy.

101. I have been further informed by Cory Wanless that of the statements, 15 are objections. Although I do not want to minimize the objections or the rights of Class members to speak directly to the court regarding the Settlement, I am setting out a summary of the types of objections so that the Court will appreciate the nature of the objections received to date:

a. $10,000 is an insufficient amount to compensate for the loss of language, culture and spirituality suffered by Survivors;

b. $10,000 is an insufficient amount compared to the much higher awards available in other settlements for survivors of Residential/Day Schools;

c. $10,000 is an insufficient amount to compensate for the level of physical, sexual and/or emotional abuse suffered by Survivors;

d. it is unfair that Survivor Class Members who attended Residential School as a Day Scholar for longer would not receive larger compensation payments;

e. the amount dedicated to the Revitalization Trust should be reduced in favour of increasing the value of the Day Scholar Compensation Payments; and

f. there should be no eligibility date for the estate claims process.

102. For a number of the objections, it is unclear whether the author is a Survivor Class Member, given that the focus of their statement is on Day Schools and/or the McLean Settlement Agreement claims process.

103. Based on Class Counsel's experience, this is a low number of objections relative to the estimated size of the Survivor and Descendant Classes. The number of objections is also extremely low relative to the overall number of inquiries that Class Counsel have received regarding the Settlement Agreement since it was announced publicly (which is in the high hundreds). The number of statements of support out-number the objections.

104. Given the extensive noticing efforts (which included direct delivery of the short-form Notice of Proposed Settlement to over 3,000 putative Survivor Class Members and holding six webinars at which one or more Class Counsel attended to explain the settlement and answer questions), and the number of overall inquiries, Class Counsel are of the opinion that the low number of objections reflects broad support for the Settlement Agreement from the Class Members.

105. Class Counsel's substantive responses/positions on the issues raised in the objections are incorporated into the discussion of the key benefits of the Settlement Agreement, below.

Mitigation of litigation risks

106. As discussed briefly above and referred to in the Representative Plaintiffs' affidavits, the Survivor and Descendant Class claims faced a number of significant litigation risks.

107. With regard to liability, the issue of causation was one of Canada's primary focuses in defending the Action through the years. Specifically, Canada highlighted an argument that it intended to advance at trial that, for Day Scholars, attendance at Residential Schools did not cause loss of language and culture on a "but for" standard, given the assimilationist pressures present in Canadian society generally. Although Class Counsel believe that this argument would not have succeeded at trial, it certainly was arguable. This causation issue is further complicated by the fact that many Day Scholars, including some of the Representative Plaintiffs, also attended Residential School as residents for some period of time, and some Day Scholars also attended Day Schools – for example, those who attended an institution on both temporal sides of an administrative split.

108. This causation argument is also a significant issue with regard to the claims of the Descendant Class, whose loss of language and culture would have had to be tied directly to their parents' attendance at Residential School as Day Scholars.

109. There was also the issue of apportioning liability to the churches/religious organizations (the "Church Entities") which had been involved in the operation of Residential Schools. As a legal matter, Class Counsel took the position that the Church Entities' involvement had been at Canada's direction. As a practical matter, Class Counsel were very aware of the delays caused by legal disputes between Canada and the Church Entities in earlier litigation – approximately 150 Catholic Church Entities were involved with IRSSA, as well as the United Church, Anglican Church, and the Presbyterian Church. Thus, Class Counsel made the strategic decision to sue only Canada and not any Church Entities.

110. Canada fought Class Counsel's approach strenuously and argued that relevant Church Entities should be included in the proceeding. As discussed above, Canada filed third party claims against five Church Entities alleged to have been involved in running the Residential Schools in Tk'emlúps and shíshálh. When Canada's jurisdictional challenge failed and the third party claims were struck by Justice Harrington, Canada appealed the matter to the Federal Court of Appeal unsuccessfully.

111. This did not mean, however, that Canada had abandoned the issue of the Church Entities' liability. Throughout Canada's defence of the litigation over the subsequent years, including during the parties' discussions regarding the Trial Plan, Canada highlighted that it intended to argue liability rested with the Church Entities, which, in addition to defeating the Class Members'

claims, would have resulted in a virtually impossible evidentiary mess, given the sheer number of Church Entities.

112. There was also substantial litigation risk relating to damages. In 2011, when the original legal team was first approached, there was, to our knowledge, no Canadian precedent where damages had been awarded for loss of language and/or culture. The only situation in which such compensation had been paid was the CEP in IRSSA – even then, the text of IRSSA was not clear that the CEP constituted damages for loss of language and culture, but our legal team was aware, based on our involvement with IRSSA negotiation and settlement approval processes, that the Plaintiffs in that settlement based their arguments in favour of the CEP in the loss of language and culture suffered by survivors.

113. For similar reasons, and exacerbated by the extra degree of separation, the Descendants' position – *i.e.* seeking damages for loss of language and/or culture as a result of wrongdoing to a related Survivor – was even riskier.

114. There was a further risk that, even if the Court found that there was liability and an entitlement to damages for loss of language and culture, the Court could still find that an aggregate damages award is not appropriate for a variety of reasons (including an inability to fix quantum on an aggregate scale without individual precedents, or the need for individual Class Members' evidence). This risk was compounded by the fact that the law of aggregate damages in the Federal Court is relatively under-developed.

115. Finally, although Canada had withdrawn its limitation period defence, its legal counsel advised that it intended to rely on the "deemed release" from IRSSA (which affected all IRSSA class members, even those who did not receive CEP, like the Day Scholars, and including IRSSA

Family Class which includes Descendants), and the release for all those Survivors who had applied to undergo the IAP process. The Survivor and Descendant Class Members faced a real risk that the broad wording of these releases would have effectively barred all of their claims.

116. In summary, there was no guarantee of success in this case. Furthermore, Class Counsel were instructed to seek recovery for all Day Scholars alive as of May 30, 2005 (covering the same period of IRSSA to ensure that the previously excluded were fully included in that reconciliation). Such claims for deceased persons had no support in Canadian law and created a nearly unachievable objective. Even worse, as Justice Harrington observed during the course of his case management, any further delays of resolution of the claim resulted in the ongoing loss of Survivor Class Members.

117. The proposed settlement removed these litigation risks, along with the usual concerns about the complications and delay associated with trial and likely appeals. A settlement also allows the Representative Plaintiffs and Class Member witnesses to avoid the distressing and traumatizing process of being examined and cross-examined on their experiences with Residential School.

118. This class action settlement also alleviates the usual concerns about the spectre of onerous and burdensome individual issues which remain following the common issues trial. Since the Survivor and Descendant Class Members' main claims are negligence and breach of fiduciary duty, even if an aggregate damages award was granted in recognition of a common baseline of harm, there would still need to be individualized damages inquiries after the common issues trial before Class Members received full compensation. These damages inquiries would likely necessitate thousands of individual hearings, delaying further individual compensation for many years, and requiring a staggering amount of Court resources to manage. And, of course, for reasons

discussed above, many Class Members might not have the personal capacity, documentation, or resources to actually pursue their individual claims.

Key benefits of the settlement

119. The list of the key benefits of the settlement are set out above. For the Court's consideration at settlement approval, Class Counsel wish to highlight some further details.

The quantum of the Day Scholar Compensation Payments

120. It is important to emphasize that any attempt to negotiate a CEP-similar compensation for Day Scholars in IRSSA were rejected by Canada. Thus, not only was there litigation risk associated with making a relatively unprecedented argument for damages before the courts, the reality of settlement was that negotiations were taking place with a party that had previously refused to acknowledge this loss.

121. In this context, Class Counsel decided that some concession could be made from our original negotiating position that the Day Scholar Compensation Payments should match the CEP compensation if Canada would agree to a reasonable flat-rate amount for the Day Scholar Compensation Payments and also agree to use the CEP eligibility cut-off date of being alive as of May 30, 2005. This is in recognition of the Survivor Class Members' focus on rectifying the wrong of being unjustly excluded from CEP, and will ultimately result in many more people receiving compensation through this settlement.

122. There are also benefits of a flat-rate model in a case involving historical wrongdoing. The experience of the CEP process in IRSSA, that tied compensation to proven periods of residence, led to a complex claims process that required claimants to articulate and document times of

attendance and required Canada to verify and document those claimed periods against imperfect historical records, all of which resulted in delayed compensation, contentious arguments over duration and proof, and large numbers of appeals.

123. As the representative for Independent Counsel on the National Administration Committee (NAC), I was involved as a NAC member in over 4700 appeals of CEP denials. These appeals often involved several hundred pages produced by claimants who had been denied. Often the Claimants were denied on the grounds that they were Day Scholars and, though they proved attendance at a Residential School, there was no record of them being in residence even if they proved they knew the building, the staff and other students. Though these appeals were in writing, there was often much unnecessary work done by Claimants to prove they attended but they may not have been there for the number of years claimed as residents. In negotiating the claims here, I was fully aware of the hard work it would take Day Scholars (or, in the case of deceased Day Scholars, their heirs) to prove the number of years that they were Day Scholars at a Residential School.

124. It is also significant that the $10,000 quantum of the Day Scholar Compensation Payments is comparable to the $10,000 Level 1 award in the McLean Settlement harms grid—a copy of which is attached hereto as Exhibit "J"—which was previously approved by this Court as being fair and reasonable. This is important because the Level 1 award includes mocking or belittling by reason of Indigenous language and culture, and unreasonable or disproportionate acts of discipline or punishment including those relating to Indigenous language and culture. Higher levels in the McLean Settlement harms grid all pertain to experiences of serious physical or sexual abuse, that are not at issue in the Action because Day Scholars were eligible to bring claims regarding such abuse through the IAP of IRSSA.

125. Thus, although the comparison is not exact, the harms which are intended to be compensated by the $10,000 Day Scholar Compensation Payments are roughly equivalent to the harms intended to be compensated by the $10,000 Level 1 awards in the McLean Settlement.

126. As many have commented, including the Courts in other "Indigenous Children" litigation and the Representative Plaintiffs in their affidavits sworn in support of this motion, there is no monetary amount that is sufficient to compensate fully for loss of language and culture. It is important, however, for any resolution to the Survivor Class Members' claims to provide meaningful recognition of these losses, and some compensation for them – Class Counsel are of the opinion that the quantum of the Day Scholar Compensation Payments accomplishes both these goals, and is reasonable in light of what might be achieved at trial, having regard to the realities of this litigation.

The Day Scholars Revitalization Fund

127. Class Counsel and the Representative Plaintiffs are also of the opinion that the $50 million Day Scholars Revitalization Fund is an appropriate way to resolve the claims of the Descendant Class.

128. As discussed above, there are real litigation risks associated with being able to establish causation on behalf of the Descendant Class, and with being able to establish entitlement to damages, including aggregate damages, which had to be reflected in the settlement.

129. The compensation for the Descendants also does not include the losses of the collective Indigenous communities, since those losses are being advanced as part of the Band Class claims.

130. A fund of this type has been a common way to resolve family/descendant claims in "Indigenous children" class actions, including IRSSA, the McLean settlement and *Brown v. Canada* (60s Scoop).

131. Class Counsel retained Merrill Shepard, a lawyer at First Peoples Law LLP, who is a recognized expert in tax, corporate, trust and other structuring issues related to Indigenous community assets, to provide advice and to assist with drafting the necessary documentation for the Fund and the associated Day Scholars Revitalization Society.

132. The proposed structure is designed to minimize taxation of the Fund, in order to ensure the maximum amount of any income earned on the money is used for the stated purposes rather than losing a portion a portion of the income to taxes. The structure will be controlled by Indigenous persons from across the country who will be guided by a council of Survivors and experts in language and culture revitalization in formulating the policies required to ensure funding is given for purposes contemplated in the Society's constitution and by-laws.

The Schedule "E" Schools Lists

133. The original list of Residential Schools appended as Schedule "A" to Justice Harrington's Certification Order reflected the schools included in IRSSA, without regard to whether they had Day Scholars, or even could have had Day Scholars – since we were at the procedural certification stage, we used the broadest possible list, with the understanding that the discovery process would inform the evolution of the list.

134. Diane Soroka, a senior member of the Class Counsel team participated in negotiations with Canada regarding the Schools Lists. She has informed me, and I verily believe, that the Schools Lists at Schedule "E" were derived by two processes:

a. creating List 1, of Residential Schools which were determined conclusively to have had Day Scholars based on archival and other records; and

b. creating a so-called "List 3", of Residential Schools which could not have had Day Scholars within the Class Period – for example, because they were proven to have closed prior to the Class Period, or because they were hostels which were only ever used as residences and never as educational institutions and then subtracting "List 3" from the Schedule "A" list to generate List 2.

135. Both the processes described above included an intense review of the knowledge bases of Canada and of Class Counsel. On this point, Class Counsel and Canada worked collaboratively in a mutual effort to ensure that we ended up with the correct schools and dates. This included the sharing of documents and information through settlement privilege of Canada's institutional knowledge regarding attendance at Residential Schools, including key closure dates, and administrative split dates.

136. Class Counsel pushed for these two processes deliberately. First, the creation of List 1 allowed for the establishment of a very low burden of proof for claimants who attended these List 1 institutions – since the List 1 Residential Schools were confirmed to have had Day Scholars, and since Canada will have the resources and opportunity to confirm a claimant's attendance, there is no real need for the claimant to provide additional information.

137. As has been noted by the Representative Plaintiffs in their affidavits, re-living Residential School experiences is a painful and traumatizing experience. The process from the IAP of creating a personal narrative, providing supporting documentation, and then being cross-examined, has been criticized judicially – see, for example, *Fontaine v. Canada (Attorney General)*, 2018 ONSC 103, where the court stated that it was "painful to watch and painfully obvious…that it is painful and a revictimization for survivor claimants…to have to testify about what occurred at the IRSs…".

138. Class Counsel fought to reach agreement on a claims process which would result in as little emotional burden as possible, and are of the opinion that this claims process, including particularly the List 1 claim process which requires no supporting narrative or documentation whatsoever, achieves that goal.

139. Second, the creation of List 2 in reverse, by elimination of "List 3", meant that no Residential School was excluded due to lack of evidence that it had Day Scholars. Because only those Residential Schools which definitively did not have Day Scholars during the Class Period were removed (for example, hostels which had no school located therein), and based on the analytical work undergone, Class Counsel are confident that Lists 1 and 2 comprise all of the Residential Schools which did have, or could have had, Day Scholars, and therefore that no otherwise eligible claimants will be excluded from the claims process.

Reconsideration claims

140. Class Counsel have already engaged in extensive planning with regard to the reconsideration claims process.

141. John Phillips' firm, Waddell Phillips PC, will be managing the reconsideration claims process and ensuring that claimants receive all the necessary support.

142. Waddell Phillips has sufficient staff to engage and direct any and all claimants who wish to make a reconsideration claim, including French-speaking staff. Waddell Phillips also has a dedicated information technology clerk who will establish and maintain a designated database to track all reconsideration claimants who have sought legal assistance. There is a system in place to hire more staff and lawyers as necessary.

143. Many of the staff who will be involved with the reconsideration claims have already received trauma-informed advocacy training, and the training will be mandatory for all staff who are part of this team. Julia Tremain, the senior partner at Waddell Phillips who will oversee the process has both an LLB and a MSW.

144. The Class Counsel team will monitor the outcomes of all reconsideration claims (not just those where Class Counsel are providing legal assistance) and will report to the Court on a quarterly basis at a minimum, with more frequent reporting if requested by the Court.

The Band Class litigation

145. Class Counsel have been careful to protect and promote the best interests of the Band Class Members throughout the negotiation of the proposed settlement for the Survivor and Descendant Classes.

146. For example, the evidence in this Affidavit is filed on the understanding that the Parties cannot use any of this evidence or other evidence filed in support of the motion to approve the Settlement Agreement in the Band Class litigation.

147. The releases of liability in the Settlement Agreement were specifically negotiated so that they will not prejudice the ongoing litigation of the Band Class, and any issues which form part of the Band Class claims (such as the collective damages issue discussed above) have been carved out of the proposed settlement.

148. In addition, the Parties have made considerable efforts to come to agreement on an amended certification order and amended statement of claim, so that these foundational documents reflect the shape and core issues of the litigation moving forward, should the Settlement Agreement be approved.

Negotiating the Fee Agreement

149. Class Counsel and Canada negotiated the terms of the Day Scholars Survivor and Descendant Class Settlement Fee Agreement ("Fee Agreement") separately from the negotiations of the Settlement Agreement. Throughout both sets of negotiations, both Class Counsel and Canada were clear that failure to finalize the Fee Agreement would in no way impact the Settlement Agreement.

150. The Fee Agreement precludes any possibility that the legal fees amounts and disbursements to be paid to Class Counsel would come from the compensation for the Class Members, or reduce the compensation for the Class Members in any way.

Other matters

151. Class Counsel negotiated for an unusually lengthy claims period of 21 months, plus 3 months of leeway for late claims in contrast to the one-year claims period originally provided for in the McLean Settlement Agreement, which will be a significant benefit to Class Members.

152. Class Counsel also negotiated for a strict timeframe (45 days) for Canada's assessment of claims. Since the settlement is uncapped, and claims can be paid out as they are approved, the strict timeframe will help to ensure that claimants receive their Day Scholar Compensation Payments in a timely fashion.

153. In the spirit of ensuring claims will move expeditiously for Class Members, the Parties agreed that there would be no claims administration or exceptions committee – any issues identified by Class Members, claimants, or the Claims Administrator will be directed to the Parties, who will act expeditiously to have them addressed, including by Court intervention where necessary.

154. Class Counsel are of the opinion that the Settlement Agreement is a fair and reasonable result for the Survivor and Descendant Classes, in all of the circumstances, and is in the best interests of these Class Members.

Appointment of the Claims Administrator

155. The parties have agreed to work with Deloitte as Claims Administrator, and believe that Deloitte's appointment as Claims Administrator would be to the benefit of the Class Members.

156. Deloitte has experience acting as a claims administrator in large national class actions brought on behalf of Indigenous class members regarding historic wrongs, including acting currently as court-appointed claims administrator in the McLean Settlement. As a result of this experience, Deloitte has well-established processes for the receipt, management, and protection of sensitive personal information, which will not have to be re-created for this mandate. Deloitte's credentials are set out in detail in the Affidavit of Joelle Gott filed herein.

157. The parties are satisfied that Deloitte has the resources, both in terms of personnel and technology to provide prompt and sufficient support to permit the claims process to proceed smoothly.

158. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement, and for no other or improper purpose and is not to be relied upon by the Defendant in any ongoing Band Class litigation.

SWORN before me at the City of Vancouver, in the Province of British Columbia, on August 25th, 2021.

Commissioner for Taking Affidavits
JOHN TRUEMAN
Barrister
1512 - 808 Nelson Street
Vancouver, BC, V6Z 2H2

PETER R. GRANT

Court File No. T-1542-12

This is Exhibit "A" referred to in the Affidavit of Peter Grant, sworn before me this 25th day of August, 2021.

Commissioner for taking Affidavits

FEDERAL COURT

Proposed Class Proceeding

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND and the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE and RITA POULSON

PLAINTIFFS

and

HER MAJESTY THE QUEEN

DEFENDANT

and

THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS, THE SISTERS OF INSTRUCTION OF THE CHILD JESUS, AND THE SISTERS OF SAINT ANN

THIRD PARTIES

AFFIDAVIT #1 OF JOHN MILLOY
(AFFIRMED November 12, 2013)

I, John Milloy, Ph.D. Professor of History at Trent University in the City of Peterborough, in the Province of Ontario, do hereby AFFIRM AS FOLLOWS:

A. Professional Qualifications

1. I am a Full Professor of History in the Canadian Studies Department at Trent University in Peterborough, Ontario. I have personal knowledge of the facts and matters to which I herein depose except where stated to be based upon information and belief, in which case I verily believe them to be true.

2. I am an historian with an extensive teaching, research and publishing background in colonial Canadian history, particularly the relationship between Canada and the aboriginal populations. I received my M.A. from Carleton University in 1972 and my Ph.D. from New College Oxford in 1978. The topic of my doctoral thesis was: "The Era of Civilization – British Policy for the Canadian Indian 1815-1860". I have published several papers on the relationship between Imperial Canada and the aboriginal populations which are listed in my *Curriculum Vitae* a copy of which are appended and marked as **Exhibit "A"** to this my Affidavit. I have also made several presentations on Native peoples, the *Constitution* and Church missions which are also listed in **Exhibit "A."**

3. I provided litigation research or expert testimony on several cases which are also listed in my *Curriculum Vitae* a copy of which is appended and marked as **Exhibit "A".**

4. My evidence in this matter is based on my qualifications, research, and experience as an historian in Canadian history, specifically in the area of Canada's relationship with its aboriginal peoples in the period 1850 to the present. More particularly, my opinion evidence in this case, relates to Canada's education policies for aboriginal peoples and the Indian Residential School system.

B. Request for Opinions

5. I have received a request for my opinion by letter from Peter Grant, legal counsel for the Plaintiffs, and a copy of that letter is appended and marked as **Exhibit "B"** to this my Affidavit. In particular, I have been requested by the Plaintiffs in this matter to provide

my expert opinion on the following topics:

a. The origins of the Indian Residential School system;
b. Canada's involvement in oversight of the Indian Residential School system, including what occurred throughout the period of operation of the schools;
c. Development and content of the Indian Residential School Policy;
d. Objective and Purpose of the Indian Residential School Policy (i.e. cultural homogenization); and
e. Implementation of the Indian Residential School Policy, including Canada's role in administration, particularly as it relates to the Plaintiff Classes.

C. Summary of Opinions

6. The opinions expressed in this Affidavit and those expressed in my publications and reports appended as **Exhibits "F", "G", "H"** and **"O"** comprise my expert opinion on the above noted topics.

7. The facts and assumptions on which this report is based are the facts set out in the historical record of the residential schools. I have assumed that the records were an accurate reflection of what occurred at the residential schools (e.g. Reports of needed repairs in a school reflected a need for repairs). I researched thousands of documents provided by Canada for my research of for the Royal Commission of aboriginal peoples for three years. Although I know that I have not seen every single document relating to the residential schools, I assume that the thousands of documents that I have seen reflect the policy of Canada regarding the residential schools and the historical evolution of the Residential School policies.

8. The summary of my opinions are:

a. Canada operated and was responsible for the policy of the Indian Residential schools throughout the period between 1920 and 1979;

b. The churches, which administered the day-to-day operation of the Indian Residential Schools, did so under the authority of the Federal government and according to Federal regulations governing matters of childcare and education;

c. The purported purpose of the schools was to educate Indian children to take their place in Canadian society. The method – the schools' curriculum and pedagogy – was the eradication of the children's' traditional ontology, their language, spirituality and their cultural practices. The use of indigenous languages was forbidden and often punishments given for transgressing that prohibition. The schools were meant to be instruments of assimilation;

d. The funding for the schools, whether on a per capita basis before 1957 or on a control cost basis after 1957, was persistently inadequate and was the cause for inferior buildings, poor quality teaching and low standards of childcare. Children provided manual labour to supplement school budgets; and

e. The impacts of residential schools on children were detrimental. Many lost their languages, belief systems and thus their connections to their communities. As a result many have lived lives of considerable dysfunction, have found their way to other state institutions – prisons, mental hospitals and welfare services. Many survivor families have had their children taken from them by social service agencies. There is no reason to believe that the schools discriminated in their treatment of students between day students and resident students; all would have experienced Canada's attempt to extinguish their identities.

9. *"Suffer the Little Children", A National Crime* and Chapter 10 of the Royal Commission on Aboriginal Peoples ("RCAP") Report, all of which I wrote, were the products of my research and analysis of thousands of documents during the course of my work for the RCAP. These documents related to Indian Residential School policies, legacies, and history. The opinions contained therein are my opinions and the conclusions contained therein are my conclusions.

10. My opinions contained in this Affidavit and its Exhibits are based on the historical documents I have reviewed during my career relating to residential schools, including the thousands of documents I reviewed for the RCAP, many of which are referenced in Chapter 10 of the Royal Commission Report. They also include the documents listed in the Bibliography Reference in my book, *A National Crime*, a copy of which Reference list is appended and marked as **Exhibit "C"** to this my Affidavit, the volumes of documents held by Canada and released to me for review for my research and publication for the RCAP, and the documents cited in my report to the Royal Commission entitled "Suffer the Little Children", a copy of which report is appended and marked as **Exhibit "D"** to this my Affidavit. My opinions are also based on those documents, articles, books, and reports listed in **Exhibits "C", "G"** and **"H"** to this my Affidavit.

11. Based on the research that I did for the RCAP, I also prepared a much more detailed report for the Royal Commission which was entitled, *"Suffer the Little Children"*, a copy of which is appended and marked as **Exhibit "D"** to this my Affidavit. It is much more detailed and referenced than Chapter 10 of the RCAP Report. The opinions and conclusions set out in *"Suffer the Little Children"* are my opinions and conclusions. I rely on those conclusions and opinions as part of this opinion report.

12. I have read and agree to follow the Federal Court Expert Code of Conduct set out in the Federal Courts Rules. Appended and marked as **Exhibit "E"** to this my Affidavit is my certification of acceptance of the Expert Code of Conduct.

D. Work with Royal Commission on Aboriginal Peoples ("RCAP")

13. The RCAP was commissioned in 1991 to address "the evolution of the relationship among aboriginal peoples (Indian, Inuit and Métis), the Canadian government, and Canadian society as a whole." The RCAP included terms of reference to analyze the history of the Indian Residential School system. Appended and marked as **Exhibit "F"**

to this my Affidavit is a copy of the terms of reference of the RCAP. I also wrote sections of the history of the relationship set out at the beginning of the final RCAP report Vol. 1.

14. As part of my mandate for the RCAP and in order to prepare my report for it, I examined thousands of original source documents from The National Archives of Canada in Ottawa, the Presbyterian, Anglican, the United Church Archives in Toronto and the Deschatelets Archives of the Oblates of Mary Immaculate in Ottawa. I was also granted access by the Federal Government to the sealed Indian Affairs document collection on Residential Schools and was able to rely on these materials for the Royal Commission Reports and also *A National Crime.* I have explained this at the beginning of my Notes in my book, *A National Crime*, a copy of which is included in the extracts appended and marked as **Exhibit "G"** to this my Affidavit.

15. An examination of these documents enabled me to provide the RCAP with an historical perspective and understanding of the policies of Canada, in relation to aboriginal Canadians from the time preceding the formation of the Indian Residential Schools up until the modern day. While there is no single document setting out "Indian Residential School policy", the Annual Reports of the Department of Indian Affairs combined with letters, and other communications from government officials, reveal to me as a historian a pattern of thought and behaviour which led to the formation, mandate, and governance of Indian Residential Schools which I refer to collectively in this Affidavit as the "Residential School Policy".

16. I wrote what ultimately became Chapter 10 of the RCAP Report, a copy of which is appended and marked as **Exhibit "H"** to this my Affidavit including the Notes as to the References on which I relied. I reviewed that Chapter with the Commissioners for the Royal Commission who published it as part of their Report without change to my opinions and conclusions contained therein. Therefore, the opinions contained in Chapter 10 are my opinions, and I rely on those conclusions and opinions as part of this opinion report.

17. I am the author of *A National Crime: The Canadian Government and the Residential School System, 1879 to 1986*, ("*A National Crime*") published by the University of Manitoba Press in 1999, and winner of the 1999 Margaret McMillan Award. This book was a reduced version of my Royal Commission Report, *"Suffer the Little Children"*. The opinions in *A National Crime* are my opinions, and I have included extracts of the Introduction and Parts One and Two, and a copy of those parts of *A National Crime* are appended and marked as **Exhibit "I"** to this my Affidavit which include my opinions relevant to this case and the factual basis for those opinions are included in those parts of *A National Crime* and in "*Suffer the Little Children*". I continue to hold those opinions today.

E. Canada's Indian Residential School Policy

18. While several Indian Residential Schools were initially founded by religious organizations, Canada provided funding for the operation of these schools. The earliest record of Canada funding Residential Schools is 1868 when the legislation authorized funding of Indian schools.

19. Canada demonstrated its intention to provide the oversight for the Indian Residential Schools, and for all children in the Indian Residential Schools, from the earliest times of its involvement in the schools as demonstrated in Canada's 1892-1894 Orders-In-Council.

20. The 1892 Order-In-Council, a copy of which is appended and marked as **Exhibit "J"** to this my Affidavit, declared that, in consideration of the federal funds received, the school management "would conform to the rules of the Indian Department as laid down." Furthermore, the Department had the authority to amend and supplement those rules from "time to time." Principals would receive a constant flow of directives, making Departmental control pervasive. I have done a further review of these Orders-In-Council in my book, *A National Crime*, and the opinions set out therein, which is appended and marked as **Exhibit "I"** to this my Affidavit, are my opinions. The funding and building of the Indian Residential Schools was a political process which directly involved political

representatives. In my opinion, while the Department had the authority, it in many cases did not exercise control, and thus standards set by the Department were often neglected, resulting in a negative impact on the quality of child care and education.

21. By 1920, Canada was directly involved in the operation of both Kamloops and Sechelt Indian Residential Schools. In 1920, an amendment to the *Indian Act* made it compulsory for every child between the ages of seven and fifteen to attend school. Section 10 of the *Indian Act* set out the mechanisms of enforcement: Truant officers, and, "on summary conviction," penalties of fines or imprisonment for "non-compliance." I have appended and marked as **Exhibit "J"** to this my Affidavit a copy of the *Indian Act*, The Statutes of Canada, 1919-20, c. 50. 10.

22. My detailed analysis of Canada's assimilation policy is incorporated in Chapter 2 of *A National Crime*, which is appended and marked as **Exhibit "I"** to this my Affidavit. From the earliest days of Confederation, when Canada turned its attention to address its constitutional responsibility for Indians and their lands as assigned in the *Constitution Act, 1867*, it adopted an express policy of assimilation. The goal was to assist in "civilizing" aboriginal peoples to make Canada one community of Christians. The governments of the time, as stated in the Annual Report of 1876 and quoted in **Exhibit "I"** to this my Affidavit, considered it their duty to prepare the original people of the land "*'for a higher civilization by encouraging' [them] 'to assume the privileges and responsibilities of full citizenship.'*"

23. Government officials considered education of aboriginal children as key to assimilation of Canada's native populations. For example, at the core of Federal policy was education. It was education above all that, Frank Oliver, the Minister of Indian Affairs, asserted in 1908 would "elevate the Indian from his condition of savagery and make him a self-supporting member of the State, and eventually a citizen in good standing.", which is appended at **Exhibit "I"**.

24. As early as 1879, the Government of Canada confirmed that it wished to "civilize" the aboriginal peoples, and that the government would have to work through the aboriginal children. In 1879, "*The Report on Industrial Schools for Indians and Half-Breeds*" ("The Davin Report"), a copy of which is appended and marked **Exhibit "K"** to this my Affidavit, was commissioned by the government of John A. Macdonald. Commissioner Davin referred to educating adult natives as follows:

> *...[l]ittle can be done with him. He can be taught to do a little farming, and at stock-raising and to dress in a more civilized manner, but that is all.* (Appended at **Exhibit "K"**).

He concluded:

> *...if anything is to be done with the Indian, we must catch him very young. ....The children must be kept constantly within the circle of civilized conditions." I take that to mean the residential school and then, perhaps, white society when they have completed their schooling.* (Appended at **Exhibit "K"**)

25. The policy of Canada in effect made the children 'hostages' to their parents. As the Presbyterian Church argued, when lobbying for a school in Regina, "the Indians would regard them [the children in the school] as hostages given to the whites and would hesitate to commit any hostile acts that might endanger their child's well-being." (Appended at **Exhibit "H"**).

26. Based on my research, I have concluded that the plan of Indian education put forward by Canada involved both classroom and practical skills. In every school, the children were to receive instruction in a range of subjects including, for the boys, agriculture, carpentry, shoemaking, blacksmithing, tinsmithing, and printing, and for the girls, sewing, shirt making, knitting, cooking, laundry, dairying, ironing, and general household duties. As the curriculum was delivered in a half-day system until after the Second World War, with students spending half the day in the classroom and the other half in practical activities, trades training took place both in shops and in learn-by-doing chores. These chores had the additional benefit for the school of providing free labour – on the farm and in the residences, bake house, laundry, and dairy that were meant to contribute to the economical operation of the institution.. I have appended and marked as **Exhibit "L"** to

this my Affidavit, a copy of the preamble to the 1891 Annual Report of the Department of Indian Affairs which outlines the educational activities at existing Indian Residential Schools as of that date. The plan of education, of both residential students and those attending Indian Residential Schools as day students, has always been directed by Canada.

27. I have appended and marked as **Exhibit "M"** to this my Affidavit a copy of the Programme of Indian Studies as published in the 1896 Annual Report of the Department of Indian Affairs with a clean reproduction appended thereto. This plan was the basis of the education programme throughout Canada until Canada instructed the Indian Residential Schools to follow the curricula developed by each of the individual provinces.

28. The plan of education included an "Ethics" programme, divided into six standard levels. In the first year, in Standard I, pupils were to be taught, "the practice of cleanliness, obedience, respect, order, neatness." In Standard II, they were to learn, "Right and Wrong, Truth, and a Continuance of proper appearance and behaviour." In Standard III, they would "Develop the reasons for proper appearance and behaviour" in addition to "Independence and Self-respect." Standard IV was "Industry, Honesty, Thrift," while Standard V introduced "Patriotism ... Self-maintenance. Charity. Pauperism." The final standard was the most sophisticated and aggressive. Pupils were to be brought to confront the differences in "Indian and white life,...[the] evils of Indian isolation,...labour, the law of life,...relations of the sexes as to labour,...[and] home and public duties." I have set out in my book, *A National Crime*, appended at **Exhibit "I"**, a more detailed analysis of the "ethics" program based on the research that I have conducted.

F. Policy of Destruction of Aboriginal Languages

29. A principle objective of the program of education was to rework aboriginal children's ontology, or ordering of the world. This was partially accomplished through the ethics courses and the remaining European-based curriculum.

30. I have appended and marked as **Exhibit "N"** to this my Affidavit, copies of excerpts of the 1895 Annual Report of the Indian Affairs Branch which sets out the plan of education including the ethics program. I have also set out the information and my opinions with respect to the destruction of children's ontology in *A National Crime*, appended at **Exhibit "I"**.

31. In addition, Canada insisted that the children learn English. In the Annual Report of 1895, the Indian Affairs Branch declared that without English, the aboriginal person is "permanently disabled," and assimilation frustrated:

> *So long as he keeps his native tongue, so long will he remain a community apart.* [emphasis added]

32. Canada's policy of assimilation recognized that it was not sufficient just to have Indian children learn English while keeping their "native tongue." The legacy of punishing all children who attended Indian Residential Schools for speaking their own language, carried through until the closure of the Indian Residential Schools.

33. I have described in my more detailed report "*Suffer the Little Children*", appended at **Exhibit "D"**, which is based on the historical records, where the forced learning of English (or French in Quebec) and punishment for speaking their own language fit into the assimilationist policy. This policy applied to all children at the Residential Schools, including Day Scholars.

34. Use of English and French, and punishment for a child speaking her native language were used to enhance the process of assimilation. The Programme of Studies from 1896, appended at **Exhibit "M"**, stated:

> *Every effort must be made to induce pupils to speak English and to teach them how to understand it; unless they do, the whole work of the teacher is likely to be wasted.*

Government policy was that:

> *The use of English in preference to the Indian dialect must be insisted on"* and *"in or about all schools as far as possible the only allowed means of communication" was English or French.*

35. Canada recognized that the insistence on use of English or French, and the punishment for the use of native languages would promote and enhance the acculturation and assimilation of aboriginal children. In 1900, the Deputy Superintendent General, James Smart, stated that those languages (English and French) alone can "impart ideas which, being entirely outside the experience and environment of the pupils and their parents, have no equivalent expression in their native tongue."

36. I have looked at the impact of punishment for speaking language on those who attended Residential Schools based on testimony presented to the Royal Commission. In 1999, I published a peer reviewed paper "*When a Language Dies"*, a copy of which is appended and marked as **Exhibit "O"** to this my Affidavit. The opinions and conclusions in that paper are my opinions and conclusions.

37. As the documentary record confirmed, that the government understood that the "main challenge was aboriginal ontology is seen in their identification of language as the most critical issue in the curriculum. It was through language that the child received its cultural heritage; it was the vital connection which had to be cut if progress was to be made.....The only effective road to English language hegemony, was to stamp out aboriginal languages within the school and in the children." (Appended at **Exhibit "O"**)

38. As one Inuit woman described so poignantly the impact of the loss of language:
"After a lifetime of beatings, going hungry, standing in a corner on one leg, and walking in the snow with no shoes for speaking Inuvialuktun,...I soon lost the ability to speak my mother tongue. When a language dies, the world dies, the world it was generated from breaks down too." (Appended at **Exhibit "O"**)

39. Significantly, both Kamloops and Sechelt had Residential Schools built right in their communities. As one witness explained to the Royal Commission almost twenty years ago, "Anywhere they placed a residential school, the local people usually lost their language. Anywhere there is no residential school, the people have retained the language which is so important to them." (Appended at **Exhibit "O"**)

40. Based on the policies of Canada, it is clear that the ideas that were to be imparted to the Indian children in the Indian Residential Schools were European and non-aboriginal cultural ideas, and were to assist in the destruction of aboriginal children's connection to their native languages and cultures as I have set out in Chapter 10 of RCAP Report, appended at **Exhibit "H"** of this my Affidavit. Based on my research, appended at **Exhibit "F"**, I have concluded in my report to the Royal Commission:

> At the heart of the vision of residential education – a vision of the school as home and sanctuary of motherly care – there was a dark contradiction, an inherent element of savagery in the mechanics of civilizing the children. The very language in which the vision was couched revealed what would have to be the essentially violent nature of the school system in its assault on child and culture. The basic premise of resocialization, of the great transformation from 'savage' to 'civilized', was violent. "To kill the Indian in the child", the department aimed at severing the artery of culture that ran between generations and was the profound connection between parent and child sustaining family and community. In the end, at the point of final assimilation, "all the Indian there is in the race should be dead." This was more than a rhetorical flourish as it took on a traumatic reality in the life of each child separated from parents and community and isolated in a world hostile to identify, traditional belief and language.

41. Canada was fully aware of and condoned the punishment of students including Indian Day Scholars for speaking their language. This policy applied to all Indian Residential Schools, including the Kamloops and Sechelt Indian Residential Schools.

G. Establishment of Kamloops and Sechelt Residential Schools

42. Kamloops Indian Residential School was built with the support of J. Mara, a powerful Tory member of Parliament. I have described Mara's involvement in the establishment

of the Kamloops Indian Residential School in *A National Crime* (Appended and marked as **Exhibit "I"**).

43. I researched the founding of the Sechelt Indian Residential School and Canada's role. I have set this out in my book, *A National Crime,* appended and marked as **Exhibit "I"**. In the case of the Sechelt Indian Residential School, the Sechelt Band petitioned the Government in 1903 for the school which was ultimately funded by Canada.

H. Canada's Role in Operation and Management of the Residential Schools

44. By the 1892 Order-In-Council, appended and marked as **Exhibit "J"** to this my Affidavit, Canada established a per capita system of payments for the education of aboriginal Children. Per capita funding lasted until 1957. This per capita system allowed Canada to control payment to the churches for the running of the Indian Residential Schools, including the Kamloops and Sechelt Indian Residential Schools. However, in general, the payments were lower than the expenses associated with operation of the Indian Residential Schools, and many schools found themselves operating at a deficit. As a result of underfunding, the school buildings were often in poor repair, disease was rampant, and students suffered from poor education.

45. I provided a detailed discussion on the impact of the chronic underfunding by Canada in both Chapter 10 of the RCAP report, and my book *A National Crime*. These are set out in **Exhibit "H"**, and **Exhibit "I"**, both of which are appended to this my Affidavit.

46. Throughout the history of the Indian Residential Schools, Canada played the role of overseer and primary funder of the system. Until 1957, Canada had supplied funds to the schools on a per capita basis. In that year, the Department of Citizenship and Immigration moved to funding Indian Residential Schools on a "controlled cost basis" intended to achieve "greater efficiency" in the operation of the schools as well as to ensure proper "standards of food, clothing, and supervision at all schools." This allowed Canada to control the rates of teacher salaries, transportation costs, extra-curricular activities, rental

costs, building repairs, maintenance, and capital costs. I have appended and marked as **Exhibit "P"** to this my Affidavit a copy of the 1958 Annual Report of the Indian Affairs Branch which describes the change in the funding model for Indian Residential Schools which occurred in that fiscal year.

I. Summary of Opinion

47. In summary, throughout the Class Period set out in the Statement of Claim, which is between 1920 and 1979, it is my opinion based on the historical record that Canada played the central role in the funding and management of the Indian Residential School system. Canada had ultimate authority over all educational aspects of the system, including the mandatory attendance of both residents and Day Scholars. Canada also controlled the funding of the Residential School system throughout its existence.

48. Canada's administrative and financial control was the foundation of control over assimilation of Indian children and solve "Indian problem". Canada's policy applied equally to Indian children who attended as Day Scholars at these schools, as well as those who were in residence.

49. I make this Affidavit in support of the certification of this action and for other or improper purpose.

AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario, this 12 day of November, 2013.

A Commissioner for Taking Affidavits

JOHN KINGMAN PHILLIPS
Barrister & Solicitor

John Milloy

Crown-Indigenous Relations and Northern Affairs Canada
Relations Couronne-Autochtones et Affaires du Nord Canada

CONFIDENTIAL AND
WITHOUT PREJUDICE

March 8, 2021

This is Exhibit "B" referred to in the Affidavit of Peter Grant, sworn before me this 25th day of August, 2021

Commissioner for taking Affidavits

Mr. Peter R. Grant
pgrant@grantnativelaw.com

Mr. John K. Phillips
john@waddellphillips.ca

Ms. Diane Soroka
dhs@dsoroka.com

Re: Chief Shane Gottfriedson et al. v. Her Majesty The Queen – Canada's Offer to Settle Survivor and Descendant Classes

Dear Counsel:

Further to the request made during our March 4, 2021 meeting, I am pleased to confirm Canada's February 18, 2021 offer to settle the Gottfriedson Survivor and Descendant classes and to sever the Band class. The terms of Canada's offer are as follows:

Severance of the Band Class

The claims of the Band class will be severed from the claims of the Survivor and Descendant classes. The terms of the settlement of the Survivor and Descendant classes will allow for the Band class claims to continue to be litigated.

Survivor Class

The Survivor class will be settled on the following terms:

(a) Canada will provide $10,000 (ten thousand dollars) to each eligible day scholar who attended an Indian Residential School (to be agreed upon) during the class period. Individuals will not be eligible for such compensation for a year in which they already received compensation as a resident through the Indian Residential Schools Settlement Agreement (IRSSA) Common Experience Payment (CEP) or as a day school student under the *McLean* Federal Indian Day Schools Settlement;
(b) The "alive as of" date for eligibility for day scholars will be as of May 30, 2005 in order to align with the IRSSA CEP date;

.../2

(c) For any eligible day scholar who passed away on or after May 30, 2005, Canada will provide compensation to his/her/their effective estate, as applicable, in a manner to be negotiated by the parties;
(d) Funding for individual compensation will be uncapped to ensure that all eligible day scholars, or their effective estates, as applicable, who apply receive $10,000 (ten thousand dollars);
(e) Canada will not rely on the IRSSA releases, including the Independent Assessment Process releases, for the purposes of this settlement; and
(f) Canada will not seek any reduction for those day scholars, and the effective estates as applicable, who have received a CEP.

Foundation or Trust

The Survivor and Descendant classes will be settled on the following terms:

a) Canada will fund $50M (fifty million dollars) to support the establishment of a Foundation or Trust;
b) The Foundation or Trust will be open to members of the Survivor and Descendant classes to support healing, wellness, education, language, culture and commemoration activities;
c) The Foundation or Trust will be established in accordance with the *Canada Not-for-Profit Corporations Act* and will be independent of the Government of Canada; and
d) The Board of the Foundation or Trust should have national representation and should include one representative appointed by Canada.

The establishment of the Foundation or Trust will be clarified through further negotiations.

Administration

A streamlined, paper-based claims process will be administered by a third party. All costs associated with the administration of the settlement will be paid by Canada.

The claims process will be clarified through further negotiations.

Legal Fees

Canada will reimburse the plaintiffs for class counsel's reasonable legal fees related to the litigation to date and pay class counsel's reasonable legal fees relating to negotiating a final settlement agreement and settlement approval, all of which is subject to negotiations between class counsel and Canada.

.../3

Further negotiations will determine a process to ensure that eligible day scholars have access to legal support through the claims process at no cost to them.

Releases

Appropriate deemed and/or individual releases will be required, the content of which will be addressed through further negotiations.

We look forward to receiving written confirmation of your client's acceptance of Canada's settlement offer in order to move forward to negotiate the remaining components of the settlement as soon as possible.

Sincerely,

Thomas Isaac
Ministerial Special Representative
Crown-Indigenous Relations and Northern Affairs Canada

cc.

Martin Reiher, CIRNAC
Krista Robertson, CIRNAC
Lorne Lachance, Department of Justice
Travis Henderson, Department of Justice

This is Exhibit " C " referred to in the Affidavit of Peter Grant, sworn before me this 25th day of August, 2021.

Commissioner for taking Affidavits

BRITISH COLUMBIA

Number: S0075295

Societies Act

CERTIFICATE OF INCORPORATION

DAY SCHOLARS REVITALIZATION SOCIETY

I Hereby Certify that ~

DAY SCHOLARS REVITALIZATION SOCIETY was incorporated under the *Societies Act* on August 20, 2021 at 12:15 PM Pacific Time.

Issued under my hand at Victoria, British Columbia

CAROL PREST

REGISTRAR OF COMPANIES
PROVINCE OF BRITISH COLUMBIA
CANADA

BRITISH COLUMBIA

CERTIFIED COPY
Of a document filed with the Province of British Columbia Registrar of Companies

CAROL PREST

CONSTITUTION

BC Society • Societies Act

NAME OF SOCIETY: **DAY SCHOLARS REVITALIZATION SOCIETY**

Incorporation Number:	S0075295
Business Number:	78174 7100 BC0001
Filed Date and Time:	August 20, 2021 12:15 PM Pacific Time

The name of the Society is DAY SCHOLARS REVITALIZATION SOCIETY

The purposes of the Society are:

2. The purposes of the Society are, in consideration of the harms suffered by scholars due to attending residential schools in Canada while not residing at those schools and the harms suffered by their children, to remediate those harms by creating and implementing programs with funding from Canada to support the scholars and their children with grants for healing, wellness, education, language, culture, heritage, and commemoration activities and programs that
(a) revitalize and protect the Indigenous languages of the scholars and their children;
(b) protect and revitalize the Indigenous cultures of the scholars and their children;
(c) pursue healing and wellness for the scholars and their children;
(d) protect the Indigenous heritage of the scholars and their children; and
(e) assist in the education of the scholars and their children;
except that
(f) no part of the income of the Society shall be payable to, or otherwise be available for the personal benefit of, any member and the Society shall not appropriate any of its funds or property in any manner whatever to or for the benefit of any member;
(g) the Society shall not otherwise confer any benefit on the Band Class as defined in the certified class proceeding bearing Federal Court File No. T-1542-12, Gottfriedson et al v. Her Majesty the Queen in Right of Canada; and
(h) the activities and programs will not duplicate those of the Government of Canada.
3. The purposes of the society include the pursuit of non-charitable activities for the benefit of the scholars and their children.

This is Exhibit "D" referred to in
the Affidavit of Peter Grant, sworn
before me this 25th day of August,
2021.

Commissioner for taking Affidavits

Bylaws

of the

Day Scholars Revitalization Society (the "Society")

PART 1 – DEFINITIONS AND INTERPRETATION

Definitions

1.1 In these Bylaws:

"Aboriginal Person" means a person whose rights are recognized and affirmed by the Constitution Act, 1982, s. 35;

"Act" means the *Societies Act* of British Columbia as amended from time to time;

"Action" means the certified class proceeding bearing Court File No. T-1542-12, Gottfriedson et al. v. Her Majesty the Queen in Right of Canada;

"Board" means the directors of the Society;

"Bylaws" means these Bylaws as altered from time to time;

"Class Period" means the period from and including January 1, 1920 and ending on December 31, 1997;

"Committee" means the committee described in section 2.1;

"Descendant Class" means the first generation of persons descended from Survivor Class Members or persons who were legally or traditionally adopted by a Survivor Class Member or their spouse;

"Descendant Class Member" means an individual who falls within the definition of the Descendant Class;

"Eligible Individuals" means the Descendant Class Members and the Survivor Class Members;

"Indian Residential Schools" means the institutions identified in the lists of Indian Residential Schools attached as a Schedule to these Bylaws;

"IRSSA" means the Indian Residential Schools Settlement Agreement dated May 8, 2006;

"Opt Out" means any individual who would otherwise fall within the definition of a Survivor Class Member or Descendant Class Member who previously validly opted out of the Action;

"**Qualified Recipient**" means

(a) a society, other than a member-funded society as defined in section 190 of the Societies Act,

(b) a registered charity as defined in section 248 (1) of the Income Tax Act (Canada) or another qualified donee as defined in section 149.1 (1) of that Act, or

(c) trustees on trust for a charitable purpose,

as long as the recipient has purposes related to the purposes of the Society;

"Special Resolution" means any of the following:

(a) a resolution passed at a general meeting by at least 2/3 of the votes cast by the voting members, whether cast personally or by proxy;

(b) a resolution consented to in writing by all of the voting members;

"Survivor Class" means all Aboriginal Persons who attended as a student or for educational purposes for any period at an Indian Residential School during the Class Period, excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the IRSSA; and

"Survivor Class Member" means an individual who falls within the definition of the Survivor Class and is not an Opt Out.

Definitions in Act apply

1.2 The definitions in the Act apply to these Bylaws.

Conflict with Act or regulations

1.3 If there is a conflict between these Bylaws and the Act or the regulations under the Act, the Act or the regulations, as the case may be, prevail.

PART 2 – MEMBERS

Appointment of Members

2.1 The members of the Society, other than the members who become members on incorporation, shall be appointed by a committee (the "Committee") consisting of representatives appointed by the Tk'emlúps te Secwépemc, the Sechelt Indian Band and the Grand Council of the Crees (Eeyou Istchee), after carrying out the following procedure:

(a) reasonable notice of the opportunity to nominate a member shall be given to the Eligible Individuals,
(b) the notice shall invite the Eligible Individuals to make nominations in a form established by the Committee and to mail or email any completed form to a person identified in the form,
(c) the Committee shall consider the qualifications of the individuals nominated, bearing in mind the need to provide regional representation for Eligible Individuals, and
(d) having done that, the Committee shall appoint the individuals that they select as members.

The Committee shall decide on the number of members to be appointed and the frequency with which new members shall be appointed. The Committee shall be entitled to remove any individual as a member. No Eligible Individuals shall become members.

The directors may decide to pay a reasonable per diem to the members of the Committee for attending meetings, preparing for meetings and otherwise carrying out their duties as members of the Committee. The directors may determine the amount of the per diem. The total amount of per diems paid to Committee members in each year must appear as a separate line item or in a note in the financial statements of the Society for that year. The directors shall also establish guidelines for reimbursing any reasonable expenses incurred by the members of the Committee in carrying out their duties. For this purpose, the directors shall have reference to the Travel Directive of the National Joint Council regarding expenses incurred by members of the Public Service or to other appropriate guidelines.

Duties of members

2.2 Every member must uphold the constitution of the Society and must comply with these Bylaws.

Amount of membership dues

2.3 There shall be no membership dues.

No Benefits to Members

2.4 No part of the income of the Society shall be payable to, or otherwise be available for the personal benefit of, any member and the Society shall not appropriate any of its funds or property in any manner whatever to or for the benefit of any member.

PART 3 – GENERAL MEETINGS OF MEMBERS

Time and place of general meeting

3.1 A general meeting must be held at the time and place within Canada the Board determines and will not be public unless the Board resolves otherwise.

Ordinary business at general meeting

3.2 At a general meeting, the following business is ordinary business:

(a) adoption of rules of order;

(b) consideration of any financial statements of the Society presented to the meeting;

(c) consideration of the reports, if any, of the directors or auditor;

(d) appointment of an auditor, if any;

(f) business arising out of a report of the directors not requiring the passing of a Special Resolution.

Notice of special business

3.3 A notice of a general meeting must state the nature of any business, other than ordinary business, to be transacted at the meeting in sufficient detail to permit a member receiving the notice to form a reasoned judgment concerning that business.

Chair of general meeting

3.4 The following individual is entitled to preside as the chair of a general meeting:

(a) the individual, if any, appointed by the Board to preside as the chair;

(b) if the Board has not appointed an individual to preside as the chair or the individual appointed by the Board is unable to preside as the chair,

(i) the president,

(ii) the vice-president, if the president is unable to preside as the chair, or

(iii) one of the other directors present at the meeting, if both the president and vice-president are unable to preside as the chair.

Alternate chair of general meeting

3.5 If there is no individual entitled under these Bylaws who is able to preside as the chair of a general meeting within 15 minutes from the time set for holding the meeting, the voting members who are present must elect an individual present at the meeting to preside as the chair.

Quorum required

3.6 Business, other than the election of the chair of the meeting and the adjournment or termination of the meeting, must not be transacted at a general meeting unless a quorum of voting members is present.

Quorum for general meetings

3.7 The quorum for the transaction of business at a general meeting is 3 voting members or 10% of the voting members, whichever is greater.

Lack of quorum at commencement of meeting

3.8 If, within 30 minutes from the time set for holding a general meeting, a quorum of voting members is not present,

(a) in the case of a meeting convened on the requisition of members, the meeting is terminated, and

(b) in any other case, the meeting stands adjourned to the same day in the next week, at the same time and place, and if, at the continuation of the adjourned meeting, a quorum is not present within 30 minutes from the time set for holding the continuation of the adjourned meeting, the voting members who are present constitute a quorum for that meeting.

If quorum ceases to be present

3.9 If, at any time during a general meeting, there ceases to be a quorum of voting members present, business then in progress must be suspended until there is a quorum present or until the meeting is adjourned or terminated.

Adjournments by chair

3.10 The chair of a general meeting may, or, if so directed by the voting members at the meeting, must, adjourn the meeting from time to time and from place to place, but no business may be transacted at the continuation of the adjourned meeting other than business left unfinished at the adjourned meeting.

Notice of continuation of adjourned general meeting

3.11 It is not necessary to give notice of a continuation of an adjourned general meeting or of the business to be transacted at a continuation of an adjourned general meeting except that, when a general meeting is adjourned for 30 days or more, notice of the continuation of the adjourned meeting must be given.

Order of business at general meeting

3.12 The order of business at a general meeting is as follows:

(a) elect an individual to chair the meeting, if necessary;

(b) determine that there is a quorum;

(c) approve the agenda;

(d) approve the minutes from the last general meeting;

(e) deal with unfinished business from the last general meeting;

(f) if the meeting is an annual general meeting,

(i) receive the directors' report on the financial statements of the Society for the previous financial year, and the auditor's report, if any, on those statements and the report required under section 3.13,

(ii) receive any other reports of directors' activities and decisions since the previous annual general meeting,

(iii) appoint an auditor, if any;

(g) deal with new business, including any matters about which notice has been given to the members in the notice of meeting;

(h) terminate the meeting.

Directors' Reports on Projects

3.13 At each annual general meeting, the directors shall present a report on the types of projects carried out by the Society in the previous financial year, the amount spent on each type of project and the way in which each type of project relates to the purposes of the Society. These reports shall be made available to the public. The directors may determine a reasonable fee for the Society to charge for providing this service to the public.

Methods of voting

3.14 At a general meeting, voting must be by a show of hands, an oral vote or another method that adequately discloses the intention of the voting members, except that if, before or after such a vote, 2 or more voting members request a secret ballot or a secret ballot is directed by the chair of the meeting, voting must be by a secret ballot.

Announcement of result

3.15 The chair of a general meeting must announce the outcome of each vote and that outcome must be recorded in the minutes of the meeting.

Proxy voting not permitted

3.16 Voting by proxy is not permitted.

Matters decided at general meeting by ordinary resolution

3.17 A matter to be decided at a general meeting must be decided by ordinary resolution unless the matter is required by the Act or these Bylaws to be decided by Special Resolution or by another resolution having a higher voting threshold than the threshold for an ordinary resolution.

PART 4 – DIRECTORS

Number of directors on Board

4.1 The Society must have no fewer than 3 and no more than 11 directors.

Appointment of directors

4.2 Subject to sections 4.5 and 4.6, the directors of the Society, other than the directors who become directors upon incorporation, shall be appointed by the Committee, after carrying out the following procedure:

(a) reasonable notice of the opportunity to nominate a director shall be given to the Eligible Individuals in a manner to be determined by the Committee,

(b) the notice shall invite the Eligible Individuals to make nominations in a form established by the Committee and to mail or email any completed form to a person identified in the form,

(c) the Committee shall consider the qualifications of the individuals nominated, bearing in mind the need to provide regional representation for Eligible Individuals, and

(d) having done that, the Committee shall appoint the individuals that they select as directors.

Subject to section 4.1, the Committee shall decide on the number of directors to be appointed. The Committee shall be entitled to remove any individual as a director, except for the director appointed under section 4.6.

Committee may fill casual vacancy on Board

4.3 Subject to sections 4.5 and 4.6, the Committee may, at any time, appoint an individual as a director to fill a vacancy that arises on the Board as a result of the resignation, death or incapacity of a director during the director's term of office.

Term of appointment of director filling casual vacancy

4.4 A director appointed by the Committee to fill a vacancy ceases to be a director at the end of the unexpired portion of the term of office of the individual whose departure from office created the vacancy.

Qualifications to be a Director

4.5 No individual shall be appointed as a director unless they:

(a) are of Indigenous descent or are the directors who became directors on incorporation,

(b) are knowledgeable regarding the responsibilities of a director and qualified to act as a director,

(c) agree to comply with and be bound by all terms of the Bylaws and the policies established by the directors for the operation of the Society,

(d) are over the age of 18 and have capacity,

(f) are not a Chief or a Councillor of a First Nation,

(g) have not been found by any court, in Canada or elsewhere, to be incapable of managing their own affairs,

(h) are not an undischarged bankrupt, and

(i) have not been convicted in or out of British Columbia of an offence in connection with the promotion, formation or management of a corporation or unincorporated entity, or of an offence involving fraud, unless

(i) the court orders otherwise,

(ii) 5 years have elapsed since the last to occur of

(A) the expiration of the period set for suspension of the passing of sentence without a sentence having been passed,

(B) the imposition of a fine,

(C) the conclusion of the term of any imprisonment, and

(D) the conclusion of the term of any probation imposed, or

(iii) a pardon was granted or issued, or a record suspension was ordered, under the Criminal Records Act (Canada) and the pardon or record suspension, as the case may be, has not been revoked or ceased to have effect.

Director Appointed by Canada

4.6 The Minister of Crown-Indigenous Relations, or the successor to that Minister, shall be entitled to appoint one director without the involvement of the Committee and without following the procedure in section 4.2. That Director must meet the qualifications set out in section 4.5. The Minister alone shall be entitled to replace that director at any time and for any reason.

Limitations on Actions by the Directors

4.7 The Directors shall not authorize any borrowings or the issuance of any guarantees or the pledge of any assets or income by the Society.

Actions Required by the Directors

4.8 The Directors shall ensure that the assets owned by the Society are prudently invested with advice from professional investment managers and

with the goal of balancing the preservation of the value of the assets with the growth of that value.

PART 5 – DIRECTORS' MEETINGS

Calling directors' meeting

5.1 A directors' meeting may be called by the president or by any 2 other directors.

Notice of directors' meeting

5.2 At least 2 days' notice of a directors' meeting must be given unless all the directors agree to a shorter notice period.

Proceedings valid despite omission to give notice

5.3 The accidental omission to give notice of a directors' meeting to a director, or the non-receipt of a notice by a director, does not invalidate proceedings at the meeting.

Conduct of directors' meetings

5.4 The directors may regulate their meetings and proceedings as they think fit.

Quorum of directors

5.5 The quorum for the transaction of business at a directors' meeting is a majority of the directors.

PART 6 – BOARD POSITIONS

Election or appointment to Board positions

6.1 Directors may be appointed to the following Board positions, and a director, other than the president, may hold more than one position:

(a) president;

(b) vice-president;

(c) secretary;

(d) treasurer.

Directors at large

6.2 Directors who are appointed to positions on the Board in addition to the positions described in these Bylaws are appointed as directors at large.

Role of president

6.3 The president, if one is appointed, is the chair of the Board and is responsible for supervising the other directors in the execution of their duties.

Role of vice-president

6.4 The vice-president, if one is appointed, is the vice-chair of the Board and is responsible for carrying out the duties of the president if the president is unable to act.

Role of secretary

6.5 The secretary, if one is appointed, is responsible for doing, or making the necessary arrangements for, the following:

(a) issuing notices of general meetings and directors' meetings;

(b) taking minutes of general meetings and directors' meetings;

(c) keeping the records of the Society in accordance with the Act;

(d) conducting the correspondence of the Board;

(e) filing the annual report of the Society and making any other filings with the registrar under the Act.

Absence of secretary from meeting

6.6 In the absence of the secretary from a meeting, the Board must appoint another individual to act as secretary at the meeting.

Role of treasurer

6.7 The treasurer, if one is appointed, is responsible for doing, or making the necessary arrangements for, the following:

(a) receiving and banking monies collected from the members or other sources;

(b) keeping accounting records in respect of the Society's financial transactions;

(c) preparing the Society's financial statements;

(d) making the Society's filings respecting taxes.

PART 7 – REMUNERATION OF DIRECTORS AND SIGNING AUTHORITY

Remuneration of directors

7.1 The Committee may decide to pay a reasonable per diem to the directors for attending meetings, preparing for meetings and otherwise carrying out their duties as directors. The total amount of per diems paid to the directors in each year must appear as a separate line item or in a note in the financial statements of the Society for that year. The Committee may determine the amount of the per diem. The Committee shall also establish guidelines for reimbursing any reasonable expenses incurred by the directors in carrying out their duties. For this purpose, the Committee shall have reference to the Travel Directive of the National Joint Council regarding expenses incurred by members of the Public Service or to other appropriate guidelines.

Signing authority

7.2 A contract or other record to be signed by the Society must be signed on behalf of the Society

(a) by the president, together with one other director,

(b) if the president is unable to provide a signature, by the vice-president together with one other director,

(c) if the president and vice-president are both unable to provide signatures, by any 2 other directors, or

(d) in any case, by one or more individuals authorized by the Board to sign the record on behalf of the Society.

PART 8 – ALTERATIONS TO BYLAWS

ALTERATION APPLICATION

8.1 The society may alter its bylaws by filing with the registrar a bylaw alteration application.

AUTHORIZATION BY SPECIAL RESOLUTION

8.2 The society must not submit a bylaw alteration application to the registrar for filing unless the alteration proposed by the application has been authorized by Special Resolution.

SUBMITTING APPLICATION FOR FILING

8.3 An alteration proposed in a bylaw alteration application takes effect when the bylaw alteration application is filed with the registrar.

PART 9 – ADVISORY BOARD

CREATION OF ADVISORY BOARD

9.1 The directors shall create an Advisory Board after carrying out the following procedure:

(a) reasonable notice of the opportunity to nominate a member of the Avisory Board shall be given to the Eligible Individuals,
(b) the notice shall invite the Eligible Individuals to make nominations in a form established by the directors and to mail or email any completed form to a person identified in the form,
(c) the directors shall consider the qualifications of the individuals nominated, bearing in mind the need to provide regional representation for Eligible Individuals and the need for advice from financial advisors and other professionals, and
(d) having done that, the directors shall appoint the individuals that they select as members of the Advisory Board.

The directors shall decide on the number of members to be appointed to the Advisory Board and the frequency with which new members shall be appointed. The directors shall be entitled to remove any individual as a member.

ADVICE BY BOARD

9.2 The Advisory Board shall advise the directors regarding all activities of the directors in the pursuit of the activities of the Society, including the development and implementation of a policy for applications to obtain funding from the Society in that pursuit.

APPLICATIONS FOR FUNDING

9.3 No application for funding shall be approved if funding from another source is available. If funding from another source will only cover part of the amount requested, the directors may agree to fund the part that is not covered.

REMUNERATION FOR MEMBERS OF ADVISORY BOARD

9.4 The directors may decide to pay a reasonable per diem to the members of the Advisory Board for attending meetings, preparing for meetings and otherwise carrying out their duties as members of the Board. The directors may determine the amount of the per diem. The total amount of per diems paid members of the Advisory Board in each year must appear as a separate line item or in a note in the financial statements of the Society for that year. The directors shall also establish guidelines for reimbursing any reasonable expenses incurred by the members of the Board in carrying out their duties. For this purpose, the directors shall have reference to the Travel Directive of the National Joint Council regarding expenses incurred by members of the Public Service or to other appropriate guidelines.

DISSOLUTION OF SOCIETY BY REQUEST

10.1 Before the dissolution of the Society by request under section 126 of the Societies Act or on the liquidation of the Society under Part 10 of that Act,

(a) all of the society's liabilities must be paid or adequate provision for payment of the liabilities must be made, and

(b) subject to section 10.2, after payment or adequate provision for payment of all of the Society's liabilities is made, the remaining money or other property of the Society may be distributed.

10.2 A distribution of money or other property under section 10.1(b) must be made only to a Qualified Recipient specified in an ordinary resolution of the society.

SCHEDULE

Lists of Indian Residential Schools

Residential School Day Scholars

Schools Lists

Schools that Day Scholars Attended or May Have Attended

Schools that Day Scholars Attended or May Have Attended

Day Scholars who attended a Residential School during the day only, for part or all of a school year, and who were alive as of May 30, 2005, are included in the proposed settlement.

Below are lists of Residential Schools where there were confirmed Day Scholars (List 1), or there might have been Day Scholars (List 2). If you went to one of these schools during the day, but did not sleep there over night, you are part of the proposed settlement.

You can also find these lists in "Schedule E" of the proposed Settlement Agreement.

List 1 – Schools with Confirmed Day Scholars

British Columbia Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Alberni	Port Alberni (Tseshaht Reserve)	January 1, 1920 **Interim Closures:** June 2, 1917, to December 1, 1920 February 21, 1937 to September 23, 1940	August 31, 1965
Cariboo (St. Joseph's, William's Lake)	Williams Lake	January 1, 1920	February 28, 1968
Christie (Clayoquot, Kakawis)	Tofino	January 1, 1920	June 30, 1983
Kamloops	Kamloops (Kamloops Indian Reserve)	January 1, 1920	August 31, 1969
Kuper Island	Kuper Island	January 1, 1920	August 31, 1968
Lejac (Fraser Lake)	Fraser Lake (on reserve)	January 1, 1920	August 31, 1976
Lower Post	Lower Post (on reserve)	September 1, 1951	August 31, 1968
St. George's (Lytton)	Lytton	January 1, 1920	August 31, 1972
St. Mary's (Mission)	Mission	January 1, 1920	August 31, 1973
Sechelt	Sechelt (on reserve)	January 1, 1920	August 31, 1969
St. Paul's (Squamish, North Vancouver)	Squamish, North Vancouver	January 1, 1920	August 31, 1959

Alberta Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Assumption (Hay Lake)	Assumption (Hay Lakes)	February 1, 1951	September 8, 1968
Blue Quills	Saddle Lake Indian Reserve (1898 to 1931) St. Paul (1931 to 1990)	January 1, 1920	January 31, 1971
Crowfoot (Blackfoot, St. Joseph's, Ste. Trinité)	Cluny	January 1, 1920	December 31, 1968
Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)	Desmarais, Wabasca / Wabisca	January 1, 1920	August 31, 1964
Ermineskin (Hobbema)	Hobbema (Ermineskin Indian Reserve)	January 1, 1920	March 31, 1969
Holy Angels (Fort Chipewyan, École des Saint-Anges)	Fort Chipewyan	January 1, 1920	August 31, 1956
Fort Vermillion (St. Henry's)	Fort Vermillion	January 1, 1920	August 31, 1964
Joussard (St. Bruno's)	Lesser Slave Lake	1920	October 31, 1969
Morley (Stony/Stoney, replaced McDougall Orphanage)	Morley (Stony Indian Reserve)	September 1, 1922	July 31, 1969

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Old Sun (Blackfoot)	Gleichen (Blackfoot Reserve)	January 1, 1920 **Interim Closures:** 1922 to February 1923 June 26, 1928 to February 17, 1931	June 30, 1971
Sacred Heart (Peigan, Brocket)	Brocket (Peigan Indian Reserve)	January 1, 1920	June 30, 1961
St. Cyprian (Queen Victoria's Jubliee Home, Peigan)	Brocket (Peigan Indian Reserve)	January 1, 1920 **Interim Closure:** September 1, 1953 to October 12, 1953	June 30, 1961
St. Mary's (Blood, Immaculate Conception)	Cardston (Blood Indian Reserve)	1920 **Interim Closure:** September 1, 1965 to January 6, 1966	August 31, 1969
St. Paul's (Blood)	Cardston (Blood Indian Reserve)	January 1, 1920	August 31, 1965
Sturgeon Lake (Calais, St. Francis Xavier)	Calais	January 1, 1920	August 31, 1959
Wabasca (St. John's)	Wabasca Lake	January 1, 1920	August 31, 1965
Whitefish Lake (St. Andrew's)	Whitefish Lake	January 1, 1920	June 30, 1950
Grouard	West side of Lesser Slave Lake, Grouard	January 1, 1920	September 30, 1957

Saskatchewan Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Beauval (Lac la Plonge)	Beauval	January 1, 1920	August 31, 1968
File Hills	Balcarres	January 1, 1920	June 30, 1949
Gordon's	Punnichy (Gordon's Reserve)	January 1, 1920 **Interim Closures:** June 30, 1947, to October 14, 1949 January 25, 1950 to September 1, 1953	August 31, 1968
Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	Lebret	January 1, 1920 **Interim Closures:** November 13, 1932 to May 29, 1936	August 31, 1968
Marieval (Cowesess, Crooked Lake)	Cowesess Reserve	January 1, 1920	August 31, 1969
Muscowequan (Lestock, Touchwood)	Lestock	January 1, 1920	August 31, 1968

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Prince Albert (Onion Lake Anglican, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	Onion Lake / Lac La Ronge / Prince Albert	January 1, 1920	August 31, 1968
St. Anthony's (Onion Lake, Sacred Heart)	Onion Lake	January 1, 1920	March 31, 1969
St. Michael's (Duck Lake)	Duck Lake	January 1, 1920	August 31, 1968
St. Philip's	Kamsack	April 16, 1928	August 31, 1968

Manitoba Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Assiniboia (Winnipeg)	Winnipeg	September 2, 1958	August 31, 1967
Brandon	Brandon	1920 **Interim Closures:** July 1, 1929 to July 18, 1930	August 31, 1968
Churchill Vocational Centre	Churchill	September 9, 1964	June 30, 1973

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Cross Lake (St. Joseph's, Norway House)	Cross Lake	January 1, 1920	June 30, 1969
Fort Alexander (Pine Falls)	Fort Alexander Reserve No. 3, near Pine Falls	January 1, 1920	September 1, 1969
Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	Clearwater Lake	September 5, 1952	August 31, 1968
Norway House	Norway House	January 1, 1920 **Interim Closures:** May 29, 1946 to September 1, 1954	June 30, 1967
Pine Creek (Camperville)	Camperville	January 1, 1920	August 31, 1969
Portage la Prairie	Portage la Prairie	January 1, 1920	August 31, 1960
Sandy Bay	Sandy Bay Reserve	January 1, 1920	June 30, 1970

Ontario Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Bishop Horden Hall (Moose Fort, Moose Factory)	Moose Island	January 1, 1920	August 31, 1964
Cecilia Jeffrey (Kenora, Shoal Lake)	Shoal Lake	January 1, 1920	August 31, 1965
Fort Frances (St. Margaret's)	Fort Frances	January 1, 1920	August 31, 1968
McIntosh (Kenora)	McIntosh	May 27, 1925	June 30, 1969
Pelican Lake (Pelican Falls)	Sioux Lookout	September 1, 1927	August 31, 1968
Poplar Hill	Poplar Hill	September 1, 1962	June 30, 1989
St. Anne's (Fort Albany)	Fort Albany	January 1, 1920	June 30, 1976
St. Mary's (Kenora, St. Anthony's)	Kenora	January 1, 1920	August 31, 1968
Spanish Boys' School (Charles Garnier, St. Joseph's)	Spanish	January 1, 1920	June 30, 1958
Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	Spanish	January 1, 1920	June 30, 1962

Quebec Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Fort George (Anglican)	Fort George	September 1, 1933 **Interim Closures:** January 26, 1943 to July 9, 1944	August 31, 1971
Fort George (Roman Catholic)	Fort George	September 1, 1937	June 30, 1978
Point Bleue	Point Bleue	October 6, 1960	August 31, 1968
Sept-Îles	Sept-Îles	September 2, 1952	August 31, 1969

Nova Scotia Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Shubenacadie	Shubenacadie	September 1, 1929	June 30, 1967

Northwest Territories Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Aklavik (Immaculate Conception)	Aklavik	July 1, 1926	June 30, 1959
Aklavik (All Saints)	Aklavik	August 1, 1936	August 31, 1959
Fort Providence (Sacred Heart)	Fort Providence	January 1, 1920	June 30, 1960

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Fort Resolution (St. Joseph's)	Fort Resolution	January 1, 1920	December 31, 1957
Hay River (St. Peter's)	Hay River	January 1, 1920	August 31, 1937

Yukon Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Carcross (Chooutla)	Carcross	January 1, 1920 **Interim Closures:** June 15, 1943 to September 1, 1944	June 30, 1969
Whitehorse Baptist Mission	Whitehorse	September 1, 1947	June 30, 1960
Shingle Point Eskimo Residential School	Shingle Point	September 16, 1929	August 31, 1936

List 2 – Schools Not Known to Have Day Scholars

British Columbia Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class	School Closing or Transfer

		Period or later, as applicable)	Date
Ahousaht	Ahousaht (Maktosis Reserve)	January 1, 1920	January 26, 1940
Coqualeetza from 1924 to 1940	Chilliwack	January 1, 1924	June 30, 1940
Cranbrook (St. Eugene's, Kootenay)	Cranbrook (on reserve)	January 1, 1920	June 23, 1965
St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	Alert Bay (on reserve)	January 1, 1920	August 31, 1960

Alberta Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Edmonton (Poundmaker, replaced Red Deer Industrial)	St. Albert	March 1, 1924 **Interim Closures:** July 1, 1946 to October 1, 1946 July 1, 1951 to November 5, 1951	August 31, 1960
Lesser Slave Lake (St. Peter's)	Lesser Slave Lake	January 1, 1920	June 30, 1932
St. Albert (Youville)	St. Albert, Youville	January 1, 1920	June 30, 1948
Sarcee (St. Barnabas)	Sarcee Junction, T'suu Tina (Sarcee Indian Reserve)	January 1, 1920	September 30, 1921

Saskatchewan Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Round Lake	Broadview	January 1, 1920	August 31, 1950
Sturgeon Landing (replaced by Guy Hill, MB)	Sturgeon Landing	September 1, 1926	October 21, 1952
Thunderchild (Delmas, St. Henri)	Delmas	January 1, 1920	January 13, 1948

Manitoba Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Birtle	Birtle	January 1, 1920	June 30, 1970
Dauphin (replaced McKay)	The Pas / Dauphin	See McKay below	See McKay below
Elkhorn (Washakada)	Elkhorn	January 1, 1920 **Interim Closure:** 1920 to September 1, 1923	June 30, 1949
McKay (The Pas, replaced by Dauphin)	The Pas / Dauphin	January 1, 1920 **Interim Closure:** March 19, 1933 to September 1, 1957	August 31, 1968

Ontario Residential Schools

School	Location	Opening Date (January 1, 1920 as	School Closing or Transfer

		per the Class Period or later, as applicable)	Date
Chapleau (St. John's)	Chapleau	January 1, 1920	July 31, 1948
Mohawk Institute	Brantford	January 1, 1920	August 31, 1968
Mount Elgin (Muncey, St. Thomas)	Muncey	January 1, 1920	June 30, 1946
Shingwauk	Sault Ste. Marie	January 1, 1920	June 30, 1970
St. Joseph's / Fort William	Fort William	January 1, 1920	September 1, 1968
Stirland Lake High School (Wahbon Bay Academy)	Stirland Lake	September 1, 1971	June 30, 1991
Cristal Lake High School	Stirland Lake	September 1, 1976	June 30, 1986

Quebec Residential Schools

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Amos	Amos	October 1, 1955	August 31, 1969
La Tuque	La Tuque	September 1, 1963	June 30, 1970

John Kingman Phillips
Curriculum Vitae

He is a member of the Law Societies of Alberta (1990), Ontario (2002) and pending in Nunavut. John frequently appears in all levels of Provincial Superior Courts and Federal court, as well as before Provincial Securities Regulators. John has a wide range of experience in corporate/commercial litigation, class actions, Aboriginal law, administrative law, criminal law, professional liability, insurance litigation, labour and employment law and private international law.

John has been counsel in many precedent-setting and high profile cases in wide-ranging areas of the law. Some of his representative cases include: *R. v. Stinchcombe*, a decision of the Supreme Court of Canada that first imposed disclosure obligations on the Crown, *Merrifield v. RCMP*, a case that addressed harassment by the RCMP of one of its own members leading the unionization of the force, *Currie v. McDonald's Restaurants*, a leading case on notice requirements in class actions, and *Fontaine v. Canada*, where he acted as counsel to then National Chief Phil Fontaine and the Assembly of First Nations in the multi-jurisdictional class action and settlement on behalf of Indian Residential Schools survivors.

More recent actions include his representation of child soldier Omar Khadr, that resulted in Omar being compensated following his detention and torture in Guantanamo Bay, as well as acting on behalf of 5 intelligence officers who sued their employer, CSIS, Canada's spy agency, for discrimination and harassment. He is currently representing former diplomats and their families in proceedings against Canada for mysterious damages suffered by them while serving on diplomatic mission in Cuba, and he has commenced proceedings against government and party officials in Prince Edward Island on behalf of whistleblowers who suffered severe retaliation for disclosing wrongdoing and corruption.

John obtained his B.A. (High Honours) at the University of Saskatchewan (1984), his LL.B. from Osgoode Hall Law School (1989), as well as his M.A. (Philosophy of Science) from the University of Guelph (1989). He has been a sessional lecturer/adjunct professor at the University of Calgary Law School and later a sessional lecturer at the University of Saskatchewan Law School. Throughout his career, he has taught trial advocacy programs in both Alberta and Ontario.

This is Exhibit "F" referred to in
the Affidavit of Peter Grant, sworn
before me this 25th day of August,
2021.

Commissioner for taking Affidavits

Diane Soroka

Curriculum Vitae

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Westmount, Quebec
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Education

1972 B.A. (Anthropology) McGill University
1975 LL.L. Université de Montréal
Member of the Quebec Bar since 1976

This is Exhibit "G" referred to in the Affidavit of Peter Grant, sworn before me this 25th day of August, 2021.

Commissioner for Taking Affidavits

Languages

English
French

Professional Experience

1978-2004	Partner, Hutchins & Soroka
2004 - present	Sole practitioner, Diane Soroka, Barrister & Solicitor Inc.

I have worked in private practice for over 45 years as a lawyer for various First Nations and for aboriginal organizations mainly in Quebec and British Columbia on issues related to the recognition of aboriginal and treaty rights including in the area of internal governance.

One component of my work over the years has been to assist in the negotiation and implementation of modern treaties such as the *James Bay and Northern Quebec Agreement,* with particular emphasis on governance issues. As such, I assisted in the negotiation, drafting and implementation of the *Cree/Naskapi (of Quebec) Act*, S.C. 1984, c. 18 which replaced the *Indian Act* for the beneficiaries of the *James Bay and Northern Quebec.*

I have represented First Nations and aboriginal organizations, as litigants and as interveners, in litigation concerning aboriginal and treaty rights and other matters before the courts in Quebec and British Columbia and before the Supreme Court of Canada, including:

- *Ontario (A.G.) v. Bear Island Foundation*, [1991] 2 S.C.R. 570
- *Friends of the Oldman River Society v. Canada*, [1992] 1 S.C.R. 3
- *R. v. Adams*, [1996] 3 S.C.R. 101
- *R. v. Morris*, [2006] 2 S.C.R. 915

- *Young v. P.G. Québec*, [2003] J.Q. No. 69 (Que. C.A.)
- *Constant v. P.G. Quebec*, [2003] J.Q. No. 63 (Que. C.A.)
- *P.G. Québec v. Young,* [2003] J.Q. No. 60 (Que. C.A.)
- *Delgamuukw v. B.C.* [1993] B.C.J. No. 1395 (B.C.C.A.)
- *Canadian Forest Products Ltd. v. Sam,* 2011 BCSC 676
- *Tsilhqot'in Nation v. British Columbia* [2014] S.C.J. No. 44

I have also represented First Nation individuals as plaintiffs and as interveners in litigation concerning their claims for physical and sexual abuse in Indian Residential Schools:

- *Bazley v. Curry*, [1999] 2 S.C.R. 534
- *K.L.B. v. British Columbia*, [2003] 2 S.C.R. 403
- *E.D.G. v. Hammer*, [2003] 2 S.C.R. 459
- *M.B. v. British Columbia*, [2003] 2 S.C.R. 477
- *W.R.B. v. Plint; Barney v. Canada*, [2005] 3 S.C.R. 3
- *T.W.N.A. v. Clarke*, [2003] B.C.J. No. 2747 (B.C.C.A.)
- *Canada (AG) v Fontaine,* [2017] S.C.J. No. 47

Related Activities

Canadian Bar Association/Federal Court Bench and Bar Liaison Committee

I was a CBA representative on this Committee from 2010-2019. The Committee's mandate is to provide a forum for members of the bar, the Federal Court and Federal Court of Appeal to informally discuss issues of concern relating to the operation of the Courts, that fall outside the mandate of the Federal Court Rules Committee.

Indian Residential School Settlement Oversight Committee

This Committee was created under the Indian Residential Schools Class Action Settlement. I was a member of this Committee representing Claimant Counsel. Its mandate was to monitor the implementation of the Independent Assessment Process by which claims by former students at Indian Residential Schools for sexual and physical abuse are adjudicated.

Occasional Lecturer – McGill University School of Social Work

I taught occasional classes on the history of the legal relationship between aboriginal peoples of Canada and Euro-Canadians to students of social work. These classes were intended to give context to some of the issues facing aboriginal communities today.

WADDELL PHILLIPS

August 19, 2021

Our File No. 40491

This is Exhibit "H" referred to in the Affidavit of Peter Grant, sworn before me this 25th day of August, 2021

Commissioner for taking Affidavits

BY EMAIL: webmail@trustee.bc.ca

Public Guardian and Trustee of British Columbia
700 – 808 West Hastings Street
Vancouver, BC V6C 3L3

Dear Sir / Madam:

RE: *Gottfriedson v. Her Majesty the Queen in Right of Canada*, Court File No. T-1542-12

Our firm, together with Peter R. Grant Law Corporation and Diane Soroka Avocate Inc., are Class Counsel in *Gottfriedson* v. *Her Majesty the Queen in Right of Canada*, a certified Federal Court class action bearing Court File No. T-1542-12 (the "Action"). We write on behalf of Class Counsel to advise that the parties have reached a proposed partial settlement of the Action, and to provide details of the settlement approval hearing to be heard by the Federal Court.

The certified class in the Action contains three subclasses:

- the "Survivor Class", which includes all Aboriginal persons who attended as a student or for educational purposes for any period at an Indian Residential School between January 1, 1920 and December 31, 1997, excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the Indian Residential Schools Settlement Agreement ("IRSSA");

- the "Descendant Class", which includes the first generation of persons descended from Survivor Class Members, and persons who were legally or traditionally adopted by a Survivor Class Member or their spouse; and

- the "Band Class", which consists of certain Bands which have or had community members who are or were Survivor Class Members, or in whose community an Indian Residential School is located, and which chose to opt in to the Action.

The Survivor Class consists, in effect, of those known as Day Scholars, who attended Residential Schools during the day, but did not reside there at night. The claims of the Survivor Class arise from loss of Indigenous language and culture allegedly suffered as a result of their compelled attendance

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at Residential Schools. With regard to the Descendant Class, the Action advances the claim that the Survivors' loss of Indigenous language and culture resulted in corresponding losses of Indigenous language and culture for their children.

On June 4, 2021, the Representative Plaintiffs and Canada executed a Settlement Agreement which, if approved by the Court, would resolve the claims of the Survivor and Descendant Classes completely, without prejudice to the Band Class claims, which remain ongoing.

The major terms of the Settlement Agreement are as follows:

- each eligible Survivor Class Member who makes a claim will receive a $10,000 Day Scholar Compensation Payment, with no deductions for legal fees or any other reason;
- a Survivor Class Member is eligible to make a claim if they attended a Residential School listed at Schedule "E" to the Settlement Agreement (*i.e.* a Residential School which had, or may have had, Day Scholars) as a Day Scholar for even part of a school year, so long as they have not already received compensation for that school year as part of another lawsuit;
- for any Day Scholar who has died since May 30, 2005, but who would otherwise be eligible, their descendants/heirs will be eligible to make a claim for a Day Scholar Compensation Payment in their name;
- there will be no limit on the total number of Survivor Class Members who can receive Day Scholar Compensation Payments – all approved claims will be paid in full;
- both the claims process and the estate claims process will be simple and accessible. Claimants will not be required to provide a narrative or supporting documentation for their claim, and will receive the benefit of the doubt wherever possible;
- claimants will have the right to seek reconsideration if their claims are denied and will be provided with free legal assistance for their reconsideration claims;
- a $50 million Day Scholars Revitalization Fund will be established to support healing, wellness, education, language, culture, heritage, and commemoration projects for the benefit of Survivor and Descendant Class Members;
- the Day Scholars Revitalization Fund will be Indigenous-led, and will be operated by a not-for-profit Revitalization Society that is independent of Canada; and
- in exchange for the compensation set out above, the claims of the Survivors and Descendants will be dismissed, and the Survivor and Descendant Class Members will release Canada from any other liability relating to their attendance or their parents' attendance, respectively, at Residential Schools.

Commencing on September 7, 2021, the Federal Court will begin hearing the Plaintiffs' motion for approval of the Settlement Agreement. At this time, the Court has directed that the hearing will proceed in hybrid fashion, meaning that the Court will sit in person at the Federal Court in Vancouver, but that appearances may also be made virtually by video conference. The Court has indicated that this direction may be amended prior to September 7, 2021, due to public health concerns relating to the COVID-19 pandemic.

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As you will know, if the Court approves the Settlement Agreement, then it will bind all Survivor and Descendant Class Members, including any Class Members who are under the care of your Office. Therefore, your Office has standing to appear before the Court, on behalf of any Survivor and/or Descendant Class Members who are under your care.

If your Office will be seeking to make written and/or oral submissions to the Court with regard to the settlement approval motion hearing, please advise at your earliest convenience in advance of the September 7, 2021, commencement date, so that we may facilitate the delivery of these submissions.

If you require additional information, please do not hesitate to contact the under-signed. For your reference, a copy of the Short-Form Notice of Proposed Partial Settlement and Settlement Approval Hearing is attached. The Settlement Agreement, and all related documents can be found on our website: www.justicefordayscholars.com.

Yours truly,
Waddell Phillips Professional Corporation

John Kingman Phillips
JKP/vt

Attachment

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WADDELL PHILLIPS

July 16, 2021

Our File No. 40491

BY EMAIL: AGHCCRAClassActions@gov.bc.ca
Jacob.Todd@gov.bc.ca
Peter.Lawless@gov.bc.ca

This is Exhibit "I" referred to in the Affidavit of Peter Grant, sworn before me this 25th day of August, 2021

Commissioner for taking Affidavits

Third Party Liability
Ministry of Health
PO Box 9647 STN PROV GOVT
Victoria, B.C. V8W 9P4

Dear Sirs:

RE: *Gottfriedson v. Her Majesty the Queen in Right of Canada*, Court File No. T-1542-12

Our firm, together with Peter R. Grant Law Corporation and Diane Soroka Avocate Inc., are Class Counsel in *Gottfriedson* v. *Her Majesty the Queen in Right of Canada*, a certified Federal Court class action bearing court file no. T-1542-12 (the "Action").

We write—out of an abundance of caution—to advise that the parties have reached a partial proposed settlement of the Action and to confirm that no subrogated rights of recovery for any provincial/territorial health insurers are affected by the proposed settlement, or arise from the Action generally.

The certified class in the Action contains three subclasses:

- the "Survivor Class", which includes all Aboriginal persons who attended as a student or for educational purposes for any period at an Indian Residential School between January 1, 1920 and December 31, 1997, excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the Indian Residential Schools Settlement Agreement ("IRSSA");

- the "Descendant Class", which includes the first generation of persons descended from Survivor Class Members, and persons who were legally or traditionally adopted by a Survivor Class Member or their spouse; and

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- the "Band Class", which consists of certain Bands which have or had community members who are or were Survivor Class Members, or in whose community an Indian Residential School is located, and which chose to opt in to the Action.

The proposed settlement reached by the parties would, if approved by the court, resolve the claims of the Survivor and Descendant Classes completely, while the litigation of the Band Class claims remains ongoing.

The Survivor Class consists, in effect, of those known as Day Scholars, who attended Residential Schools during the day, but did not reside there at night. Day Scholars, unlike residential students, were deemed ineligible under the IRSSA to receive Common Experience Payments, which were awarded in recognition of losses suffered due to attendance at Residential Schools. Day Scholars were, however, included in the four other major components of the IRSSA, including the Independent Assessment Process ("IAP"). As part of the IAP, Day Scholars, like all Residential School survivors, were able to make claims for damages if they suffered sexual and/or serious physical abuses, or any other wrongful act or acts which caused serious psychological harms.

With regard to the Survivor Class, the Action was intended to fill the gap left by the IRSSA – specifically, to obtain compensation and acknowledgment that Day Scholars, like residential students, lost their Indigenous language and culture as a result of their compelled attendance at Residential Schools. With regard to the Descendant Class, the Action advances the claim that the Survivors' loss of Indigenous language and culture resulted in corresponding losses of Indigenous language and culture for their children.

In sum, the Action is not about harms which would give rise to healthcare costs, since those harms were already compensated for through the IAP. Neither past nor future healthcare costs are included in the damages sought on behalf of the Class Members.

In reflection of the nature of the Action, the proposed settlement provides for compensation in the form of: non-pecuniary general damages for Survivors; and a Revitalization Fund, which will promote healing, wellness, education, language, culture, heritage and commemoration activities for the benefit of Survivors and Descendants.

It is helpful to distinguish the Action, and the settlement, from the *McLean* v. *Canada* class action ("McLean") and the settlement reached in that action. McLean advanced claims relating to the federal government's operation of Indian Day Schools, which were a different set of institutions than the Residential Schools. Day School students were excluded from the IRSSA completely, including the IAP, and therefore their claims relating to sexual and/or physical abuse, and serious psychological harms were part of the McLean settlement, unlike the settlement in this Action.

For the reasons set out above, Class Counsel are of the view that no subrogated rights of recovery for any provincial/territorial health insurers are affected by the proposed settlement, or arise

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from the Action generally. Should you disagree with our assessment, or have any questions regarding the above, we ask that you kindly contact us immediately.

For your reference, copies of the plaintiffs' First Re-Amended Statement of Claim and the Certification Order of Justice Harrington, dated June 18, 2015, are attached. The Settlement Agreement, and all related documents can be found on our website: www.justicefordayscholars.com.

Yours truly,
Waddell Phillips Professional Corporation

John Kingman Phillips
JKP/vt

Attachments

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This is Exhibit "J " referred to in the Affidavit of Peter Grant, sworn before me this 25th day of August, 2021.

Commissioner for taking Affidavits

Schedule B

Indian Day Schools Compensation Grid

	Abuses Suffered by Students Attending Indian Day Schools	Compensation Amount
LEVEL 1	Harms associated with attendance at Indian Day Schools including: 1. Verbal abuse, for example: • Mocking, denigration, or humiliation by reason of Indigenous identity or culture; • Threats of violence or intimidating statements; or • Sexual comments or provocations. or 2. Physical abuse, including but not limited to culturally unreasonable or disproportionate acts of discipline or punishment.	$10,000
LEVEL 2	1. Physical assault causing: • Serious but temporary injury requiring bed rest or infirmary; • Loss of consciousness; or • Broken bone(s). or 2. Any of the following acts: • Touching with a sexual purpose or intention, including touching with an object; • The act of an adult exposing themselves; • One or more incidents of fondling or kissing; or • Nude photographs taken of the survivor. This is Exhibit "K" referred to in the Affidavit of Peter Grant, sworn before me this 24th day of August, 2021. Commissioner for taking Affidavits	$50,000

	Abuses Suffered by Students Attending Indian Day Schools	Compensation Amount
LEVEL 3	1. Isolated physical assault(s) leading to permanent or demonstrated long-term injury, impairment, or disfigurement. or 2. Isolated incident(s) of any of the following acts: • Masturbation; • Oral intercourse; or • Attempted vaginal or anal intercourse.	$100,000
LEVEL 4	1. Repeated and persistent physical assaults leading to permanent or demonstrated long-term injury, impairment, or disfigurement. or 2. Isolated incident(s) of any of the following acts: • Digital anal or vaginal penetration; • Anal or vaginal intercourse; or • Anal or vaginal penetration with an object.	$150,000
LEVEL 5	1. Repeated and persistent incidents of any of the following acts: • Oral intercourse, masturbation, digital anal or vaginal penetration; • Anal or vaginal intercourse; or • Anal or vaginal penetration with an object. or 2. Isolated physical assault(s) leading to permanent or demonstrated long-term injury, impairment, or disfigurement, when contemporaneous with any of the following acts: • Digital anal or vaginal penetration; • Anal or vaginal intercourse; or • Anal or vaginal penetration with an object.	$200,000

TAB 9

Court File No.: T-1542-12

FEDERAL COURT

Class Proceeding

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND and the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, CHARLOTTE ANNE VICTORINE GILBERT, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, DAPHNE PAUL and RITA POULSEN

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN

DEFENDANT

AFFIDAVIT OF MARTIN REIHER

I, **Martin Reiher**, of the City of Gatineau, in the Province of Quebec, AFFIRM THAT:

1. I am the Assistant Deputy Minister ("ADM"), of the Resolution and Partnerships Sector of the Department of Crown-Indigenous Relations and Northern Affairs Canada ("CIRNA"). Prior to assuming the position of ADM in April 2017, I was departmental legal services counsel for 20 years. In this capacity I had responsibility for providing legal advice on a broad range of Indigenous law issues.

2. As CIRNA's ADM of Resolution and Partnerships I have responsibility for:

    - Indian Residential Schools Resolution;
    - Indigenous Childhood Claims Litigation;
    - Indigenous Institutions and Governance Modernization; and,
    - Specific Claims

3. Resolution and Partnerships works with Indigenous partners to address the harms resulting from past government policies and practices and create conditions under which the Government of Canada can foster a renewed and positive relationship. As a part of this work, the sector is responsible for the implementation of the settlement agreements on Indian Residential Schools, Federal Indian Day Schools and Sixties Scoop and the strategic management and resolution of Indigenous Childhood Claims Litigation.

4. Childhood Claims include litigation related to Indian Residential Schools day scholars, federal day schools, provincial residential schools, boarding homes, individuals involved in the Sixties Scoop, Indian Hospitals and sanatoria, Indian Boarding Homes and other related claims. In this capacity I am responsible for the strategic management of litigation; providing advice to Crown-Indigenous Relations Minister Carolyn Bennett and the Deputy Minister on the approach to these claims; consulting my colleagues within the department and externally with other government departments to ensure consistency in the management of litigation; and providing direction to departmental staff and Department of Justice counsel.

5. From my intimate involvement with the Sixties Scoop and McLean Federal Indian Day Schools settlement agreements and the proposed settlement agreement of the Gottfriedson Survivor and Descendant class claims, I have developed a particular appreciation for the deep consequences of the historic harms suffered by Indigenous children, their families and communities and a practical perspective on large class action settlements.

6. As a result of my position and experience, I have knowledge of the matters herein. If I reference information from third parties, I believe that information to be true.

CIRNA's Mandate

7. To live up to our Government's commitment to reconciliation, CIRNA strives to resolve Indigenous claims, especially those involving children, outside the courts wherever possible. This is reflected in the mandate letters from the Prime Minister to the Minister of Crown-Indigenous Relations.

8. Through the December 13, 2019 mandate letter to the Minister of Crown-Indigenous Relations, a copy of which is attached to my affidavit as **Exhibit "A"**, the Prime Minister tasked Minister Bennett with fourteen top priorities, including to:

• Lead and coordinate the work required of all Ministers to continue to implement the Truth and Reconciliation Commission's *Calls to Action*;

• Continue to support Indigenous-led processes for rebuilding and reconstituting their historic nations, advancing self-determination and, for First Nations, transitioning away from the *Indian Act*.

9. In response to the COVID-19 global pandemic, the Prime Minister issued a January 15, 2021 supplementary mandate letter to the Minister, a copy of which is attached to my affidavit as **Exhibit "B"**. This letter reiterates the expectation that the Minister will continue to work in partnership with Indigenous Peoples and communities to advance meaningful reconciliation. More specifically, the Prime Minister tasked the Minister to continue to lead and coordinate the work of all ministers to accelerate the implementation of the Truth and Reconciliation Commission's *Calls to Action*.

10. It is with these mandate letters in mind that CIRNA approaches all litigation.

The Government of Canada's Position on Settlement

11. As the Prime Minister has said, no relationship is more important to him and to Canada than the one with Indigenous peoples. We are deeply committed to advancing reconciliation and renewing, on a nation-to-nation, Inuit-Crown, and government-to-government basis, the relationship with Indigenous peoples. This relationship should be based on recognition of rights, respect, co-operation and partnership.

12. As we continue our work to renew this most important relationship, the Government of Canada is committed to furthering the vital work of reconciliation as outlined in the *Calls to Action* of the Truth and Reconciliation Commission, which contained a specific *Call to Action 29* to address the claims of individuals left out of the Indian Residential Schools Settlement Agreement. This work of reconciliation is not just for government, but for all Canadians. A copy of the *Calls to Action* is attached to my affidavit as **Exhibit "C"**.

13. True and lasting reconciliation cannot be achieved through any one settlement. The federal government's relationship with Indigenous peoples has been filled with too much tragedy, especially related to the treatment of children. We look forward to continuing to work together for a constructive, national resolution of claims related to the historic harms committed against Indigenous children, outside the court process.

14. As Minister Bennett has stated, negotiation, rather than litigation, is our Government's preferred route to resolve differences and right historical wrongs, especially those related to harms committed against Indigenous children. This commitment is demonstrated through the settlement of the Newfoundland and Labrador Residential Schools class action and the Prime Minister's related apology; settlement of the Sixties Scoop class action and the creation of a Sixties Scoop Healing Foundation; settlement of the McLean Federal Indian Day School class action and establishment of the McLean Day Schools

Settlement Corporation; and, most recently, the proposed class action settlement with respect to Day Scholars who attended Indian Residential Schools.

Schedule "E" to the Settlement Agreement

15. This Court's June 18, 2015 Order ("Certification Order") certifying this proceeding as a class action contains a list of Indian Residential Schools, attached as Schedule "A". This list is an amalgamation of Schedules "E" and "F" to the Indian Residential Schools Settlement Agreement, created pursuant to a rigorous process established under that agreement. The Certification Order states that any party may apply to the Court to amend the list for the purpose of the litigation. No research was undertaken at that time to determine which of these facilities had day scholars in attendance during the class period, 1920 to 1997.

16. During the course of the settlement negotiations, the parties agreed to include a list of schools as a schedule to the settlement agreement, which would be closed upon approval of the settlement. This was based on the research undertaken by CIRNA to confirm, where possible, day scholar attendance at the institutions listed in Schedule "A" to the Certification Order. CIRNA developed what ultimately became two lists of schools as set out in Schedule "E", a copy of which is attached to my affidavit as **Exhibit "D"**. Class counsel was involved in the development of this list through extensive discussions resulting in the agreed-upon lists in Schedule "E".

17. Schedule "E" is comprised of two lists: List 1 contains schools with confirmed day scholar attendance. List 2 contains schools not known to have day scholars. The division of the schools into these two lists is based on research undertaken by CIRNA starting in 2015 through 2016. While extensive research had been completed on the operational history of Indian Residential Schools, previous research focused on the students in residence at these facilities, not day scholars.

18. To complete the required work CIRNA contracted with an independent research firm to review previous departmental research and conduct new primary research specific to day scholar enrolment, the identification of these students, and the date range for day scholar attendance at Indian Residential Schools.

19. From 2015-2016 to 2020-2021, CIRNA spent approximately $1 million to complete the research required to finalize the two lists. This is in addition to the significant internal resources that have also gone into the completion of this work.

20. The list of Federal Indian Day Schools in Schedule "K" to the McLean Federal Indian Day School Settlement Agreement was also relied upon to determine years of operation for those Indian Residential Schools that underwent an administrative split in and around approximately 1969. At that time, many Indian Residential Schools became solely residences and the school portion either closed or transitioned into a day school. Students who attended these day schools from that time forward are eligible for compensation under the McLean Federal Indian Day School Settlement Agreement.

21. Some of the institutions listed in Schedule "A" to the Certification Order are not included in Schedule "E" to the proposed settlement agreement. These institutions were hostels only and did not offer classroom instruction. Students who lived in the hostels attended Federal Indian Day Schools or other provincial or territorial schools. They remain on Schedule "A", however, for the ongoing litigation with the Band Class.

Legal Fees

22. A standalone legal agreement deals with legal fees, honoraria, and disbursements. The agreement is structured such that an amount for legal fees will be paid up front by Canada. An additional amount of money will also be set aside for class counsel for future work relating to the claims process. No other counsel is permitted to charge further legal fees against individual compensation payments without prior authorization from the Court. This is an attempt to avoid the issues that arose in the IRSSA, where some individuals who were awarded compensation through the Independent Assessment Process were charged excessively high fees by legal counsel assisting them in that process. A similar model was used in the McLean Federal Indian Day Schools Settlement Agreement.

23. Given the relative simplicity of the claims process, we anticipate most claimants will not require the assistance of counsel. Under the Indian Residential Schools Settlement Agreement, the onus lay with claimants to establish their status as residents. Whereas in this agreement, the onus shifts to Canada under the claims process to present any information that supports or contradicts a claimant's attendance as a day scholar. Claimants are entitled under the agreement to legal assistance from class counsel for the reconsideration process, which allows for claimants whose claims are denied to seek reconsideration by an independent reviewer.

24. Canada considers this approach to legal fees as appropriate as it offers class members the advantage of being assisted – at no charge to them – by expert counsel. It is important to note that class members are not precluded from retaining other counsel; however, the Court will be called upon to approve proposed fees so that amounts are reasonable and claimants are not surprised by dramatically reduced pay outs.

25. The structure of the proposed fees agreement is such that any remaining unused funds approved for Negotiation and Implementation Fees will not revert to Canada, but rather will be transferred by class counsel to the Day Scholars Revitalization Society to be used in furtherance of that Society's objectives.

26. I make this affidavit in support of the motion to approve the settlement and for no other or improper purpose.

Affirmed before me at)
the City of Gatineau in the)
Province of Québec)
this 12th day of August 2021.)
)
)
Commissioner for Taking Affidavits

MARTIN REIHER

This is Exhibit "A" referred to in
the Affidavit of Martin Reiher
Affirmed before me this 12th day of August 2021.

Commissioner for Taking Affidavits

Minister of Crown-Indigenous Relations Mandate Letter

December 13, 2019

Office of the Prime Minister | Cabinet du Premier ministre

Ottawa, Canada K1A 0A2

Dear Ms. Bennett:

Thank you for agreeing to serve Canadians as Minister of Crown-Indigenous Relations.

On Election Day, Canadians chose to continue moving forward. From coast to coast to coast, people chose to invest in their families and communities, create good middle class jobs and fight climate change while keeping our economy strong and growing. Canadians sent the message that they want us to work together to make progress on the issues that matter most, from making their lives more affordable and strengthening the healthcare system, to protecting the environment, keeping our communities safe and moving forward on reconciliation with Indigenous Peoples. People expect Parliamentarians to work together to deliver these results, and that's exactly what this team will do.

It is more important than ever for Canadians to unite and build a stronger, more inclusive and more resilient country. The Government of Canada is the central institution to promote that unity of purpose and, as a Minister in that Government, you have a personal duty and responsibility to fulfill that objective.

That starts with a commitment to govern in a positive, open and collaborative way. Our platform, *Forward: A Real Plan for the Middle Class*, is the starting point for our Government. I expect us to work with Parliament to deliver on our commitments. Other issues and ideas will

arise or will come from Canadians, Parliament, stakeholders and the public service. It is my expectation that you will engage constructively and thoughtfully and add priorities to the Government's agenda when appropriate. Where legislation is required, you will need to work with the Leader of the Government in the House of Commons and the Cabinet Committee on Operations to prioritize within the minority Parliament.

We will continue to deliver real results and effective government to Canadians. This includes: tracking and publicly reporting on the progress of our commitments; assessing the effectiveness of our work; aligning our resources with priorities; and adapting to events as they unfold, in order to get the results Canadians rightly demand of us.

Many of our most important commitments require partnership with provincial, territorial and municipal governments and Indigenous partners, communities and governments. Even where disagreements may occur, we will remember that our mandate comes from citizens who are served by all orders of government and it is in everyone's interest that we work together to find common ground. The Deputy Prime Minister and Minister of Intergovernmental Affairs is the Government-wide lead on all relations with the provinces and territories.

There remains no more important relationship to me and to Canada than the one with Indigenous Peoples. We made significant progress in our last mandate on supporting self-determination, improving service delivery and advancing reconciliation. I am directing every single Minister to determine what they can do in their specific portfolio to accelerate and build on the progress we have made with First Nations, Inuit and Métis Peoples.

I also expect us to continue to raise the bar on openness, effectiveness and transparency in government. This means a government that is open by default. It means better digital capacity and services for Canadians. It means a strong and resilient public service. It also means humility and continuing to acknowledge mistakes when we make them. Canadians do not expect us to be perfect; they expect us to be diligent, honest, open and sincere in our efforts to serve the public interest.

As Minister, you are accountable for your style of leadership and your ability to work constructively in Parliament. I expect that you will collaborate closely with your Cabinet and Caucus colleagues. You will

also meaningfully engage with the Government Caucus and Opposition Members of Parliament, the increasingly non-partisan Senate, and Parliamentary Committees.

It is also your responsibility to substantively engage with Canadians, civil society and stakeholders, including businesses of all sizes, organized labour, the broader public sector and the not-for-profit and charitable sectors. You must be proactive in ensuring that a broad array of voices provides you with advice, in both official languages, from every region of the country.

We are committed to evidence-based decision-making that takes into consideration the impacts of policies on all Canadians and fully defends the *Canadian Charter of Rights and Freedoms*. You will apply Gender-based Analysis Plus (GBA+) in the decisions that you make.

Canada's media and your engagement with them in a professional and timely manner are essential. The Parliamentary Press Gallery, indeed all journalists in Canada and abroad, ask necessary questions and contribute in an important way to the democratic process.

You will do your part to continue our Government's commitment to transparent, merit-based appointments, to help ensure that people of all gender identities, Indigenous Peoples, racialized people, persons with disabilities and minority groups are reflected in positions of leadership.

As Minister of Crown-Indigenous Relations, you will continue the work to renew the nation-to-nation, Inuit-Crown and government-to-government relationship between Canada and Indigenous Peoples. This includes continuing to modernize our institutional structure and governance so that First Nations, Inuit and Métis Peoples can build capacity that supports implementation of their vision of self-determination.

I will expect you to work with your colleagues and through established legislative, regulatory and Cabinet processes to deliver on your top priorities. In particular, you will:

- Lead a whole-of-government approach on the continued renewal of a nation-to-nation, Inuit-Crown and government-to-government relationship with Indigenous Peoples, advancing co-developed distinctions-based policy and improving our capacity as a Government to consider and respond to the unique realities of Indigenous Peoples.

- Support the Minister of Justice and Attorney General of Canada in work to introduce co-developed legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples by the end of 2020.
- Lead and coordinate the work required of all Ministers to continue to implement the Truth and Reconciliation Commission's *Calls to Action*.
- Lead and coordinate the work required of all Ministers in establishing a National Action Plan in response to the National Inquiry into Missing and Murdered Indigenous Women and Girls' *Calls for Justice*, in partnership with First Nations, Inuit and Métis Peoples.
- Co-develop with Indigenous Peoples a new distinctions-based process for the ongoing review, maintenance and enforcement of Canada's treaty obligations between the Crown and Indigenous communities. This work will be supported by a new National Treaty Commissioner's Office that will be designed and established with Indigenous partners.
- Continue to support Indigenous-led processes for rebuilding and reconstituting their historic nations, advancing self-determination and, for First Nations, transitioning away from the *Indian Act*.
- Continue ongoing work with First Nations to redesign federal policies on additions to reserves, and on the Specific Claims process.
- Continue ongoing work with First Nations, Inuit and Métis to redesign the Comprehensive Claims and Inherent Rights Policies.
- Work with the Minister of Finance and the Minister of Natural Resources to develop a new national benefits-sharing framework for major resource projects on Indigenous territory.
- Deepen work with the Minister of Finance, working with the Minister of Indigenous Services, to establish a new fiscal relationship with Indigenous Peoples that ensures sufficient, predictable and sustained funding for communities, and that nations have the revenue generation and fiscal capacity to govern effectively and to provide programs and services to those for whom they are responsible.
- Work with First Nations, Inuit and Métis Nation leadership, with the

support of the Minister of Public Services and Procurement, to conclude the Government's contribution to the space for Indigenous Peoples in the Parliamentary Precinct.

- With the support of the Minister of Northern Affairs, co-develop and implement an Inuit Nunangat policy, and fully implement Inuit land claims agreements.
- Continue our regular meetings on Indigenous priorities through the Assembly of First Nations-Canada Memorandum of Understanding on Joint Priorities, the Inuit-Crown Partnership Committee and the Canada-Métis Nation Accord.
- Work with the Deputy Prime Minister and Minister of Intergovernmental Affairs and with me to support a First Ministers' Meeting on Reconciliation with Indigenous Peoples, and continue to advance meaningful inclusion of First Nations, Inuit and Métis partners in federal and intergovernmental decision-making processes that have an impact on Indigenous rights and interests.

These priorities draw heavily from our election platform commitments. As mentioned, you are encouraged to seek opportunities to work across Parliament in the fulfillment of these commitments and to identify additional priorities.

I expect you to work closely with your Deputy Minister and their senior officials to ensure that the ongoing work of your department is undertaken in a professional manner and that decisions are made in the public interest. Your Deputy Minister will brief you on the many daily decisions necessary to ensure the achievement of your priorities, the effective running of the government and better services for Canadians. It is my expectation that you will apply our values and principles to these decisions so that they are dealt with in a timely and responsible manner and in a way that is consistent with the overall direction of our Government.

Our ability, as a government, to implement our priorities depends on consideration of the professional, non-partisan advice of public servants. Each and every time a government employee comes to work, they do so in service to Canada, with a goal of improving our country and the lives of all Canadians. I expect you to establish a collaborative working relationship with your Deputy Minister, whose role, and the role of public servants under their direction, is to support you in the performance of your responsibilities.

We have committed to an open, honest government that is accountable to Canadians, lives up to the highest ethical standards and applies the utmost care and prudence in the handling of public funds. I expect you to embody these values in your work and observe the highest ethical standards in everything you do. I want Canadians to look on their own government with pride and trust.

As Minister, you must ensure that you are aware of and fully compliant with the *Conflict of Interest Act* and Treasury Board policies and guidelines. You will be provided with a copy of *Open and Accountable Government* to assist you as you undertake your responsibilities. I ask that you carefully read it, including elements that have been added to strengthen it, and ensure that your staff does so as well. I expect that in staffing your offices you will hire people who reflect the diversity of Canada, and that you will uphold principles of gender equality, disability equality, pay equity and inclusion.

Give particular attention to the Ethical Guidelines set out in Annex A of that document, which apply to you and your staff. As noted in the Guidelines, you must uphold the highest standards of honesty and impartiality, and both the performance of your official duties and the arrangement of your private affairs should bear the closest public scrutiny. This is an obligation that is not fully discharged by simply acting within the law.

I will note that you are responsible for ensuring that your Minister's Office meets the highest standards of professionalism and that it is a safe, respectful, rewarding and welcoming place for your staff to work.

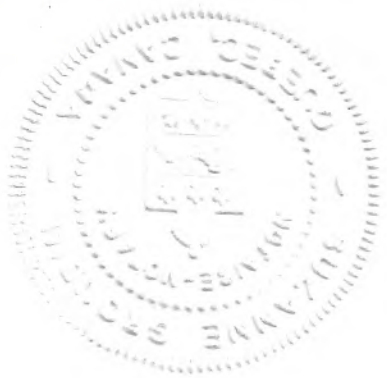
I know I can count on you to fulfill the important responsibilities entrusted in you. It is incumbent on you to turn to me and the Deputy Prime Minister early and often to support you in your role as Minister.

Sincerely,

Rt. Hon. Justin Trudeau, P.C., M.P.
Prime Minister of Canada

This is Exhibit "B" referred to in
the Affidavit of Martin Reiher
Affirmed before me this 13th day of August 2021

Commissioner for Taking Affidavits



Minister of Crown-Indigenous Relations Supplementary Mandate Letter

January 15, 2021

Office of the Prime Minister | Cabinet du Premier ministre

Ottawa, Canada K1A 0A2

Dear Ms. Bennett:

Thank you for continuing to serve Canadians as Minister of Crown-Indigenous Relations.

Since my previous mandate letter to you, our country has been confronted by the most serious public health crisis we have ever faced. The global pandemic has had devastating impacts on lives and livelihoods and exposed fundamental gaps in our society. Challenges that existed before the pandemic remain and others have been exacerbated. In light of these realities, I am issuing this supplementary letter to outline further responsibilities and considerations that I expect you to undertake on behalf of Canadians. Nothing in this letter replaces any previous commitments or expectations. It is necessary for us to continue making progress on the commitments laid out in 2019, while ensuring our actions are centred on fighting the pandemic and building back better.

Even as we continue to distribute vaccines across Canada, bold action continues to be required to fight this pandemic, save lives, support people and businesses throughout the remainder of this crisis and build back better. We need to work together to protect and create jobs, and to rebuild our country in a way that will create long-term competitiveness through clean growth. As articulated in the Speech from the Throne 2020 and Fall Economic Statement 2020, our four

main priorities for making tangible progress for Canadians continue to be: protecting public health; ensuring a strong economic recovery; promoting a cleaner environment; and standing up for fairness and equality.

Ongoing struggles around the world – and here at home – remind us of how important it is to keep working toward a brighter future. We are at a crossroads and must keep moving Canada forward to become stronger, more inclusive, and more resilient. It is part of your job to look out for Canadians, with particular attention to our most vulnerable.

We need to continue delivering on our commitments by working together in a positive, open and collaborative way with Parliamentarians, with partners and with all Canadians. Where legislation is required, I expect you to continue working with the Leader of the Government in the House of Commons to make progress for Canadians within this minority Parliament.

To be ready for what lies ahead, our Government must continue to be agile and use the best available science and evidence. Canadians are counting on us to ensure that today's policies, programs and services are calibrated and targeted to match their needs. Therefore, I expect you to uphold our ongoing commitment to delivering real results and effective government for the people we are elected to serve.

Many of our most important commitments continue to require a sustained partnership with provincial, territorial and municipal governments, and Indigenous partners, communities and governments. Always remember that our mandate comes from citizens who are served by all orders of government, and that it is in everyone's interest that we work together to find common ground and make life better for Canadians. The President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs is the Government-wide lead on all relations with the provinces and territories.

There remains no more important relationship to me and to Canada than the one with Indigenous Peoples. With respect and dignity, we remain committed to moving forward along the shared path of reconciliation. You, and indeed all ministers, must continue to play a role in helping to advance self-determination, close socio-economic gaps and eliminate systemic barriers facing First Nations, Inuit, and Métis Peoples. As Minister, I expect you to work in full partnership with Indigenous Peoples and communities to advance meaningful

reconciliation.

The Government has significantly increased spending during the pandemic in order to achieve our most pressing priority: to help protect Canadians' health and financial security. Going forward, we must preserve Canada's fiscal advantage and continue to be guided by values of sustainability and prudence. Therefore, our actions must focus on creating new jobs and supporting the middle class to preserve the strength of our economy.

While fighting the pandemic must be our top priority, climate change still threatens our health, economy, way of life and planet. Clean growth is the best way to create good jobs and power our long-term economic recovery. I expect you and all ministers to pursue complementary partnerships and initiatives that will support our work to exceed our emissions reduction target, seize new market opportunities to create good jobs and prepare our country to adapt to the impacts of a changing climate.

We remain committed to evidence-based decision-making that takes into consideration the impacts of policies on all Canadians and fully defends the *Canadian Charter of Rights and Freedoms*. You will apply Gender-based Analysis Plus (GBA+) in the decisions that you make and consider public policies through an intersectional lens in order to address systemic inequities including: systemic racism; unconscious bias; gender-based discrimination; barriers for persons with disabilities; discrimination against LGBTQ2 communities; and inequities faced by all vulnerable populations. Whenever possible, you will work to improve the quality and availability of disaggregated data to ensure that policy decisions benefit all communities.

It is clear that this pandemic has disproportionately affected different communities throughout our country. Therefore, we must ensure our recovery includes all Canadians, with an emphasis on supporting those most affected. To this end, I expect that you will seek the advice and hear the perspectives of a diverse group of Canadians, in both official languages. Moreover, you will continue to rely on and develop meaningful relationships with civil society and stakeholders, including businesses of all sizes, organized labour, the broader public sector and the not-for-profit and charitable sectors across Canada.

Now more than ever, Canadians are relying on journalists and journalism for accurate and timely news, especially in the face of a

concerning spread of misinformation. I expect you to foster a professional and respectful relationship with journalists to ensure that Canadians have the information they need to keep themselves and their families safe.

Our ability to implement our Government's priorities depends on consideration of the professional, non-partisan advice of public servants. Government employees perform their duties in service to Canada, with a goal of improving our country and the lives of all Canadians. I expect you to maintain a collaborative working relationship with your Deputy Minister, whose role, like the role of the public servants under their direction, is to support you in the performance of your responsibilities.

Important ministerial responsibilities have been entrusted to you, notably delivering on the Government's commitments that were set out in your 2019 mandate letter. I expect that you will keep me updated and proactively communicate with Canadians on the progress you are making toward our priorities. Always know that you can turn to me, and the Deputy Prime Minister, at any time for support.

In addition to the priorities set out in my mandate letter to you in 2019, as Minister of Crown-Indigenous Relations, you will implement on a priority basis the following commitments, as set out in the Speech from the Throne 2020 and building off the investments in the Fall Economic Statement 2020:

- Accelerate work with all ministers to implement the National Action Plan in response to the National Inquiry into Missing and Murdered Indigenous Women and Girls' *Calls for Justice*.
- Lead and coordinate the work required of all ministers to accelerate implementation of the Truth and Reconciliation Commission's *Calls to Action*.
- Support the Minister of Justice and Attorney General of Canada to ensure passage of the co-developed legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples.
- Continue to support efforts by the Minister of Fisheries and Oceans and the Canadian Coast Guard to develop a comprehensive blue economy strategy aligned with Canada's economic recovery and focused on growing Canada's ocean economy to create good middle class jobs and opportunities for ocean sectors and coastal

communities, while advancing reconciliation and conservation objectives.

- Work with the Minister of Infrastructure and Communities, the Minister of Families, Children and Social Development, the Minister of Northern Affairs and the Minister of Indigenous Services to continue to close the infrastructure gap in Indigenous communities, particularly with respect to affordable housing, working on a distinctions-basis with First Nations, Inuit and the Métis Nation to accelerate the Government's 10-year commitment.
- Work with the Minister of Indigenous Services to support additional capacity-building for First Nations, Inuit and the Métis Nation.
- Support the Minister of Public Safety and Emergency Preparedness and the Minister of Justice and Attorney General of Canada to introduce legislation and make investments that take action to address systemic inequities in the criminal justice system.
- Support the Minister of Justice and Attorney General of Canada to develop an Indigenous Justice Strategy to address systemic discrimination and the overrepresentation of Indigenous people in the justice system.

Sincerely,

Rt. Hon. Justin Trudeau, P.C., M.P.
Prime Minister of Canada

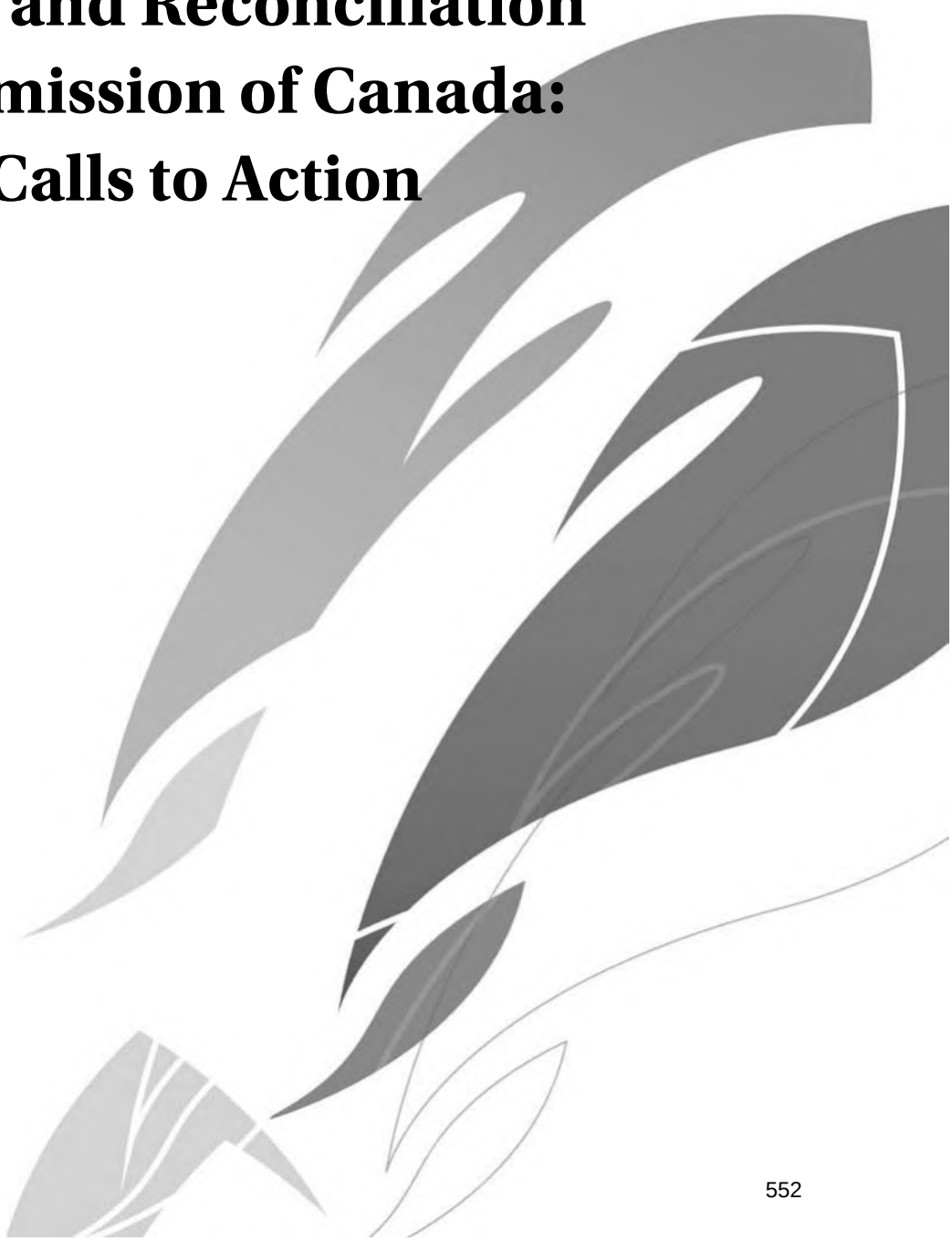
This is Exhibit "C" referred to in
the Affidavit of Martin Reiher
Affirmed before me this 12th day of August 2021

Commissioner for Taking Affidavits

Truth and Reconciliation Commission of Canada: Calls to Action

Truth and Reconciliation
Commission of Canada

Truth and Reconciliation Commission of Canada: Calls to Action



2015

Truth and Reconciliation Commission of Canada, 2012
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Calls to Action

In order to redress the legacy of residential schools and advance the process of Canadian reconciliation, the Truth and Reconciliation Commission makes the following calls to action.

Legacy

Child welfare

1. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:
    i. Monitoring and assessing neglect investigations.
    ii. Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.
    iii. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the history and impacts of residential schools.
    iv. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.
    v. Requiring that all child-welfare decision makers consider the impact of the residential school experience on children and their caregivers.
2. We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.
3. We call upon all levels of government to fully implement Jordan's Principle.
4. We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:
    i. Affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies.
    ii. Require all child-welfare agencies and courts to take the residential school legacy into account in their decision making.
    iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.
5. We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families.

Education

6. We call upon the Government of Canada to repeal Section 43 of the *Criminal Code of Canada*.
7. We call upon the federal government to develop with Aboriginal groups a joint strategy to eliminate

educational and employment gaps between Aboriginal and non-Aboriginal Canadians.

8. We call upon the federal government to eliminate the discrepancy in federal education funding for First Nations children being educated on reserves and those First Nations children being educated off reserves.

9. We call upon the federal government to prepare and publish annual reports comparing funding for the education of First Nations children on and off reserves, as well as educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people.

10. We call on the federal government to draft new Aboriginal education legislation with the full participation and informed consent of Aboriginal peoples. The new legislation would include a commitment to sufficient funding and would incorporate the following principles:

    i. Providing sufficient funding to close identified educational achievement gaps within one generation.

    ii. Improving education attainment levels and success rates.

    iii. Developing culturally appropriate curricula.

    iv. Protecting the right to Aboriginal languages, including the teaching of Aboriginal languages as credit courses.

    v. Enabling parental and community responsibility, control, and accountability, similar to what parents enjoy in public school systems.

    vi. Enabling parents to fully participate in the education of their children.

    vii. Respecting and honouring Treaty relationships.

11. We call upon the federal government to provide adequate funding to end the backlog of First Nations students seeking a post-secondary education.

12. We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate early childhood education programs for Aboriginal families.

Language and culture

13. We call upon the federal government to acknowledge that Aboriginal rights include Aboriginal language rights.

14. We call upon the federal government to enact an Aboriginal Languages Act that incorporates the following principles:

    i. Aboriginal languages are a fundamental and valued element of Canadian culture and society, and there is an urgency to preserve them.

    ii. Aboriginal language rights are reinforced by the Treaties.

    iii. The federal government has a responsibility to provide sufficient funds for Aboriginal-language revitalization and preservation.

    iv. The preservation, revitalization, and strengthening of Aboriginal languages and cultures are best managed by Aboriginal people and communities.

    v. Funding for Aboriginal language initiatives must reflect the diversity of Aboriginal languages.

15. We call upon the federal government to appoint, in consultation with Aboriginal groups, an Aboriginal Languages Commissioner. The commissioner should help promote Aboriginal languages and report on the adequacy of federal funding of Aboriginal-languages initiatives.

16. We call upon post-secondary institutions to create university and college degree and diploma programs in Aboriginal languages.

17. We call upon all levels of government to enable residential school Survivors and their families to reclaim names changed by the residential school system by waiving administrative costs for a period of five years for the name-change process and the revision of official identity documents, such as birth certificates, passports, driver's licenses, health cards, status cards, and social insurance numbers.

Health

18. We call upon the federal, provincial, territorial, and Aboriginal governments to acknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies, including residential schools, and to recognize and implement the health-care rights of Aboriginal people as identified in international law, constitutional law, and under the Treaties.

19. We call upon the federal government, in consultation with Aboriginal peoples, to establish measurable goals to identify and close the gaps in health outcomes

between Aboriginal and non-Aboriginal communities, and to publish annual progress reports and assess long-term trends. Such efforts would focus on indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.

20. In order to address the jurisdictional disputes concerning Aboriginal people who do not reside on reserves, we call upon the federal government to recognize, respect, and address the distinct health needs of the Métis, Inuit, and off-reserve Aboriginal peoples.

21. We call upon the federal government to provide sustainable funding for existing and new Aboriginal healing centres to address the physical, mental, emotional, and spiritual harms caused by residential schools, and to ensure that the funding of healing centres in Nunavut and the Northwest Territories is a priority.

22. We call upon those who can effect change within the Canadian health-care system to recognize the value of Aboriginal healing practices and use them in the treatment of Aboriginal patients in collaboration with Aboriginal healers and Elders where requested by Aboriginal patients.

23. We call upon all levels of government to:

    i. Increase the number of Aboriginal professionals working in the health-care field.

    ii. Ensure the retention of Aboriginal health-care providers in Aboriginal communities.

    iii. Provide cultural competency training for all health-care professionals.

24. We call upon medical and nursing schools in Canada to require all students to take a course dealing with Aboriginal health issues, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, and Indigenous teachings and practices. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Justice

25. We call upon the federal government to establish a written policy that reaffirms the independence of the Royal Canadian Mounted Police to investigate crimes in which the government has its own interest as a potential or real party in civil litigation.

26. We call upon the federal, provincial, and territorial governments to review and amend their respective statutes of limitations to ensure that they conform to the principle that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Aboriginal people.

27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

28. We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

29. We call upon the parties and, in particular, the federal government, to work collaboratively with plaintiffs not included in the Indian Residential Schools Settlement Agreement to have disputed legal issues determined expeditiously on an agreed set of facts.

30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.

31. We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.

32. We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.

33. We call upon the federal, provincial, and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner.

34. We call upon the governments of Canada, the provinces, and territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD), including:

    i. Providing increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD.

    ii. Enacting statutory exemptions from mandatory minimum sentences of imprisonment for offenders affected by FASD.

    iii. Providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community.

    iv. Adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety.

35. We call upon the federal government to eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system.

36. We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.

37. We call upon the federal government to provide more supports for Aboriginal programming in halfway houses and parole services.

38. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.

39. We call upon the federal government to develop a national plan to collect and publish data on the criminal victimization of Aboriginal people, including data related to homicide and family violence victimization.

40. We call on all levels of government, in collaboration with Aboriginal people, to create adequately funded and accessible Aboriginal-specific victim programs and services with appropriate evaluation mechanisms.

41. We call upon the federal government, in consultation with Aboriginal organizations, to appoint a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls. The inquiry's mandate would include:

    i. Investigation into missing and murdered Aboriginal women and girls.

    ii. Links to the intergenerational legacy of residential schools.

42. We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*, endorsed by Canada in November 2012.

Reconciliation

Canadian Governments and the *United Nations Declaration on the Rights of Indigenous People*

43. We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.

44. We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*.

Royal Proclamation and Covenant of Reconciliation

45. We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation relationship between Aboriginal peoples and the Crown. The proclamation would include, but not be limited to, the following commitments:

i. Repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and *terra nullius*.

ii. Adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.

iii. Renew or establish Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.

iv. Reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements.

46. We call upon the parties to the Indian Residential Schools Settlement Agreement to develop and sign a Covenant of Reconciliation that would identify principles for working collaboratively to advance reconciliation in Canadian society, and that would include, but not be limited to:

i. Reaffirmation of the parties' commitment to reconciliation.

ii. Repudiation of concepts used to justify European sovereignty over Indigenous lands and peoples, such as the Doctrine of Discovery and *terra nullius*, and the reformation of laws, governance structures, and policies within their respective institutions that continue to rely on such concepts.

iii. Full adoption and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.

iv. Support for the renewal or establishment of Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.

v. Enabling those excluded from the Settlement Agreement to sign onto the Covenant of Reconciliation.

vi. Enabling additional parties to sign onto the Covenant of Reconciliation.

47. We call upon federal, provincial, territorial, and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the Doctrine of Discovery and *terra nullius,* and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.

Settlement Agreement Parties and the *United Nations Declaration on the Rights of Indigenous Peoples*

48. We call upon the church parties to the Settlement Agreement, and all other faith groups and interfaith social justice groups in Canada who have not already done so, to formally adopt and comply with the principles, norms, and standards of the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework for reconciliation. This would include, but not be limited to, the following commitments:

i. Ensuring that their institutions, policies, programs, and practices comply with the *United Nations Declaration on the Rights of Indigenous Peoples*.

ii. Respecting Indigenous peoples' right to self-determination in spiritual matters, including the right to practise, develop, and teach their own spiritual and religious traditions, customs, and ceremonies, consistent with Article 12:1 of the *United Nations Declaration on the Rights of Indigenous Peoples*.

iii. Engaging in ongoing public dialogue and actions to support the *United Nations Declaration on the Rights of Indigenous Peoples*.

iv. Issuing a statement no later than March 31, 2016, from all religious denominations and faith groups, as to how they will implement the *United Nations Declaration on the Rights of Indigenous Peoples*.

49. We call upon all religious denominations and faith groups who have not already done so to repudiate concepts used to justify European sovereignty over Indigenous lands and peoples, such as the Doctrine of Discovery and *terra nullius*.

Equity for Aboriginal People in the Legal System

50. In keeping with the *United Nations Declaration on the Rights of Indigenous Peoples*, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and

understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada.

51. We call upon the Government of Canada, as an obligation of its fiduciary responsibility, to develop a policy of transparency by publishing legal opinions it develops and upon which it acts or intends to act, in regard to the scope and extent of Aboriginal and Treaty rights.

52. We call upon the Government of Canada, provincial and territorial governments, and the courts to adopt the following legal principles:

    i. Aboriginal title claims are accepted once the Aboriginal claimant has established occupation over a particular territory at a particular point in time.

    ii. Once Aboriginal title has been established, the burden of proving any limitation on any rights arising from the existence of that title shifts to the party asserting such a limitation.

National Council for Reconciliation

53. We call upon the Parliament of Canada, in consultation and collaboration with Aboriginal peoples, to enact legislation to establish a National Council for Reconciliation. The legislation would establish the council as an independent, national, oversight body with membership jointly appointed by the Government of Canada and national Aboriginal organizations, and consisting of Aboriginal and non-Aboriginal members. Its mandate would include, but not be limited to, the following:

    i. Monitor, evaluate, and report annually to Parliament and the people of Canada on the Government of Canada's post-apology progress on reconciliation to ensure that government accountability for reconciling the relationship between Aboriginal peoples and the Crown is maintained in the coming years.

    ii. Monitor, evaluate, and report to Parliament and the people of Canada on reconciliation progress across all levels and sectors of Canadian society, including the implementation of the Truth and Reconciliation Commission of Canada's Calls to Action.

    iii. Develop and implement a multi-year National Action Plan for Reconciliation, which includes research and policy development, public education programs, and resources.

    iv. Promote public dialogue, public/private partnerships, and public initiatives for reconciliation.

54. We call upon the Government of Canada to provide multi-year funding for the National Council for Reconciliation to ensure that it has the financial, human, and technical resources required to conduct its work, including the endowment of a National Reconciliation Trust to advance the cause of reconciliation.

55. We call upon all levels of government to provide annual reports or any current data requested by the National Council for Reconciliation so that it can report on the progress towards reconciliation. The reports or data would include, but not be limited to:

    i. The number of Aboriginal children—including Métis and Inuit children—in care, compared with non-Aboriginal children, the reasons for apprehension, and the total spending on preventive and care services by child-welfare agencies.

    ii. Comparative funding for the education of First Nations children on and off reserves.

    iii. The educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people.

    iv. Progress on closing the gaps between Aboriginal and non-Aboriginal communities in a number of health indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.

    v. Progress on eliminating the overrepresentation of Aboriginal children in youth custody over the next decade.

    vi. Progress on reducing the rate of criminal victimization of Aboriginal people, including data related to homicide and family violence victimization and other crimes.

    vii. Progress on reducing the overrepresentation of Aboriginal people in the justice and correctional systems.

56. We call upon the prime minister of Canada to formally respond to the report of the National Council for Reconciliation by issuing an annual "State of Aboriginal Peoples" report, which would outline the government's plans for advancing the cause of reconciliation.

Professional Development and Training for Public Servants

57. We call upon federal, provincial, territorial, and municipal governments to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Church Apologies and Reconciliation

58. We call upon the Pope to issue an apology to Survivors, their families, and communities for the Roman Catholic Church's role in the spiritual, cultural, emotional, physical, and sexual abuse of First Nations, Inuit, and Métis children in Catholic-run residential schools. We call for that apology to be similar to the 2010 apology issued to Irish victims of abuse and to occur within one year of the issuing of this Report and to be delivered by the Pope in Canada.

59. We call upon church parties to the Settlement Agreement to develop ongoing education strategies to ensure that their respective congregations learn about their church's role in colonization, the history and legacy of residential schools, and why apologies to former residential school students, their families, and communities were necessary.

60. We call upon leaders of the church parties to the Settlement Agreement and all other faiths, in collaboration with Indigenous spiritual leaders, Survivors, schools of theology, seminaries, and other religious training centres, to develop and teach curriculum for all student clergy, and all clergy and staff who work in Aboriginal communities, on the need to respect Indigenous spirituality in its own right, the history and legacy of residential schools and the roles of the church parties in that system, the history and legacy of religious conflict in Aboriginal families and communities, and the responsibility that churches have to mitigate such conflicts and prevent spiritual violence.

61. We call upon church parties to the Settlement Agreement, in collaboration with Survivors and representatives of Aboriginal organizations, to establish permanent funding to Aboriginal people for:

    i. Community-controlled healing and reconciliation projects.

    ii. Community-controlled culture- and language-revitalization projects.

    iii. Community-controlled education and relationship-building projects.

    iv. Regional dialogues for Indigenous spiritual leaders and youth to discuss Indigenous spirituality, self-determination, and reconciliation.

Education for reconciliation

62. We call upon the federal, provincial, and territorial governments, in consultation and collaboration with Survivors, Aboriginal peoples, and educators, to:

    i. Make age-appropriate curriculum on residential schools, Treaties, and Aboriginal peoples' historical and contemporary contributions to Canada a mandatory education requirement for Kindergarten to Grade Twelve students.

    ii. Provide the necessary funding to post-secondary institutions to educate teachers on how to integrate Indigenous knowledge and teaching methods into classrooms.

    iii. Provide the necessary funding to Aboriginal schools to utilize Indigenous knowledge and teaching methods in classrooms.

    iv. Establish senior-level positions in government at the assistant deputy minister level or higher dedicated to Aboriginal content in education.

63. We call upon the Council of Ministers of Education, Canada to maintain an annual commitment to Aboriginal education issues, including:

    i. Developing and implementing Kindergarten to Grade Twelve curriculum and learning resources on Aboriginal peoples in Canadian history, and the history and legacy of residential schools.

    ii. Sharing information and best practices on teaching curriculum related to residential schools and Aboriginal history.

    iii. Building student capacity for intercultural understanding, empathy, and mutual respect.

    iv. Identifying teacher-training needs relating to the above.

64. We call upon all levels of government that provide public funds to denominational schools to require such schools to provide an education on comparative religious studies, which must include a segment on

Aboriginal spiritual beliefs and practices developed in collaboration with Aboriginal Elders.

65. We call upon the federal government, through the Social Sciences and Humanities Research Council, and in collaboration with Aboriginal peoples, post-secondary institutions and educators, and the National Centre for Truth and Reconciliation and its partner institutions, to establish a national research program with multi-year funding to advance understanding of reconciliation.

Youth Programs

66. We call upon the federal government to establish multi-year funding for community-based youth organizations to deliver programs on reconciliation, and establish a national network to share information and best practices.

Museums and Archives

67. We call upon the federal government to provide funding to the Canadian Museums Association to undertake, in collaboration with Aboriginal peoples, a national review of museum policies and best practices to determine the level of compliance with the *United Nations Declaration on the Rights of Indigenous Peoples* and to make recommendations.

68. We call upon the federal government, in collaboration with Aboriginal peoples, and the Canadian Museums Association to mark the 150th anniversary of Canadian Confederation in 2017 by establishing a dedicated national funding program for commemoration projects on the theme of reconciliation.

69. We call upon Library and Archives Canada to:

    i. Fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Joinet-Orentlicher Principles*, as related to Aboriginal peoples' inalienable right to know the truth about what happened and why, with regard to human rights violations committed against them in the residential schools.

    ii. Ensure that its record holdings related to residential schools are accessible to the public.

    iii. Commit more resources to its public education materials and programming on residential schools.

70. We call upon the federal government to provide funding to the Canadian Association of Archivists to undertake, in collaboration with Aboriginal peoples, a national review of archival policies and best practices to:

    i. Determine the level of compliance with the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Joinet-Orentlicher Principles*, as related to Aboriginal peoples' inalienable right to know the truth about what happened and why, with regard to human rights violations committed against them in the residential schools.

    ii. Produce a report with recommendations for full implementation of these international mechanisms as a reconciliation framework for Canadian archives.

Missing Children and Burial Information

71. We call upon all chief coroners and provincial vital statistics agencies that have not provided to the Truth and Reconciliation Commission of Canada their records on the deaths of Aboriginal children in the care of residential school authorities to make these documents available to the National Centre for Truth and Reconciliation.

72. We call upon the federal government to allocate sufficient resources to the National Centre for Truth and Reconciliation to allow it to develop and maintain the National Residential School Student Death Register established by the Truth and Reconciliation Commission of Canada.

73. We call upon the federal government to work with churches, Aboriginal communities, and former residential school students to establish and maintain an online registry of residential school cemeteries, including, where possible, plot maps showing the location of deceased residential school children.

74. We call upon the federal government to work with the churches and Aboriginal community leaders to inform the families of children who died at residential schools of the child's burial location, and to respond to families' wishes for appropriate commemoration ceremonies and markers, and reburial in home communities where requested.

75. We call upon the federal government to work with provincial, territorial, and municipal governments, churches, Aboriginal communities, former residential school students, and current landowners to develop and implement strategies and procedures for the ongoing identification, documentation, maintenance, commemoration, and protection of residential school cemeteries or other sites at which residential school children were buried. This is to include the provision of

appropriate memorial ceremonies and commemorative markers to honour the deceased children.

76. We call upon the parties engaged in the work of documenting, maintaining, commemorating, and protecting residential school cemeteries to adopt strategies in accordance with the following principles:

    i. The Aboriginal community most affected shall lead the development of such strategies.

    ii. Information shall be sought from residential school Survivors and other Knowledge Keepers in the development of such strategies.

    iii. Aboriginal protocols shall be respected before any potentially invasive technical inspection and investigation of a cemetery site.

National Centre for Truth and Reconciliation

77. We call upon provincial, territorial, municipal, and community archives to work collaboratively with the National Centre for Truth and Reconciliation to identify and collect copies of all records relevant to the history and legacy of the residential school system, and to provide these to the National Centre for Truth and Reconciliation.

78. We call upon the Government of Canada to commit to making a funding contribution of $10 million over seven years to the National Centre for Truth and Reconciliation, plus an additional amount to assist communities to research and produce histories of their own residential school experience and their involvement in truth, healing, and reconciliation.

Commemoration

79. We call upon the federal government, in collaboration with Survivors, Aboriginal organizations, and the arts community, to develop a reconciliation framework for Canadian heritage and commemoration. This would include, but not be limited to:

    i. Amending the Historic Sites and Monuments Act to include First Nations, Inuit, and Métis representation on the Historic Sites and Monuments Board of Canada and its Secretariat.

    ii. Revising the policies, criteria, and practices of the National Program of Historical Commemoration to integrate Indigenous history, heritage values, and memory practices into Canada's national heritage and history.

    iii. Developing and implementing a national heritage plan and strategy for commemorating residential school sites, the history and legacy of residential schools, and the contributions of Aboriginal peoples to Canada's history.

80. We call upon the federal government, in collaboration with Aboriginal peoples, to establish, as a statutory holiday, a National Day for Truth and Reconciliation to honour Survivors, their families, and communities, and ensure that public commemoration of the history and legacy of residential schools remains a vital component of the reconciliation process.

81. We call upon the federal government, in collaboration with Survivors and their organizations, and other parties to the Settlement Agreement, to commission and install a publicly accessible, highly visible, Residential Schools National Monument in the city of Ottawa to honour Survivors and all the children who were lost to their families and communities.

82. We call upon provincial and territorial governments, in collaboration with Survivors and their organizations, and other parties to the Settlement Agreement, to commission and install a publicly accessible, highly visible, Residential Schools Monument in each capital city to honour Survivors and all the children who were lost to their families and communities.

83. We call upon the Canada Council for the Arts to establish, as a funding priority, a strategy for Indigenous and non-Indigenous artists to undertake collaborative projects and produce works that contribute to the reconciliation process.

Media and Reconciliation

84. We call upon the federal government to restore and increase funding to the CBC/Radio-Canada, to enable Canada's national public broadcaster to support reconciliation, and be properly reflective of the diverse cultures, languages, and perspectives of Aboriginal peoples, including, but not limited to:

    i. Increasing Aboriginal programming, including Aboriginal-language speakers.

    ii. Increasing equitable access for Aboriginal peoples to jobs, leadership positions, and professional development opportunities within the organization.

    iii. Continuing to provide dedicated news coverage and online public information resources on issues of concern to Aboriginal peoples and all Canadians,

including the history and legacy of residential schools and the reconciliation process.

85. We call upon the Aboriginal Peoples Television Network, as an independent non-profit broadcaster with programming by, for, and about Aboriginal peoples, to support reconciliation, including but not limited to:

    i. Continuing to provide leadership in programming and organizational culture that reflects the diverse cultures, languages, and perspectives of Aboriginal peoples.

    ii. Continuing to develop media initiatives that inform and educate the Canadian public, and connect Aboriginal and non-Aboriginal Canadians.

86. We call upon Canadian journalism programs and media schools to require education for all students on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations.

Sports and Reconciliation

87. We call upon all levels of government, in collaboration with Aboriginal peoples, sports halls of fame, and other relevant organizations, to provide public education that tells the national story of Aboriginal athletes in history.

88. We call upon all levels of government to take action to ensure long-term Aboriginal athlete development and growth, and continued support for the North American Indigenous Games, including funding to host the games and for provincial and territorial team preparation and travel.

89. We call upon the federal government to amend the Physical Activity and Sport Act to support reconciliation by ensuring that policies to promote physical activity as a fundamental element of health and well-being, reduce barriers to sports participation, increase the pursuit of excellence in sport, and build capacity in the Canadian sport system, are inclusive of Aboriginal peoples.

90. We call upon the federal government to ensure that national sports policies, programs, and initiatives are inclusive of Aboriginal peoples, including, but not limited to, establishing:

    i. In collaboration with provincial and territorial governments, stable funding for, and access to, community sports programs that reflect the diverse cultures and traditional sporting activities of Aboriginal peoples.

    ii. An elite athlete development program for Aboriginal athletes.

    iii. Programs for coaches, trainers, and sports officials that are culturally relevant for Aboriginal peoples.

    iv. Anti-racism awareness and training programs.

91. We call upon the officials and host countries of international sporting events such as the Olympics, Pan Am, and Commonwealth games to ensure that Indigenous peoples' territorial protocols are respected, and local Indigenous communities are engaged in all aspects of planning and participating in such events.

Business and Reconciliation

92. We call upon the corporate sector in Canada to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:

    i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.

    ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.

    iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Newcomers to Canada

93. We call upon the federal government, in collaboration with the national Aboriginal organizations, to revise the information kit for newcomers to Canada and its citizenship test to reflect a more inclusive history of the diverse Aboriginal peoples of Canada, including

information about the Treaties and the history of residential schools.

94. We call upon the Government of Canada to replace the Oath of Citizenship with the following:

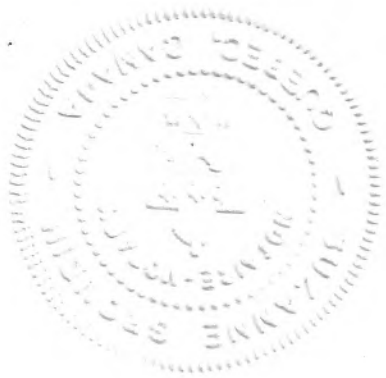
> I swear (or affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada including Treaties with Indigenous Peoples, and fulfill my duties as a Canadian citizen.

Truth and Reconciliation Commission of Canada

1500–360 Main Street
Winnipeg, Manitoba
R3C 3Z3
Telephone: (204) 984-5885
Toll Free: 1-888-872-5554 (1-888-TRC-5554)
Fax: (204) 984-5915
E-mail: info@trc.ca
Website: www.trc.ca

This is Exhibit "D" referred to in
the Affidavit of Martin Reiher
Affirmed before me this 12th day of August 2021

Commissioner for Taking Affidavits



SCHEDULE E – Lists of Indian Residential Schools for Claims Process

List 1 – Schools with Confirmed Day Scholars

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
British Columbia Residential Schools			
Alberni	Port Alberni (Tseshaht Reserve)	January 1, 1920 **Interim Closures:** June 2, 1917, to December 1, 1920 February 21, 1937 to September 23, 1940	August 31, 1965
Cariboo (St. Joseph's, William's Lake)	Williams Lake	January 1, 1920	February 28, 1968
Christie (Clayoquot, Kakawis)	Tofino	January 1, 1920	June 30, 1983
Kamloops	Kamloops (Kamloops Indian Reserve)	January 1, 1920	August 31, 1969
Kuper Island	Kuper Island	January 1, 1920	August 31, 1968
Lejac (Fraser Lake)	Fraser Lake (on reserve)	January 1, 1920	August 31, 1976
Lower Post	Lower Post (on reserve)	September 1, 1951	August 31, 1968
St. George's (Lytton)	Lytton	January 1, 1920	August 31, 1972
St. Mary's (Mission)	Mission	January 1, 1920	August 31, 1973
Sechelt	Sechelt (on reserve)	January 1, 1920	August 31, 1969
St. Paul's (Squamish, North Vancouver)	Squamish, North Vancouver	January 1, 1920	August 31, 1959
Alberta Residential Schools			
Assumption (Hay Lake)	Assumption (Hay Lakes)	February 1, 1951	September 8, 1968

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Blue Quills	Saddle Lake Indian Reserve (1898 to 1931) St. Paul (1931 to 1990)	January 1, 1920	January 31, 1971
Crowfoot (Blackfoot, St. Joseph's, Ste. Trinité)	Cluny	January 1, 1920	December 31, 1968
Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)	Desmarais, Wabasca / Wabisca	January 1, 1920	August 31, 1964
Ermineskin (Hobbema)	Hobbema (Ermineskin Indian Reserve)	January 1, 1920	March 31, 1969
Holy Angels (Fort Chipewyan, École des Saint-Anges)	Fort Chipewyan	January 1, 1920	August 31, 1956
Fort Vermillion (St. Henry's)	Fort Vermillion	January 1, 1920	August 31, 1964
Joussard (St. Bruno's)	Lesser Slave Lake	1920	October 31, 1969
Morley (Stony/Stoney, replaced McDougall Orphanage)	Morley (Stony Indian Reserve)	September 1, 1922	July 31, 1969
Old Sun (Blackfoot)	Gleichen (Blackfoot Reserve)	January 1, 1920 **Interim Closures:** 1922 to February 1923 June 26, 1928 to February 17, 1931	June 30, 1971
Sacred Heart (Peigan, Brocket)	Brocket (Peigan Indian Reserve)	January 1, 1920	June 30, 1961
St. Cyprian (Queen Victoria's Jubliee Home, Peigan)	Brocket (Peigan Indian Reserve)	January 1, 1920 **Interim Closure:** September 1, 1953 to October 12, 1953	June 30, 1961

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
St. Mary's (Blood, Immaculate Conception)	Cardston (Blood Indian Reserve)	1920 **Interim Closure:** September 1, 1965 to January 6, 1966	August 31, 1969
St. Paul's (Blood)	Cardston (Blood Indian Reserve)	January 1, 1920	August 31, 1965
Sturgeon Lake (Calais, St. Francis Xavier)	Calais	January 1, 1920	August 31, 1959
Wabasca (St. John's)	Wabasca Lake	January 1, 1920	August 31, 1965
Whitefish Lake (St. Andrew's)	Whitefish Lake	January 1, 1920	June 30, 1950
Grouard	West side of Lesser Slave Lake, Grouard	January 1, 1920	September 30, 1957
Saskatchewan Residential Schools			
Beauval (Lac la Plonge)	Beauval	January 1, 1920	August 31, 1968
File Hills	Balcarres	January 1, 1920	June 30, 1949
Gordon's	Punnichy (Gordon's Reserve)	January 1, 1920 **Interim Closures:** June 30, 1947, to October 14, 1949 January 25, 1950 to September 1, 1953	August 31, 1968

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	Lebret	January 1, 1920 **Interim Closure:** November 13, 1932 to May 29, 1936	August 31, 1968
Marieval (Cowesess, Crooked Lake)	Cowesess Reserve	January 1, 1920	August 31, 1969
Muscowequan (Lestock, Touchwood)	Lestock	January 1, 1920	August 31, 1968
Prince Albert (Onion Lake Anglican, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	Onion Lake / Lac La Ronge / Prince Albert	January 1, 1920	August 31, 1968
St. Anthony's (Onion Lake, Sacred Heart)	Onion Lake	January 1, 1920	March 31, 1969
St. Michael's (Duck Lake)	Duck Lake	January 1, 1920	August 31, 1968
St. Philip's	Kamsack	April 16, 1928	August 31, 1968
Manitoba Residential Schools			
Assiniboia (Winnipeg)	Winnipeg	September 2, 1958	August 31, 1967
Brandon	Brandon	1920 **Interim Closure:** July 1, 1929 to July 18, 1930	August 31, 1968
Churchill Vocational Centre	Churchill	September 9, 1964	June 30, 1973
Cross Lake (St. Joseph's, Norway House)	Cross Lake	January 1, 1920	June 30, 1969
Fort Alexander (Pine Falls)	Fort Alexander Reserve No. 3, near Pine Falls	January 1, 1920	September 1, 1969

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	Clearwater Lake	September 5, 1952	August 31, 1968
Norway House	Norway House	January 1, 1920 **Interim Closure:** May 29, 1946 to September 1, 1954	June 30, 1967
Pine Creek (Camperville)	Camperville	January 1, 1920	August 31, 1969
Portage la Prairie	Portage la Prairie	January 1, 1920	August 31, 1960
Sandy Bay	Sandy Bay Reserve	January 1, 1920	June 30, 1970
Ontario Residential Schools			
Bishop Horden Hall (Moose Fort, Moose Factory)	Moose Island	January 1, 1920	August 31, 1964
Cecilia Jeffrey (Kenora, Shoal Lake)	Shoal Lake	January 1, 1920	August 31, 1965
Fort Frances (St. Margaret's)	Fort Frances	January 1, 1920	August 31, 1968
McIntosh (Kenora)	McIntosh	May 27, 1925	June 30, 1969
Pelican Lake (Pelican Falls)	Sioux Lookout	September 1, 1927	August 31, 1968
Poplar Hill	Poplar Hill	September 1, 1962	June 30, 1989
St. Anne's (Fort Albany)	Fort Albany	January 1, 1920	June 30, 1976
St. Mary's (Kenora, St. Anthony's)	Kenora	January 1, 1920	August 31, 1968
Spanish Boys' School (Charles Garnier, St. Joseph's)	Spanish	January 1, 1920	June 30, 1958
Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	Spanish	January 1, 1920	June 30, 1962

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Quebec Residential Schools			
Fort George (Anglican)	Fort George	September 1, 1933 **Interim Closure:** January 26, 1943 to July 9, 1944	August 31, 1971
Fort George (Roman Catholic)	Fort George	September 1, 1937	June 30, 1978
Point Bleue	Point Bleue	October 6, 1960	August 31, 1968
Sept-Îles	Sept-Îles	September 2, 1952	August 31, 1969
Nova Scotia Residential Schools			
Shubenacadie	Shubenacadie	September 1, 1929	June 30, 1967
Northwest Territories Residential Schools			
Aklavik (Immaculate Conception)	Aklavik	July 1, 1926	June 30, 1959
Aklavik (All Saints)	Aklavik	August 1, 1936	August 31, 1959
Fort Providence (Sacred Heart)	Fort Providence	January 1, 1920	June 30, 1960
Fort Resolution (St. Joseph's)	Fort Resolution	January 1, 1920	December 31, 1957
Hay River (St. Peter's)	Hay River	January 1, 1920	August 31, 1937
Yukon Residential Schools			
Carcross (Chooutla)	Carcross	January 1, 1920 **Interim Closure:** June 15, 1943 to September 1, 1944	June 30, 1969
Whitehorse Baptist Mission	Whitehorse	September 1, 1947	June 30, 1960
Shingle Point Eskimo Residential School	Shingle Point	September 16, 1929	August 31, 1936

List 2 – Schools Not Known to Have Day Scholars

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	Closing or Transfer Date
British Columbia Residential Schools			
Ahousaht	Ahousaht (Maktosis Reserve)	January 1, 1920	January 26, 1940
Coqualeetza from 1924 to 1940	Chilliwack	January 1, 1924	June 30, 1940
Cranbrook (St. Eugene's, Kootenay)	Cranbrook (on reserve)	January 1, 1920	June 23, 1965
St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	Alert Bay (on reserve)	January 1, 1920	August 31, 1960
Alberta Residential Schools			
Edmonton (Poundmaker, replaced Red Deer Industrial)	St. Albert	March 1, 1924 **Interim Closures:** July 1, 1946 to October 1, 1946 July 1, 1951 to November 5, 1951	August 31, 1960
Lesser Slave Lake (St. Peter's)	Lesser Slave Lake	January 1, 1920	June 30, 1932
St. Albert (Youville)	St. Albert, Youville	January 1, 1920	June 30, 1948
Sarcee (St. Barnabas)	Sarcee Junction, T'suu Tina (Sarcee Indian Reserve)	January 1, 1920	September 30, 1921
Saskatchewan Residential Schools			
Round Lake	Broadview	January 1, 1920	August 31, 1950
Sturgeon Landing (replaced by Guy Hill, MB)	Sturgeon Landing	September 1, 1926	October 21, 1952
Thunderchild (Delmas, St. Henri)	Delmas	January 1, 1920	January 13, 1948
Manitoba Residential Schools			
Birtle	Birtle	January 1, 1920	June 30, 1970

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	Closing or Transfer Date
Dauphin (replaced McKay)	The Pas / Dauphin	See McKay below	See McKay below
Elkhorn (Washakada)	Elkhorn	January 1, 1920 **Interim Closure:** 1920 to September 1, 1923	June 30, 1949
McKay (The Pas, replaced by Dauphin)	The Pas / Dauphin	January 1, 1920 **Interim Closure:** March 19, 1933 to September 1, 1957	August 31, 1968
Ontario Residential Schools			
Chapleau (St. John's)	Chapleau	January 1, 1920	July 31, 1948
Mohawk Institute	Brantford	January 1, 1920	August 31, 1968
Mount Elgin (Muncey, St. Thomas)	Muncey	January 1, 1920	June 30, 1946
Shingwauk	Sault Ste. Marie	January 1, 1920	June 30, 1970
St. Joseph's / Fort William	Fort William	January 1, 1920	September 1, 1968
Stirland Lake High School (Wahbon Bay Academy)	Stirland Lake	September 1, 1971	June 30, 1991
Cristal Lake High School	Stirland Lake	September 1, 1976	June 30, 1986
Quebec Residential Schools			
Amos	Amos	October 1, 1955	August 31, 1969
La Tuque	La Tuque	September 1, 1963	June 30, 1970

TAB 10

Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL~~, AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

AFFIDAVIT OF DR. RITA AGGARWALA
(Sworn August 20, 2021)

I, Dr. Rita Aggarwala, of the City of Calgary, in the Province of Alberta, **MAKE OATH AND SAY AS FOLLOWS**:

1. I am the President of Rita Aggarwala Consulting Inc. I provide statistical and actuarial expert services to lawyers and their clients. I have an undergraduate degree in Actuarial Science, a Ph. D. in Mathematics specializing in statistics, and a Juris Doctor degree. As such, I have expertise which allows my to opine on the matters which I have been asked to report on in order to assist the Court.

2. I was retained by Class Counsel on July 29, 2021 for the purposes of providing my expert opinion to the Court regarding the estimated size of the Survivor Class. In particular, I was asked to provide my estimates regarding the following:

a. Total Unique Day Scholars – Prior to Survivorship;

b. Day Scholars alive on May 30, 2005;

c. Day Scholars alive on September 7, 2021; and

d. The total value of the settlement for the Day Scholar Survivor Class.

3. Attached to this Affidavit and marked as **Exhibit "A"** is a true copy of the formal engagement letter confirming my instructions from W. Cory Wanless, counsel for the Plaintiffs, dated August 11, 2021.

4. Attached to this Affidavit and marked as **Exhibit "B"** is a true copy of my current curriculum vitae.

5. Attached to this Affidavit and marked as **Exhibit "C"** is a true copy of my expert opinion with respect to this matter.

6. Attached to this Affidavit and marked as **Exhibit "D"** is a true copy of my Certificate Concerning Code of Conduct for Expert Witnesses confirming that I have read the Code of Conduct for Expert Witnesses and agree to be bound by it.

7. The list of documents relied on while preparing my expert opinion are described and listed in my expert opinion.

SWORN by Rita Aggarwala of the City of Calgary, in the Province of Alberta, before me at the City of Toronto, in the Province of Ontario, on August 20, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:
Nancy Amaya
83B71B7825984B8...

Commissioner for Taking Affidavits
(or as may be)

NANCY AMAYA

Nancy Josefina Amaya, a Commissioner, etc.,
Province of Ontario, for Waddell Phillips Professional Corporation,
Barristers and Solicitors. Expires August 3, 2024.

DocuSigned by:
Rita Aggarwala
8213FCC6D0384B0...

RITA AGGARWALA

This is **Exhibit "A"** referred to in the Affidavit of Rita Aggarwala, sworn at the City of Calgary, in the Province of Alberta, before me at the City of Toronto, in the Province of Ontario, on August 20, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:
Nancy Amaya
83B71B7825984B8...

Commissioner for Taking Affidavits (or as may be)

NANCY AMAYA

Nancy Josefina Amaya, a Commissioner, etc.,
Province of Ontario, for Waddell Phillips Professional Corporation,
Barristers and Solicitors. Expires August 3, 2024.

WADDELL PHILLIPS

August 11, 2021

VIA EMAIL

Rita Aggarwala, JD, ASA, PhD (Math/Stat)
Rita Aggarwala Consulting Inc.
30 Varview Place NW
Calgary, AB T3A 0G5
aggarsons@gmail.com

Dear Dr. Aggarwala:

RE: Day Scholars Class Action

Further to my recent email correspondence with you, this letter is to confirm your retainer to act as an expert to provide an estimated class size of the Survivor Class for the above captioned Class Proceeding for use at the Settlement Approval Hearing.

The Plaintiffs in this Class Proceeding are retaining you as an actuarial/statistical expert to provide the following estimates or ranges to the court:

1) Total Unique Day Scholars – Prior to Survivorship
2) Day Scholars alive on 30 May 2005
3) Day Scholars alive on September 2021
4) Estimate of the maximum total value of the settlement for the Day Scholar Survivor Class

We anticipate that for many of the above questions you can rely on the methodology and analysis used by you previously in your report dated December 16, 2018, and in the joint report you produced with Canada's expert Peter Gorham dated December 17, 2018 (the "Joint Report").

In addition to providing your evidence on the above questions, please also provide a summary of the answers to the above questions provided by Peter Gorham as found in the joint report dated December 17, 2018. Canada has agreed to this approach. As part of your report, we would appreciate if you could provide summary tables similar to those found on pages 9 and 12 of the Joint Report.

The final report must be completed by August 20, 2021.

W. Cory Wanless
cory@waddellphillips.ca
36 Toronto St | Suite 1120 | Toronto ON, M5C 2C5 | ph 647-874-2555 | fx 416-477-1657
waddellphillips.ca

Your report should conform with your overriding duty to the Court and in compliance with the *Federal Courts Rules*. In particular, your Primary Report will set out:

a. Your name, address, and area(s) of expertise;

b. Your qualifications and employment and educational experience in your area of expertise;

c. The instructions provided to you in relation to the proceeding;

d. The nature of the opinion being sought and the issues in this proceeding to which the opinion relates;

e. Your opinions respecting each question and, if there is a range of numbers given in response to any particular question, a summary of the range and the reasons for your opinions within that range; and

f. Your reasons for your opinions, including:

   i. a description of any factual assumptions on which your opinion is based,
   ii. a description of any research conducted that led you to form the opinion, and
   iii. a list of every document, if any, relied on by you in forming the opinion.

The overriding duty of an Expert is to the Court, both in preparing your reports and in giving oral evidence. As an Expert, you will provide a Certificate to that affect with your Reports, certifying that they have complied and will continue to comply with that duty.

In this litigation, the Plaintiffs and Defendants are both required to ultimately disclose documents which are governed by an "implied undertaking" to the court that these documents will not be used for any other purpose than advancing or defending the litigation. Breach of this undertaking is considered contempt of court. As an expert witness retained by the Plaintiffs, this implied undertaking applies to you as well. This means that unless authorized by the Court, or Canada waives this implied undertaking in the future, neither the Plaintiffs nor our experts can use documents disclosed by Canada for any purpose other than this litigation or negotiations of this litigation. We also request that, without the written consent of the Plaintiffs you not use any documents provided by the Plaintiffs for any purpose other than the litigation or negotiation of this litigation.

W. Cory Wanless
cory@waddellphillips.ca
36 Toronto St | Suite 1120 | Toronto ON, M5C 2C5 | ph 647-874-2555 | fx 416-477-1657
waddellphillips.ca

The *Federal Courts Rules* (Rule 52.2(1)(c)) require that your final report, or the affidavit to which the report will be attached, be accompanied by a certificate signed by you acknowledging that you have read the Code of Conduct for Expert Witnesses set out as part of the *Rules* and that you agree to be bound by it. We can assist you in preparing this certificate before your report is submitted as evidence in this case.

Limitation of Liability

Work under this retainer is prepared for the use of Waddell Phillips Professional Corporation ("Waddell Phillips") on behalf of the Representative Plaintiffs in this matter specifically for the purpose for which it is created. Any other use made of it by Waddell Phillips or any other person is done at their sole risk. Rita Aggarwala Consulting Inc. ("RACI") and its employees, directors, agents and contractors assume no liability for such use. RACI makes no representations as to the applicability of any assumptions, analysis or conclusions in the work for any purpose other than for which it was created.

Waddell Phillips agrees that RACI and its employees, directors, agents and contractors (collectively the Beneficiaries) assume absolutely no liability for Losses (meaning any losses, costs, charges, penalties, fines, damages (whether contractual or tortious or other) of any kind or type whatsoever, including legal fees and expenses) resulting from any and all Claims (meaning any claims, actions, causes of action, suits, proceedings, liabilities and demands of any type whatsoever, whether direct or indirect, and all associated costs and expenses including legal fees and expenses), including without limitation, contractual and tortious Claims (including Claims of misrepresentation, negligence or gross negligence), made in connection with any of the services provided under this retainer. By using RACI's services, Waddell Phillips waives its and its clients' rights to any and all Claims and Losses against the Beneficiaries, and releases the Beneficiaries from any liability relating to any and all Claims and Losses. Should Waddell Phillips, any of its clients, or any third party, including government entities, bring a Claim against any of the Beneficiaries in connection with work done under this retainer, Waddell Phillips will fully indemnify and save harmless the Beneficiaries against any Losses incurred by the Beneficiaries as a result of such a Claim. For clarity, the indemnification includes full (solicitor-client) legal expenses.

Should the above limitation of liability be found to be unenforceable in a court of law or equivalent forum, RACI's limitation of liability under this retainer shall be limited to $10,000, with full indemnification by Waddell Phillips to RACI of any and all Losses in excess of $10,000, incurred by the Beneficiaries as a result of a Claim.

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Yours truly,

Waddell Phillips
Professional Corporation

W. Cory Wanless
WCW/

c. Peter Grant, Diane Soroka, John Phillips, Tina Yang

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This is **Exhibit "B"** referred to in the Affidavit of Rita Aggarwala, sworn at the City of Calgary, in the Province of Alberta, before me at the City of Toronto, in the Province of Ontario, on August 20, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:
Nancy Amaya
83B71B7825984B8...

Commissioner for Taking Affidavits (or as may be)

NANCY AMAYA

Nancy Josefina Amaya, a Commissioner, etc.,
Province of Ontario, for Waddell Phillips Professional Corporation,
Barristers and Solicitors. Expires August 3, 2024.

CURRICULUM VITAE

Rita Aggarwala, JD, PhD

Education

2007 **Called to Alberta Bar**

2003 – 2006 **Student, Faculty of Law**, University of Calgary

1993 - 1996 **Ph.D., Mathematics, specializing in Statistics**, McMaster University, Hamilton, Ontario

Awards: NSERC Post Graduate Scholarship Award

1992 - 1993 **Master of Mathematics, in the field of Statistics**, University of Waterloo, Waterloo, Ontario

Awards: NSERC Post Graduate Scholarship Award, Waterloo Graduate Award

1992 **Associate, Society of Actuaries** (designation maintained until 2019)

1989 - 1992 **B.Sc., Statistics and Actuarial Science**, University of Calgary, Calgary, Alberta

Awards: Canada Scholarship, Louise McKinney Scholarship

Professional Experience

2010 – Present **Statistical / Actuarial Expert and Legal Researcher**, Rita Aggarwala Consulting Inc.

- Provide clients with statistical or actuarial expert services, including actuarial and statistical analyses and damages assessments
- Conduct legal research on a variety of issues in all areas of law, as requested by clients

2007 – 2010 **Associate**, Jensen Shawa Solomon Duguid Hawkes LLP, Calgary

- As part of my work in a law firm, I routinely assisted lawyers with damages estimates for various matters, including loss of income scenarios and general damages mark-ups
- I was heavily involved in damages determination for two novel matters, one which concerned a pension class action claim and another that concerned stop option fraud

2007 **Student-at-Law**, May Jensen Shawa Solomon LLP, Calgary

2006 - 2007 **Articling Clerk,** Court of Queen's Bench, Calgary

- As a result of my Articling work, I was invited to speak at the National Judicial Institute Conference on Gender Issues: November 2007. The topic I spoke on was the application of gender- and race-specific actuarial tables to historically disadvantaged income earning groups in light of Canada's charter.

Summer 2004 **Expert Panel Member,** Indian Residential Schools Resolution Initiative, Assembly of First Nations (AFN) and University of Calgary

- Participated in workshops and conference as statistical expert, contributed to major report which became basis for national settlement agreement
- Traveled to Ottawa to present results to AFN and Government

2000 – 2004 **President**, Sigma Statistical Solutions, Inc.

- Operated private company specializing in providing statistical consulting services to industry
- Statistical/Actuarial expert for various legal matters, including serious personal injury and product liability cases

1996 – 2001 **Statical Quality Expert**, Nortel Networks

- Statistical training curriculum expert, Project consultant

1995 – 2002 **Assistant / Associate Professor**, University of Calgary, Mathematics and Statistics

- Taught and co-ordinated all levels of university courses, graduate and undergraduate
- Received more than 15 multi-year, multi-discipline grants; Published over 20 refereed papers, 15 technical reports/proceedings and 1 book
- Granted tenure 1999
- Traveled to over 15 local, national and international venues as invited guest speaker
- Collaborated with academics from various disciplines, including mathematicians, geologists, biologists, engineers and kinesiologists
- Participated actively on several university committees, including assessment and policy review committees
- Recognized for academic and research contributions vis:
    - 35 Outstanding Alumni, University of Calgary *Arch* Alumni magazine: 2002
    - Guest speaker for Sigma Xi Scientific Society's distinguished lecture series: 2002
    - Alberta Science and Technology *Leaders of Tomorrow* Award: October, 2000
    - 100 Canadians to Watch, *Maclean's* magazine: January 1, 2000
    - Top 10 Rising Stars, *Alberta Venture* Magazine: 1998

This is **Exhibit "C"** referred to in the Affidavit of Rita Aggarwala, sworn at the City of Calgary, in the Province of Alberta, before me at the City of Toronto, in the Province of Ontario, on August 20, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:
Nancy Amaya
83B71B7825984B8...

Commissioner for Taking Affidavits (or as may be)

NANCY AMAYA

Nancy Josefina Amaya, a Commissioner, etc.,
Province of Ontario, for Waddell Phillips Professional Corporation,
Barristers and Solicitors. Expires August 3, 2024.

Expert report for use in *Gottfriedson et al v. Her Majesty the Queen in Right of Canada*, Federal Court File No. T-1542-12

ESTIMATING THE NUMBER OF DAY SCHOLARS WHO ATTENDED CANADA'S INDIAN RESIDENTIAL SCHOOLS

Prepared by Rita Aggarwala, J.D., Ph.D.
Rita Aggarwala Consulting Inc.

August 19, 2021

TABLE OF CONTENTS

EXECUTIVE SUMMARY

1. I have been retained as an expert in this matter to assist with the estimation of:

    a. The total number of indigenous persons who attended as day students for educational purposes for any period at an Indian Residential School ("**IRS**"), between 1920 and 1997. Such students are referred to in this report as "**Day Scholars**." It is my understanding that "Indigenous" includes non-status Indians, Metis and Inuit;

    b. The number of Day Scholars who were still alive on May 30, 2005;

    c. The number of Day Scholars who will still be alive on September 7, 2021;

    d. The total value of the settlement, being the number of Day Scholars alive on May 30, 2005 x $10,000.

2. I have serious concerns with the quality of the data available for these estimates. The available data contains many uncertainties and inconsistencies and is far from complete. Given all of the issues with the data, it is my opinion that this data set should not be relied on to accurately estimate the number of Day Scholars who attended IRSs from 1920 to 1997 and who survived to 2005. Although the exercise of producing an estimate can be performed, I would not have confidence in the accuracy of such an estimate. In particular, I would not use estimates from this data to cap the total sum available for compensation.

3. Despite the forgoing concerns, I have been asked to perform a statistical analysis to estimate the values listed above. I have done so and the following are my results. I have also included, where available, estimates made by Mr. Peter Gorham, an actuary that was hired by Canada for a similar purpose. Mr. Gorham's results are taken from the joint report that was completed by both of us together in December 2018.

a. Total number of Day Scholars, prior to survivorship

	Aggarwala	Gorham	Average
Low Estimate	14,554	14,200	14,377
High Estimate	22,870	21,000	21,935
Single Point Estimate	17,788	16,800	17,294

b. Total number of Day Scholars still alive on May 30, 2005:

	Aggarwala	Gorham	Average
Low Estimate	12,669	12,200	12,435
High Estimate	19,908	18,100	19,004
Single Point Estimate	15,484	14,420	14,952

c. Total number of Day Scholars who will still be alive on Sept 7, 2021

	Aggarwala	Gorham
Low Estimate	10,779	Unavailable
High Estimate	16,939	Unavailable
Single Point Estimate	13,174	Unavailable

d. Total value of the settlement

	Aggarwala	Gorham
Estimated Range	$127M - $199M ($155M Point Est.)	$122M - $181M ($144M Point Est.)

INTRODUCTION

4. This report has been prepared at the request of the Representative Plaintiffs in Federal Court file number T-1542-13.

5. The purpose of this report is to aid in the settlement process related to the underlying action. The parties have agreed to a settlement formula pending court approval. This report has been created to assist the court in making its decision about whether or not to approve the proposed settlement agreement between the parties.

6. I am the President of Rita Aggarwala Consulting Inc. of Calgary Alberta. I have an undergraduate degree in Statistics and Actuarial Science, and was an associate of the Society of Actuaries from 1992 until 2019. I obtained my Ph. D. in Mathematics, specializing in Statistics, in 1996, and have taught all levels of statistics and actuarial science. As part of the work of Rita Aggarwala Consulting Inc., I provide statistical and actuarial expert services to lawyers and their clients. My CV is attached to my affidavit as Exhibit "B".

7. My opinion as an expert is not influenced by the position of either of the parties to the Federal Court action.

8. The results of this report are to be relied upon only by the parties to the action and the Court, and only with respect to the specific purpose for which the report was requested, being for use at the Settlement Approval Hearing. The results must not be used for any other purpose unless required by law.

DOCUMENTS AND INFORMATION

9. I have referred to the following in preparing this report:

    a. Statement of Claim for Federal Court file number T-1542-13;

    b. Spreadsheet (created by Canadian Development Consultants International Inc. ("**CDCI**") for Department of Justice ("**DOJ**"): List of Indian Residential Schools with Day Scholars – All Stats 12Feb2.xlsx (the "**Original Data**");

    c. Spreadsheet (created by CDCI for DOJ): List of Indian ResidentialSchoolswith Day Scholars – All Stats 3Mar2017.xlsx;

    d. Spreadsheet (created by CDCI for DOJ): List of IRS with Day Scholars – All Stats.xlsx (the "**Updated Data**")

e. Spreadsheet (created by CDCI for DOJ): Industrial Arts and Home Economics Summary Chart – 2017-02-02.xlsx

f. Spreadsheet (created by CDCI for DOJ): Temporary IRS Closures Chart – 2017-02-02.xlsx

g. Email summaries of data updates from DOJ to Peter Gorham dated March 21, 2017; June 12, 2017; September 12, 2017; November 17, 2017;

h. Correspondence from the Department of Justice to Plaintiff's counsel dated Jan. 19, 2017; Feb. 14, 2017; April 28, 2017; July 12, 2017;

i. Instructions regarding this report from counsel for the Plaintiffs;

j. "Estimating the Class Size in Gottfriedson et al v. Canada – Day Scholars Attending Indian Residential Schools – Revised Report," Prepared by Peter Gorham, F.C.I.A., F.S.A., 15 February 2018 for the Department of Justice (the "**Gorham Report**");

k. Notes from telephone meetings with representatives from CDCI, the Department of Justice and counsel for the Plaintiffs dated October 25, 2016; March 7, 2017; April 4, 2017;

l. "Day Students at Indian Residential Schools – Research Plan" (the "**Research Plan**");

m. Statistics Canada Report: "Projections of the Aboriginal Population and Households in Canada, 2011-2036," (2015), available at Projections of the Aboriginal Population and Households in Canada, 2011 to 2036 (statcan.gc.ca);

n. Life Tables from Canadian Human Mortality Database (based on Statistics Canada Life Tables), available at https://www.prdh.umontreal.ca/BDLC/data/can/bltper_1x1.txt;

o. "Day Scholars Survivor and Descendant Class Settlement Agreement" dated June 4, 2021, available at Gottfriedson-Settlement-Agreement-FINAL-Signatures-Added.pdf (justicefordayscholars.com);

p. Statistics Canada Report: "Aboriginal peoples of Canada," available at Aboriginal peoples of Canada: A demographic profile (statcan.gc.ca);

q. Verma and Gavin, "Abridged Life Tables for Registered Indians in Canada, 1976-1980 to 1996-2000," *Canadian Studies in Population,* Vol. 31(2), 2004, pp. 197-235 (the "**Verma Paper**");

r. Akee and Jeir, "First People Lost: Determining the State of Status First Nations Mortality in Canada Using Administrative Data," University of Victoria Department Discussion Paper DDP 1802, February 2018;

s. INAC summary statistics page for the Indian Residential School Settlement Agreement ("**IRSSA**"), available at https://www.aadnc-aandc.gc.ca/eng/1315320539682/1315320692192;

t. "Joint Report – Estimated Class Size: Gottfriedson v. Canada," Prepared by Rita Aggarwala and Peter Gorham, December 17, 2018. ("**Joint Report**").

DESCRIPTION OF SPREADSHEET DATA

10. The data provided by the Department of Justice includes 3 successive spreadsheets listing each of the 76 Indian Residential Schools which were identified by the Department of Justice as hosting Day Scholars at some point. Each line of each spreadsheets includes:

    a. the name of the IRS;

    b. the dates of its operation;

    c. the dates during which it is believed the IRS accepted Day Scholars;

    d. notes regarding the school's operation, enrolment and other general notes;

    e. administration information regarding who operated the school;

    f. enrolment statistics for each of the years 1909-10 and 1919-20 through 1997-98, including number of residents; number of days scholars; and total enrolment.

11. It is my understanding that CDCI compiled the spreadsheets following an extensive review of documents archived with the government of Canada. I understand that during the period between creating the spreadsheets containing the Original Data and the Updated Data, a "name coding" exercise was completed, where Day Scholar names were extracted from the archived records.

12. CDCI indicates (with colour coding) in the spreadsheets, among other things:

    a. instances in which it knew there was missing documentation regarding enrolment;

    b. instances for which it has reviewed a full or partial list of day scholar names for the particular school year.

13. An additional spreadsheet, summarizing the attendance of home economics and industrial arts Day Scholars, provides incomplete summary information for 3 schools, over a total of 6 years. It is not clear whether there were additional schools with similar programs, for which data was not available. Considering the definition of "Survivor" in the Statement of Claim, I have added these numbers to the Day Scholar totals in the relevant years and for the relevant schools.

14. An additional spreadsheet summarizes temporary IRS closures, for example due to fires, and temporary day schools that opened as a result of closures. It is not clear whether these day schools were part of the IRS and therefore subject to this action. The data is limited and incomplete. Day Scholar data arising from such temporary closures is noted as not included in the Original Data or the Updated Data, however in reviewing the spreadsheets, it appears the data has been included, at least in part. I have not adjusted the data for these values. Any adjustment would not have a significant effect on the overall estimates.

INTEGRITY OF THE DATA

15. It is a basic premise of statistical analysis that any statistical analysis is only as useful as the quality of the data being analyzed. If the data collection is properly planned and executed for a specific purpose, and actually measures what was set out to be measured, statistical analysis for that purpose will be meaningful. If the data is plagued with errors and inconsistencies, or if the data relied upon was not collected for the purpose of the analysis, any corresponding statistical analyses will be of limited, if any, use.

16. Statistical analysis which is done on data collected for purposes other than the analysis can be of some use, for example, it may allow for some initial understanding to be gained for further and purposeful data collection. However, there will always be limitations as to the conclusions that can be drawn from such an analysis, as the data were collected for another purpose. In the worst case, relying on such data for a purpose other than that for which it was collected can

lead to dangerously incorrect conclusions. Data which is incomplete and collected haphazardly is of even less use.

17. In my opinion, despite the fact that it may be based on the best information available, and although it is an impressive compilation of combing through thousands and thousands of documents, the Day Scholar data collected by the CDCI contains so many uncertainties and inconsistencies and is so incomplete, that any statistical analysis to estimate the number of Day Scholars who attended an IRS and were alive in 2005 based on that data is not likely to provide accurate summary values. The reasons for this opinion follow.

18. In the case of the Day Scholar data, we have a situation in which the data that are being analyzed were not collected with the purpose of identifying the number of Day Scholars that attended IRSs. In at least one case, notes in the data indicate that the administration of the school was surprised to find out there were Day Scholars in attendance at all.

19. Furthermore, the data is neither derived from a census nor a properly collected sample from a larger population. It is therefore not representative of the underlying population of Day Scholars. It is a convenience sample and it is almost certainly biased.

20. In addition, the "measurement error" in the underlying data, that is the error in the actual reported numbers, is far greater than any statistical error arising from methods used to fill in gaps in the data.

21. In addition to this, CDCI has informed me that:

    a. In contrast to resident attendance records, Day Scholar attendance records were inconsistent and often haphazardly kept. In some cases, attendance was not noted at all. The enumeration of Day Scholars is being attempted long after the fact, using a variety of dated records. Although there were some, often incomplete, direct records of Day Scholar attendance, the researchers at CDCI also used busing and lunch room lists to attempt to indirectly enumerate Day Scholars.

    b. The Research Plan outlines challenges with the data at page 9:

        i. For most Indian Residential Schools, the funding formula was based on the number of residential students. As a result, records regarding Day Scholars were not consistently kept.

ii. After 1971, day students were no longer included in the Quarterly/Enrolment Returns so records may be even more sparse from that point on. Therefore, the notion that the data may have improved with time is not necessarily true.

iii. Coding was inconsistent and incorrect at times.

c. There could be errors with any of the numbers provided. For example, the fact that CDCI was able to locate a list of names of Day Scholars for a certain year and certain school is not an indication that the list is a complete list. CDCI has not indicated in each case where there is a list of names associated with a Day Scholar attendance number, whether the recorded attendance number is equal to the number of students enumerated on the list. Indeed, in a number of the email updates referencing specific schools and years, it is noted that only a portion of the reported Day Scholar attendance is based on a list. CDCI repeatedly stated that the lists are likely incomplete.

d. There were instances in which documents were destroyed or damaged beyond legibility The fact that information was missing is indicated in those and other cases. However, as mentioned above, this does not mean that entries that do not indicate that there is missing information are based on complete information. For example, there are cases in which CDCI states that Day Scholar lists are likely not complete, however those data points are not marked as being subject to missing data. Consequently, every entry in the data could be potentially missing information.

e. The CDCI informed me that some students did not go to school for the full week and therefore, those students may not have been counted at all, even though they may fall within the definition of “Survivor” in the Statement of Claim.

22. Overall, these shortcomings in the data suggest the Day Scholar count in the Updated Data is generally under-reported.

23. In addition, I have made the following observations in studying the data:

a. CDCI considered 76 IRSs as having Day Scholars. The number of IRSs listed in the previous IRSSA is 139. It is my understanding that for some of the 63 institutions not included in the list of 76, it was not possible

that they hosted Day Scholars (for example because they were residences only). For others, there is simply no record of Day Scholars. Given the state of the available data, and the low priority put on Day Scholar record-keeping, it seems possible that at least some of the IRSs that the CDCI considered as not having Day Scholars may have in fact had some Day Scholars that were never recorded, or that relevant records have been lost.

b. Although the Original Data was presented as containing upper limits on the numbers of Day Scholars in any year, the Updated Data includes several entries for which the upper limit from the Original Data increased significantly, even where that original upper limit was based on school lists. This puts into question whether the values in the Updated Data are actually upper limits, and whether the school lists relied on in the Updated Data are complete.

c. A number of entries not originally noted as missing data were flagged as missing data in the Updated Data. This suggests that there could be further missing information for any data point not currently associated with missing data.

d. CDCI stumbled on information that led to changes in the data. There could be additional as-yet unfound documentation, or documentation that will never be found, that could affect the numbers significantly.

e. There are several instances in which the total number of students attending an IRS is much higher than the sum of the number of Day Scholars and the number of residents. These gaps are unexplained and suggest missing or incorrect information.

f. There are several instances in which the total number of students is much less than the sum of Day Scholars and residents. Although I understand that there were instances in which a student was both a Day Scholar and a Resident in the same year, those instances would have been few. This is alluded to in some of the notes to the data, for example the notes for the Lower Post school indicate that only two students fell in this category. In contrast, there are several years in the data for which the difference between the total number of students and the sum of the number of residents and Day Scholars is large and appears to be due to incomplete or incorrect data.

g. CDCI informed me that they included a student as a Day Scholar if there was a question as to the status of a student. However, in reviewing the spreadsheets, there are instances in which CDCI did not include a student as a Day Scholar when the status of that student was uncertain . For example

   i. For Fort Alexander (Manitoba), the notes indicate that there were five possible Day Scholars in 1935, but the number zero is recorded, with a subsequent note that CDCI was "unable to rule out the possibility that they attended as Day Scholars in that year." So, CDCI did not err on the side of including students with unknown status as Day Scholars. This suggests there may be other such incidents reflected in the data.

   ii. Similarly, for Sechelt, there is a note indicating that it is possible Day scholars were in attendance outside of 1952-69, however they have recorded all values outside of that time period as zero, not as unknown gaps.

   iii. For St George's, a note indicates that as of 1965, there was no category for residents, so that the number of Day Scholars matched the number of residents. However, the spreadsheet data assumes all of the students enrolled were residents, not Day Scholars.

   iv. For Poplar Hill, there is a note indicating that the 1980 statistics indicated 62 students, with no indication of whether any of them were Day Scholars. All students are recorded as residents.

   v. For Fort George (St. Philip's), a note indicates that in 1943-44, there was a fire and the IRS was replaced by a temporary day school. Although residential enrolment drops to zero, there is no indication of Day Scholar enrolment.

   vi. For LeBret, there is a note from 1980 indicating that no distinction was made in the rolls between Day Scholars and residents. However, it appears the assumption was made that all of the students were residents, not Day Scholars. Similar notes were made for a number of schools.

h. There are entries that went from being “confirmed zeros” in the Original Data (i.e. there was no indication that those numbers were subject to missing information), to being considered data gaps (i.e. it is known that there is missing information associated with that entry). When I questioned these numbers before the data was updated, I was informed that zeros in the data were confirmed and should not be treated as gaps. Subsequently, in the Updated Data, they were characterized as gaps. This causes me to question other zero-reported entries, especially when they fall between non-zero entries or are surrounded by entries associated with missing information.

i. As the data was not collected with the present analysis in mind, there is no indication of the number of unique Day Scholars that attended IRSs. A student that attended IRSs for 5 years as a Day Scholar would appear in the data 5 times, assuming that student’s data is complete. I have no way to match repeated years to students in the data.

j. Further to the issue of determining the number of unique Day Scholars, I have no information about the pattern of enrolment in the schools. In many cases, the reported yearly numbers fluctuate dramatically, suggesting either students were moved in and out of schools routinely, or that the data is inaccurate.

k. Assuming there was any continuity in terms of yearly enrolments, the widely fluctuating year-to-year attendance values suggest the values recorded do not accurately reflect the actual attendance of Day Scholars at IRSs, rather they are a reflection of incomplete and inconsistent record-keeping.

l. There are inconsistencies between the notes made in the spreadsheets and the numbers recorded. For example, for the Old Sun (Gleichen, Alberta) IRS, there is a note indicating there were Day Scholars in 1949-50. However, the recorded value for that year is a zero, with no gap indicated.

m. The changes between the Original Data and Updated Data are mainly within a certain time frame (approximately 1945-1970), which includes years of peak overall Day Scholar attendance. My understanding is the update was a result of a name coding exercise, and that perhaps this is a period during which better records were kept by some schools. This

same type of record collection does not exist for all schools, even from the years 1945-1970, nor for all periods outside of 1945-1970.

CONCLUSION ON DATA INTEGRITY

24. Given all of the issues with the data, it is my opinion that this data set should not be relied on for estimating the number of Day Scholars who attended IRS from 1920 to 1997 and who survived to 2005. Although the exercise of producing an estimate can be performed, I would not have confidence in the accuracy of such an estimate. In particular, I would not use such estimates to cap the total sum available for compensation.

25. A statistical analysis of the data follows. This is provided on request, despite the above discussion.

RESULTS OF STATISTICAL ANALYSIS ON DAY SCHOLAR DATA

26. Statistical models take into account the inherent background variability or noise in the data. By using statistical models to fill in gaps in the data, as opposed to, for example, simply connecting the dots on either side of a gap, measures of uncertainty in the predictions can be determined. These measures of uncertainty require certain statistical assumptions, which were generally met in the data. Note that the method of "connecting the dots" results in statistically infinite uncertainty in the predicted values.

27. The total number of Day Scholar years recorded in the Updated Data is 66,450. Following my analysis, the total number of Day Scholar years is 80,047, an addition of 13,597 Day Scholar years or approximately 20.5%. The bulk of the adjustments were made in the early and late years of the class period, with relatively few adjustments made between approximately 1952 and 1972.

28. Note this total includes both statistically and non-statistically adjusted values. The total of all of the statistical predictions over all years and schools is 11,505 Day Scholar years. The standard error (measure of uncertainty) of this total, is about 370 Day Scholar years, or 3.2% of 11,505. This is a relatively small standard error, which suggests that the proposed statistical models describe the data (however flawed that data is) well.

29. This statistical uncertainty is very small compared with the underlying uncertainty in the data itself and the differences in results based on making different assumptions with respect to mortality patterns, average years of attendance and average student age. I have therefore not reported the statistical error in the final results, rather I have focused on determining a range of estimates based on varying assumptions.

DETAILS OF STATISTICAL ANALYSIS OF DAY SCHOLAR DATA

30. There are 76 IRSs listed in the CDCI Spreadsheets. These IRSs were located throughout Canada, and administered by a variety of groups, including the government of Canada, church groups and Indian bands in later years. There is some indication that there was a small amount of dependency with respect to enrolment or retention between the individual IRSs. For example, there is some indication that students were moved between schools for administrative efficiencies or when there was fire damage. However, the information is scarce and incomplete. For this exercise, each IRS is treated with its own independent statistical analysis. In my opinion, this approximation will not meaningfully affect the overall estimates, especially considering the underlying limitations in the data.

31. Some broad observations can be made:

    a. Generally speaking, Day Scholar enrolment in IRSs increased after approximately 1945. In some cases, the increases were dramatic.

    b. Day Scholar enrolment, according to the Updated Data, was sporadic and rarely "smooth" from year to year. Generally speaking, I have left values as recorded in the data, unless they are noted by CDCI as gaps, are inconsistent with the notes, or unless they are notably erratic as compared to the "background" fluctuation in the data. This determination has been made through graphical inspection of the data and a review of the notes in the spreadsheet.

32. Of the 76 schools listed, analyses on or adjustments to the Day Scholar enrolment numbers, including estimating missing data points, were made for 42 schools and 457 data points.

33. Global adjustments to data:

    a. A specific non-statistical adjustment that was made prior to doing any statistical analysis was in cases where total enrolment exceeded the sum

of Day Scholar and resident enrolment by more than 5% and there was no explanation for the difference. In these cases, the difference was proportionately distributed based on available Day Scholar and resident numbers.

b. A non-statistical adjustment that was made after doing statistical analysis was to include the student counts summarized in the CDCI supplementary spreadsheet concerning home economics and industrial arts students.

c. Where notes were inconsistent with the Updated Data, a non-statistical adjustment to the data was made.

34. Models used:

a. Generally speaking, where a statistical analysis was used to fill in a data gap, I used simple statistical models for Day Scholar enrolment. I considered the shape of the data and considered whether there were points in time when the enrolment pattern appeared to change to determine which years to include in a model.

b. Where there were too few known data points to perform a statistical analysis, I relied on what little data there was (in some cases, just 1 or 2 points over the entire history of the school). In these cases, no error estimate could be calculated (more accurately, if computed, the error estimate would be infinite). There are 6 such non-statistical applications, accounting for 68 individual Day Scholar counts.

c. In two cases, where residential enrolment information was fulsome and Day Scholar enrolment information was sparse, I modelled the proportion of Day Scholar attendees in the school, and applied the estimated proportion to the residential enrolment data to predict Day Scholar enrolment.

d. Note that the predicted values of Day Scholar attendance will generally not be integers. This is not surprising, as the statistical models used do not require this. For example, if a statistical average is based on Day Scholar counts of 3 and 4, the resulting average, 3.5, is necessarily not an integer. As these numbers are being used to determine a global total, they ought to be left as non-integers until the final estimate of total Day Scholar years over all schools and years is obtained.

CANADIAN MORTALITY

35. Once predictions of Day Scholar years of attendance were obtained for each year in the class period, these numbers needed to be adjusted for mortality. For example, the number of Day Scholar years predicted for the 1919-1920 school year is 164. However, in order for those students to qualify as Survivors in the Class Action, they would need to survive to 2005. Accounting for this adjustment reduces the number of Day Scholar years for 1919-1920 to approximately 10, using unadjusted Canadian mortality tables (the terms “mortality tables” and “life tables” refer to the same thing).

36. In order to make mortality adjustments to the predicted Day Scholar attendance years, I used the life tables for all Canadians, obtained from the Canadian Human Mortality Database, which is housed on a server at the University of Montreal. The life tables available there are yearly tables, for the years 1921 to 2016. They are based on life table data collected by Statistics Canada. I applied the 1921 table to the year 1920. Statistics Canada does not provide yearly tables for the entire class period, however they do provide yearly tables from 1980 to 2018. I compared several of these tables to those found on the Human Mortality Database, and the agreement was very good. I used the Statistics Canada life tables for the years 2015 to 2018.

37. For the years 2019 to 2021, I used the 2018 life table. As noted in the Statistics Canada’s description of its life tables, the table used for 2018 is also considered a preliminary table for 2019 and 2020. Extending the table to 2021, versus using an adjustment such as the Canadian Pensioners Mortality adjustment, would make a negligible difference in the estimate for the number of Day Scholars that will be alive on September 7, 2021.

INDIGENOUS MORTALITY

38. Mortality for Indigenous peoples is not well understood. The main source of data is the INAC Register, which includes data only for Status Indians. Data is sparse and prone to late reporting and non-reporting. For example, according to the Verma Paper, births may be reported up to 18 years late or not at all. Deaths may be reported several years late or not at all.

39. A few researchers have attempted to use the available data to arrive at life expectancies for Indigenous peoples. The studies by these researchers recognize

the severe limitations in the data. One such study, the Verma Paper, presents estimates of the difference in life expectancy between Indigenous and non-Indigenous people to be approximately 10 years in about 1978 and approximately 7 years in about 1988. Statistics Canada, in its publication, "Projections of the Aboriginal Population and Households in Canada, 2011-2036," notes that the difference in life expectancy between Indigenous and non-Indigenous peoples has been about 5 years since 1991.

40. Although I hesitate to make an assumption about Indigenous mortality given the lack of reliable data available regarding Indigenous mortality, it is widely accepted that Indigenous mortality rates are generally higher than Canadian mortality rates.

41. One suggestion for modifying the Canadian life tables for Indigenous populations is to apply a multiplier to mortality rates in the Canadian tables, such that the resulting expected life times are lowered by 5-10 years.

42. There are an infinite number of ways in which the Canadian life tables could be modified to arrive at specified life expectancies. Applying a single multiplier to all mortality rates in the Canadian tables, to come up with a proxy for a life table for Indigenous peoples, is likely a very simplistic method of adjusting the Canadian life tables. One paper, "First People Lost: Determining the State of Status First Nations Mortality in Canada Using Administrative Data," attempts to estimate mortality rates for status Indians by age, however the results are preliminary and are only published for certain years.

43. In reviewing the various publications dealing with the issue of Indigenous mortality, the assumption used below, where two multipliers are used to adjust Canadian mortality rates, appears reasonable for the purposes of this report.

44. Based on the research that has been done, I have applied a multiplier of 1.9 to Canadian mortality rates for years prior to 1985. This means Indigenous mortality is assumed to be 190% of Canadian mortality for every year of life. The resulting reduction in Canadian life expectancy is between 15 and 9 years (reductions are higher for earlier years). I have applied a multiplier of 1.6 to Canadian mortality rates for the years 1985 and later, resulting in reductions in life expectancy of between 6 and 5 years. These values are consistent with the observations regarding life expectancy in the Verma paper and the Statistics Canada publication discussed above.

45. In 1985, my mortality multiple changes from 1.9 to 1.6. This is the year status was returned to many Indigenous women. This influx of women may have increased the overall life expectancy of registered Indians, as women generally live longer than men on average.

AVERAGE YEARS OF ATTENDANCE

46. Once total Day Scholar years are adjusted for mortality, the resulting number needs to be adjusted to reflect that a single student would have been counted multiple times in the data, depending on how many years they attended as a Day Scholar.

47. The data does not indicate the number of years that individual students attended IRSs as Day Scholars. I have no knowledge of enrolment patterns at IRSs for Day Scholars. Sporadic yearly fluctuations for many schools suggest enrolment patterns may also have been sporadic. It is possible that a very rough idea of the average years of attendance for some schools and years, could be gained from a further analysis of lists of Day Scholar names. However, I do not have access to this data.

48. In my opinion, the best estimate I have found for average years of Day Scholar attendance is in INAC's summary statistics page for the IRSSA. The average Common Experience Payment provided to residents of IRSs was $20,457. Based on the funding formula for those payments, this comes to just under 4.5 years.

49. Average Day Scholar and resident years of attendance may have been different, however given the lack of data regarding Day Scholar attendance, it seems reasonable to use data on average resident attendance to approximate average Day Scholar attendance. It could be argued that Day Scholars attended IRSs longer on average because they were not resident in the schools and not subject to the same stresses. On the other hand, it could also be argued that they stayed for shorter periods on average because many of them left the schools each evening to face a world which they were taught to reject, creating different stresses, and because they were not "confined" to the schools as residents. I have provided estimates based on a range of assumptions for average years of attendance.

50. Using an assumption for average years of attendance to adjust the estimated total Day Scholar years accounts for students who changed schools or sporadically attended at a school over the years. Note that using a value for average years of attendance to adjust the total Day Scholar years may not work to provide a useful estimate of Day Scholar years for any single school, rather it works in aggregate.

STUDENT AGES

51. In applying the mortality assumption, an age assumption is required. Given we are interested in summary statistics encompassing all years and all schools, it is appropriate to use an average student age in any year. I have assumed an average student age of 9 years. As it is my understanding that many of the IRSs were primary level schools, it is sensible to assume there was more student enrolment at lower ages. To test the robustness of the average age assumption, I also performed calculations with an average age of 8. The differences between estimates were small despite a full year adjustment.

RESULTS: NUMBER OF DAY SCHOLARS ALIVE ON MAY 30, 2005

52. Table 1 provides estimates of the number of unique Day Scholars alive on May 30, 2005, for a variety of assumptions on mortality multipliers, average years of attendance and average student age. Here, Mortality Assumption #1 assumes a 200% mortality multiplier for all years, which is what is used in the Gorham Report, though a different overall model is used there. Mortality Assumption #2 assumes a 190% mortality for the years up to and including 1984, and a 160% mortality multiplier for years 1985 and later. Mortality Assumption #3 uses the Canadian life tables without any mortality multiplier.

53. The entry in **BOLD** (average attendance of 4.5 years, average student age of 9 years, 1.9/1.6 mortality multiplier) is, in my opinion, the most reasonable estimate given the information available to me.

54. In Table 1, I included a column that does not apply any mortality assumption, i.e. that assumes all Day Scholars would be part of the class, regardless of whether they survived to any set date.

55. From the tables, we can see that varying the average student age by a full year does not make a large difference in the estimate of the number of unique Day Scholars surviving to 2005. Even varying the different mortality multipliers does not result in dramatic differences as one might expect. What makes the biggest difference is varying the assumption of the average number of years of Day Scholar attendance.

Table 1 Unique Day Scholars alive on May 30, 2005 assuming average student age is 9 (8):

	Mortality Assumption #1 (200%)	Mortality Assumption #2 (190%/160%)	Mortality Assumption #3 (100%)	No Mortality Assumption applied
Average 3.5 years attendance	19,537 (19,703)	19,908 (20,060)	20,845 (20,964)	22,870
Average 4 years attendance	17,095 (17,240)	17,420 (17,553)	18,239 (18,344)	20,011
Average 4.5 years attendance	15,196 (15,324)	**15,484** (15,602)	16,213 (16,305)	17,788
Average 5 years attendance	13,676 (13,792)	13,936 (14,042)	14,592 (14,675)	16,009
Average 5.5 years attendance	12,432 (12,538)	12,669 (12,766)	13,265 (13,341)	14,554

NUMBER OF DAY SCHOLARS ALIVE ON SEPTEMBER 7, 2021

56. I have been asked to estimate the number of Day Scholars who will still be alive on September 7, 2021. Table 2 provides those estimates, for the various assumption combinations.

57. It is notable that the number of Day Scholars estimated to die between 2005 and 2021 is large in comparison to the number who died across the years 1920 to 2005. For example, for the scenario using an average student age of 9, 4.5 average years of attendance and Mortality Assumption #2, the number of Day Scholars who died between 1920 and 2005 is estimated to be 2304. The number of additional Day Scholars estimated to die between 2005 and 2021 is 2310.

Table 2 Unique Day Scholars alive on September 7, 2021, assuming average student age is 9 (8):

	Mortality Assumption #1 (200%)	Mortality Assumption #2 (190%/160%)	Mortality Assumption #3 (100%)
Average 3.5 years attendance	16,177 (16500)	16,939 (17,339)	18,454 (18,683)
Average 4 years attendance	14,155 (14,437)	14,821 (15,075)	16,146 (16,347)
Average 4.5 years attendance	12,582 (12,833)	13,174 (13,400)	14,353 (14,530)
Average 5 years attendance	11, 324 (11,550)	11,857 (12,060)	12,918 (13,078)
Average 5.5 years attendance	10,295 (10,500)	10.779 (10.963)	11,743 (11,889)

TOTAL CLAIM OVER ALL DAY SCHOLARS ALIVE IN 2005

58. I have been asked to estimate the total amount of the class claim based on a funding formula of $10,000 per survivor who lived to 2005. This can be done simply by adding four zeros to the numbers in the tables above. For example, using an average student age of 9, an average of 4 years of attendance and a 190/160% mortality adjustment, corresponding to what I believe to be the most reasonable assumptions given the information I have, the total amount of the class claim is approximately $154,840,000, being the entry in bold in Table 1, with four extra zeros.

CONCLUSIONS

59. The broad conclusions of this report are as follows:

    a. The underlying data enumerating Day Scholar attendance, gathered by CDCI, was not collected for the purpose of determining Day Scholar attendance. The data is inconsistent, incomplete and almost certainly

biased. It is not appropriate to rely on this data or statistical analysis performed on it to cap total compensation.

b. Various assumptions have been made regarding Indigenous mortality, average years of attendance and average ages of students in performing the analysis. In my opinion, the most reasonable assumption are a 190%/160% adjustment for indigenous mortality, 4.5 average years of attendance and an average age of 9 years.

c. The statistical error associated with the total Day Scholar estimate, ignoring those few cases in which the error estimate is infinite, is very small in comparison with the measurement error in the underlying data and the differences arising from varying assumptions, and has not been used in providing estimate ranges.

This is **Exhibit "D"** referred to in the Affidavit of Rita Aggarwala, sworn at the City of Calgary, in the Province of Alberta, before me at the City of Toronto, in the Province of Ontario, on August 20, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:
Nancy Amaya
83B71B7825984B8...

Commissioner for Taking Affidavits (or as may be)

NANCY AMAYA

Nancy Josefina Amaya, a Commissioner, etc.,
Province of Ontario, for Waddell Phillips Professional Corporation,
Barristers and Solicitors. Expires August 3, 2024.

Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL~~, AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

CERTIFICATE CONCERNING CODE OF CONDUCT FOR EXPERT WITNESSES

I, Dr. Rita Aggarwala, having been named as an expert witness by the Representative Plaintiffs certify that I have read the Code of Conduct for Expert Witnesses set out in the schedule to the *Federal Courts Rules* (and attached hereto) and agree to be bound by it.

Date: August 20, 2021

RAggarwala

Dr. Rita Aggarwala
Rita Aggarwala Consulting Inc.
30 Varview Place NW
Calgary, AB T3A 0G5

CODE OF CONDUCT FOR EXPERT WITNESSES

GENERAL DUTY TO THE COURT

An expert witness named to provide a report for use as evidence, or to testify in a proceeding, has an overriding duty to assist the Court impartially on matters relevant to his or her area of expertise.

This duty overrides any duty to a party to the proceeding, including the person retaining the expert witness. An expert is to be independent and objective. An expert is not an advocate for a party.

EXPERTS' REPORTS

An expert's report submitted as an affidavit or statement referred to in rule 52.2 of the *Federal Courts Rules* shall include

- a statement of the issues addressed in the report;
- a description of the qualifications of the expert on the issues addressed in the report;
- the expert's current *curriculum vitae* attached to the report as a schedule;
- the facts and assumptions on which the opinions in the report are based; in that regard, a letter of instructions, if any, may be attached to the report as a schedule;
- a summary of the opinions expressed;
- in the case of a report that is provided in response to another expert's report, an indication of the points of agreement and of disagreement with the other expert's opinions;
- the reasons for each opinion expressed;
- any literature or other materials specifically relied on in support of the opinions;
- a summary of the methodology used, including any examinations, tests or other investigations on which the expert has relied, including details of the qualifications of the person who carried them out, and whether a representative of any other party was present;
- any caveats or qualifications necessary to render the report complete and accurate, including those relating to any insufficiency of data or research and an indication of any matters that fall outside the expert's field of expertise; and
- particulars of any aspect of the expert's relationship with a party to the proceeding or the subject matter of his or her proposed evidence that might affect his or her duty to the Court.

An expert witness must report without delay to persons in receipt of the report any material changes affecting the expert's qualifications or the opinions expressed or the data contained in the report.

EXPERT CONFERENCES

An expert witness who is ordered by the Court to confer with another expert witness

- must exercise independent, impartial and objective judgment on the issues addressed; and
- must endeavour to clarify with the other expert witness the points on which they agree and the points on which their views differ.

TAB 11

Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, CHARLOTTE ANNE VICTORINE GILBERT, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, DAPHNE PAUL, and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

AFFIDAVIT OF JOELLE GOTT

(Motion for Settlement Approval)

I, Joelle Gott, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Partner in the Financial Advisory Services Group at Deloitte LLP ("Deloitte"). Deloitte is the parties' joint proposed Claims Administrator and I am the proposed engagement lead on Deloitte's proposal to act as Claims Administrator and, as such, I have knowledge of the matters to which I hereinafter depose. Where the matters referenced in this affidavit are based on information I have received from others, I have stated the source of the information, and believe such information to be true.

Deloitte's credentials

2. Since the creation of Deloitte's Indigenous Client Services group in 1990, Deloitte has supported over 250 Indigenous clients in various forms, either directly, or indirectly. The scope of Deloitte's work with Indigenous clients is broad, both in terms of geography (coast-to-coast including remote communities) and the clients we work with (First Nations, Métis and Inuit). The administration of this settlement will be supported by Alnoor Nazarali (Director, Grants and Loans Portfolio Services) and Guillaume Vadeboncoeur (Partner, Forensic Services), who have significant experience working directly with Indigenous clients. Attached as **Exhibit "A"** is a summary of some of our representative work.

3. Deloitte is one of Canada's most experienced class action claims administrators, with extensive experience in claims management oversight, claims intake and technical support, and claims processing, review and adjusting.

4. Deloitte has managed over $2 billion of class action claims and currently maintains 29 Canadian offices and four Claims Administration Facilities located in Toronto, Vancouver, Ottawa, and Montreal.

5. A list of Deloitte's representative appointments is attached hereto as **Exhibit "B"**. As can be seen from this list, Deloitte also has specific experience administering settlements in class actions involving large, national classes, and classes containing vulnerable and/or marginalized people.

Administering this settlement

6. If the motion for Deloitte to be appointed as Claims Administrator is approved, Deloitte is prepared to fulfill the role of Claims Administrator, as that role is set out in the Settlement Agreement dated June 4, 2021 (the "Settlement Agreement"), and to provide all of the services associated with that role. Deloitte is committed to administering the proposed settlement efficiently and in the best interests of the claimants.

Staffing

7. As engagement lead, I will manage the administration of this settlement. I will be supported by a number of Deloitte team leaders, whose proposed roles and responsibilities are attached hereto as **Exhibit "C"**. In addition, all of us will be assisted by staff from Deloitte's Restructuring and Forensic Services groups, which consists of approximately 500 staff members nationally.

Claims Processes principles

8. I, and the rest of the Deloitte leadership team listed above, have reviewed the Settlement Agreement, including the Claims Process and Estate Claims Process (together, the "Claims Processes"), carefully. We understand that the Claims Processes are intended to be defined by foundational principles, and are committed to upholding and promoting these foundational principles, as follows:

a. the Claims Processes shall be expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed;

b. the Claims Processes shall minimize the burden on claimants in pursuing their claims;

c. the Claims Processes shall mitigate any likelihood of re-traumatization through the Claims Processes;

d. the Claims Administrator and all other decision-makers involved in the Claims Processes shall assume that a claimant is acting honestly and in good faith unless there is reasonable evidence to the contrary; and

e. the Claims Administrator and all other decision-makers involved in the Claims Processes shall draw all reasonable and favourable inferences that can be drawn in favour of the claimant.

Claim forms

9. I and other members of the Deloitte team have been assisting Class Counsel and counsel for Canada with the preparation of the Claim Form and Estate Claim Form. I understand from working with Class Counsel and counsel for Canada that the focus of the claim form development process is on creating documents which will be simple and functional, which will minimize the burden of making a claim, and which will assist with making the claim process more navigable and transparent for claimants. I am advised by Tina Yang, a member of the Class Counsel team, that the parties anticipate that they will bring a motion for approval of the Claim Form and Estate Claim Form shortly after this Court renders its decision on settlement approval.

10. To expedite the launch of the claims process following the Implementation Date, Deloitte has also been assisting Class Counsel and counsel for Canada with developing digital/online

versions of the claim forms alongside the paper-based forms, including consideration of how the advantages of a digital format and Deloitte's technological capabilities can be harnessed to assist claimants.

11. I understand from the parties, that once the claim forms are complete and approved by the Court, the parties will have both the paper and online pdf claim forms translated into French, James Bay/Eastern Cree, Plains Cree, Dene, Ojibwe, Mi'kmaq and Inuktitut. The portal claim form will be available in French and English.

Claim processing

12. The following is an overview of claims administration process, which is supplementary to, and should be read in conjunction with, the Claims Processes:

a. Deloitte will advise all claimants that their claims have been received;

b. Deloitte will review all claims received and:

(i) for any claims with missing information, advise whether their claim forms are considered complete, or whether information is missing and request the missing information;

(ii) for claims made regarding a Day Scholar who was not alive as of May 30, 2005, advise that the claim has been rejected;

(iii) for claims made regarding only institutions which are not included in Schedule "E" List 1 or List 2, advise that the claim has been rejected;

(iv) forward information to Canada for review as set out in the Claims Process; and

c. Deloitte will review the information (if any) provided by Canada, and, taking into consideration the Claims Processes principles and evidentiary standards set out in the Claims Processes, advise whether the claim has been accepted and a Day Scholar Compensation Payment will be made, or that the claim has been rejected and that there is an opportunity for reconsideration by an Independent Reviewer, as well as any applicable deadlines.

13. Deloitte will use a proprietary claims management workflow solution to process the claim forms and supporting documentation as they are received. This is a web-based platform that allows Deloitte to:

a. enter claim intake details and information and digitize paper applications;

b. maintain claim information and documents in a centralized location;

c. allow Deloitte claims reviewers secure access to review claims; and

d. when necessary, permit controlled access to approved third parties (such as the Government of Canada or an Independent Reviewer, in the case of a claim for reconsideration).

14. From the claimant side, Deloitte will develop and build a customizable portal which those claimants with online access can use to submit their claim forms, monitor the status of their claim, and receive information from Deloitte and/or the Independent Reviewer about their claim. The

portal will be available in both English and French only, and Deloitte's call centre will be trained in portal troubleshooting responses.

15. I understand from my review of the Claims Processes that limited supporting documentation will be required from claimants and that, for those claimants who are Day Scholars who attended at least one List 1 Residential School, no supporting documentation will be required at all. Based on my experience with claims administration, I anticipate that this will allow for claims to be processed, and therefore for successful claimants to receive compensation, more quickly and efficiently.

Reconsideration

16. If a claimant chooses to seek reconsideration, their application will be assessed *de novo* by an Independent Reviewer appoint by the Court. Deloitte's role will be to provide the necessary documentation to the Independent Reviewer, along with any other information and support that the Independent Reviewer may require.

17. Where a claimant who is seeking reconsideration has legal assistance, whether through Class Counsel or otherwise, Deloitte will also provide any necessary documentation, information and support to the claimant's counsel.

18. The Settlement Agreement does not provide for a settlement monitoring body, and it is my understanding that any issues, questions, or requests for direction from Deloitte should be sent to Class Counsel and counsel for Canada directly. Deloitte is prepared to provide any information and support that counsel for the parties may require to resolve these issues, questions, or requests for direction.

Class member assistance

19. Although all legal inquiries will be resolved by Class Counsel, Deloitte's call center will be available to help claimants understand the Claims Processes and answer questions that Claimants may have about the claim forms. .

Payment processing and accounting

20. Pursuant to s. 27.01 of the Settlement Agreement, Canada will transfer monies directly to the Claims Administrator to provide for payment of all approved claims for Day Scholar Compensation Payments. Deloitte will work with Canada's representatives to establish a process for this transfer which is safe, effective, and efficient, so that successful claimants receive payment quickly.

Reporting

21. Deloitte will report to the parties on a monthly basis respecting claims received and determined, and to which Residential Schools the claims relate.

22. Deloitte will also prepare financial statements, reports and records as required and when requested by the Court.

Privacy and data security

23. Deloitte uses industry standard physical, electronic, and procedural systems and processes to preserve the privacy of all of the information that claimants provide when submitting a claim. These include technological security measures such as firewalls, multi-factor authentication, end-to-end encryption, and anti-virus software.

24. Deloitte maintains network servers in data centres that employ a variety of industry-accepted procedures and tools to safeguard those portions of the network and servers within the data centres. Deloitte routinely backs up data that is maintained on Deloitte network servers and has processes to store back-up media off-site.

25. In accordance with the Settlement Agreement, within two years of completing the distribution of Day Scholar Compensation Payments, Deloitte will destroy all claimant information and documentation in its possession, unless a claimant specifically requests the return of such information within the two-year period.

Lessons learned

26. Deloitte has previously been appointed as claims administrator in another settlement of a class action involving "Indigenous children, the *McLean* Indian Day Schools Class Action Settlement (the administration of which currently ongoing). It has been an honour and a privilege to act as part of these matters, and to support Indigenous people as they seek compensation for the experiences that they endured.

27. Our experiences acting as claims administrator in these previous cases have allowed our team at Deloitte to develop some useful best practices which are geared toward resolving challenges experienced by claimants. They have also highlighted some challenges with the implementation and administration of these previous settlements, including demonstrating areas for improvement in Deloitte's processes and performance.

28. In advance of the parties' decision to jointly propose Deloitte's appointment as Claims Administrator, I and other members of the Deloitte team met with members of the Class Counsel

team and counsel for Canada to discuss several matters, including this issue of lessons learned. In advance of that meeting, I provided counsel for the parties with the copy of a summary document regarding these issues, a copy of which is attached as **Exhibit "D"**. We reviewed this document, and had a lengthy, frank discussion about its contents, as well as our thoughts on further specific improvements which could be made in the administration of the settlement in this action.

29. Our commitment to implementing these lessons learned has also guided our work thus far in supporting counsel in this action. For example, we have emphasized to counsel that the Claim Form and Estate Claim Form need to:

a. be written in plain language, with minimal complicated legal language;

b. include clear indications of which information will be shared with which audience (for example, ensuring that claimants understand that the information about Residential School attendance will be shared with Canada for purposes of claim assessment, but that the banking information is only requested for purposes of making payment, and therefore will not be shared with Canada); and

c. provide discussion of common points of confusion or errors – for example, explaining who the Claims Administrator is and what their role is, explaining how to correct errors or submit additional information, providing instructions about what to do if information is unknown or uncertain and indicating where guesses or estimates are sufficient, and so on.

All of these points listed above reflect issues we have encountered in the past, such as claimants being concerned that their banking information will be shared with Canada, or claimants being confused as to Deloitte's role/involvement.

Deloitte's fees

30. The Settlement Agreement dictates that the Claims Administrator's costs will be paid entirely by Canada. If appointed, Deloitte will provide the parties, in advance of the Implementation Date, with a proposed fee structure that will include a breakdown of fixed fees for the costs of, among other things, building program components and variable fees dependent on how many claimants submit claims.

SWORN by Joelle Gott at the City of Toronto, in the Province of Ontario, before me on August 25, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:
Nancy Amaya
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Commissioner for Taking Affidavits (or as may be)

NANCY AMAYA

Nancy Josefina Amaya, a Commissioner, etc.,
Province of Ontario, for Waddell Phillips Professional Corporation,
Barristers and Solicitors. Expires August 3, 2024.

DocuSigned by:
Joelle Gott
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JOELLE GOTT

This is **Exhibit "A"** referred to in the Affidavit of Joelle Gott, sworn at the City of Toronto, in the Province of Ontario, before me on August 25, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

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Nancy Amaya
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Commissioner for Taking Affidavits (or as may be)

NANCY AMAYA

Nancy Josefina Amaya, a Commissioner, etc.,
Province of Ontario, for Waddell Phillips Professional Corporation,
Barristers and Solicitors. Expires August 3, 2024.

Our Work Serving Indigenous Clients

We provide a Wide Variety of Services for Indigenous clients

Since the creation of our Indigenous Client Services group in 1990, Deloitte has supported Indigenous clients in various forms, either directly, or indirectly (i.e. through Federal and Provincial governments and through work with corporate clients). We have conducted significant work where the ultimate outcome was the increase in capacity and independence of the First Nations. Through this work, we have had to reach out to members through community consultation processes, leveraging all available sources to identify and locate deceased First Nation members, members living outside of reserves, unknown members.

Federal and Provincial Governments

- Review of federal programs for Indigenous and Northern Affairs Canada and Health Canada FNIHB (e.g., Nutrition North, First Nations Child and Family Services Program, Urban Aboriginal Strategy Programs
- Special audits for Provinces (e.g., Alberta Indigenous Relation FNDF, Ontario Works social assistance)
- Audits of Contribution agreement funding
- Forensic audits, investigations and disputes

Indigenous Government Organizations

- Financial audits – Assembly of First Nation (AFN), National Indian Brother Trust Fund
- Assistance in development of Trusts
- Assistance in development, implementation and oversight of Indigenous procurement strategies, employment strategies, performance measurement
- Assistance in the negotiation of modern-day treaties
- Assistance with the provision of training on various financial and non-financial topics

First Nations, Settlements and Hamlets

- Financial audits
- Operations reviews
- Financial and non-financial Governance support
- Support in the negotiation of Impact Benefit Agreements (IBAs) and the following implementation and oversight
- Specific claims quantification
- Development and administration of Trusts
- Strategic advisory on real estate
- Tax advisory

Deloitte has demonstrated experience working with all aspects of Indigenous issues. Our experience is not limited to a single type of work, a single type of client, or a specific geography. We have the breadth and depth to deliver complex engagement dealing with Indigenous people with a proven track record of achieving positive results.

Our Work Assisting Indigenous Clients

We Work with all Types of Indigenous Groups in Canada

Our work with Indigenous clients is broad both in terms of geographical locations (coast-to-coast including remote communities) and the type of clients we work with (First Nations, Métis and Inuit). Below is a selection from the more than 250 Indigenous clients we have worked with.

First Nations

National Organizations
- Assembly of First Nations
- First Nations Financial Management Board
- Chiefs of Ontario
- National Aboriginal Capital Corporations Association
- National Indian Brotherhood Trust
- Ontario Federation of Indigenous Friendship Centres

First Nations and Tribal Councils

Alberta
- Athabasca Chipewyan First Nation
- Blood (Kanai Nation)
- Erminsekin Band Enterprises
- Frog Lake First Nation
- Louis Bull Band
- Mikisew Cree First Nation
- Piikani Nation
- Saddle Lake Cree Nation
- Siksika Nation
- Tsuut'ina Nation

British Columbia and Yukon
- Doig River First Nation
- Gitxsan Nation
- Kaska Dena Council
- Kwanlin Dun
- Lax Kw'alaams Band
- Lil'wat Nation
- McLeod Lake Indian Band
- Musqueam Indian Band
- Nanaimo First Nation
- Squamish Nation
- Stone Indian Band
- Treaty 8 Tribal Association
- Tsawwassen First Nation

Manitoba
- Lake St. Martin First Nation
- Norway House Cree Nation
- Peguis First Nation

Maritimes
- Eskasoni First Nation
- Kingsclear First Nation
- Miawpukek First Nation
- Tobique First Nation
- Woodstock First Nation

Ontario
- Chippewas of Kettle and Stony Point
- Chippewas of Rama First Nation
- Hiawatha First Nation
- Mississaugas of Credit First Nation
- Mohawks Council of Akwesasn
- Six Nations of the Grand River

Quebec
- Abitibiwinni First Nation
- Atikamekw Nation
- Bande des Innus de Pessamit
- Eagle Village First Nation – Kipawa
- Innu Takua Uashat Mak Mani-Utenam
- Kitigan Zibi Anishinabeg
- Long Point First Nation
- Nation Huronne-Wendat
- Timiskaming First Nation

Saskatchewan
- Chakastaypasin Band
- Lac La Ronge First Nation
- Peepeekisis Cree Nation
- Peter Ballantyine First Nation
- Peter Chapman Band
- Prince Albert Grand Council

Métis

- Alberta Métis Settlement Transition Commission
- Manitoba Métis Federation
- Métis Nation of Ontario
- Métis Nation – Saskatchewan
- Métis Provincial Council of British Columbia
- Métis Voyageur Development Fund

Inuit

- Inuit Tapiriit Kanatami
- Kitikmeot Inuit Association
- Nunatsiavut Government
- Nunatsiavut Marine
- Nunavut Tunngavik Inc.
- West Baffin Eskimo Cooperative

This is **Exhibit "B"** referred to in the Affidavit of Joelle Gott, sworn at the City of Toronto, in the Province of Ontario, before me on August 25, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:
Nancy Amaya
83B71B7825984B8...

Commissioner for Taking Affidavits (or as may be)

NANCY AMAYA

Nancy Josefina Amaya, a Commissioner, etc.,
Province of Ontario, for Waddell Phillips Professional Corporation,
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Appendix B: Our Expertise and Qualifications

Our Expertise and Qualifications

Selected Experience Summary

Deloitte has extensive experience in multiple key areas, which include public sector, class action administration, matters with regard to Indigenous Peoples, due diligence and investigative research, and information technology. These areas will all be essential to meeting the needs of all parties involved with this class action. Below we highlight some of our relevant experience and indicate the key activities for each.

Experience	Matter involving Abuse	Class Action Administration	Indigenous Peoples	Investigative / Due Diligence	Information Technology
Indian Day Schools Class Action • Appointed by the Federal Court of Canada as the Claims Administrator of a multi-billion-dollar landmark settlement for harm and abuse incurred on students of a Federal Indian Day School. • Host and maintain a bilingual call center and a web portal to disseminate the Claim Form and other information. • Assembled a bilingual team to intake, review and reconcile supporting evidence/documentation to determine eligibility, a well as adjudicate in accordance with the Harms Grid and issue payment based on the level of harm. • Prepared and made payments from a Trust Fund	✓	✓	✓	✓	✓
Royal Canadian Mounted Police ("RCMP") – Tiller Class Action • Appointed by the Federal Court of Canada as the Claims Administrator in this settlement for injury resulting from gender and sexual orientation-based harassment and discrimination within the RCMP. • Currently administering this matter, with a dedicated bilingual call center and webpage for Claimants. • Claim forms are provided online and may be submitted via Mail, Fax and electronically uploaded • Assembled a team of bilingual (French and English) to intake, review, adjudicate and reconcile supporting evidence/documentation to determine eligibility and level of payment to be made.	✓	✓		✓	✓
LGBT DND Purge Settlement Class Action • Appointed by the Federal Court of Canada as the Claims Administrator of the $110 million settlement in Todd Edward Ross, Marine Roy and Alida Satalic v. Her Majesty the Queen class proceeding pertaining to the LGBT Purge. • The action related to those individuals directly affected by the official policies of the Canadian Armed Forces, the Royal Canadian Mounted Police, and the Federal Public Service which led to the investigation, sanction, and in many cases, sexual and physical assault as well as discharge or termination on the basis that one was unsuitable for service or employment due to one's sexual orientation, gender identity or gender expression. • This matter is currently wrapping up. Deloitte was responsible for managing and adjudicating claim submissions, trust fund administration and distribution of payments, operating a contact centre, liaising with Defendant and Plaintiff Counsel, reporting to the Parties, the Exception Committee and the Court, as well as the Assessor through our proprietary claims management system. Deloitte also managed the issuance of Individual Reconciliation Measures including citation letter, apology letter, file notation and provision of claimant's permanent records.	✓	✓		✓	✓

Our Expertise and Qualifications

Selected Experience Summary

Experience	Matter involving Abuse	Class Action Administration	Indigenous Peoples	Investigative / Due Diligence	Information Technology
Indigenous Communities Trust Administration – Various Trusts • Currently working with 20 First Nations Trusts across Canada as either Trust Administrator or as advisor in their Trust structuring. This includes communication with their members and seeking member input on Trust structuring, Trust operations and community priorities. • Collaboration with Chief and Council, Nation Trustees, ISC/CIRNAC, and provincial ministries on Trust program and project opportunities to improve the lives of the First Nation members. • Provide financial and/or trust training to community members and/or Nation Trustees. • Developing trust programs and eligibility criteria to best meet the community or beneficiary needs. Due diligence and governance processes implemented for making economic development business investment decisions.			✓		
Royal Canadian Mounted Police ("RCMP") Long Term Disability Settlement • Retained by the Treasury Board of Canada and the Department of Justice to monitor a $70 million class action settlement related to benefit payments for past RCMP members. • Developed onsite and remote testing process to verify the recalculation of the benefit payments and its validity with regard to the terms of the settlement. • Assisted an independent adjudicator in the resolution of calculation disputes.		✓		✓	✓
Northern Ontario Heritage Fund Corporation – Various • Evaluation of applications for funding, which included a complete array of due diligence activities, ranging from background checks to financing and procurement bids. • Processing of disbursements based on program rules and the applicants' expenditure claims. • Monitored long-term projects and applicants' ability to meet funding agreement requirements. • Interacted directly with applicants and related parties, including Indigenous parties in the North, to verify and retain the necessary information.		✓	✓	✓	
Christian Brothers of Ireland in Canada ("CBIC") Settlement and Liquidation • Appointed by the Superior Court of Justice of the Province of Ontario to be the Provisional Liquidator for the claims against CBIC pertaining to a number of child abuse allegations from former residents of the Mount Cashel Orphanage. • Executed advertisements for claims as part of notification process. • Registered claim submissions for tracking purposes and scanned supporting documentation. • Reviewed and assessed declaration of claims for eligibility.	✓	✓		✓	

Our Expertise and Qualifications

Selected Experience Summary

Experience	Matter involving Abuse	Class Action Administration	Indigenous Peoples	Investigative / Due Diligence	Information Technology
Canadian Forces Veterans' LTD Benefit Settlement • Appointed by the Federal Court to monitor the administration of an $888 million class action, which involved former members of the Canadian Forces whose long-term disability benefits were reduced dating back to 1976. • Reviewed and monitored the benefit provider's process for identifying class members, determining eligibility for benefits, and calculation of benefit entitlements.				✓	
Hormone Replacement Therapy Breast Cancer Class Action Settlement • Appointed by the Supreme Court of British Columbia as the Claim Administrator of a pharmaceutical matter involving hormone replacement therapy drugs. • Assembled a specialized team to facilitate the review of supporting medical documentation and the determination of class member eligibility. • Recalculated the benefit entitlement of applicants under the terms of the settlement.	✓	✓		✓	✓
Transamerica Life Excess Management Fee Settlement • Appointed by the Ontario Superior Court of Justice to monitor, support, and report on the administration of a bilingual class action settlement. • Assisted in the design and implementation of a bad address resolution process to ensure cost effective search efforts was undertaken to address returned mail terms. • Responded to escalated inquiries from affected policyholders and provided regular reports to the Court and Parties.		✓		✓	
Dow Corning Breast Implant Class Action Settlements • Deloitte was appointed to administer two distinctly different Dow Corning class action settlements. • Both engagements required 7 years to distribute approximately US$62M in settlement proceeds to eligible Class Members. • With dedicated teams in Montreal and Vancouver, we evaluated complex medical claims for patients implanted with silicone gel. • A tiered benefit matrix was used to compensate Class Members in accordance with the severity of their medical condition. • Responsible for claim submissions from all provinces with the exception of Ontario. • Reported to Settlement Class Counsel, Counsel for the Defense, and the Superior Court of Quebec and Supreme Court of British Columbia.	✓	✓		✓	✓

This is **Exhibit "C"** referred to in the Affidavit of Joelle Gott, sworn at the City of Toronto, in the Province of Ontario, before me on August 25, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:
Nancy Amaya
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Commissioner for Taking Affidavits (or as may be)

NANCY AMAYA

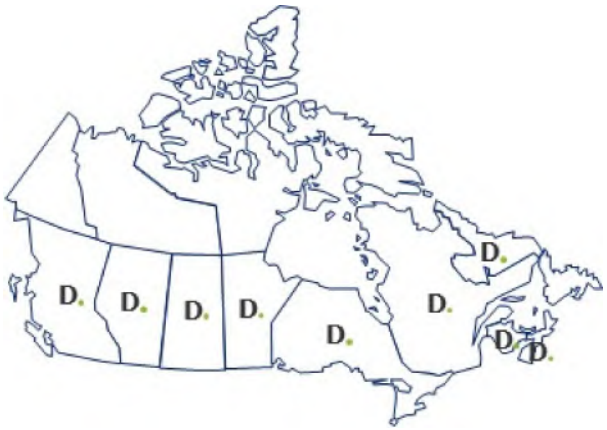
Nancy Josefina Amaya, a Commissioner, etc.,
Province of Ontario, for Waddell Phillips Professional Corporation,
Barristers and Solicitors. Expires August 3, 2024.

Appendix A: Our Dedicated Team and Resources

Our Dedicated Team and Resources

Our National Reach and Reputation

Our client service objective is to be more than just your service provider; our vision is to be your most sought after business advisor. In 2010, Deloitte became the single largest professional services organization in the world. Deloitte is also the largest firm in Canada with more than 11,900 people in 29 offices providing audit, tax, consulting and financial advisory services. This gives our clients even greater access to global resources as required, and enables us to make larger investments in new markets and innovation to your benefit.



In addition, programs in Canada, like our 50 Best Managed Companies and Fast 50 Programs expand our reach and connection to the brightest and best minds in the business world. The firm is dedicated to helping its clients and its people excel. Our professionals have been developing effective business solutions and innovative performance improvements for Canadian and international organizations for more than 150 years.

Key Facts and Figures

- 985 Partners
- 10,900 Professionals
- 11,900 Total People
- 29 Locations

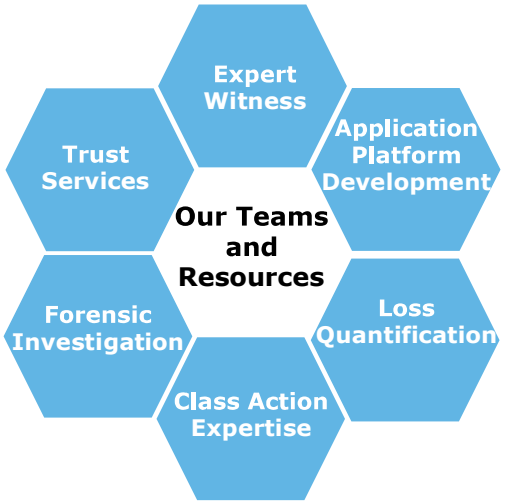
Our Repertoire

Our Public Sector Class Actions

- Indian Day Schools Class Action (Indigenous / Child Abuse)
- RCMP – Tiller Class Action (Sexual Abuse)
- LGBT Purge Settlement Class Action (Sexual Harassment)
- Christian Brothers (Child Abuse)

Deloitte has considerable experience in class action and administration matters with over **$2 billion** in claims managed. We have the infrastructure and resources to effectively administer class action claims of any size, in multiple jurisdictions, and in both official languages. We combine national coverage with international capabilities; a cross functional team approach with in-depth claims management expertise; and a personal commitment to service with technical excellence.

Whether the situation merits design and oversight services or more comprehensive claims processing, Deloitte's extensive experience in claims administration makes us a valuable ally in providing cost effective solutions to complex claims related situations.



Our Dedicated Team and Resources

Lead Engagement Team

	Public Sector	Class Action Administration	Indigenous Peoples	Investigative / Due Diligence	Information Technology
 **Alnoor Nazarali | Director Grants and Loans Portfolio Services** Alnoor is a Director in our Financial Advisory Services group with several years' experience in Loan and Lease Portfolio Management and Claims administration. He has significant expertise in loan servicing on different system platforms, fast conversion turn around, and complex investor reporting with links/bridges to clients' own systems. Alnoor is the Lead Director for Process and Systems for the Indian Day Schools Class Action settlement.	✓	✓	✓	✓	✓
 **Joelle Gott | Partner Grants and Loans Portfolio Services** Joelle leads Deloitte's national Grant & Loan Portfolio Services Practice, which deals with matters ranging from credit due diligence to grants & loans administration and monitoring. In addition, Joelle brings 15 years of experience relating to litigation advisory services, specializing in economic damages quantification, valuation advisory and accounting standards and practices. Joelle has led several class actions where Deloitte was engaged to perform a range of services with respect to class action administration in private and public sector, with matters ranging from adjudicating on compensation in accordance with a harms grid to calculation of financial losses as a result of system errors or breach of privacy. Joelle is Lead Partner for Deloitte's appointment as Administrator for the Indian Day Schools Class Action settlement. ***Joelle is on the Board of the Métis Voyageur Development Fund.***	✓	✓	✓	✓	
 **Guillaume Vadeboncoeur | Partner Forensic Services** Guillaume is a Partner in our Financial Advisory Services group with over 20 years experience in forensic and investigative accounting. He is a federal public sector specialist, having been involved in several large high-profile engagements (Gomery Inquiry, Senate investigation, investigations resulting form the Charbonneau Inquiry, etc.) and bringing a wealth of experience in leading and managing these large-scale engagements. Guillaume is also a specialist on Indigenous-related matters, having been the Deloitte Indigenous Client Services Eastern Canada lead for more than five years. In this role he has worked with numerous First Nations, Métis and Inuit organizations, and has personally visited more than 60 First Nations, Métis settlements and Inuit hamlets, specializing in settlement of claims and the development and administration of Indigenous trusts. Guillaume is the quality assurance Partner for Deloitte's appointment as Administrator for the Indian Day Schools class action settlement.	✓	✓	✓	✓	✓

Our Dedicated Team and Resources

Advisory Partners and Subject Matter Experts

	Public Sector	Class Action Administration	Indigenous Peoples	Investigative / Due Diligence
 **Phil Reynolds | Partner Restructuring Practice** Phil is the National Co-Leader of the Restructuring practice at Deloitte. Phil is the former National Leader of the restructuring practice of a competing firm. Over the course of his career, Phil has lead numerous large, profile restructuring engagements ranging from strategic Board advisory to formal insolvency proceedings. He has lead cases involving large public companies with global operations. Phil has advised numerous stakeholders in situations of distress including lenders and regulators, but focusses on working with corporations. Phil has routinely led cross-border insolvency proceedings in numerous countries outside of Canada.	✓		✓	✓
 **Jolain Foster | Partner Prairies Leader, Indigenous Client Services** Jolain is a Partner who leads Deloitte's Prairies Indigenous Client Services. She works directly with Indigenous communities and businesses to develop and improve community and organizational strategic planning, governance, and operations. Jolain has over 20 years of experience in executive leadership roles working with Indigenous clients, industry, academia, and the public sector to advance and promote mutually beneficial policies, practices, and innovative agreements. Jolain is part of the Indian Day Schools Class Action team. ***Jolain is a member of the Gitxsan and Wet'suet'en First Nations.***	✓	✓	✓	✓
 **Zoia Petrossian | Senior Manager Grants and Loans Portfolio Services** Zoia is a Senior Manager in the Grants and Loans Portfolio Services of our Financial Advisory practice. Zoia has worked on a number of class actions engagements that involved planning, claims review, team oversight and reporting. Zoia is a CPA, CA with experience providing in Audit and Assurance engagements that include advisory services on finance transformation projects, as well as public company audits of large scale mining operations in Canada and the US. Zoia is the lead Senior Manager for the Indian Day Schools Class Action settlement.	✓	✓	✓	✓
 **Fiona Kirkpatrick Parsons | National Advisor / kā-nīkānīt*, Deloitte Indigenous** Fiona is National Advisor with Deloitte Indigenous, co-leading the firm's Indigenous marketplace strategy and is a passionate champion of Deloitte Canada's Reconciliation Action Plan, the first of its kind in corporate Canada. Prior to her current role, Fiona led the marketing team for Deloitte's Atlantic practice and spearheaded Deloitte Canada's initial steps toward reconciliation, advocating for the establishment of the firm's first of what would later become six Downie Wenjack Legacy Spaces. Fiona is involved in the management of Deloitte Public Relations and Media Communications for the Indian Day Schools Class Action settlement. ***Fiona a proud nehithaw-iskwew (Woodland Cree woman) and member of Lac La Ronge First Nation. *Translation: kā-nīkānīt means "the one in front" in Woodland Cree***	✓		✓	

This is **Exhibit "D"** referred to in the Affidavit of Joelle Gott, sworn at the City of Toronto, in the Province of Ontario, before me on August 25, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:
Nancy Amaya
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Commissioner for Taking Affidavits (or as may be)

NANCY AMAYA

Nancy Josefina Amaya, a Commissioner, etc.,
Province of Ontario, for Waddell Phillips Professional Corporation,
Barristers and Solicitors. Expires August 3, 2024.

Indigenous Class Actions: Lessons Learned & Best Practices

Indian Day Schools Class Action

Our experience and best practices

The Indian Day Schools Class Action Settlement offers compensation for all people who attended an Indian Day School, established, funded, controlled and managed by the Government of Canada. It is estimated that close to 200,000 First Nations, Inuit, Métis and non-status Indian children attended a federally operated Indian Day School. Many students who attended these schools experienced trauma and sadly, in some cases, physical and sexual abuse at the hands of persons entrusted with their care.

In an effort to reduce the burden on the Survivors, the IDS claim form and claims process were designed to allow for a simplified submission and review process.

As the Claims Administrator, in accordance with the Settlement Agreement, Deloitte developed and implemented all required systems, guidelines and procedures for claim submission processing, adjudicating and issuing payments. Deloitte developed best practices and adjust our approach to resolve challenges by Claimants and communities , while operating within the parameters of the Settlement Agreement.

Best practices established, that may bee applicable to the Day Scholars Action are as follows:

- Identify and direct claimants promptly, with easily accessible direction / resources to mental health and cultural support services, as well as crisis intervention services.
- Incorporate required education/sensitivity training of all team members, with materials developed by Deloitte Indigenous, as part of Deloitte Canada's Reconciliation Action Plan, including *Four Seasons Learning* offered though First Nations University of Canada
- Partner with Indigenous service providers, with prior experience on such matters, for our contact centre and to facilitate outreach.
- Develop detailed informational guidelines for Claimants in order to address process questions via detailed FAQs available to claimants on our website and contact centre.
- Provide input during the development of the Claim Form to ensure simple and accessible process for all claimants, with claim form made available on the website or delivered to claimants by mail upon request.
- Provide updates regarding process milestones on our website, anticipating where additional clarity may be required to explain to claimants their options and next steps. Provide claim numbers/statistics on the status of the claims processed for transparency, trust of the claimant class - with respect to claim receipt and adjudication.
- Involve/consult with mental health experts in the adjudication process.
- Rely on Indigenous POA/Will/Estate experts to manage complex estate and/or POA matters involving Family Class Members.

Challenges faced by IDS Claimants:

- Claimants have found it difficult to self-identify the level of harm they experienced/suffered from the Claim Form harm grid.
- Missing or incomplete claimant information (e.g., address, ID, signatures), that may be remedied with an online claim process.
- Claimants do not have access to records or documents to support their claims and primarily rely on the attestation process.
- Claimants benefit from support networks and materials (Class Counsel, Administrator Call Centre, FAQs, instructional videos, community visits etc.) that assist them in understanding the detailed steps involved in the claims process and anticipating next steps for their claim.
- We may provide more details upon request.

TAB 12

Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL~~, AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

AFFIDAVIT OF ROANNE ARGYLE
(Motion for Settlement Approval)

I, Roanne Argyle, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Senior Vice President, Corporate & Public Affairs, at ACI Argyle Communications Inc. ("Argyle") and, as such, have knowledge of the matters to which I hereinafter depose. Where the matters referenced in this affidavit are based on information I have received from others, I have stated the source of the information, and believe such information to be true.

2. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement executed June 4, 2021 (the "Settlement Agreement"), which will, if approved, resolve the claims of the Survivor and Descendant Class Members in this class action.

3. Pursuant to the Order of Justice McDonald, dated June 10, 2021, Argyle was appointed by the Court to act as Notice Administrator and to carry out the functions set out in the Plaintiffs' plan for dissemination of the Notices of Proposed Settlement and Settlement Approval ("Notices") (the "Notice Plan").

4. In accordance with the Notice Plan, and in cooperation with Class Counsel, Argyle:

a. created an updated www.justicefordayscholars.com website ("Day Scholars Website") to publish the Notices and to provide additional information regarding the Settlement Agreement and settlement approval motion hearing, which was launched in English on June 7, 2021, and in French on June 21, 2021;

b. continued to update the Day Scholars Website as necessary and appropriate;

c. translated and published the Notices in James Bay Cree, Plains Cree Ojibwe, Mi'kmaq and Inuktitut on June 19, 2021 and in Dene on June 29, 2021 on the Day Scholars Website;

d. facilitated a series of informational webinars (4 in English; 2 in French) which were conducted by Class Counsel and made open for attendance by all Survivor and Descendant Class Members, between June 28 and August 3, 2021, and published recordings of the informational webinars on the Day Scholars Website;

e. distributed a press release announcing the Settlement Agreement via a National newswire on June 7, 2021, and an Indigenous newswire in Indigenous languages

(Dene, Inuktitut, James Bay Cree, Plains Cree, Mi'kmaq, Ojibway) on June 28, 2021;

f. conducted outreach to national and regional journalists and outlets known to cover Indigenous issues and serve Indigenous audiences, throughout the Notice Period;

g. placed media advertisements (including ads on Facebook and YouTube, Google search ads, ads on Indigenous news site websites and other commonly visited websites for the target demographic, and radio and print ads targeting regions with lower internet penetration), which were published throughout the Notice Period;

h. developed and disseminated community outreach kits (including posters, information cards, social media posts, and postcards) for Indigenous communities and organizations (including Band Offices, Friendship Centres, Indigenous health centres, and so on), throughout the Notice Period;

i. on July 26, 2021, distributed the short-form Notice by regular mail to 3,277 individuals who registered themselves as putative Survivor Class Members with Class Counsel; and

j. created and maintained a "Justice for Day Scholars" group on Facebook, to disseminate news and information regarding the Settlement Agreement and settlement approval motion hearing, which was launched on June 21, 2021.

5. Further information regarding Argyle's efforts, including statistical outcomes, are set out in the Proposed Settlement Notice Plan Report dated August 9, 2021, attached as **Exhibit "A"** to this affidavit. Some key metrics detailed in the Report include:

a. since the Day Scholars Website was updated to include information regarding the Settlement Agreement, there have been 11,415 unique visitors;

b. 258 people registered for and received the webinar presentation materials, 58 people attended the informational webinar series live, and the recorded webinar sessions posted on the Day Scholars Website have been viewed 48times in total;

c. the Settlement Agreement has been publicized in 226 media stories across Canada, with a total potential reach of over 222 million;

d. the total number of impressions of the online ads placed is believed to be 6.6 million;

e. 1,700 radio ads were placed in total, which stations located in 13 communities across British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Yukon Territory, and the Northwest Territories;

f. the total circulation of print ads placed is believed to be 226,000;

g. community outreach kits were sent to 357 Indigenous organizations;

h. 6141 postcards were mailed in the postcard drop;

i. 281 individuals are followers of the "Justice for Day Scholars" Facebook group; and;

j. the short-form Notice was successfully delivered by mail to 3,017 putative Survivor Class Members who registered with Class Counsel (I am advised by Class Counsel that, as of August 18, 2021, 260 of the mailed Notices were returned to sender).

6. Between August 9 (the date of the Report), and August 20 (the official end of the Notice Period), 2021, the Argyle team continued many of the above activities, including updating the Day Scholars Website and the "Justice for Day Scholars" Facebook group, continuing to run ad placements, and following up with Indigenous organizations regarding the community outreach kits.

7. I am advised by the Class Counsel team that, since the proposed settlement was first announced to the public on June 7, 2021, they have been contacted by hundreds of putative Class Members by phone, email and mail regarding the Settlement Agreement or settlement approval notice hearing, and that they have responded to every single one of these inquiries.

8. Although the official Notice Period has ended, Argyle continues to carry out certain functions to serve Class Members and the Public, including updating the Day Scholars Website and the "Justice for Day Scholars" Facebook group with more information regarding the Settlement Agreement and settlement approval motion hearing, as necessary and appropriate.

9. This affidavit is sworn in support of the Plaintiffs' motion for approval of the Settlement Agreement, and for no other or improper purpose.

SWORN by Roanne Argyle at the City of Toronto, in the Province of Ontario, before me on August 23, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:
Nancy Amaya
83B71B7825984B8...

Commissioner for Taking Affidavits
(or as may be)

NANCY AMAYA

Nancy Josefina Amaya, a Commissioner, etc.,
Province of Ontario, for Waddell Phillips Professional Corporation,
Barristers and Solicitors. Expires August 3, 2024.

DocuSigned by:
Roanne Argyle
952AEC7726B04DB...

ROANNE ARGYLE

This is **Exhibit "A"** referred to in the Affidavit of Roanne Argyle, sworn at the City of Toronto, in the Province of Ontario, before me on August 23, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:
Nancy Amaya
83B71B7825984B8...

Commissioner for Taking Affidavits (or as may be)

NANCY AMAYA

Nancy Josefina Amaya, a Commissioner, etc.,
Province of Ontario, for Waddell Phillips Professional Corporation,
Barristers and Solicitors. Expires August 3, 2024.

RESIDENTIAL SCHOOL DAY SCHOLARS

NOTICE REPORT

August 9, 2021

TABLE OF CONTENTS

INTRODUCTION

This report highlights all the notice distribution activities undertaken as part of the *Gottfriedson* Residential Schools Day Scholars Notice Plan. The reporting period is June 7 to August 9, 202, but notice distribution tactics are still in progress for the remainder of the notice period and leading up to the settlement approval hearing on September 7.

In accordance with the Court's order, we undertook a national, integrated communications campaign to inform as many Survivor and Descendant Class Members as possible of the proposed settlement and their rights related to it. The objectives of this campaign were:

- To raise awareness of the proposed settlement amongst Survivor and Descendant Class Members.
- To grow understanding of what the Settlement Agreement says and what it could mean for Survivors, Descendants and their families.
- To inform individuals of their rights and how they could participate in the settlement approval process if they would like to (i.e., tell the court whether they think the settlement is fair, reasonable, and in the best interest of the Survivor and Descendant Classes).

Our communications activities included media coverage, paid traditional advertisements, paid digital advertisements, webinars, an ongoing organic social media strategy, direct community outreach and mail drop, direct mailing of the short-form notice, and updates to the Justice for Day Scholars website (www.JusticeForDayScholars.com).

PERFORMANCE SUMMARY

TACTIC	KEY METRICS
Media coverage	226 stories, overall reach of 222 million readers
Paid traditional advertisements	226,000+ placements in Indigenous newspapers; 1,700 radio spots with airtime on 13 Indigenous radio stations across the country; 2.6 million impressions on premium websites
Paid digital advertisements	4,004,145 impressions, 325,220 individuals reached
Webinars	6 webinars held, 258 total registrants, 58 total attendees
Ongoing organic social media	281 followers, 2,821 users reached, 214 engagements generated on organic content
Direct outreach and mail drop	Direct outreach: 357 organizations, nations and communities contacted Mail drop: postcards sent to 6141 households, across 11 communities
Direct mailing of notice	3,277 notices mailed to Survivor and Descendant Class Members

Website	14,458 total sessions, 26,630 pageviews

MEDIA COVERAGE

To help raise broad awareness, Argyle prepared a proactive media outreach strategy that launched on June 7, 2021. The strategy included press release distribution via national and Indigenous newswires in English, French, Mi'kmaq, Ojibway, James Bay Cree, Plains Cree, Inuktitut, and Dene as well as proactive outreach to national and regional journalists/outlets that cover Indigenous issues and serve Indigenous audiences. Argyle's support also included day-of handling of media inquiries and coordination of interviews with spokespeople. We also reviewed all published articles and followed up with journalists with any corrections of inaccuracies.

In addition to a press release, we developed additional materials (e.g., media FAQ) that helped to shape factual and contextualized reporting.

In addition to proactive media engagement around the announcement, Argyle is currently developing a plan to manage media interest in the lead up to and during the settlement approval hearing. The plan will ensure that any journalists covering the hearing have accurate and factual information about the settlement agreement to ground their reporting during the hearing period.

- There were **36 original articles** written about the Residential School Day Scholars settlement, with an additional **190 story syndications**: totalling **226 media stories**.
- The stories generated a **total reach of over 222 million**, inclusive of syndications.
- The stories with information about the Residential School Day Scholars settlement were initially sent to over **100 journalists** over the span of 2 months.
- Following the phase one announcement and syndication of the press release, we targeted pitching areas with "Schedule E" residential schools with Day Scholars that did not gain coverage. This included 10 outlets in Northern Canada and Manitoba.
- A second round of outreach was conducted to provide media with updated information about the settlement approval hearing. The update was pitched to **50 top-tier national and regional media outlets**.

Full list of coverage can be found in Appendix A. Reporting is representative of June 11-August 9, 2021.

PAID TRADITIONAL ADVERTISEMENTS

A paid traditional advertising campaign was developed to reach potential Survivor and Descendant Class Members through radio, print, and digital display ads in their communities and news outlets that they frequent. Geographical considerations were taken to ensure that we were targeting individuals across Canada, but were also based on the locations of the "Schedule E" residential schools. Specific postal code "FSA"-, *(the first 3 digits of a postal code)* targeting was implemented for paid advertisements on premium websites.

Time in market:

- Radio ads were in market between July 5-August 15.
- Display ads on premium websites such as APTN, The Weather Network, and CBC Indigenous; print ads were in Indigenous newspapers between July 8-August 15.

- Digital ads in Indigenous e-newsletters were in market between July 12-August 9.
- Print ads were in market between July 8-August 15.

Selected newspapers: Ha-Shilt Sha, Alberta Native News, Eagle Feather News, Grassroots News, Wawatay News, News North NWT and Indian Country (US e-newsletter).

Additional display ads with a new Call-To-Action will be run between August 21-September 5 in the lead up to the settlement approval hearing.

- Overall reach: national reach through an estimated total circulation of **226,000+ in Indigenous newspapers** reaching First Nations and urban Indigenous readers in combination with **1,700 radio spots** in airtime on **13 Indigenous radio stations** across the country.
- Overall impressions: estimated more than **2.6 million impressions on premium websites.**
- Combination of national/provincial reach and specific "FSA"-targeting based on locations of "Schedule E" residential schools.

PAID DIGITAL ADVERTISEMENTS

A paid digital advertising plan was created for placement on Facebook, YouTube, and Google Search to generate targeted awareness amongst potential Survivor and Descendant Class Members. Our strategy focused on these channels as we know that they are used heavily by Indigenous communities, e.g., Facebook which has an estimated audience of 720,000 individuals in Canada matching our target Indigenous demographic for this campaign and Google Search which has an estimated 36,000 searches per month for Indigenous Day School and similar class actions in Canada. The paid digital advertisements are, and will be, in market between June 21-August 31, 2021. The below metrics cover from June 21-August 9, 2021.

- **325,220 individuals reached**
- **4,004,145 overall impressions served**
- Paid search results – **6,425 clicks, 160,303 impressions, 4.0% Click-Through-Rate (CTR)**
- YouTube results – **1,266 clicks, 918,391 impressions, 0.13% CTR**
- Facebook results – **23,904 clicks, 2,925,451 impressions, 0.82% CTR**

The CTR on our Facebook ads match industry standards in this field. Our paid search CTR exceeds industry standards (the average is 2.5%).

WEBINARS

We developed a webinar strategy to help Class Counsel engage with Survivors and inform them of the settlement process and their ability to participate in the settlement approval hearing. Webinars focused on educating and preparing individuals to deliver their feedback on the settlement either through writing ahead of the hearing or in-person during the hearing.

Webinars were 1-hour in length with four English webinars and two French webinars, all conducted by Class Counsel. The webinars ran from June 28-August 4, were promoted through Facebook ahead of each session and the webinar schedule was posted on the Justice for Day Scholars website.

- **4 webinars delivered in English, 2 in French**
- **211 registrants/54 attendees in English, 47 registrant/4 attendees in French**
- **Overall average attendance rate of 18.8%**

Webinar materials including the presentation and a recorded version of both the English and French webinar were made available on the website. The webinar presentation was also sent directly to all registrants, regardless of whether they actually attended.

ONGOING OGANIC SOCIAL MEDIA

An ongoing organic social media plan was developed to ensure that Survivor and Descendant Class Members have access to accurate and accessible information through the social channels they frequent. This included the creation of an official Facebook page for settlement information, as well as the regular development and posting of informative content.

We also provided daily social media monitoring and ongoing community management for all social channels, responding to questions about the settlement (using pre-approved messaging) and correcting misinformation where appropriate.

- **9 organic posts published to date**
- **281 followers -** Nonpriority metric for campaign objectives, audience targeting is driven primarily through advertising placements
- **2,821 users reached** and **214 engagements generated** on organic content

DIRECT OUTREACH AND MAIL DROP

Beginning the week of June 21, we began our outreach to 357 Indigenous organizations, nations and communities across Canada to raise awareness of the settlement and how individuals could participate in the upcoming settlement approval hearing.

We focused our outreach on national and provincial organizations, Tribal Councils, communities where "Schedule E" residential schools were located, friendship centers, community organizations, and health centres. We focused on these types or organizations as they act as the primary information hubs of many communities and are a trusted voice for community members. As part of this direct outreach, we contacted all Bands on the opt-in list created by Class Counsel.

Organizations were contacted by either email, phone calls or mail with hardcopies of fliers and posters. The method of outreach was dependent on organizations' valid email addresses, accessible phone numbers and mailing addresses. Outreach efforts have been ongoing throughout the notice period beginning on June 25th.

In total, we contacted **357 organizations, nations and communities**.

- National organizations and provincial organizations: **12**
- Breakdown by province
  - Alberta - **65**
  - British Columbia – **74**
  - Manitoba – **36**
  - New Brunswick – **10**
  - Newfoundland and Labrador - **1**
  - Nova Scotia - **8**

    - Ontario – **75**
    - Prince Edward Island - **3**
    - Quebec – **26**
    - Saskatchewan – **35**
    - Northwest Territories – **17**
    - Yukon – **7**
- Breakdown by organization type:
    - Tribal Councils - 57
    - Friendship centres and associations - 53
    - Health and healing centres - 26
    - Social services and cultural organizations – 12
    - Educational, employment and training organizations – 8
    - Advocacy organizations – 5
    - Leadership organizations – 4
    - Housing organizations - 3
    - Senior centers - 2
    - Criminal justice organizations – 2
    - Child and family services – 2

For organizations that requested materials the following would be provided in either English or French:

- Day Scholar fact sheet
- Facebook image and accompanying copy
- Webinar information
- Newsletter and website copy
- Postcard
- Poster
- Short-form notice

In addition to the direct outreach to communities, we boosted grassroots awareness through a targeted postcard maildrop focused on the postal codes of remote, fly-in communities with limited internet access surrounding the list of schools on "Schedule E".

- General information postcards send to **6141 households**
- **11 communities**
    - Alberta-**1**
    - British Columbia-**2**
    - Manitoba-**3**
    - Northwest Territories-**2**
    - Ontario-**2**
    - Yukon-**1**

DIRECT MAILING OF NOTICE

The short-form notice and cover letter explaining the background of the settlement and where we were in the process was mailed directly to the database of Survivor and Descendant Class Members collected by Class Counsel. The short-form notice and cover letter were mailed in English and French the week of July 19th to all recipients.

- **3,277 notices mailed** to Survivor and Descendant Class Members.
  - BC: **263**
  - Alberta: **491**
  - Saskatchewan: **1119**
  - Manitoba: **137**
  - Ontario: 329
  - Quebec: 848
  - Nova Scotia: 1
  - Nunavut: **1**
  - NWT: 82
  - Yukon: **6**

This package was also made available in English and French on the Justice for Day Scholars website and Class Counsel followed up directly with members who requested materials in additional languages.

WEBSITE

The Justice for Day Scholars website (www.JusticeForDayScholars.com) was updated with new information and branding as it acts as a key "source of truth" for Survivor and Descendant Class Members regarding the settlement. It was redeveloped to be a hub for any resource relating to the settlement and to help people navigate the process. The website was updated regularly with newly created messaging and information.

Further, the website was optimized to improve the user journey and make information more accessible to site visitors. There were no analytics being tracked on the website prior to June 11, 2021. The below metrics cover from June 11-August 9, 2021.

- **11,415 visitors to date**
- **Average engagement time of 1m 21seconds**
- **26,630 total page views**

Insights

- The website has healthy engagement with recurring visitors which indicate that the audience is looking for news and updates.
- The home page and "Schedule E" Schools Lists are the top performing pages which indicate that the audience is looking to understand the settlement (majority of homepage content at time of launch) and who can apply.
- The paid social and referral traffic (media, and community websites) are high performers in supporting awareness and driving traffic to site.

Website analytics can be found in Appendix B. Analytics are representative of June 11-August 9, 2021.

APPENDIX A – MEDIA COVERAGE

Reporting is representative of June 11-August 9, 2021.

Source	Article	City	Province	Reach	Number of Syndications
APTN News	Proposed settlement for day scholars of residential schools to go before judge in September	Winnipeg	Manitoba	255,326	
CBC.CA News	Residential school 'day scholars' get notice of proposed settlement agreement	Edmonton	Alberta	6,902,366	2
Coast Reporter (Print Edition)	Steps forward and back	Sechelt	British Columbia	178,337	2
CBC.CA News	What the TRC report tells us about the Marieval Indian Residential School	Edmonton	Alberta	7,375,692	5
MSN Canada	'They made us believe we didn't have souls:' Marieval residential school survivor	Mississauga	Ontario	691,680	
The Guelph Mercury (Metroland Media Group)	Two hundred and fifteen Indigenous children: Yet another reckoning	Guelph	Ontario	93,369	
Toronto Star	Residential Schools Day Scholars reach settlement with government			999,256	4
InfoTel News	Kamloops bishop apologizes to families, communities affected by residential schools	Okanagan	British Columbia	376,322	
Toronto Star	This fight over compensation for First Nation kids has been raging for 14 years. On Monday it's back in court — amid calls for Canada to 'just do the right thing'	St. Catharines	Ontario	119,259	6
CBC Edmonton	'It's about time' to update citizenship guide, Assembly of First Nations Alberta chief says	Edmonton	Alberta	230,247	

NationTalk	Settlement reached on residential school day scholars class-action lawsuit – CBC	Toronto	Ontario	11,143	
Coast Reporter	Editorial: Justice for day scholars was hard-earned	Sechelt	British Columbia	178,337	
NationTalk	National Chief Yakeleya Responds to Residential Schools Day Scholars Survivor and Descendant Settlement Agreement Being Reached with Canada	Toronto	Ontario	11,143	
The Lawyer's Daily	Ottawa announces settlement in residential school day scholar class action	Toronto	Ontario	34,788	1
Yorkton This Week	Digital shift cushioned blow to post-pandemic growth outlook, BoC deputy says	Yorkton	Saskatchewan	21,823	
My Espanola Now	Settlement reached for day scholars of residential schools	Espanola	Ontario	10,400	
IPolitics	iPolitics AM: Liberals aim to extend sitting hours in bid to pass key bills ahead of summer recess	Ottawa	Ontario	31,2908	
IPolitics	Morning Brief: The WE report	Ottawa	Ontario	31,2908	
CBC (Canadian Press)	Settlement reached on residential school 'day scholars' class-action lawsuit			6,902,366	161
Lethbridge Herald (Print Edition)	Settlement reached on residential school 'day scholars' lawsuit	Lethbridge	Alberta	51,194	2
Vancouver Sun (Print Edition)	Settlement for residential school 'day scholars'; Class-action lawsuit	Vancouver	British Columbia	1,901,887	6
Edmonton Journal (Print Edition)	Day scholars' reach settlement in lawsuit	Edmonton	Alberta	948,704	1
National Post - Outside Toronto (Print Edition)	'Day scholars' reach settlement in class-action suit; Residential schools	Toronto	Ontario	4,597,449	
Municipal Information Network	Government of Canada - Settlement reached with Indian Residential Schools Day Scholars	Terrebonne	Quebec	5,969	
CBC Player	Settlement reached in class action by residential school survivors	Toronto	Ontario	69,840	

Stockhouse	Settlement reached with Indian Residential Schools Day Scholars			1,490,000	
The Squamish Chief	Day scholar settlement reached		British Columbia	50,442	
MSN Canada	Years-long court battle delivers victory to surviving 'day scholars' of Canada's residential schools	Mississauga	Ontario	691,680	
Global News	Years-long court battle delivers victory to surviving 'day scholars' of Canada's residential schools	Toronto	Ontario	12,689,214	
Global News	Global National: June 9	Toronto	Ontario	12,689,214	
CBC News - Canada	Settlement reached on residential school day scholars class-action lawsuit	Edmonton	Alberta	4,751,615	
Kamloops This Week (Print Edition)	Federal government reaches settlement with residential school day scholars	Kamloops	British Columbia	244,478	
Yahoo! News Canada	Settlement reached in residential school day scholars class-action lawsuit			999,256	
CTV News	Ottawa proposes settlement with residential school day scholars			21,869,784	
CBC News - Canada	Ottawa says it's not liable for cultural damage caused by Kamloops residential school: court documents	Edmonton	Alberta	5,083,354	
Niagara Falls Review	Survivors helping survivors: residential school hotlines flooded with calls after Kamloops mass grave discovery	St. Catharines	Ontario	99,705	

APPENDIX B –WEBSITE ANALYTICS

Analytics are representative of June 11-August 9, 2021.

Engagement	
Visitors	11,415 users
Average engagement time	1 m 21s
Page views	26,630 pageviews
Traffic Sources	
Paid social	5,104 users
Paid Search	2,358 users
Referral	1,105 users
Organic	694 users
Users by Country - % of total users	
Canada	10,658 users
US	490 users
Philippines	39 users
Pages	
Home	14,901 pageviews
Schools Lists	5,848 pageviews
Documents	1,333 pageviews
FAQ	733 pageviews

File Downloads	
Documents	1,229

TAB 13

Court File No. T-1542-12

FEDERAL COURT

THE HONOURABLE	)	……..……, THE ……
	)	
MADAM JUSTICE ANN MARIE MCDONALD	)	DAY OF ……., 2021

CLASS PROCEEDING

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL~~, AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

ORDER

(Motion for Settlement Approval)

THIS MOTION, made by the Representative Plaintiffs, on consent, for an order approving the partial settlement of this action pursuant to Rule 334.29(1) of the *Federal Courts Rules*, SOR/98-106, in accordance with the terms of the Settlement Agreement between the Survivor and

Descendant Class Representative Plaintiffs and the Defendant, dated June 4, 2021 (the "Settlement Agreement"), was heard on September 7-___ at the Federal Court, Vancouver, British Columbia;

ON READING the motion record of the Plaintiffs, filed, including the Settlement Agreement, appended hereto as Schedule "A", and on hearing the submissions of Class Counsel and the lawyers for the Defendant, and certain Class Members;

AND ON BEING ADVISED that Deloitte LLP has consented to act as the Claims Administrator;

AND ON BEING ADVISED that the parties consent to this Order, without any admission of liability by the Defendant whatsoever;

SETTLEMENT APPROVAL

1. **THIS COURT DECLARES** that the Settlement Agreement appended hereto as Schedule "A" is incorporated by reference into this Order and any interpretation of the Orders below will be made by reading them in context with all of the clauses in that Schedule, and that, unless otherwise defined in this Order, capitalized terms in this Order shall have the meanings set out in the Settlement Agreement.

2. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement is fair and reasonable and in the best interests of the Survivor and Descendant Classes, and is hereby approved pursuant to Rule 334.29(1) of the Federal Court Rules, SOR/98-106, and shall be implemented in accordance with its terms.

3. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding on Canada and all Survivor Class Members and Descendant Class Members, including those persons who are minors or are mentally incapable, and any claims brought on behalf of the estates of Survivor and Descendant Class Members.

4. **THIS COURT ORDERS AND DECLARES** that the Survivor Class and Descendant Class Claims set out in the First Re-Amended Statement of Claim, filed June 26, 2015, are dismissed and the following releases and related Orders are made and shall be interpreted as ensuring the conclusion of all Survivor and Descendant Class claims, in accordance with sections 42.01 and 43.01 of the Settlement Agreement as follows:

(a) each Survivor Class Member or, if deceased, their estate (hereinafter "Survivor Releasor"), has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims, and demands of every nature or kind available, asserted for the Survivor Class in the First Re-Amended Statement of Claim filed June 26, 2015, in the Action or that could have been asserted by any of the Survivor Releasors as individuals in any civil action, whether known or unknown, including for damages, contribution, indemnity, costs, expenses, and interest which any such Survivor Releasor ever had, now has, or may hereafter have due to their attendance as a Day Scholar at any Indian Residential School at any time;

(b) each Descendant Class Member or, if deceased, their estate (hereinafter "Descendant Releasor"), has fully, finally and forever released Canada, her

servants, agents, officers and employees, from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims, and demands of every nature or kind available, asserted for the Descendant Class in the First Re-Amended Statement of Claim filed June 26, 2015, in the Action or that could have been asserted by any of the Descendant Releasors as individuals in any civil action, whether known or unknown, including for damages, contribution, indemnity, costs, expenses, and interest which any such Descendant Releasor ever had, now has, or may hereafter have due to their respective parents' attendance as a Day Scholar at any Indian Residential School at any time;

(c) all causes of actions/claims asserted by, and requests for pecuniary, declaratory or other relief with respect to the Survivor Class Members and Descendant Class Members in the First Re-Amended Statement of Claim filed June 26, 2015, are dismissed on consent of the Parties without determination on their merits, and will not be adjudicated as part of the determination of the Band Class claims;

(d) Canada may rely on the above-noted releases as a defence to any lawsuit that purports to seek compensation from Canada for the claims of the Survivor Class and Descendant Class as set out in the First Re-Amended Statement of Claim;

(e) For additional certainty, however, the above releases and this Approval Order will not be interpreted as if they release, bar or remove any causes of action or claims that Band Class Members may have in law as distinct legal entities or as entities with standing and authority to advance legal claims for the violation of collective rights of their respective Aboriginal peoples, including to the extent such causes of

action, claims and/or breaches of rights or duties owed to the Band Class are alleged in the First Re-Amended Statement of Claim filed June 26, 2015, even if those causes of action, claims and/or breaches of rights or duties are based on alleged conduct towards Survivor Class Members or Descendant Class Members set out elsewhere in either of those documents;

(f) each Survivor Releasor and Descendant Releasor is deemed to agree that, if they make any claim or demand or take any action or proceeding against another person, persons, or entity in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute, common law, or Quebec civil law, in relation to allegations and matters set out in the Action, including any claim against provinces or territories or other legal entities or groups, including but not limited to religious or other institutions that were in any way involved with Indian Residential Schools, the Survivor Releasor or Descendant Releasor will expressly limit their claim so as to exclude any portion of Canada's responsibility;

(g) upon a final determination of a Claim made under and in accordance with the Claims Process, each Survivor Releasor and Descendant Releasor is also deemed to agree to release the Parties, Class Counsel, counsel for Canada, the Claims Administrator, the Independent Reviewer, and any other party involved in the Claims Process, with respect to any claims that arise or could arise out of the application of the Claims Process, including but not limited to the sufficiency of the compensation received; and

(h) Canada's obligations and liabilities under the Settlement Agreement constitute the consideration for the releases and other matters referred to in the Settlement Agreement and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Survivor Releasors and Descendant Releasors are limited to the benefits provided and compensation payable pursuant to the Settlement Agreement, in whole or in part, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims, and demands.

5. **THIS COURT ORDERS AND DECLARES** that, without in any way affecting the finality of this Order, this Court reserves exclusive and continuing jurisdiction over the claims of the Survivor and Descendant Classes in this action, for the limited purpose of implementing the Settlement Agreement and enforcing the Settlement Agreement and this Approval Order.

APPOINTMENT OF CLAIMS ADMINISTRATOR AND CLAIMS PROCESS

6. **THIS COURT ORDERS AND DECLARES** that Deloitte LLP is hereby appointed as Claims Administrator.

7. **THIS COURT ORDERS** that the fees, disbursements, and applicable taxes of the Claims Administrator shall be paid by Canada in their entirety, as set out in section 40.01 of the Settlement Agreement.

8. **THIS COURT ORDERS** that the Claims Administrator shall facilitate the claims administration process, and report to the Court and the Parties in accordance with the terms of the Settlement Agreement.

9. **THIS COURT ORDERS** that no person may bring any action or take any proceeding against the Claims Administrator or any of its employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Settlement Agreement, the implementation of this Order or the administration of the Settlement Agreement and this Order, except with leave of this Court.

10. **THIS COURT ORDERS** that, prior to the Implementation Date, the Parties will move for approval of the form and content of the Claim Form and Estate Claim Form.

11. **THIS COURT ORDERS** that, prior to the Implementation Date, the Parties will identify and propose an Independent Reviewer or Independent Reviewers for Court appointment.

REPORTING TO THE COURT

12. **THIS COURT ORDERS** that Class Counsel shall report to the Court on the administration of the Settlement Agreement. The first report will be due six (6) months after the Implementation Date and no less frequently than every six (6) months thereafter, subject to the Court requiring earlier reports, and subject to Class Counsel's overriding obligation to report as soon as reasonable on any matter which has materially impacted the implementation of the terms of the Settlement Agreement.

ONGOING LITIGATION

13. **THIS COURT ORDERS** that the Certification Order of Justice Harrington, dated June 18, 2015, is hereby amended in the form attached to as Schedule "B".

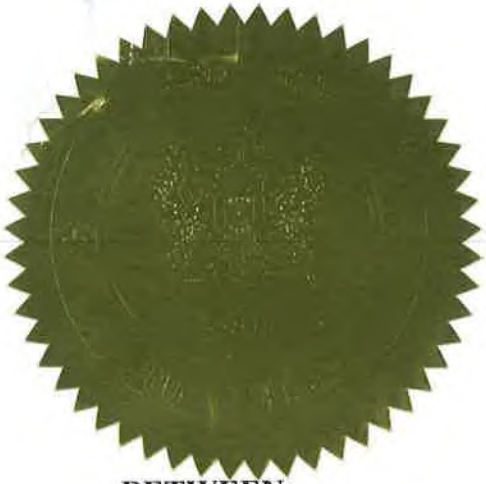
14. **THIS COURT ORDERS** that the Plaintiffs are granted leave to amend the First Re-Amended Statement of Claim in the form attached hereto as Schedule "C".

COSTS

15. **THIS COURT ORDERS** that there will be no costs of this motion.

Justice McDonald

TAB 14



Court File No. T-1542-12

PROPOSED CLASS PROCEEDING

FORM 171A - Rule 171

FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND and the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE and RITA POULSON

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by THE ATTORNEY GENERAL OF CANADA

DEFENDANT

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

(Date) AOUT AUG 15 2012

ORIGINAL SIGNED BY
TAMSIN RAMSAY
REGISTRY OFFICER

Issued by: _____
(Registry Officer)

Address of local office: Courts Administration Service
P.O. Box 10065, 3rd Floor
701 West Georgia Street
Vancouver, B.C. V7Y 1B6

TO:

Her Majesty the Queen in Right of Canada,
Minister of Indian Affairs and Northern Development, and
Attorney General of Canada
Department of Justice
900 - 840 Howe Street
Vancouver, B.C. V6Z 2S9

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the AOUT AUG 15 2012 day of _____ A.D. 20 ____

Dated this AOUT AUG 15 2012 day of _____ 20 ____

TAMSIN RAMSAY
REGISTRY OFFICER
AGENT DU GREFFE

RELIEF SOUGHT

The Survivor Class

1. The Representative Plaintiffs of the Survivor Class, on their own behalf, and on behalf of the members of the Survivor Class, claim:

(a) an Order certifying this proceeding as a Class Proceeding pursuant to the Federal Court Class Proceedings Rules ("CPR") and appointing them as Representative Plaintiffs for the Survivor Class and any appropriate subgroup of that Class;

(b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the Plaintiffs and the other Survivor Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Identified Residential Schools;

(c) a Declaration that Canada breached the Aboriginal Rights of the Survivor Class;

(d) a Declaration that the Residential Schools Policy and the Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Survivor Class;

(e) a Declaration that Canada is liable to the Plaintiffs and other Survivor Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties, and Aboriginal Rights and for the intentional infliction of mental distress, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;

(f) non-pecuniary general damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights, negligence and intentional infliction of mental distress;

(g) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, loss of educational opportunities, breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights and intentional infliction of mental distress including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Survivor Class;

(h) exemplary and punitive damages;

(i) prejudgment and post-judgment interest;

(j) the costs of this action; and

(k) such further and other relief as this Honourable Court may deem just.

The Descendant Class

2. The Representative Plaintiffs of the Descendant Class, on their own behalf and on behalf of the members of the Descendant Class, claim:

(a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPR and appointing them as Representative Plaintiffs for the Descendant Class and any appropriate subgroup of that Class;

(b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the Plaintiffs and the other Descendant Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Identified Residential Schools;

(c) a Declaration that Canada breached the Aboriginal Rights of the Descendant Class;

(d) a Declaration that the Residential Schools Policy and the Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Descendant Class;

(e) a Declaration that Canada is liable to the Plaintiffs and other Descendant Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;

(f) non-pecuniary general damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights;

(g) pecuniary general damages and special damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Descendant Class;

(h) exemplary and punitive damages;

(i) pre-judgment and post-judgment interest;

(j) the costs of this action; and

(k) such further and other relief as this Honourable Court may deem just;

The Band Class

3. The Representative Plaintiffs of the Band Class claim:

(a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPR and appointing them as Representative Plaintiffs for the Band Class;

(b) a Declaration that the Sechelt Indian Band (referred to as the shíshálh or shíshálh band) and Tk'emlúps Band, and all members of the Band Class, have existing Aboriginal Rights within the meaning of s. 35(1) of the *Constitution Act, 1982* to speak their traditional languages and engage in their traditional customs;

(c) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the Band Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the SIRS and the KIRS;

(d) a Declaration that the Residential Schools Policy and the KIRS, the SIRS and Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Band Class;

(e) a Declaration that Canada was or is in breach of the Band Class members' Aboriginal Rights;

(f) a Declaration that Canada is liable to the Band Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;

(g) non-pecuniary and pecuniary general damages and special damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights, including amounts to cover the ongoing cost of care and development of wellness plans for individual members of the bands in the Band Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Bands;

(h) the construction of healing centres in the Band Class communities;

(i) exemplary and punitive damages;

(j) pre-judgment and post-judgment interest;

(k) the costs of this action; and

(l) such further and other relief as this Honourable Court may deem just.

DEFINITIONS

4. The following definitions apply for the purposes of this Claim:

(a) "Aboriginal(s)", "Aboriginal Person(s)" or "Aboriginal Child(ren)" means a person or persons whose rights are recognized and affirmed by the *Constitution Act*, 1982, s. 35;

(b) "Aboriginal Right(s)" means any or all of the aboriginal and treaty rights recognized and affirmed by the *Constitution Act*, 1982, s. 35;

(c) "Act" means the *Indian Act*, R.S.C. 1985, c. I-5 and its predecessors as have been amended from time to time;

(d) "Agents" means the servants, contractors, agents, officers and employees of Canada and the operators, managers, administrators and teachers and staff of each of the Residential Schools;

(e) "Agreement" means the Indian Residential Schools Settlement Agreement dated May 10, 2006 entered into by Canada to settle claims relating to Residential Schools as approved in the orders granted in various jurisdictions across Canada;

(f) "Band Class" means the Tk'emlúps te Secwépemc Indian Band and the shíshálh band and any other Aboriginal Indian Band(s) which:

(i) has some members who are members of the Survivor Class, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically identified Residential Schools.

(g) "Canada" means the Defendant, Her Majesty the Queen in right of Canada as represented by the Attorney General of Canada;

(h) "Class" or "Class members" means all members of the Survivor Class, Descendant Class and Band Class as defined herein;

(i) "Class Period" means 1920 to 1979;

(j) "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the educational, governmental, economic, cultural, linguistic, spiritual and social customs, practices and way of life, traditional governance structures, as well as to the community and individual security and wellbeing, of Aboriginal Persons;

(k) "Descendant Class" means all persons who are descended from Survivor Class members;

(l) "Identified Residential School(s)" means the KIRS or the SIRS or any other Residential School specifically identified by a member of the Band Class;

(m) "KIRS" means the Kamloops Indian Residential School;

(n) "Residential Schools" means all Indian Residential Schools recognized under the Agreement;

(o) "Residential Schools Policy" means the policy of Canada with respect to the implementation of Indian Residential Schools;

(p) "SIRS" means the Sechelt Indian Residential School;

(q) "Survivor Class" means all Aboriginal persons who attended at an Identified Residential School, during the Class Period.

THE PARTIES

The Plaintiffs

5. The Plaintiff, Darlene Matilda Bulpit (nee Joe) resides on shíshálh band lands in British Columbia. Darlene Matilda Bulpit was born on August 23, 1948 and attended the SIRS for nine years, between the years 1954 and 1963. Darlene Matilda Bulpit is a proposed Representative Plaintiff for the Survivor Class.

6. The Plaintiff, Frederick Johnson resides on shíshálh band lands in British Columbia. Frederick Johnson was born on July 21, 1960 and attended the SIRS for ten years, between the

years 1966 and 1976. Frederick Johnson is a proposed Representative Plaintiff for the Survivor Class.

7. The Plaintiff, Abigail Margaret August (nee Joe) resides on shíshálh band lands in British Columbia. Abigail Margaret August was born on August 21, 1954 and attended the SIRS for eight years, between the years 1959 and 1967. Abigail Margaret August is a proposed Representative Plaintiff for the Survivor Class.

8. The Plaintiff, Shelly Nadine Hoehne (nee Joe) resides on shíshálh band lands in British Columbia. Shelly Nadine Hoehne was born on June 23, 1952 and attended the SIRS for eight years, between the years 1958 and 1966. Shelly Nadine Hoehne is a proposed Representative Plaintiff for the Survivor Class.

9. The Plaintiff, Daphne Paul resides on shíshálh band lands in British Columbia. Daphne Paul was born on January 13, 1948 and attended the SIRS for eight years, between the years 1953 and 1961. Daphne Paul is a proposed Representative Plaintiff for the Survivor Class.

10. The Plaintiff, Violet Catherine Gottfriedson resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Violet Catherine Gottfriedson was born on March 30, 1945 and attended the KIRS for four years, between the years 1958 and 1962. Violet Catherine Gottfriedson is a proposed Representative Plaintiff for the Survivor Class.

11. The Plaintiff, Doreen Louise Seymour resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Doreen Louise Seymour was born on September 7, 1955 and attended the KIRS for five years, between the years 1961 and 1966. Doreen Louise Seymour is a proposed Representative Plaintiff for the Survivor Class.

12. The Plaintiff, Charlotte Anne Victorine Gilbert (nee Larue) resides in Williams Lake in British Columbia. Charlotte Anne Victorine Gilbert was born on May 24, 1952 and attended the KIRS for seven years, between the years 1959 and 1966. Charlotte Anne Victorine Gilbert is a proposed Representative Plaintiff for the Survivor Class.

13. The Plaintiff, Victor Fraser (also known as Victor Frezie) resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Victor Fraser was born on June 11, 1957 and attended the KIRS for six years, between the years 1962 and 1968. Victor Fraser is a proposed Representative Plaintiff for the Survivor Class.

14. The Plaintiff, Diena Marie Jules resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Diena Marie Jules was born on September 12, 1955 and attended the KIRS for six years, between the years 1962 and 1968. Diena Marie Jules is a proposed Representative Plaintiff for the Survivor Class.

15. The Plaintiff, Aaron Joe, resides on shíshálh band lands. Aaron Joe was born on January 19, 1972 and is the son of Valerie Joe, who attended the SIRS as a day scholar. Aaron Joe is a proposed Representative Plaintiff for the Descendant Class.

16. The Plaintiff, Rita Poulson, resides on shíshálh band lands. Rita Poulson was born on March 8, 1974 and is the daughter of Randy Joe, who attended the SIRS as a day scholar. Rita Poulson is a proposed Representative Plaintiff for the Descendant Class.

17. The Plaintiff, Amanda Deanne Big Sorrel Horse resides on the Tk'emlúps te Secwépemc Indian Band reserve. Amanda Deanne Big Sorrel Horse was born on December 26, 1974 and is the daughter of Jo-Anne Gottfriedson who attended the KIRS for six years between

the years 1961 and 1967. Amanda Deanne Big Sorrel Horse is a proposed Representative Plaintiff for the Descendant Class.

18. The Tk'emlúps te Secwépemc Indian Band and the shíshálh band are"bands" as defined by the Act and they both propose to act as Representative Plaintiffs for the Band Class. The Band Class members represent the collective interests and authority of each of their respective communities.

19. The individual Plaintiffs and the proposed Survivor and Descendant Class members are largely members of the shíshálh band and Tk'emlúps Indian Band, and members of Canada's First Nations and/or are the sons and daughters of members of these Aboriginal collectives. The individual Plaintiffs and Survivor and Descendant Class members are Aboriginal Persons within the meaning of the *Constitution Act, 1982,* s. 35.

The Defendant

20. Canada is represented in this proceeding by the Attorney General of Canada. The Attorney General of Canada represents the interests of Canada and the Minister of Aboriginal Affairs and Northern Development Canada and predecessor Ministers who were responsible for "Indians" under s.91(24) of the *Constitution Act, 1867*, and who were, at all material times, responsible for the formation and implementation of the Residential Schools Policy, and the maintenance and operation of the KIRS and the SIRS.

STATEMENT OF FACTS

21. Over the course of the last several years, Canada has acknowledged the devastating impact of its Residential Schools Policy on Canada's Aboriginal Peoples. Canada's Residential

Schools Policy was designed to eradicate Aboriginal culture and identity and assimilate the Aboriginal Peoples of Canada into Euro-Canadian society. Through this policy, Canada ripped away the foundations of identity for generations of Aboriginal People and caused incalculable harm to both individuals and communities.

22. The direct beneficiary of the Residential Schools Policy was Canada as its obligations would be reduced in proportion to the number, and generations, of Aboriginal Persons who would no longer recognize their Aboriginal identity and would reduce their claims to rights under the Act and Canada's fiduciary , constitutionally-mandated, statutory and common law duties.

23. Canada was also a beneficiary of the Residential Schools Policy, as the policy served to weaken the claims of Aboriginal Peoples to their traditional lands and resources. The result was a severing of Aboriginal People from their cultures, traditions and ultimately their lands and resources. This allowed for exploitation of those lands and resources by Canada, not only without Aboriginal Peoples' consent but also, contrary to their interests, the Constitution of Canada and the Royal Proclamation of 1763.

24. The truth of this wrong and the damage it has wrought has now been acknowledged by the Prime Minister on behalf of Canada, and through the pan-Canadian settlement of the claims of those who *resided at* Canada's Residential Schools by way of the Agreement implemented in 2007. Notwithstanding the truth and acknowledgement of the wrong and the damages caused, many members of Canada's Aboriginal communities were excluded from the Agreement, not because they did not *attend* Residential Schools and suffer Cultural, Linguistic and Social Damage, but simply because they did not *reside at* Residential Schools.

25. This claim is on behalf of the members of the Survivor Class, namely those who attended an Identified Residential School for the Cultural, Linguistic and Social Damage occasioned by that attendance, as well as on behalf of the Descendant Class, who are the descendants of those within the Survivor Class, and the Band Class, consisting of the Aboriginal communities within which the Identified Residential Schools were situated, and within which the majority of the Survivor and Descendant Class members live.

26. The claims of the proposed Representative Plaintiffs are for the harm done to the Representative Plaintiffs as a result of members of the Survivor Class *attending* the KIRS and the SIRS and being exposed to the operation of the Residential Schools Policy and do not include the claims arising from residing at the KIRS or the SIRS for which specific compensation has been paid under the Agreement. This claim seeks compensation for the victims of that policy whose claims have been ignored by Canada and were excluded from the compensation in the Agreement.

The Residential School System

27. Residential Schools were established by Canada prior to 1874, for the education of Aboriginal Children. Commencing in the early twentieth century, Canada began entering into formal agreements with various religious organizations (the "Churches") for the operation of Residential Schools. Pursuant to these agreements, Canada controlled, regulated, supervised and directed all aspects of the operation of Residential Schools. The Churches assumed the day-to-day operation of many of the Residential Schools under the control, supervision and direction of Canada, for which Canada paid the Churches a *per capita* grant. In 1969, Canada took over operations directly.

28. As of 1920, the Residential Schools Policy included compulsory *attendance* at Residential Schools for all Aboriginal children aged 7 to 15. Canada removed most Aboriginal Children from their homes and Aboriginal communities and transported them to Residential Schools which were often long distances away. However, in some cases, Aboriginal Children lived in their homes and communities and were similarly required to attend Residential Schools as day students and not residents. This practice applied to even more children in the later years of the Residential Schools Policy. While at Residential School, all Aboriginal Children were confined and deprived of their heritage, their support networks and their way of life, forced to adopt a foreign language and a culture alien to them and punished for non-compliance.

29. The purpose of the Residential Schools Policy was the complete integration and assimilation of Aboriginal children into the Euro-Canadian culture and the obliteration of their traditional language, culture, religion and way of life. Canada set out and intended to cause the Cultural, Linguistic and Social Damage which has harmed Canada's Aboriginal Peoples and Nations. In addition to the inherent cruelty of the Residential Schools Policy itself, many children attending Residential Schools were also subject to spiritual, physical, sexual and emotional abuse, all of which continued until the year 1997, when the last Residential School was closed.

30. Canada chose to be disloyal to its Aboriginal Peoples, implementing the Residential Schools Policy in its own self-interest, including economic self-interest, and to the detriment and exclusion of the interests of the Aboriginal Persons to whom Canada owed fiduciary and constitutionally-mandated duties. The intended eradication of Aboriginal identity, culture, language and religion, to the extent successful, results in the reduction of the obligations owed by Canada in proportion to the number of individuals, over generations, who would no longer

identify as Aboriginal and who would be less likely to make claims to their rights as Aboriginal Persons.

The Effects of the Residential Schools Policy on the Class Members

Tk'emlúps Indian Band

31. Tk'emlúpsemc, 'the people of the confluence', now known as the Tk'emlúps te Secwépemc Indian Band are members of the northernmost of the Plateau People and of the Interior-Salish Secwépemc (Shuswap) speaking peoples of British Columbia. The Tk'emlúps Indian Band was established on a reserve now adjacent to the City of Kamloops, where the KIRS was subsequently established. Most, if not all, of the students who *attended*, but did not *reside at* the KIRS were or are members of the Tk'emlúps Indian Band, resident or formerly resident on the reserve.

32. Secwepemctsin is the language of the Secwépemc, and it is the unique means by which the cultural, ecological, and historical knowledge and experience of the Secwépemc people is understood and conveyed between generations. It is through language, spiritual practices and passage of culture and traditions including their rituals, drumming, dancing, songs and stories, that the values and beliefs of the Secwépemc people are captured and shared. From the Secwépemc perspective all aspects of Secwépemc knowledge, including their culture, traditions, laws and languages, are vitally and integrally linked to their lands and resources.

33. Language, like the land, was given to the Secwépemc by the Creator for communication to the people and to the natural world. This communication created a reciprocal and cooperative relationship between the Secwépemc and the natural world which enabled them

to survive and flourish in harsh environments. This knowledge, passed down to the next generation orally, contained the teachings necessary for the maintenance of Secwépemc culture, traditions, laws and identity.

34. For the Secwépemc, their spiritual practices, songs, dances, oral histories, stories and ceremonies were an integral part of their lives and societies. These practices and traditions are absolutely vital to maintain. Their songs, dances, drumming and traditional ceremonies connect the Secwépemc to their land and continually remind the Secwépemc of their responsibilities to the land, the resources and to the Secwépemc people.

35. Secwépemc ceremonies and spiritual practices, including their songs, dances, drumming and passage of stories and history, perpetuate their vital teachings and laws relating to the harvest of resources, including medicinal plants, game and fish, and the proper and respectful protection and preservation of resources. For example, in accordance with Secwépemc laws, the Secwépemc sing and pray before harvesting any food, medicines, and other materials from the land, and make an offering to thank the Creator and the spirits for anything they take. The Secwépemc believe that all living things have spirits and must be shown utmost respect. It was these vital, integral beliefs and traditional laws, together with other elements of Secwépemc culture and identity, that Canada sought to destroy with the Residential Schools Policy.

Shíshálh band

36. The shíshálh Nation, a division of the Coast Salish First Nations, originally occupied the southern portion of the lower coast of British Columbia. The shíshálh People settled the area thousands of years ago, and occupied approximately 80 village sites over a vast tract of land. The shíshálh People are made up of four sub-groups that speak the language of Shashishalhem,

which is a distinct and unique language, although it is part of the Coast Salish Division of the Salishan Language.

37. Shíshálh tradition describes the formation of the shíshálh world (Spelmulh story). Beginning with the creator spirits, who were sent by the Divine Spirit to form the world, they carved out valleys leaving a beach along the inlet at Porpoise Bay. Later, the transformers, a male raven and a female mink, added details by carving trees and forming pools of water.

38. The shíshálh culture includes singing, dancing and drumming as an integral part of their culture and spiritual practices, a connection with the land and the Creator and passing on the history and beliefs of the people. Through song and dance the shíshálh People would tell stories, bless events and even bring about healing. Their songs, dances and drumming also signify critical seasonal events that are integral to the shíshálh. Traditions also include making and using masks, baskets, regalia and tools for hunting and fishing. It was these vital, integral beliefs and traditional laws, together with other elements of the shíshálh culture and identity, that Canada sought to destroy with the Residential Schools Policy.

The Impact of the Identified Residential schools

39. For all of the Aboriginal Children who were compelled to attend the Identified Residential Schools, rigid discipline was enforced. While at school, children were not allowed to speak their Aboriginal language, even to their parents, and thus members of these Aboriginal communities were forced to learn English.

40. Aboriginal culture was strictly suppressed by the school administrators. At the SIRS, converts to Catholicism were forced to burn or give to the agents of Canada centuries-old totem

poles, regalia, masks and other "paraphernalia of the medicine men" and to abandon their potlatches, dancing and winter festivities, and other elements integral to the Aboriginal culture and society of the shíshálh and Secwépemc peoples.

41. Because the SIRS was physically located in the shíshálh community, the church and government eyes were upon the elders and they were punished severely for practising their culture or speaking their language or passing this on to future generations. In the midst of that scrutiny, the Class members struggled, often unsuccessfully, to practice, protect and preserve their songs, masks, dancing or other cultural practices

42. The Tk'emlúps te Secwépemc suffered a similar fate due to their proximity to the KIRS.

43. The children at the Identified Residential Schools were indoctrinated into Christianity, and taught to be ashamed of their Aboriginal identity, culture, spirituality and practices. They were referred to as, amongst other derogatory epithets, "dirty savages" and "heathens" and taught to shun their very identities. The Class members' Aboriginal way of life, traditions, cultures and spiritual practices were supplanted with the Euro-Canadian identity imposed upon them by Canada through the Residential Schools Policy.

44. This further damaged the Survivor Class members of the Identified Residential Schools, who returned to their homes at the end of the school day and, having been taught in the school that the traditional teachings of their parents, grandparents and elders were of no value and, in some cases, "heathen" practices and beliefs, would dismiss the teachings of their parents, grandparents and elders.

45. The assault on their traditions, laws, language and culture through the implementation of the Residential Schools Policy has continued to undermine the individual Survivor Class members, causing a loss of self-esteem, depression, anxiety, suicidal ideation, suicide, physical illnesses without clear causes, difficulties in parenting, difficulties in maintaining positive relationships, substance abuse and violence, among other harms and losses, all of which has impacted the Descendant Class.

46. The Band Class members have lost, in whole or in part, their traditional economic viability, self-government and laws, language, land base and land-based teachings, traditional spiritual practices and religious practices, and the integral sense of their collective identity.

47. The Residential Schools Policy, delivered through the Identified Residential Schools, wrought cultural, linguistic and social devastation on the communities of the Band Class and altered their traditional way of life.

Canada's Settlement with Former Residential School Residents

48. From the closure of the Identified Residential Schools in the 1970's until the late 1990's, Canada's Aboriginal communities were left to battle the damages and suffering of their members as a result of the Residential Schools Policy, without any acknowledgement from Canada. During this period, Residential School survivors increasingly began speaking out about the horrible conditions and abuse they suffered, and the dramatic impact it had on their lives. At the same time, many survivors committed suicide or self-medicated to the point of death. The deaths devastated not only the members of the Survivor Class and the

Descendant Class, but also the life and stability of the communities represented by the Band Class.

49. In January 1998, Canada issued a Statement of Reconciliation acknowledging and apologizing for the failures of the Residential Schools Policy. Canada admitted that the Residential Schools Policy was designed to assimilate Aboriginal Persons and that it was wrong to pursue that goal. The Plaintiffs plead that the Statement of Reconciliation by Canada is an admission by Canada of the facts and duties set out herein and is relevant to the Plaintiffs' claim for damages, particularly punitive damages.

50. The Statement of Reconciliation stated, in part, as follows:

> *Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the results of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.*
>
> *Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the Federal Government which have contributed to these difficult pages in the history of our relationship together.*
>
> *One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School System. This system separated many children from their families and communities and prevented them from speaking their own languages*

> *and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continued to reverberate in Aboriginal communities to this date. Tragically, some children were the victims of physical and sexual abuse.*
>
> *The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at Residential Schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at Residential Schools, we are deeply sorry. In dealing with the legacies of the Residential School program, the Government of Canada proposes to work with First Nations, Inuit, Metis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of this sad era of our history...*
>
> *Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong community...*

51. On or about May 10, 2006, Canada entered into the Agreement to provide compensation primarily to those who *resided at* Residential Schools.

52. The Agreement provides for two types of individualized compensation: the Common Experience Payment ("CEP") for the fact of having resided at a Residential School, and compensation based upon an Independent Assessment Process ("IAP"), to provide compensation for certain abuses suffered and harms these abuses caused.

53. The CEP consisted of compensation for former *residents* of a Residential School in the amount of $10,000 for the first school year or part of a school year and a further $3,000 for each subsequent school year or part of a school year of *residence* at a Residential School. The CEP was payable based upon residence at a Residential School out of a recognition that the

experience of assimilation was damaging and worthy of compensation, regardless of whether a student experienced physical, sexual or other abuse while at the Residential School. Compensation for the latter was payable through the IAP. The CEP was available only to former *residents* of a Residential School while, in some cases, the IAP was available not only to former residents but also other young people who were lawfully on the premises of a Residential School, including former day students.

54. The implementation of the Agreement represented the first time Canada agreed to pay compensation for Cultural, Linguistic and Social Damage. Canada refused to incorporate compensation for members of the Survivor Class, namely, those students who *attended* the Identified Residential Schools, or other Residential Schools, but who did not *reside* there.

55. The Agreement was approved by provincial and territorial superior courts from British Columbia to Quebec, and including the Northwest Territories, Yukon Territory and Nunavut, and the Agreement was implemented beginning on September 20, 2007.

56. On June 11, 2008, Prime Minister Stephen Harper on behalf of Canada, delivered an apology ("Apology") that acknowledged the harm done by Canada's Residential Schools Policy:

> *For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities. In the 1870's, the federal government, partly in order to meet its obligation to educate Aboriginal children, began to play a role in the development and administration of these schools.* ***Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture.*** *These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said,* ***"to kill the Indian in the child".*** *Today, we recognize that this policy of assimilation was wrong, has*

> *caused great harm, and has no place in our country. [**emphasis added**]*

57. In this Apology, the Prime Minister made some important acknowledgments regarding the Residential Schools Policy and its impact on Aboriginal Children:

> *The Government of Canada built an educational system in which very young children were often forcibly removed from their homes, often taken far from their communities. Many were inadequately fed, clothed and housed. All were deprived of the care and nurturing of their parents, grandparents and communities. First Nations, Inuit and Métis languages and cultural practices were prohibited in these schools. Tragically, some of these children died while attending residential schools and others never returned home.*
>
> *The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language.*
>
> *The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.*
>
> * * *
>
> *We now recognize that it was wrong to separate children from rich and vibrant cultures and traditions, that it created a void in many lives and communities, and we apologize for having done this. We now recognize that, in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow, and we apologize for having done this. We now recognize that, far too often, these institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you. Not only did you suffer these abuses as children, but as you became parents, you were powerless to protect your own children from suffering the same experience, and for this we are sorry.*
>
> *The burden of this experience has been on your shoulders for far too long. The burden is properly ours as a Government, and as a country. There is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again. You have been working on recovering from this experience for a long time and in a very real sense, we are now joining you on this journey. The Government of Canada sincerely apologizes and asks the forgiveness*

> *of the Aboriginal peoples of this country for failing them so profoundly.*

58. Notwithstanding the Apology and the acknowledgment of wrongful conduct by Canada, as well as the call for recognition from Canada's Aboriginal communities and from the *Truth and Reconciliation Commission* in its Interim Report of February 2012, the exclusion of the Survivor Class from the Agreement by Canada reflects Canada's continued failure to members of the Survivor Class. Canada continues, as it did from the 1970s until 2006 with respect to 'residential students', to deny the damage suffered by the individual Plaintiffs and the members of the Survivor, Descendant and Band Classes.

Canada's Breach of Duties to the Class Members

59. From the formation of the Residential Schools Policy to its execution in the form of forced attendance at the Identified Residential Schools, Canada utterly failed the Survivor Class members, and in so doing, destroyed the foundations of the individual identities of the Survivor Class members, stole the heritage of the Descendant Class members and caused incalculable losses to the Band Class members.

60. The Survivor Class members, Descendant Class members and Band Class members have all been affected by family dysfunction, a crippling or elimination of traditional ceremonies, and a loss of the hereditary governance structure which allowed for the ability to govern their peoples and their lands.

61. While attending the Identified Residential School the Survivor Class members were utterly vulnerable, and Canada owed them the highest fiduciary, moral, statutory, constitutionally-mandated and common law duties, which included, but were not limited to, the

duty to protect Aboriginal Rights and prevent Cultural, Linguistic and Social Damage. Canada breached these duties, and failed in its special responsibility to ensure the safety and well-being of the Survivor Class while at the Identified Residential Schools.

Canada's Duties

62. Canada was responsible for developing and implementing all aspects of the Residential Schools Policy, including carrying out all operational and administrative aspects of Residential Schools. While the Churches were often used to assist Canada in carrying out its objectives, those objectives and the manner in which they were carried out were the obligations of Canada. Canada was responsible for:

(a) the administration of the Act and its predecessor statutes as well as all other statutes relating to Aboriginal Persons and all Regulations promulgated under these Acts and their predecessors during the Class Period;

(b) the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessors and related Ministries and Departments, as well as the decisions taken by those ministries and departments;

(c) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of the Identified Residential Schools and for the creation, design and implementation of the program of education for Aboriginal Persons in attendance;

(d) the selection, control, training, supervision and regulation of the operators of the Identified Residential Schools, including their employees, servants, officers and agents, and for the care and education, control and well being of Aboriginal Persons attending the Identified Residential Schools;

(e) preserving, promoting, maintaining and not interfering with Aboriginal Rights, including the right to retain and practice their culture, spirituality, language and traditions and the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities; and

(f) the care and supervision of all members of the Survivor Class while they were in attendance at the Identified Residential Schools during the Class Period.

63. Further, Canada has at all material times committed itself to honour international law in relation to the treatment of its people, which obligations form minimum commitments to Canada's Aboriginal Peoples, including the Survivor, Descendant and Band Classes, and which have been breached. In particular, Canada's breaches include the failure to comply with the terms and spirit of:

(a) the *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277, entered into force Jan. 12, 1951,, and in particular Article 2(b), (c) and (e) of that convention, by engaging in the intentional destruction of the culture of Aboriginal Children and communities, causing profound and permanent cultural, psychological, emotional and physical injuries to the Class;

(b) the *Declaration of the Rights of the Child* (1959) G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 by failing to provide Aboriginal Children with the means necessary for normal development, both materially and spiritually, and failing to put them in a position to earn a livelihood and protect them against exploitation;

(c) the *Convention on the Rights of the Child*, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989), and in particular Articles 29 and 30 of that convention, by failing to provide Aboriginal Children with education that is directed to the development of respect for their parents, their cultural identities, language and values, and by denying the right of Aboriginal Children to enjoy their own cultures, to profess and practise their own religions and to use their own languages;

(d) the *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, in particular Articles 1 and 27 of that convention, by interfering with Class members' rights to retain and practice their culture, spirituality, language and traditions, the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities and the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities.

(e) the *American Declaration of the Rights and Duties of Man*, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System,* OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992), and in particular Article XIII, by violating Class members' right to take part in the cultural life of their communities.

(f) the *United Nations Declaration on the Rights of Indigenous Peoples,* G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007), endorsed by Canada 12 November 2010, and in particular article 8, 2(d), which commits to the provision of effective mechanisms for redress for forced assimilation.

64. Canada's obligations under international law inform Canada's common law, statutory, fiduciary, constitutionally-mandated and other duties, and a breach of the aforementioned international obligations is evidence of, or constitutes, a breach under domestic law.

Breach of Fiduciary and Constitutionally-Mandated Duties

65. Canada has constitutional obligations to, and a fiduciary relationship with, Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated the Identified Residential Schools and established the Residential Schools Policy. Through these acts, and by virtue of the *Constitution Act 1867*, the *Constitution Act, 1982*, and the provisions of the Act, as amended, Canada assumed the power and obligation to act in a fiduciary capacity with respect to the education and welfare of Class members.

66. Canada's constitutional duties include the obligation to uphold the honour of the Crown in all of its dealings with Aboriginal Peoples, including the Class members. This obligation arose with the Crown's assertion of sovereignty from the time of first contact and continues through post-treaty relationships. This is and remains an obligation of the Crown and was an obligation on the Crown at all material times. The honour of the Crown is a legal principle which requires the Crown to operate at all material times in its relations with Aboriginal Peoples from contact to post-treaty in the most honourable manner to protect the interests of the Aboriginal Peoples.

67. Canada's fiduciary duties obliged Canada to act as a protector of Class members' Aboriginal Rights, including the protection and preservation of their language, culture and their way of life, and the duty to take corrective steps to restore the Plaintiffs' culture, history and status, or assist them to do so. At a minimum, Canada's duty to Aboriginal Persons included the duty not to deliberately reduce the number of the beneficiaries to whom Canada owed its duties.

68. Canada's fiduciary duties and the duties otherwise imposed by the constitutional mandate assumed by Canada extend to the Descendant Class because the purpose of the assumption of control over the Survivor Class education was to eradicate from those Aboriginal Children their culture and identity, thereby removing their ability, as adults, to pass on to succeeding generations the linguistic, spiritual, cultural and behavioural bases of their people, as well as to relate to their families and communities and, ultimately, their ability to identify themselves as Aboriginal Persons to whom Canada owed its duties.

69. The fiduciary and constitutional duties owed by Canada extend to the Band Class because the Residential Schools Policy was intended to, and did, undermine and seek to destroy the way of life established and enjoyed by these Nations whose identities were and are viewed as collective.

70. Canada acted in its own self-interest and contrary to the interests of Aboriginal Children, not only by being disloyal to, but by actually betraying the Aboriginal Children and communities whom it had a duty to protect. Canada wrongfully exercised its discretion and power over Aboriginal People, and in particular children, for its own benefit. The Residential Schools Policy was pursued by Canada, in whole or in part, to eradicate what Canada saw as the "Indian Problem". Namely, Canada sought to relieve itself of its moral and financial

responsibilities for Aboriginal People, the expense and inconvenience of dealing with cultures, languages, habits and values different from Canada's predominant Euro-Canadian heritage, and the challenges arising from land claims.

71. In breach of its ongoing fiduciary, constitutionally-mandated, statutory and common law duties to the Survivor, Descendant and Band Classes, Canada failed, and continues to fail, to adequately remediate the damage caused by its wrongful acts, failures and omissions. In particular, Canada has failed to take adequate measures to ameliorate the Cultural, Linguistic and Social Damage suffered by the Survivor, Descendant and Band Classes, notwithstanding Canada's admission of the wrongfulness of the Residential Schools Policy since 1998.

Breach of Aboriginal Rights

72. The shíshálh and Tk'emlúps people, and indeed all members of the Band Class, from whom the individual Plaintiffs have descended have exercised laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans, these Nations have sustained their individual members, communities and distinctive cultures by speaking their languages and practicing their customs and traditions.

73. During the time when Survivor Class members attended the Identified Residential Schools, they were taught to speak English, were punished for using their traditional languages and were made ashamed of their traditional language and way of life. Consequently, by reason of the attendance at the Identified Residential Schools, the Survivor Class members' ability to speak their traditional languages and practice their shíshálh, Tk'emlúps, and other, spiritual, religious and cultural activities was seriously impaired and, in some cases, lost entirely. These

Class members were denied the ability to exercise and enjoy their Aboriginal Rights, both individually and in the context of their collective expression within the Bands, some particulars of which include, but are not limited to:

(a) shíshálh, Tk'emlúps and other Aboriginal cultural, spiritual and traditional activities have been lost or impaired;

(b) the traditional social structures, including the equal authority of male and female leaders have been lost or impaired;

(c) the shíshálh, Tk'emlúps and other Aboriginal languages have been lost or impaired;

(d) traditional shíshálh, Tk'emlúps and Aboriginal parenting skills have been lost or impaired;

(e) shíshálh, Tk'emlúps and other Aboriginal skills for gathering, harvesting, hunting and preparing traditional foods have been lost or impaired; and,

(f) shíshálh, Tk'emlúps and Aboriginal spiritual beliefs have been lost or impaired.

74. The interference in the Aboriginal Rights of the Survivor Class has resulted in that same loss being suffered by their descendants and communities, namely the Descendant and Band Classes, all of which was the result sought by Canada.

75. Canada had at all material times and continues to have a duty to protect the Class members' Aboriginal Rights, including the exercise of their spiritual practices and traditional protection of their lands and resources, and an obligation not to undermine or interfere with the individual Plaintiffs' and Class members' Aboriginal Rights. Canada has failed in these duties, without justification, through its Residential Schools Policy.

Intentional Infliction of Mental Distress

76. The design and implementation of the Residential Schools Policy as a program of assimilation to eradicate Aboriginal culture constituted flagrant, extreme and outrageous conduct which was plainly calculated to result in the Cultural, Social and Linguistic Damage, and the mental distress arising from that damage, which was actually suffered by the members of the Survivor and Descendant Classes.

Negligence giving rise to Spiritual, Physical, Sexual, Emotional and Mental Abuse

77. Through its Agents, Canada was negligent and in breach of its duties of care to the Survivor Class, particulars of which include, but are not limited to, the following:

(a) it failed to adequately screen and select the individuals to whom it delegated the operation of the Identified Residential Schools, to adequately supervise and control the operations of the Identified Residential Schools, and to protect Aboriginal children from spiritual, physical, sexual, emotional and mental abuse at the Identified Residential Schools, and as a result, such abuses did occur to Survivor Class members and Canada is liable for such abuses;

(b) it failed to respond appropriately or at all to disclosure of abuses in the Identified Residential Schools, and in fact, covered up such abuse and suppressed information relating to those abuses; and

(c) it failed to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed.

Vicarious Liability

78. Through its Agents, Canada breached its duty of care to the Survivor Class resulting in damages to the Survivor Class and is vicariously liable for all of the breaches and abuses committed on its behalf.

79. Further, or in the alternative, Canada is vicariously liable for the negligent performance of the fiduciary, constitutionally-mandated, statutory and common law duties of its Agents.

Damages

80. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of mental distress and the breaches of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Survivor Class members, including the Representative Plaintiffs, suffered injury and damages including:

(a) loss of language, culture, spirituality, and Aboriginal identity;

(b) emotional and psychological harm;

(c) isolation from their family, community and Nation;

(d) deprivation of the fundamental elements of an education, including basic literacy;

(e) an impairment of mental and emotional health, in some cases amounting to a permanent disability;

(f) an impaired ability to trust other people, to form or sustain intimate relationships, to participate in normal family life, or to control anger;

(g) a propensity to addiction;

(h) alienation from community, family, spouses and children;

(i) an impaired ability to enjoy and participate in recreational, social, cultural, athletic and employment activities;

(j) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;

(k) deprivation of education and skills necessary to obtain gainfully employment;

(l) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the Residential School experience;

(m) sexual dysfunction;

(n) depression, anxiety and emotional dysfunction;

(o) suicidal tendencies;

(p) pain and suffering;

(q) loss of self-esteem and feelings of degradation, shame, fear and loneliness;,

(r) nightmares, flashbacks and sleeping problems;

(s) fear, humiliation and embarrassment as a child and adult;

(t) sexual confusion and disorientation as a child and young adult;

(u) impaired ability to express emotions in a normal and healthy manner;

(v) loss of ability to participate in, or fulfill, cultural practices and duties;

(w) loss of ability to live in their community and Nation; and

(x) constant and intense emotional, psychological pain and suffering.

81. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of harm and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Descendant Class members, including the Representative Plaintiffs, suffered injury and damages including:

(a) their relationships with Survivor Class members were impaired, damaged and distorted as a result of the experiences of Survivor Class members in the Identified Residential Schools; and,

(b) their culture and languages were undermined and in some cases eradicated by, amongst other things, as pleaded, the forced assimilation of Survivor Class members into Euro-Canadian culture through the operation of the Identified Residential Schools.

82. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of harm and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Band Class has suffered from the loss of the ability to fully exercise their Aboriginal Rights collectively, including the right to have a traditional government based on their own languages, spiritual practices, traditional laws

and practices and to have those traditions fully respected by the members of the Survivor and Descendant Classes, all of which flowed directly from the individual losses of the Survivor Class and Descendant Class members' Cultural, Linguistic and Social Damage.

Grounds for Punitive and Aggravated Damages

83. Canada deliberately planned the eradication of the language, religion and culture of Survivor Class members and Descendant Class members, and the destruction of the Band Class. The actions were malicious and intended to cause harm, and in the circumstances punitive and aggravated damages are appropriate and necessary.

84. The Class members plead that Canada and its Agents had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses of Survivor Class members that were occurring at the Identified Residential Schools.

85. Despite this knowledge, Canada continued to operate the Residential Schools and took no steps, or in the alternative no reasonable steps, to protect the Survivor Class members from these abuses and the grievous harms that arose as a result. In the circumstances, the failure to act on that knowledge to protect vulnerable children in Canada's care amounts to a wanton and reckless disregard for their safety and renders punitive and aggravated damages both appropriate and necessary.

Legal Basis of Claim

86. The Survivor and Descendant Class members are Indians as defined by the *Indian Act*, R.S.C. 1985, c. 1-5. The Band Class members are bands made up of Indians so defined.

87. The Class members' Aboriginal Rights existed and were exercised at all relevant times pursuant to the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

88. At all material times, Canada owed the Plaintiffs and Class members a special and constitutionally-mandated duty of care, good faith, honesty and loyalty pursuant to Canada's constitutional obligations and Canada's duty to act in the best interests of Aboriginal People and especially Aboriginal Children who were particularly vulnerable. Canada breached those duties, causing harm.

89. The Class members descend from Aboriginal Peoples who have exercised their respective laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans to the present, the Aboriginal Peoples from whom the Plaintiffs and Class members descend have sustained their people, communities and distinctive culture by exercising their respective laws, customs and traditions in relation to their entire way of life, including language, dance, music, recreation, art, family, marriage and communal responsibilities, and use of resources.

Constitutionality of Sections of the *Indian Act*

90. The Class members plead that any section of the Act and its predecessors and any Regulation passed under the Act and any other statutes relating to Aboriginal Persons that provide or purport to provide the statutory authority for the eradication of Aboriginal People through the destruction of their languages, culture, practices, traditions and way of life, are in violation of sections 25 and 35(1) of the *Constitution Act* 1982, sections 1 and 2 of the *Canadian*

Bill of Rights, R.S.C. 1985, as well as sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* and should therefore be treated as having no force and effect.

91. Canada deliberately planned the eradication of the language, spirituality and culture of the Plaintiffs and Class members.

92. Canada's actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

93. The Plaintiffs plead and rely upon the following:

Federal Courts Act, R.S.C., 1985, c. F-7, s. 17;

Federal Courts Rules, SOR/98-106, Part 5.1 Class Proceedings;

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, ss. 3, 21, 22, and 23;

Canadian Charter of Rights and Freedoms, ss. 7, 15 and 24;

Constitution Act, 1982, ss. 25 and 35(1),

Negligence Act (British Columbia), R.S.B.C. 1996, c. 333;

The Canadian Bill of Rights, R.S.C. 1985, App. III, Preamble, ss. 1 and 2;

The Indian Act, R.S.C. 1985, ss. 2(1), 3, 18(2), 114-122 and its predecessors.

International Treaties:

Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force Jan. 12, 1951;

Declaration of the Rights of the Child (1959), G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354;

Convention on the Rights of the Child, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989);

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976;

American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System,* OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992); and

United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007), endorsed by Canada 12 November 2010.

The plaintiffs propose that this action be tried at Vancouver, BC.

August 16, 2012

Len Marchand, on behalf of
all Solicitors for the Plaintiffs

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TAB 15

Court File No. T-1542-13

PROPOSED CLASS PROCEEDING

FORM 171A - Rule 171

FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND and the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE and RITA POULSON

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by THE ATTORNEY GENERAL OF CANADA

DEFENDANT

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

(Date)

Issued by:_____
(Registry Officer)

Address of local office:_____

TO:

Her Majesty the Queen in Right of Canada,
Minister of Indian Affairs and Northern Development, and
Attorney General of Canada
Department of Justice
900 - 840 Howe Street
Vancouver, B.C. V6Z 2S9

RELIEF SOUGHT

The Survivor Class

1. The Representative Plaintiffs of the Survivor Class, on their own behalf, and on behalf of the members of the Survivor Class, claim:

(a) an Order certifying this proceeding as a Class Proceeding pursuant to the Federal Court Class Proceedings Rules ("CPR") and appointing them as Representative Plaintiffs for the Survivor Class and any appropriate subgroup of that Class;

(b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the Plaintiffs and the other Survivor Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Identified Residential Schools;

(c) a Declaration that Canada breached the Aboriginal Rights of the Survivor Class;

(d) a Declaration that the Residential Schools Policy and the Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Survivor Class;

(e) a Declaration that Canada is liable to the Plaintiffs and other Survivor Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties, and Aboriginal Rights and for the intentional infliction of mental distress, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;

(f) non-pecuniary general damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights, negligence and intentional infliction of mental distress for which Canada is liable;

(g) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, loss of educational opportunities, breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights and intentional infliction of mental distress including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Survivor Class for which Canada is liable;

(h) exemplary and punitive damages for which Canada is liable ;

(i) prejudgment and post-judgment interest;

(j) the costs of this action; and

(k) such further and other relief as this Honourable Court may deem just.

The Descendant Class

2. The Representative Plaintiffs of the Descendant Class, on their own behalf and on behalf of the members of the Descendant Class, claim:

(a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPR and appointing them as Representative Plaintiffs for the Descendant Class and any appropriate subgroup of that Class;

(b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the Plaintiffs and the other Descendant Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Identified Residential Schools;

(c) a Declaration that Canada breached the Aboriginal Rights of the Descendant Class;

(d) a Declaration that the Residential Schools Policy and the Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Descendant Class;

(e) a Declaration that Canada is liable to the Plaintiffs and other Descendant Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;

(f) non-pecuniary general damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights for which Canada is liable;

(g) pecuniary general damages and special damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Descendant Class for which Canada is liable;

(h) exemplary and punitive damages for which Canada is liable;

(i) pre-judgment and post-judgment interest;

(j) the costs of this action; and

(k) such further and other relief as this Honourable Court may deem just;

The Band Class

3. The Representative Plaintiffs of the Band Class claim:

(a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPR and appointing them as Representative Plaintiffs for the Band Class;

(b) a Declaration that the Sechelt Indian Band (referred to as the shíshálh or shíshálh band) and Tk'emlúps Band, and all members of the Band Class, have existing Aboriginal Rights within the meaning of s. 35(1) of the *Constitution Act, 1982* to speak their traditional languages and engage in their traditional customs;

(c) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the Band Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the SIRS and the KIRS;

(d) a Declaration that the Residential Schools Policy and the KIRS, the SIRS and Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Band Class;

(e) a Declaration that Canada was or is in breach of the Band Class members' Aboriginal Rights;

(f) a Declaration that Canada is liable to the Band Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;

(g) non-pecuniary and pecuniary general damages and special damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights, including amounts to cover the ongoing cost of care and development of wellness plans for individual members of the bands in the Band Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Bands for which Canada is liable;

(h) the construction of healing centres in the Band Class communities by Canada;

(i) exemplary and punitive damages for which Canada is liable;

(j) pre-judgment and post-judgment interest;

(k) the costs of this action; and

(l) such further and other relief as this Honourable Court may deem just.

DEFINITIONS

4. The following definitions apply for the purposes of this Claim:

(a) "Aboriginal(s)", "Aboriginal Person(s)" or "Aboriginal Child(ren)" means a person or persons whose rights are recognized and affirmed by the *Constitution Act*, 1982, s. 35;

(b) "Aboriginal Right(s)" means any or all of the aboriginal and treaty rights recognized and affirmed by the *Constitution Act*, 1982, s. 35;

(c) "Act" means the *Indian Act*, R.S.C. 1985, c. I-5 and its predecessors as have been amended from time to time;

(d) "Agents" means the servants, contractors, agents, officers and employees of Canada and the operators, managers, administrators and teachers and staff of each of the Residential Schools;

(e) "Agreement" means the Indian Residential Schools Settlement Agreement dated May 10, 2006 entered into by Canada to settle claims relating to Residential Schools as approved in the orders granted in various jurisdictions across Canada;

(f) "Band Class" means the Tk'emlúps te Secwépemc Indian Band and the shíshálh band and any other Aboriginal Indian Band(s) which:

(i) has some members who are members of the Survivor Class, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically identified Residential Schools.

(g) "Canada" means the Defendant, Her Majesty the Queen in right of Canada as represented by the Attorney General of Canada;

(h) "Class" or "Class members" means all members of the Survivor Class, Descendant Class and Band Class as defined herein;

(i) "Class Period" means 1920 to 1979;

(j) "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the educational, governmental, economic, cultural, linguistic, spiritual and social customs, practices and way of life, traditional governance structures, as well as to the community and individual security and wellbeing, of Aboriginal Persons;

(k) "Descendant Class" means all persons who are descended from Survivor Class members;

(l) "Identified Residential School(s)" means the KIRS or the SIRS or any other Residential School specifically identified by a member of the Band Class;

(m) "KIRS" means the Kamloops Indian Residential School;

(n) "Residential Schools" means all Indian Residential Schools recognized under the Agreement;

(o) "Residential Schools Policy" means the policy of Canada with respect to the implementation of Indian Residential Schools;

(p) "SIRS" means the Sechelt Indian Residential School;

(q) "Survivor Class" means all Aboriginal persons who attended at an Identified Residential School, during the Class Period.

THE PARTIES

The Plaintiffs

5. The Plaintiff, Darlene Matilda Bulpit (nee Joe) resides on shíshálh band lands in British Columbia. Darlene Matilda Bulpit was born on August 23, 1948 and attended the SIRS for nine years, between the years 1954 and 1963. Darlene Matilda Bulpit is a proposed Representative Plaintiff for the Survivor Class.

6. The Plaintiff, Frederick Johnson resides on shíshálh band lands in British Columbia. Frederick Johnson was born on July 21, 1960 and attended the SIRS for ten years, between the

years 1966 and 1976. Frederick Johnson is a proposed Representative Plaintiff for the Survivor Class.

7. The Plaintiff, Abigail Margaret August (nee Joe) resides on shíshálh band lands in British Columbia. Abigail Margaret August was born on August 21, 1954 and attended the SIRS for eight years, between the years 1959 and 1967. Abigail Margaret August is a proposed Representative Plaintiff for the Survivor Class.

8. The Plaintiff, Shelly Nadine Hoehne (nee Joe) resides on shíshálh band lands in British Columbia. Shelly Nadine Hoehne was born on June 23, 1952 and attended the SIRS for eight years, between the years 1958 and 1966. Shelly Nadine Hoehne is a proposed Representative Plaintiff for the Survivor Class.

9. The Plaintiff, Daphne Paul resides on shíshálh band lands in British Columbia. Daphne Paul was born on January 13, 1948 and attended the SIRS for eight years, between the years 1953 and 1961. Daphne Paul is a proposed Representative Plaintiff for the Survivor Class.

10. The Plaintiff, Violet Catherine Gottfriedson resides on the Tk'emlúps te Secwépeme Indian Band reserve in British Columbia. Violet Catherine Gottfriedson was born on March 30, 1945 and attended the KIRS for four years, between the years 1958 and 1962. Violet Catherine Gottfriedson is a proposed Representative Plaintiff for the Survivor Class.

11. The Plaintiff, Doreen Louise Seymour resides on the Tk'emlúps te Secwépeme Indian Band reserve in British Columbia. Doreen Louise Seymour was born on September 7, 1955 and attended the KIRS for five years, between the years 1961 and 1966. Doreen Louise Seymour is a proposed Representative Plaintiff for the Survivor Class.

12. The Plaintiff, Charlotte Anne Victorine Gilbert (nee Larue) resides in Williams Lake in British Columbia. Charlotte Anne Victorine Gilbert was born on May 24, 1952 and attended the KIRS for seven years, between the years 1959 and 1966. Charlotte Anne Victorine Gilbert is a proposed Representative Plaintiff for the Survivor Class.

13. The Plaintiff, Victor Fraser (also known as Victor Frezie) resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Victor Fraser was born on June 11, 1957 and attended the KIRS for six years, between the years 1962 and 1968. Victor Fraser is a proposed Representative Plaintiff for the Survivor Class.

14. The Plaintiff, Diena Marie Jules resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Diena Marie Jules was born on September 12, 1955 and attended the KIRS for six years, between the years 1962 and 1968. Diena Marie Jules is a proposed Representative Plaintiff for the Survivor Class.

15. The Plaintiff, Aaron Joe, resides on shíshálh band lands. Aaron Joe was born on January 19, 1972 and is the son of Valerie Joe, who attended the SIRS as a day scholar. Aaron Joe is a proposed Representative Plaintiff for the Descendant Class.

16. The Plaintiff, Rita Poulson, resides on shíshálh band lands. Rita Poulson was born on March 8, 1974 and is the daughter of Randy Joe, who attended the SIRS as a day scholar. Rita Poulson is a proposed Representative Plaintiff for the Descendant Class.

17. The Plaintiff, Amanda Deanne Big Sorrel Horse resides on the Tk'emlúps te Secwépemc Indian Band reserve. Amanda Deanne Big Sorrel Horse was born on December 26, 1974 and is the daughter of Jo-Anne Gottfriedson who attended the KIRS for six years between

the years 1961 and 1967. Amanda Deanne Big Sorrel Horse is a proposed Representative Plaintiff for the Descendant Class.

18. The Tk'emlúps te Secwépemc Indian Band and the shíshálh band are"bands" as defined by the Act and they both propose to act as Representative Plaintiffs for the Band Class. The Band Class members represent the collective interests and authority of each of their respective communities.

19. The individual Plaintiffs and the proposed Survivor and Descendant Class members are largely members of the shíshálh band and Tk'emlúps Indian Band, and members of Canada's First Nations and/or are the sons and daughters of members of these Aboriginal collectives. The individual Plaintiffs and Survivor and Descendant Class members are Aboriginal Persons within the meaning of the *Constitution Act, 1982,* s. 35.

The Defendant

20. Canada is represented in this proceeding by the Attorney General of Canada. The Attorney General of Canada represents the interests of Canada and the Minister of Aboriginal Affairs and Northern Development Canada and predecessor Ministers who were responsible for "Indians" under s.91(24) of the *Constitution Act, 1867*, and who were, at all material times, responsible for the formation and implementation of the Residential Schools Policy, and the maintenance and operation of the KIRS and the SIRS.

STATEMENT OF FACTS

21. Over the course of the last several years, Canada has acknowledged the devastating impact of its Residential Schools Policy on Canada's Aboriginal Peoples. Canada's Residential

Schools Policy was designed to eradicate Aboriginal culture and identity and assimilate the Aboriginal Peoples of Canada into Euro-Canadian society. Through this policy, Canada ripped away the foundations of identity for generations of Aboriginal People and caused incalculable harm to both individuals and communities.

22. The direct beneficiary of the Residential Schools Policy was Canada as its obligations would be reduced in proportion to the number, and generations, of Aboriginal Persons who would no longer recognize their Aboriginal identity and would reduce their claims to rights under the Act and Canada's fiduciary, constitutionally-mandated, statutory and common law duties.

23. Canada was also a beneficiary of the Residential Schools Policy, as the policy served to weaken the claims of Aboriginal Peoples to their traditional lands and resources. The result was a severing of Aboriginal People from their cultures, traditions and ultimately their lands and resources. This allowed for exploitation of those lands and resources by Canada, not only without Aboriginal Peoples' consent but also, contrary to their interests, the Constitution of Canada and the Royal Proclamation of 1763.

24. The truth of this wrong and the damage it has wrought has now been acknowledged by the Prime Minister on behalf of Canada, and through the pan-Canadian settlement of the claims of those who *resided at* Canada's Residential Schools by way of the Agreement implemented in 2007. Notwithstanding the truth and acknowledgement of the wrong and the damages caused, many members of Canada's Aboriginal communities were excluded from the Agreement, not because they did not *attend* Residential Schools and suffer Cultural, Linguistic and Social Damage, but simply because they did not *reside at* Residential Schools.

25. This claim is on behalf of the members of the Survivor Class, namely those who attended an Identified Residential School for the Cultural, Linguistic and Social Damage occasioned by that attendance, as well as on behalf of the Descendant Class, who are the descendants of those within the Survivor Class, and the Band Class, consisting of the Aboriginal communities within which the Identified Residential Schools were situated, and within which the majority of the Survivor and Descendant Class members live.

26. The claims of the proposed Representative Plaintiffs are for the harm done to the Representative Plaintiffs as a result of members of the Survivor Class *attending* the KIRS and the SIRS and being exposed to the operation of the Residential Schools Policy and do not include the claims arising from residing at the KIRS or the SIRS for which specific compensation has been paid under the Agreement. This claim seeks compensation for the victims of that policy whose claims have been ignored by Canada and were excluded from the compensation in the Agreement.

The Residential School System

27. Residential Schools were established by Canada prior to 1874, for the education of Aboriginal Children. Commencing in the early twentieth century, Canada began entering into formal agreements with various religious organizations (the "Churches") for the operation of Residential Schools. Pursuant to these agreements, Canada controlled, regulated, supervised and directed all aspects of the operation of Residential Schools. The Churches assumed the day-to-day operation of many of the Residential Schools under the control, supervision and direction of Canada, for which Canada paid the Churches a *per capita* grant. In 1969, Canada took over operations directly.

28. As of 1920, the Residential Schools Policy included compulsory *attendance* at Residential Schools for all Aboriginal children aged 7 to 15. Canada removed most Aboriginal Children from their homes and Aboriginal communities and transported them to Residential Schools which were often long distances away. However, in some cases, Aboriginal Children lived in their homes and communities and were similarly required to attend Residential Schools as day students and not residents. This practice applied to even more children in the later years of the Residential Schools Policy. While at Residential School, all Aboriginal Children were confined and deprived of their heritage, their support networks and their way of life, forced to adopt a foreign language and a culture alien to them and punished for non-compliance.

29. The purpose of the Residential Schools Policy was the complete integration and assimilation of Aboriginal children into the Euro-Canadian culture and the obliteration of their traditional language, culture, religion and way of life. Canada set out and intended to cause the Cultural, Linguistic and Social Damage which has harmed Canada's Aboriginal Peoples and Nations. ~~In addition to the inherent cruelty of the~~ As a result of Canada's requirements for the forced attendance of the Survivor Class members under the Residential Schools Policy ~~itself~~, many children attending Residential Schools were also subject to spiritual, physical, sexual and emotional abuse, all of which continued until the year 1997, when the last Residential School was closed.

30. Canada chose to be disloyal to its Aboriginal Peoples, implementing the Residential Schools Policy in its own self-interest, including economic self-interest, and to the detriment and exclusion of the interests of the Aboriginal Persons to whom Canada owed fiduciary and constitutionally-mandated duties. The intended eradication of Aboriginal identity, culture, language, and spiritual practices ~~and religion~~, to the extent successful, results in the reduction of

the obligations owed by Canada in proportion to the number of individuals, over generations, who would no longer identify as Aboriginal and who would be less likely to make claims to their rights as Aboriginal Persons.

The Effects of the Residential Schools Policy on the Class Members

Tk'emlúps Indian Band

31. Tk'emlúpsemc, 'the people of the confluence', now known as the Tk'emlúps te Secwépemc Indian Band are members of the northernmost of the Plateau People and of the Interior-Salish Secwépemc (Shuswap) speaking peoples of British Columbia. The Tk'emlúps Indian Band was established on a reserve now adjacent to the City of Kamloops, where the KIRS was subsequently established. Most, if not all, of the students who *attended*, but did not *reside at* the KIRS were or are members of the Tk'emlúps Indian Band, resident or formerly resident on the reserve.

32. Secwepemctsin is the language of the Secwépemc, and it is the unique means by which the cultural, ecological, and historical knowledge and experience of the Secwépemc people is understood and conveyed between generations. It is through language, spiritual practices and passage of culture and traditions including their rituals, drumming, dancing, songs and stories, that the values and beliefs of the Secwépemc people are captured and shared. From the Secwépemc perspective all aspects of Secwépemc knowledge, including their culture, traditions, laws and languages, are vitally and integrally linked to their lands and resources.

33. Language, like the land, was given to the Secwépemc by the Creator for communication to the people and to the natural world. This communication created a reciprocal and cooperative relationship between the Secwépemc and the natural world which enabled them

to survive and flourish in harsh environments. This knowledge, passed down to the next generation orally, contained the teachings necessary for the maintenance of Secwépemc culture, traditions, laws and identity.

34. For the Secwépemc, their spiritual practices, songs, dances, oral histories, stories and ceremonies were an integral part of their lives and societies. These practices and traditions are absolutely vital to maintain. Their songs, dances, drumming and traditional ceremonies connect the Secwépemc to their land and continually remind the Secwépemc of their responsibilities to the land, the resources and to the Secwépemc people.

35. Secwépemc ceremonies and spiritual practices, including their songs, dances, drumming and passage of stories and history, perpetuate their vital teachings and laws relating to the harvest of resources, including medicinal plants, game and fish, and the proper and respectful protection and preservation of resources. For example, in accordance with Secwépemc laws, the Secwépemc sing and pray before harvesting any food, medicines, and other materials from the land, and make an offering to thank the Creator and the spirits for anything they take. The Secwépemc believe that all living things have spirits and must be shown utmost respect. It was these vital, integral beliefs and traditional laws, together with other elements of Secwépemc culture and identity, that Canada sought to destroy with the Residential Schools Policy.

Shíshálh band

36. The shíshálh Nation, a division of the Coast Salish First Nations, originally occupied the southern portion of the lower coast of British Columbia. The shíshálh People settled the area thousands of years ago, and occupied approximately 80 village sites over a vast tract of land. The shíshálh People are made up of four sub-groups that speak the language of Shashishalhem,

which is a distinct and unique language, although it is part of the Coast Salish Division of the Salishan Language.

37. Shíshálh tradition describes the formation of the shíshálh world (Spelmulh story). Beginning with the creator spirits, who were sent by the Divine Spirit to form the world, they carved out valleys leaving a beach along the inlet at Porpoise Bay. Later, the transformers, a male raven and a female mink, added details by carving trees and forming pools of water.

38. The shíshálh culture includes singing, dancing and drumming as an integral part of their culture and spiritual practices, a connection with the land and the Creator and passing on the history and beliefs of the people. Through song and dance the shíshálh People would tell stories, bless events and even bring about healing. Their songs, dances and drumming also signify critical seasonal events that are integral to the shíshálh. Traditions also include making and using masks, baskets, regalia and tools for hunting and fishing. It was these vital, integral beliefs and traditional laws, together with other elements of the shíshálh culture and identity, that Canada sought to destroy with the Residential Schools Policy.

The Impact of the Identified Residential schools

39. For all of the Aboriginal Children who were compelled to attend the Identified Residential Schools, rigid discipline was enforced as per the Residential Schools Policy. While at school, children were not allowed to speak their Aboriginal language, even to their parents, and thus members of these Aboriginal communities were forced to learn English.

40. Aboriginal culture was strictly suppressed by the school administrators in compliance with the policy directives of Canada including the Residential Schools Policy. At the SIRS, ~~converts to Catholicism~~ members of shishalh were forced to burn or give to the agents of Canada

centuries-old totem poles, regalia, masks and other "paraphernalia of the medicine men" and to abandon their potlatches, dancing and winter festivities, and other elements integral to the Aboriginal culture and society of the shíshálh and Secwépemc peoples.

41. Because the SIRS was physically located in the shíshálh community, ~~thechurch and~~Canada's ~~government~~ eyes, both directly and through its agents, were upon the elders and they were punished severely for practising their culture or speaking their language or passing this on to future generations. In the midst of that scrutiny, the Class members struggled, often unsuccessfully, to practice, protect and preserve their songs, masks, dancing or other cultural practices

42. The Tk'emlúps te Secwépemc suffered a similar fate due to their proximity to the KIRS.

43. The children at the Identified Residential Schools were ~~indoctrinated into Christianity, and~~ taught to be ashamed of their Aboriginal identity, culture, spirituality and practices. They were referred to as, amongst other derogatory epithets, "dirty savages" and "heathens" and taught to shun their very identities. The Class members' Aboriginal way of life, traditions, cultures and spiritual practices were supplanted with the Euro-Canadian identity imposed upon them by Canada through the Residential Schools Policy.

44. This implementation of the Residential Schools Policy further damaged the Survivor Class members of the Identified Residential Schools, who returned to their homes at the end of the school day and, having been taught in the school that the traditional teachings of their parents, grandparents and elders were of no value and, in some cases,

"heathen" practices and beliefs, would dismiss the teachings of their parents, grandparents and elders.

45. The assault on their traditions, laws, language and culture through the implementation of the Residential Schools Policy by Canada, directly and through its agents, has continued to undermine the individual Survivor Class members, causing a loss of self-esteem, depression, anxiety, suicidal ideation, suicide, physical illnesses without clear causes, difficulties in parenting, difficulties in maintaining positive relationships, substance abuse and violence, among other harms and losses, all of which has impacted the Descendant Class.

46. The Band Class members have lost, in whole or in part, their traditional economic viability, self-government and laws, language, land base and land-based teachings, traditional spiritual practices and religious practices, and the integral sense of their collective identity.

47. The Residential Schools Policy, delivered through the Identified Residential Schools, wrought cultural, linguistic and social devastation on the communities of the Band Class and altered their traditional way of life.

Canada's Settlement with Former Residential School Residents

48. From the closure of the Identified Residential Schools in the 1970's until the late 1990's, Canada's Aboriginal communities were left to battle the damages and suffering of their members as a result of the Residential Schools Policy, without any acknowledgement from Canada. During this period, Residential School survivors increasingly began speaking out about the horrible conditions and abuse they suffered, and the dramatic impact it had on

their lives. At the same time, many survivors committed suicide or self-medicated to the point of death. The deaths devastated not only the members of the Survivor Class and the Descendant Class, but also the life and stability of the communities represented by the Band Class.

49. In January 1998, Canada issued a Statement of Reconciliation acknowledging and apologizing for the failures of the Residential Schools Policy. Canada admitted that the Residential Schools Policy was designed to assimilate Aboriginal Persons and that it was wrong to pursue that goal. The Plaintiffs plead that the Statement of Reconciliation by Canada is an admission by Canada of the facts and duties set out herein and is relevant to the Plaintiffs' claim for damages, particularly punitive damages.

50. The Statement of Reconciliation stated, in part, as follows:

> *Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the results of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.*
>
> *Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the Federal Government which have contributed to these difficult pages in the history of our relationship together.*

> *One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School System. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continued to reverberate in Aboriginal communities to this date. Tragically, some children were the victims of physical and sexual abuse.*
>
> *The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at Residential Schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at Residential Schools, we are deeply sorry. In dealing with the legacies of the Residential School program, the Government of Canada proposes to work with First Nations, Inuit, Metis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of this sad era of our history...*
>
> *Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong community...*

51. On or about May 10, 2006, Canada entered into the Agreement to provide compensation primarily to those who *resided at* Residential Schools.

52. The Agreement provides for two types of individualized compensation: the Common Experience Payment ("CEP") for the fact of having resided at a Residential School, and compensation based upon an Independent Assessment Process ("IAP"), to provide compensation for certain abuses suffered and harms these abuses caused.

53. The CEP consisted of compensation for former *residents* of a Residential School in the amount of $10,000 for the first school year or part of a school year and a further $3,000 for each

subsequent school year or part of a school year of *residence* at a Residential School. The CEP was payable based upon residence at a Residential School out of a recognition that the experience of assimilation was damaging and worthy of compensation, regardless of whether a student experienced physical, sexual or other abuse while at the Residential School. Compensation for the latter was payable through the IAP. The CEP was available only to former *residents* of a Residential School while, in some cases, the IAP was available not only to former residents but also other young people who were lawfully on the premises of a Residential School, including former day students.

54. The implementation of the Agreement represented the first time Canada agreed to pay compensation for Cultural, Linguistic and Social Damage. Canada refused to incorporate compensation for members of the Survivor Class, namely, those students who *attended* the Identified Residential Schools, or other Residential Schools, but who did not *reside* there.

55. The Agreement was approved by provincial and territorial superior courts from British Columbia to Quebec, and including the Northwest Territories, Yukon Territory and Nunavut, and the Agreement was implemented beginning on September 20, 2007.

56. On June 11, 2008, Prime Minister Stephen Harper on behalf of Canada, delivered an apology ("Apology") that acknowledged the harm done by Canada's Residential Schools Policy:

> *For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities. In the 1870's, the federal government, partly in order to meet its obligation to educate Aboriginal children, began to play a role in the development and administration of these schools.* ***Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture.*** *These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some*

> *sought, as it was infamously said, **"to kill the Indian in the child"**. Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country. **[emphasis added]***

57. In this Apology, the Prime Minister made some important acknowledgments regarding the Residential Schools Policy and its impact on Aboriginal Children:

> *The Government of Canada built an educational system in which very young children were often forcibly removed from their homes, often taken far from their communities. Many were inadequately fed, clothed and housed. All were deprived of the care and nurturing of their parents, grandparents and communities. First Nations, Inuit and Métis languages and cultural practices were prohibited in these schools. Tragically, some of these children died while attending residential schools and others never returned home.*
>
> *The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language.*
>
> *The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.*
>
> * * *
>
> *We now recognize that it was wrong to separate children from rich and vibrant cultures and traditions, that it created a void in many lives and communities, and we apologize for having done this. We now recognize that, in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow, and we apologize for having done this. We now recognize that, far too often, these institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you. Not only did you suffer these abuses as children, but as you became parents, you were powerless to protect your own children from suffering the same experience, and for this we are sorry.*
>
> *The burden of this experience has been on your shoulders for far too long. The burden is properly ours as a Government, and as a country. There is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again. You have been working on recovering from this experience for a long time and in a very real sense, we are now joining you on this journey. The*

> *Government of Canada sincerely apologizes and asks the forgiveness of the Aboriginal peoples of this country for failing them so profoundly.*

58. Notwithstanding the Apology and the acknowledgment of wrongful conduct by Canada, as well as the call for recognition from Canada's Aboriginal communities and from the *Truth and Reconciliation Commission* in its Interim Report of February 2012, the exclusion of the Survivor Class from the Agreement by Canada reflects Canada's continued failure to members of the Survivor Class. Canada continues, as it did from the 1970s until 2006 with respect to 'residential students', to deny the damage suffered by the individual Plaintiffs and the members of the Survivor, Descendant and Band Classes.

Canada's Breach of Duties to the Class Members

59. From the formation of the Residential Schools Policy to its execution in the form of forced attendance at the Identified Residential Schools, Canada utterly failed the Survivor Class members, and in so doing, destroyed the foundations of the individual identities of the Survivor Class members, stole the heritage of the Descendant Class members and caused incalculable losses to the Band Class members.

60. The Survivor Class members, Descendant Class members and Band Class members have all been affected by family dysfunction, a crippling or elimination of traditional ceremonies, and a loss of the hereditary governance structure which allowed for the ability to govern their peoples and their lands.

61. While attending the Identified Residential School the Survivor Class members were utterly vulnerable, and Canada owed them the highest fiduciary, moral, statutory, constitutionally-mandated and common law duties, which included, but were not limited to, the

duty to protect Aboriginal Rights and prevent Cultural, Linguistic and Social Damage. Canada breached these duties, and failed in its special responsibility to ensure the safety and well-being of the Survivor Class while at the Identified Residential Schools.

Canada's Duties

62. Canada was responsible for developing and implementing all aspects of the Residential Schools Policy, including carrying out all operational and administrative aspects of Residential Schools. While the Churches were ~~often~~used as Canada's agents to assist Canada in carrying out its objectives, those objectives and the manner in which they were carried out were the obligations of Canada. Canada was responsible for:

(a) the administration of the Act and its predecessor statutes as well as all other statutes relating to Aboriginal Persons and all Regulations promulgated under these Acts and their predecessors during the Class Period;

(b) the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessors and related Ministries and Departments, as well as the decisions taken by those ministries and departments;

(c) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of the Identified Residential Schools and for the creation, design and implementation of the program of education for Aboriginal Persons in attendance;

(d) the selection, control, training, supervision and regulation of the operators of the Identified Residential Schools, including their employees, servants, officers and agents, and for the care and education, control and well being of Aboriginal Persons attending the Identified Residential Schools;

(e) preserving, promoting, maintaining and not interfering with Aboriginal Rights, including the right to retain and practice their culture, spirituality, language and traditions and the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities; and

(f) the care and supervision of all members of the Survivor Class while they were in attendance at the Identified Residential Schools during the Class Period.

63. Further, Canada has at all material times committed itself to honour international law in relation to the treatment of its people, which obligations form minimum commitments to Canada's Aboriginal Peoples, including the Survivor, Descendant and Band Classes, and which have been breached. In particular, Canada's breaches include the failure to comply with the terms and spirit of:

(a) the *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277, entered into force Jan. 12, 1951,, and in particular Article 2(b), (c) and (e) of that convention, by engaging in the intentional destruction of the culture of Aboriginal Children and communities, causing profound and permanent cultural, psychological, emotional and physical injuries to the Class;

(b) the *Declaration of the Rights of the Child* (1959) G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 by failing to provide Aboriginal Children with the means necessary for normal development, both materially and spiritually, and failing to put them in a position to earn a livelihood and protect them against exploitation;

(c) the *Convention on the Rights of the Child*, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989), and in particular Articles 29 and 30 of that convention, by failing to provide Aboriginal Children with education that is directed to the development of respect for their parents, their cultural identities, language and values, and by denying the right of Aboriginal Children to enjoy their own cultures, to profess and practise their own religions and to use their own languages;

(d) the *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, in particular Articles 1 and 27 of that convention, by interfering with Class members' rights to retain and practice their culture, spirituality, language and traditions, the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities and the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities.

(e) the *American Declaration of the Rights and Duties of Man*, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System,* OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992), and in particular Article XIII, by violating Class members' right to take part in the cultural life of their communities.

(f) the *United Nations Declaration on the Rights of Indigenous Peoples,* G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007), endorsed by Canada 12 November 2010, and in particular article 8, 2(d), which commits to the provision of effective mechanisms for redress for forced assimilation.

64. Canada's obligations under international law inform Canada's common law, statutory, fiduciary, constitutionally-mandated and other duties, and a breach of the aforementioned international obligations is evidence of, or constitutes, a breach under domestic law.

Breach of Fiduciary and Constitutionally-Mandated Duties

65. Canada has constitutional obligations to, and a fiduciary relationship with, Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated the Identified Residential Schools and established the Residential Schools Policy. Through these acts, and by virtue of the *Constitution Act 1867*, the *Constitution Act, 1982*, and the provisions of the Act, as amended, Canada assumed the power and obligation to act in a fiduciary capacity with respect to the education and welfare of Class members.

66. Canada's constitutional duties include the obligation to uphold the honour of the Crown in all of its dealings with Aboriginal Peoples, including the Class members. This obligation arose with the Crown's assertion of sovereignty from the time of first contact and continues through post-treaty relationships. This is and remains an obligation of the Crown and was an obligation on the Crown at all material times. The honour of the Crown is a legal principle which requires the Crown to operate at all material times in its relations with Aboriginal Peoples from contact to post-treaty in the most honourable manner to protect the interests of the Aboriginal Peoples.

67. Canada's fiduciary duties obliged Canada to act as a protector of Class members' Aboriginal Rights, including the protection and preservation of their language, culture and their way of life, and the duty to take corrective steps to restore the Plaintiffs' culture, history and status, or assist them to do so. At a minimum, Canada's duty to Aboriginal Persons included the duty not to deliberately reduce the number of the beneficiaries to whom Canada owed its duties.

68. Canada's fiduciary duties and the duties otherwise imposed by the constitutional mandate assumed by Canada extend to the Descendant Class because the purpose of the assumption of control over the Survivor Class education was to eradicate from those Aboriginal Children their culture and identity, thereby removing their ability, as adults, to pass on to succeeding generations the linguistic, spiritual, cultural and behavioural bases of their people, as well as to relate to their families and communities and, ultimately, their ability to identify themselves as Aboriginal Persons to whom Canada owed its duties.

69. The fiduciary and constitutional duties owed by Canada extend to the Band Class because the Residential Schools Policy was intended to, and did, undermine and seek to destroy the way of life established and enjoyed by these Nations whose identities were and are viewed as collective.

70. Canada acted in its own self-interest and contrary to the interests of Aboriginal Children, not only by being disloyal to, but by actually betraying the Aboriginal Children and communities whom it had a duty to protect. Canada wrongfully exercised its discretion and power over Aboriginal People, and in particular children, for its own benefit. The Residential Schools Policy was pursued by Canada, in whole or in part, to eradicate what Canada saw as the "Indian Problem". Namely, Canada sought to relieve itself of its moral and financial

responsibilities for Aboriginal People, the expense and inconvenience of dealing with cultures, languages, habits and values different from Canada's predominant Euro-Canadian heritage, and the challenges arising from land claims.

71. In breach of its ongoing fiduciary, constitutionally-mandated, statutory and common law duties to the Survivor, Descendant and Band Classes, Canada failed, and continues to fail, to adequately remediate the damage caused by its wrongful acts, failures and omissions. In particular, Canada has failed to take adequate measures to ameliorate the Cultural, Linguistic and Social Damage suffered by the Survivor, Descendant and Band Classes, notwithstanding Canada's admission of the wrongfulness of the Residential Schools Policy since 1998.

Breach of Aboriginal Rights

72. The shíshálh and Tk'emlúps people, and indeed all members of the Band Class, from whom the individual Plaintiffs have descended have exercised laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans, these Nations have sustained their individual members, communities and distinctive cultures by speaking their languages and practicing their customs and traditions.

73. During the time when Survivor Class members attended the Identified Residential Schools, in compliance with the Residential Schools Policy, they were taught to speak English, were punished for using their traditional languages and were made ashamed of their traditional language and way of life. Consequently, by reason of the attendance at the Identified Residential Schools, the Survivor Class members' ability to speak their traditional languages and practice their shíshálh, Tk'emlúps, and other, spiritual, religious and cultural activities was seriously

impaired and, in some cases, lost entirely. These Class members were denied the ability to exercise and enjoy their Aboriginal Rights, both individually and in the context of their collective expression within the Bands, some particulars of which include, but are not limited to:

(a) shíshálh, Tk'emlúps and other Aboriginal cultural, spiritual and traditional activities have been lost or impaired;

(b) the traditional social structures, including the equal authority of male and female leaders have been lost or impaired;

(c) the shíshálh, Tk'emlúps and other Aboriginal languages have been lost or impaired;

(d) traditional shíshálh, Tk'emlúps and Aboriginal parenting skills have been lost or impaired;

(e) shíshálh, Tk'emlúps and other Aboriginal skills for gathering, harvesting, hunting and preparing traditional foods have been lost or impaired; and,

(f) shíshálh, Tk'emlúps and Aboriginal spiritual beliefs have been lost or impaired.

74. The interference in the Aboriginal Rights of the Survivor Class has resulted in that same loss being suffered by their descendants and communities, namely the Descendant and Band Classes, all of which was the result sought by Canada.

75. Canada had at all material times and continues to have a duty to protect the Class members' Aboriginal Rights, including the exercise of their spiritual practices and traditional protection of their lands and resources, and an obligation not to undermine or interfere with the individual Plaintiffs' and Class members' Aboriginal Rights. Canada has failed in these duties, without justification, through its Residential Schools Policy.

Intentional Infliction of Mental Distress

76. The design and implementation of the Residential Schools Policy as a program of assimilation to eradicate Aboriginal culture constituted flagrant, extreme and outrageous conduct which was plainly calculated to result in the Cultural, Social and Linguistic Damage, and the mental distress arising from that damage, which was actually suffered by the members of the Survivor and Descendant Classes.

Negligence giving rise to Spiritual, Physical, Sexual, Emotional and Mental Abuse

77. Through its Agents, Canada was negligent and in breach of its duties of care to the Survivor Class, particulars of which include, but are not limited to, the following:

(a) it failed to adequately screen and select the individuals ~~to whom it delegated~~ who it hired either directly or through its agents for the operation of the Identified Residential Schools, to adequately supervise and control the operations of the Identified Residential Schools, and to protect Aboriginal children from spiritual, physical, sexual, emotional and mental abuse at the Identified Residential Schools, and as a result, such abuses did occur to Survivor Class members and Canada is liable for such abuses;

(b) it failed to respond appropriately or at all to disclosure of abuses in the Identified Residential Schools, and in fact, covered up such abuse and suppressed information relating to those abuses; and

(c) it failed to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed.

Vicarious Liability

78. Through its Agents, Canada breached its duty of care to the Survivor Class resulting in damages to the Survivor Class and is vicariously liable for all of the breaches and abuses committed on its behalf.

79. Further, or in the alternative, Canada is vicariously liable for the negligent performance of the fiduciary, constitutionally-mandated, statutory and common law duties of its Agents.

80. Additionally, the Plaintiffs hold Canada solely responsible for the creation and implementation of the Residential Schools Policy and, furthermore:

a. The Plaintiffs expressly waive any and all rights they may possess to recover from Canada, or any other party, any portion of the Plaintiffs' loss that may be attributable to the fault or liability of any third-party and for which Canada might reasonably be entitled to claim from any one or more third-party for contribution, indemnity or an apportionment at common law, in equity, or pursuant to the British Columbia *Negligence Act*, R.S.B.C. 1996, c. 333, as amended; and

b. The Plaintiffs will not seek to recover from any party, other than Canada, any portion of their losses which have been claimed, or could have been claimed, against any third-parties.

Damages

81. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of mental distress and the breaches of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Survivor Class members, including the Representative Plaintiffs, suffered injury and damages including:

(a) loss of language, culture, spirituality, and Aboriginal identity;

(b) emotional and psychological harm;

(c) isolation from their family, community and Nation;

(d) deprivation of the fundamental elements of an education, including basic literacy;

(e) an impairment of mental and emotional health, in some cases amounting to a permanent disability;

(f) an impaired ability to trust other people, to form or sustain intimate relationships, to participate in normal family life, or to control anger;

(g) a propensity to addiction;

(h) alienation from community, family, spouses and children;

(i) an impaired ability to enjoy and participate in recreational, social, cultural, athletic and employment activities;

(j) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;

(k) deprivation of education and skills necessary to obtain gainfully employment;

(l) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the Residential School experience;

(m) sexual dysfunction;

(n) depression, anxiety and emotional dysfunction;

(o) suicidal tendencies;

(p) pain and suffering;

(q) loss of self-esteem and feelings of degradation, shame, fear and loneliness;,

(r) nightmares, flashbacks and sleeping problems;

(s) fear, humiliation and embarrassment as a child and adult;

(t) sexual confusion and disorientation as a child and young adult;

(u) impaired ability to express emotions in a normal and healthy manner;

(v) loss of ability to participate in, or fulfill, cultural practices and duties;

(w) loss of ability to live in their community and Nation; and

(x) constant and intense emotional, psychological pain and suffering.

82. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of harm and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Descendant Class members, including the Representative Plaintiffs, suffered injury and damages including:

(a) their relationships with Survivor Class members were impaired, damaged and distorted as a result of the experiences of Survivor Class members in the Identified Residential Schools; and,

(b) their culture and languages were undermined and in some cases eradicated by, amongst other things, as pleaded, the forced assimilation of Survivor Class members into Euro-Canadian culture through the operation of the Identified Residential Schools.

83. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of harm and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Band Class has suffered from the loss of the ability to fully exercise their Aboriginal Rights collectively, including the right to have a traditional government based on their own languages, spiritual practices, traditional laws and practices and to have those traditions fully respected by the members of the Survivor and Descendant Classes, all of which flowed directly from the individual losses of the Survivor Class and Descendant Class members' Cultural, Linguistic and Social Damage.

Grounds for Punitive and Aggravated Damages

84. Canada deliberately planned the eradication of the language, religion and culture of Survivor Class members and Descendant Class members, and the destruction of the Band Class. The actions were malicious and intended to cause harm, and in the circumstances punitive and aggravated damages are appropriate and necessary.

85. The Class members plead that Canada and its Agents had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses of Survivor Class members that were occurring at the Identified Residential Schools.

86. Despite this knowledge, Canada continued to operate the Residential Schools and took no steps, or in the alternative no reasonable steps, to protect the Survivor Class members

from these abuses and the grievous harms that arose as a result. In the circumstances, the failure to act on that knowledge to protect vulnerable children in Canada's care amounts to a wanton and reckless disregard for their safety and renders punitive and aggravated damages both appropriate and necessary.

Legal Basis of Claim

87. The Survivor and Descendant Class members are Indians as defined by the *Indian Act*, R.S.C. 1985, c. 1-5. The Band Class members are bands made up of Indians so defined.

88. The Class members' Aboriginal Rights existed and were exercised at all relevant times pursuant to the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

89. At all material times, Canada owed the Plaintiffs and Class members a special and constitutionally-mandated duty of care, good faith, honesty and loyalty pursuant to Canada's constitutional obligations and Canada's duty to act in the best interests of Aboriginal People and especially Aboriginal Children who were particularly vulnerable. Canada breached those duties, causing harm.

90. The Class members descend from Aboriginal Peoples who have exercised their respective laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans to the present, the Aboriginal Peoples from whom the Plaintiffs and Class members descend have sustained their people, communities and distinctive culture by exercising their respective laws, customs and traditions in relation to their entire way of life, including language, dance, music, recreation, art, family, marriage and communal responsibilities, and use of resources.

Constitutionality of Sections of the *Indian Act*

91. The Class members plead that any section of the Act and its predecessors and any Regulation passed under the Act and any other statutes relating to Aboriginal Persons that provide or purport to provide the statutory authority for the eradication of Aboriginal People through the destruction of their languages, culture, practices, traditions and way of life, are in violation of sections 25 and 35(1) of the *Constitution Act* 1982, sections 1 and 2 of the *Canadian Bill of Rights*, R.S.C. 1985, as well as sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* and should therefore be treated as having no force and effect.

92. Canada deliberately planned the eradication of the language, spirituality and culture of the Plaintiffs and Class members.

93. Canada's actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

94. The Plaintiffs plead and rely upon the following:

Federal Courts Act, R.S.C., 1985, c. F-7, s. 17;

Federal Courts Rules, SOR/98-106, Part 5.1 Class Proceedings;

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, ss. 3, 21, 22, and 23;

Canadian Charter of Rights and Freedoms, ss. 7, 15 and 24;

Constitution Act, 1982, ss. 25 and 35(1),

Negligence Act (British Columbia), R.S.B.C. 1996, c. 333;

The Canadian Bill of Rights, R.S.C. 1985, App. III, Preamble, ss. 1 and 2;

The Indian Act, R.S.C. 1985, ss. 2(1), 3, 18(2), 114-122 and its predecessors.

International Treaties:

Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force Jan. 12, 1951;

Declaration of the Rights of the Child (1959), G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354;

Convention on the Rights of the Child, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989);

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976;

American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992); and

United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007), endorsed by Canada 12 November 2010.

The plaintiffs propose that this action be tried at Vancouver, BC.

June 11th, 2013

Peter R. Grant, on behalf of
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TAB 16

Amended Pursuant to the Order of Justice Harrington Made June 3, 2015

Court File No. T-1542-13

~~**PROPOSED**~~ **CLASS PROCEEDING**

FORM 171A - Rule 171

FEDERAL COURT

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND and the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL~~, AARON JOE~~ and RITA POULSEN

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by THE ATTORNEY GENERAL OF CANADA

DEFENDANT

FIRST RE-AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

(Date)

Issued by:_____
(Registry Officer)

Address of local office:_____

TO:

Her Majesty the Queen in Right of Canada,
Minister of Indian Affairs and Northern Development, and
Attorney General of Canada
Department of Justice
900 - 840 Howe Street
Vancouver, B.C. V6Z 2S9

RELIEF SOUGHT

The Survivor Class

1. The Representative Plaintiffs of the Survivor Class, on their own behalf, and on behalf of the members of the Survivor Class, claim:

(a) ~~an Order certifying this proceeding as a Class Proceeding pursuant to the Federal Court Class Proceedings Rules ("CPR") and appointing them as Representative Plaintiffs for the Survivor Class and any appropriate subgroup of that Class~~;

(b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the Plaintiffs and the other Survivor Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the ~~Identified~~ Residential Schools;

(c) a Declaration that members of the Survivor Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

(d) a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) ~~Aboriginal Rights~~ of the Survivor Class;

(e) a Declaration that the Residential Schools Policy and the ~~Identified~~ Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Survivor Class;

(f) a Declaration that Canada is liable to the Survivor Class Representative Plaintiffs and other Survivor Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties, and Aboriginal Rights and for the intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the ~~Identified~~ Residential Schools;

(g) non-pecuniary general damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights and intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law,, negligence and intentional infliction of mental distress for which Canada is liable;

(h) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, loss of educational opportunities, breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights and and intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Survivor Class for which Canada is liable;

(i) exemplary and punitive damages for which Canada is liable ;

(j) prejudgment and post-judgment interest;

(k) the costs of this action; and

(l) such further and other relief as this Honourable Court may deem just.

The Descendant Class

2. The Representative Plaintiffs of the Descendant Class, on their own behalf and on behalf of the members of the Descendant Class, claim:

(a) ~~an Order certifying this proceeding as a Class Proceeding pursuant to the CPR and appointing them as Representative Plaintiffs for the Descendant Class and any appropriate subgroup of that Class~~;

(b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the Plaintiffs and the other Descendant Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the ~~Identified~~ Residential Schools;

(c) a Declaration that the Descendant Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

(d) a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) ~~Aboriginal Rights~~ of the Descendant Class;

(e) a Declaration that the Residential Schools Policy and the ~~Identified~~ Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Descendant Class;

(f) a Declaration that Canada is liable to the Plaintiffs and other Descendant Class members for the damages caused by its breach of fiduciary, constitutionally-

mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the ~~Identified~~ Residential Schools;

(g) non-pecuniary general damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, for which Canada is liable;

(h) pecuniary general damages and special damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Descendant Class for which Canada is liable;

(i) exemplary and punitive damages for which Canada is liable;

(j) pre-judgment and post-judgment interest;

(k) the costs of this action; and

(l) such further and other relief as this Honourable Court may deem just;

The Band Class

3. The Representative Plaintiffs of the Band Class claim:

(a) ~~an Order certifying this proceeding as a Class Proceeding pursuant to the CPR and appointing them as Representative Plaintiffs for the Band Class~~;

(b) a Declaration that the Sechelt Indian Band (referred to as the shíshálh or shíshálh band) and Tk'emlúps Band, and all members of the Band Class, have ~~existing~~ Aboriginal Rights ~~within the meaning of s. 35(1) of the *Constitution Act, 1982*~~ to speak their traditional languages and engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

(c) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties as well as breaches of International Conventions and Covenants, and breaches of international law, to the Band Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the SIRS and the KIRS and other Identified Residential Schools;

(d) a Declaration that the Residential Schools Policy and the KIRS, the SIRS and Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Band Class;

(e) a Declaration that Canada was or is in breach of the Band Class members' linguistic and cultural rights, (Aboriginal Rights or otherwise), as well as breaches of International Conventions and Covenants, and breaches of international law, as a consequence of its establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Residential Schools Policy, and the Identified Residential Schools; ~~Aboriginal Rights;~~

(f) a Declaration that Canada is liable to the Band Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;

(g) non-pecuniary and pecuniary general damages and special damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the ongoing cost of care and development of wellness plans for individual members of the bands in the Band Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Bands for which Canada is liable;

(h) the construction of healing centres in the Band Class communities by Canada;

(i) exemplary and punitive damages for which Canada is liable;

(j) pre-judgment and post-judgment interest;

(k) the costs of this action; and

(l) such further and other relief as this Honourable Court may deem just.

DEFINITIONS

4. The following definitions apply for the purposes of this Claim:

(a) "Aboriginal(s)", "Aboriginal Person(s)" or "Aboriginal Child(ren)" means a person or persons whose rights are recognized and affirmed by the *Constitution Act*, 1982, s. 35;

(b) "Aboriginal Right(s)" means any or all of the aboriginal and treaty rights recognized and affirmed by the *Constitution Act*, 1982, s. 35;

(c) "Act" means the *Indian Act*, R.S.C. 1985, c. I-5 and its predecessors as have been amended from time to time;

(d) "Agents" means the servants, contractors, agents, officers and employees of Canada and the operators, managers, administrators and teachers and staff of each of the Residential Schools;

(e) "Agreement" means the Indian Residential Schools Settlement Agreement dated May 10, 2006 entered into by Canada to settle claims relating to Residential Schools as approved in the orders granted in various jurisdictions across Canada;

(f) "Band Class" means the Tk'emlúps te Secwépemc Indian Band and the shíshálh band and any other Aboriginal Indian Band(s) which:

(i) has or had some members who are or were members of the Survivor Class, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically identified Residential Schools.

(g) "Canada" means the Defendant, Her Majesty the Queen in right of Canada as represented by the Attorney General of Canada;

(h) "Class" or "Class members" means all members of the Survivor Class, Descendant Class and Band Class as defined herein;

(i) "Class Period" means 1920 to ~~1979~~1997;

(j) "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the educational, governmental, economic, cultural, linguistic, spiritual and social customs, practices and way of life, traditional governance structures, as well as to the community and individual security and wellbeing, of Aboriginal Persons;

(k) "Descendant Class" means the first generation of ~~all~~ persons ~~who are~~ descended from Survivor Class members or persons who were legally or traditionally adopted by a Survivor Class Member or their spouse;

(l) "Identified Residential School(s)" means the KIRS or the SIRS ~~or any other~~ Residential School ~~specifically identified by a member of the Band Class~~;

(m) "KIRS" means the Kamloops Indian Residential School;

(n) "Residential Schools" means all Indian Residential Schools recognized under the Agreement;

(o) "Residential Schools Policy" means the policy of Canada with respect to the implementation of Indian Residential Schools;

(p) "SIRS" means the Sechelt Indian Residential School;

(q) "Survivor Class" means all Aboriginal persons who attended as a student or for educational purposes for any period at ~~an Identified~~ Residential School, during the Class Period excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the Indian Residential Schools Settlement Agreement.

THE PARTIES

The Plaintiffs

5. The Plaintiff, Darlene Matilda Bulpit (nee Joe) resides on shíshálh band lands in British Columbia. Darlene Matilda Bulpit was born on August 23, 1948 and attended the SIRS for nine years, between the years 1954 and 1963. Darlene Matilda Bulpit is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

6. The Plaintiff, Frederick Johnson resides on shíshálh band lands in British Columbia. Frederick Johnson was born on July 21, 1960 and attended the SIRS for ten years, between the years 1966 and 1976. Frederick Johnson is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~7. The Plaintiff, Abigail Margaret August (nee Joe) resides on shíshálh band lands in British Columbia. Abigail Margaret August was born on August 21, 1954 and attended the SIRS for eight years, between the years 1959 and 1967. Abigail Margaret August is a proposed Representative Plaintiff for the Survivor Class.~~

~~8. The Plaintiff, Shelly Nadine Hoehne (nee Joe) resides on shíshálh band lands in British Columbia. Shelly Nadine Hoehne was born on June 23, 1952 and attended the SIRS for eight years, between the years 1958 and 1966. Shelly Nadine Hoehne is a proposed Representative Plaintiff for the Survivor Class.~~

9. The Plaintiff, Daphne Paul resides on shíshálh band lands in British Columbia. Daphne Paul was born on January 13, 1948 and attended the SIRS for eight years, between the years 1953 and 1961. Daphne Paul is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

10. The Plaintiff, Violet Catherine Gottfriedson resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Violet Catherine Gottfriedson was born on March 30, 1945 and attended the KIRS for four years, between the years 1958 and 1962. Violet Catherine Gottfriedson is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~11. The Plaintiff, Doreen Louise Seymour resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Doreen Louise Seymour was born on September 7, 1955 and attended the KIRS for five years, between the years 1961 and 1966. Doreen Louise Seymour is a proposed Representative Plaintiff for the Survivor Class.~~

12. The Plaintiff, Charlotte Anne Victorine Gilbert (nee Larue) resides in Williams Lake in British Columbia. Charlotte Anne Victorine Gilbert was born on May 24, 1952 and attended the KIRS for seven years, between the years 1959 and 1966. Charlotte Anne Victorine Gilbert is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~13. The Plaintiff, Victor Fraser (also known as Victor Frezie) resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Victor Fraser was born on June 11, 1957~~

~~and attended the KIRS for six years, between the years 1962 and 1968. Victor Fraser is a proposed Representative Plaintiff for the Survivor Class.~~

14. The Plaintiff, Diena Marie Jules resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Diena Marie Jules was born on September 12, 1955 and attended the KIRS for six years, between the years 1962 and 1968. Diena Marie Jules is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~15. The Plaintiff, Aaron Joe, resides on shíshálh band lands. Aaron Joe was born on January 19, 1972 and is the son of Valerie Joe, who attended the SIRS as a day scholar. Aaron Joe is a proposed Representative Plaintiff for the Descendant Class.~~

16. The Plaintiff, Rita Poulsen, resides on shíshálh band lands. Rita Poulsen was born on March 8, 1974 and is the daughter of Randy Joe, who attended the SIRS as a day scholar. Rita Poulsen is a ~~proposed~~ Representative Plaintiff for the Descendant Class.

17. The Plaintiff, Amanda Deanne Big Sorrel Horse resides on the Tk'emlúps te Secwépemc Indian Band reserve. Amanda Deanne Big Sorrel Horse was born on December 26, 1974 and is the daughter of Jo-Anne Gottfriedson who attended the KIRS for six years between the years 1961 and 1967. Amanda Deanne Big Sorrel Horse is a ~~proposed~~ Representative Plaintiff for the Descendant Class.

18. The Tk'emlúps te Secwépemc Indian Band and the shíshálh band are "bands" as defined by the Act and they both ~~propose to~~ act as Representative Plaintiffs for the Band Class. The Band Class members represent the collective interests and authority of each of their respective communities.

19. The individual Plaintiffs and the proposed Survivor and Descendant Class members are largely members of the shíshálh band and Tk'emlúps Indian Band, and members of Canada's First Nations and/or are the sons and daughters of members of these Aboriginal collectives. The individual Plaintiffs and Survivor and Descendant Class members are Aboriginal Persons within the meaning of the *Constitution Act, 1982,* s. 35.

The Defendant

20. Canada is represented in this proceeding by the Attorney General of Canada. The Attorney General of Canada represents the interests of Canada and the Minister of Aboriginal Affairs and Northern Development Canada and predecessor Ministers who were responsible for "Indians" under s.91(24) of the *Constitution Act, 1867*, and who were, at all material times, responsible for the formation and implementation of the Residential Schools Policy, and the maintenance and operation of the KIRS and the SIRS.

STATEMENT OF FACTS

21. Over the course of the last several years, Canada has acknowledged the devastating impact of its Residential Schools Policy on Canada's Aboriginal Peoples. Canada's Residential Schools Policy was designed to eradicate Aboriginal culture and identity and assimilate the Aboriginal Peoples of Canada into Euro-Canadian society. Through this policy, Canada ripped away the foundations of identity for generations of Aboriginal People and caused incalculable harm to both individuals and communities.

22. The direct beneficiary of the Residential Schools Policy was Canada as its obligations would be reduced in proportion to the number, and generations, of Aboriginal Persons who would no longer recognize their Aboriginal identity and would reduce their claims to rights

under the Act and Canada's fiduciary, constitutionally-mandated, statutory and common law duties.

23. Canada was also a beneficiary of the Residential Schools Policy, as the policy served to weaken the claims of Aboriginal Peoples to their traditional lands and resources. The result was a severing of Aboriginal People from their cultures, traditions and ultimately their lands and resources. This allowed for exploitation of those lands and resources by Canada, not only without Aboriginal Peoples' consent but also, contrary to their interests, the Constitution of Canada and the Royal Proclamation of 1763.

24. The truth of this wrong and the damage it has wrought has now been acknowledged by the Prime Minister on behalf of Canada, and through the pan-Canadian settlement of the claims of those who *resided at* Canada's Residential Schools by way of the Agreement implemented in 2007. Notwithstanding the truth and acknowledgement of the wrong and the damages caused, many members of Canada's Aboriginal communities were excluded from the Agreement, not because they did not *attend* Residential Schools and suffer Cultural, Linguistic and Social Damage, but simply because they did not *reside at* Residential Schools.

25. This claim is on behalf of the members of the Survivor Class, namely those who attended a~~an Identified~~ Residential School for the Cultural, Linguistic and Social Damage occasioned by that attendance, as well as on behalf of the Descendant Class, who are the first generation descendants of those within the Survivor Class, and the Band Class, consisting of the Aboriginal communities within which the ~~Identified~~ Residential Schools were situated, or whose members belong to ~~and within which the majority of~~ the Survivor and Descendant Class ~~members live~~.

26. The claims of the ~~proposed~~ Representative Plaintiffs are for the harm done to the Representative Plaintiffs as a result of members of the Survivor Class *attending* the KIRS and the SIRS and being exposed to the operation of the Residential Schools Policy and do not include the claims arising from residing at the KIRS or the SIRS for which specific compensation has been paid under the Agreement. This claim seeks compensation for the victims of that policy whose claims have been ignored by Canada and were excluded from the compensation in the Agreement.

The Residential School System

27. Residential Schools were established by Canada prior to 1874, for the education of Aboriginal Children. Commencing in the early twentieth century, Canada began entering into formal agreements with various religious organizations (the "Churches") for the operation of Residential Schools. Pursuant to these agreements, Canada controlled, regulated, supervised and directed all aspects of the operation of Residential Schools. The Churches assumed the day-to-day operation of many of the Residential Schools under the control, supervision and direction of Canada, for which Canada paid the Churches a *per capita* grant. In 1969, Canada took over operations directly.

28. As of 1920, the Residential Schools Policy included compulsory *attendance* at Residential Schools for all Aboriginal Children aged 7 to 15. Canada removed most Aboriginal Children from their homes and Aboriginal communities and transported them to Residential Schools which were often long distances away. However, in some cases, Aboriginal Children lived in their homes and communities and were similarly required to attend Residential Schools as day students and not residents. This practice applied to even more children in the later years

of the Residential Schools Policy. While at Residential School, all Aboriginal Children were confined and deprived of their heritage, their support networks and their way of life, forced to adopt a foreign language and a culture alien to them and punished for non-compliance.

29. The purpose of the Residential Schools Policy was the complete integration and assimilation of Aboriginal Children into the Euro-Canadian culture and the obliteration of their traditional language, culture, religion and way of life. Canada set out and intended to cause the Cultural, Linguistic and Social Damage which has harmed Canada's Aboriginal Peoples and Nations. ~~In addition to the inherent cruelty of the~~ As a result of Canada's requirements for the forced attendance of the Survivor Class members under the Residential Schools Policy ~~itself~~, many children attending Residential Schools were also subject to spiritual, physical, sexual and emotional abuse, all of which continued until the year 1997, when the last Residential School was closed.

30. Canada chose to be disloyal to its Aboriginal Peoples, implementing the Residential Schools Policy in its own self-interest, including economic self-interest, and to the detriment and exclusion of the interests of the Aboriginal Persons to whom Canada owed fiduciary and constitutionally-mandated duties. The intended eradication of Aboriginal identity, culture, language, and spiritual practices ~~and religion~~, to the extent successful, results in the reduction of the obligations owed by Canada in proportion to the number of individuals, over generations, who would no longer identify as Aboriginal and who would be less likely to make claims to their rights as Aboriginal Persons.

The Effects of the Residential Schools Policy on the Class Members

Tk'emlúps Indian Band

31. Tk'emlúpsemc, 'the people of the confluence', now known as the Tk'emlúps te Secwépemc Indian Band are members of the northernmost of the Plateau People and of the Interior-Salish Secwépemc (Shuswap) speaking peoples of British Columbia. The Tk'emlúps Indian Band was established on a reserve now adjacent to the City of Kamloops, where the KIRS was subsequently established. Most, if not all, of the students who *attended*, but did not *reside at* the KIRS were or are members of the Tk'emlúps Indian Band, resident or formerly resident on the reserve.

32. Secwepemctsin is the language of the Secwépemc, and it is the unique means by which the cultural, ecological, and historical knowledge and experience of the Secwépemc people is understood and conveyed between generations. It is through language, spiritual practices and passage of culture and traditions including their rituals, drumming, dancing, songs and stories, that the values and beliefs of the Secwépemc people are captured and shared. From the Secwépemc perspective all aspects of Secwépemc knowledge, including their culture, traditions, laws and languages, are vitally and integrally linked to their lands and resources.

33. Language, like the land, was given to the Secwépemc by the Creator for communication to the people and to the natural world. This communication created a reciprocal and cooperative relationship between the Secwépemc and the natural world which enabled them to survive and flourish in harsh environments. This knowledge, passed down to the next generation orally, contained the teachings necessary for the maintenance of Secwépemc culture, traditions, laws and identity.

34. For the Secwépemc, their spiritual practices, songs, dances, oral histories, stories and ceremonies were an integral part of their lives and societies. These practices and traditions are

absolutely vital to maintain. Their songs, dances, drumming and traditional ceremonies connect the Secwépemc to their land and continually remind the Secwépemc of their responsibilities to the land, the resources and to the Secwépemc people.

35. Secwépemc ceremonies and spiritual practices, including their songs, dances, drumming and passage of stories and history, perpetuate their vital teachings and laws relating to the harvest of resources, including medicinal plants, game and fish, and the proper and respectful protection and preservation of resources. For example, in accordance with Secwépemc laws, the Secwépemc sing and pray before harvesting any food, medicines, and other materials from the land, and make an offering to thank the Creator and the spirits for anything they take. The Secwépemc believe that all living things have spirits and must be shown utmost respect. It was these vital, integral beliefs and traditional laws, together with other elements of Secwépemc culture and identity, that Canada sought to destroy with the Residential Schools Policy.

Shíshálh band

36. The shíshálh Nation, a division of the Coast Salish First Nations, originally occupied the southern portion of the lower coast of British Columbia. The shíshálh People settled the area thousands of years ago, and occupied approximately 80 village sites over a vast tract of land. The shíshálh People are made up of four sub-groups that speak the language of Shashishalhem, which is a distinct and unique language, although it is part of the Coast Salish Division of the Salishan Language.

37. Shíshálh tradition describes the formation of the shíshálh world (Spelmulh story). Beginning with the creator spirits, who were sent by the Divine Spirit to form the world, they

carved out valleys leaving a beach along the inlet at Porpoise Bay. Later, the transformers, a male raven and a female mink, added details by carving trees and forming pools of water.

38. The shíshálh culture includes singing, dancing and drumming as an integral part of their culture and spiritual practices, a connection with the land and the Creator and passing on the history and beliefs of the people. Through song and dance the shíshálh People would tell stories, bless events and even bring about healing. Their songs, dances and drumming also signify critical seasonal events that are integral to the shíshálh. Traditions also include making and using masks, baskets, regalia and tools for hunting and fishing. It was these vital, integral beliefs and traditional laws, together with other elements of the shíshálh culture and identity, that Canada sought to destroy with the Residential Schools Policy.

The Impact of the ~~Identified~~ Residential schools

39. For all of the Aboriginal Children who were compelled to attend the ~~Identified~~ Residential Schools, rigid discipline was enforced as per the Residential Schools Policy. While at school, children were not allowed to speak their Aboriginal language, even to their parents, and thus members of these Aboriginal communities were forced to learn English.

40. Aboriginal culture was strictly suppressed by the school administrators in compliance with the policy directives of Canada including the Residential Schools Policy. At the SIRS, ~~converts to Catholicism~~ members of shishalh were forced to burn or give to the agents of Canada centuries-old totem poles, regalia, masks and other "paraphernalia of the medicine men" and to abandon their potlatches, dancing and winter festivities, and other elements integral to the Aboriginal culture and society of the shíshálh and Secwépemc peoples.

41. Because the SIRS was physically located in the shíshálh community, ~~thechurch and~~Canada's ~~government~~ eyes, both directly and through its Agents, were upon the elders and they were punished severely for practising their culture or speaking their language or passing this on to future generations. In the midst of that scrutiny, the Class members struggled, often unsuccessfully, to practice, protect and preserve their songs, masks, dancing or other cultural practices

42. The Tk'emlúps te Secwépemc suffered a similar fate due to their proximity to the KIRS.

43. The children at the ~~Identified~~ Residential Schools were ~~indoctrinated into Christianity, and~~ taught to be ashamed of their Aboriginal identity, culture, spirituality and practices. They were referred to as, amongst other derogatory epithets, "dirty savages" and "heathens" and taught to shun their very identities. The Class members' Aboriginal way of life, traditions, cultures and spiritual practices were supplanted with the Euro-Canadian identity imposed upon them by Canada through the Residential Schools Policy.

44. This implementation of the Residential Schools Policy further damaged the Survivor Class members of the ~~Identified~~ Residential Schools, who returned to their homes at the end of the school day and, having been taught in the school that the traditional teachings of their parents, grandparents and elders were of no value and, in some cases, "heathen" practices and beliefs, would dismiss the teachings of their parents, grandparents and elders.

45. The assault on their traditions, laws, language and culture through the implementation of the Residential Schools Policy by Canada, directly and through its

Agents, has continued to undermine the individual Survivor Class members, causing a loss of self-esteem, depression, anxiety, suicidal ideation, suicide, physical illnesses without clear causes, difficulties in parenting, difficulties in maintaining positive relationships, substance abuse and violence, among other harms and losses, all of which has impacted the Descendant Class.

46. The Band Class members have lost, in whole or in part, their traditional economic viability, self-government and laws, language, land base and land-based teachings, traditional spiritual practices and religious practices, and the integral sense of their collective identity.

47. The Residential Schools Policy, delivered through the ~~Identified~~ Residential Schools, wrought cultural, linguistic and social devastation on the communities of the Band Class and altered their traditional way of life.

Canada's Settlement with Former Residential School Residents

48. From the closure of the ~~Identified~~ Residential Schools ~~in the 1970's~~ until the late 1990's, Canada's Aboriginal communities were left to battle the damages and suffering of their members as a result of the Residential Schools Policy, without any acknowledgement from Canada. During this period, Residential School survivors increasingly began speaking out about the horrible conditions and abuse they suffered, and the dramatic impact it had on their lives. At the same time, many survivors committed suicide or self-medicated to the point of death. The deaths devastated not only the members of the Survivor Class and the Descendant Class, but also the life and stability of the communities represented by the Band Class.

49. In January 1998, Canada issued a Statement of Reconciliation acknowledging and apologizing for the failures of the Residential Schools Policy. Canada admitted that the Residential Schools Policy was designed to assimilate Aboriginal Persons and that it was wrong to pursue that goal. The Plaintiffs plead that the Statement of Reconciliation by Canada is an admission by Canada of the facts and duties set out herein and is relevant to the Plaintiffs' claim for damages, particularly punitive damages.

50. The Statement of Reconciliation stated, in part, as follows:

> *Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the results of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.*
>
> *Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the Federal Government which have contributed to these difficult pages in the history of our relationship together.*
>
> *One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School System. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continued to reverberate in Aboriginal communities to this date. Tragically, some children were the victims of physical and sexual abuse.*

> *The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at Residential Schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at Residential Schools, we are deeply sorry. In dealing with the legacies of the Residential School program, the Government of Canada proposes to work with First Nations, Inuit, Metis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of this sad era of our history...*
>
> *Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong community...*

51. On or about May 10, 2006, Canada entered into the Agreement to provide compensation primarily to those who *resided at* Residential Schools.

52. The Agreement provides for two types of individualized compensation: the Common Experience Payment ("CEP") for the fact of having resided at a Residential School, and compensation based upon an Independent Assessment Process ("IAP"), to provide compensation for certain abuses suffered and harms these abuses caused.

53. The CEP consisted of compensation for former *residents* of a Residential School in the amount of $10,000 for the first school year or part of a school year and a further $3,000 for each subsequent school year or part of a school year of *residence* at a Residential School. The CEP was payable based upon residence at a Residential School out of a recognition that the experience of assimilation was damaging and worthy of compensation, regardless of whether a student experienced physical, sexual or other abuse while at the Residential School. Compensation for the latter was payable through the IAP. The CEP was available only to former

residents of a Residential School while, in some cases, the IAP was available not only to former residents but also other young people who were lawfully on the premises of a Residential School, including former day students.

54. The implementation of the Agreement represented the first time Canada agreed to pay compensation for Cultural, Linguistic and Social Damage. Canada refused to incorporate compensation for members of the Survivor Class, namely, those students who *attended* the ~~Identified Residential Schools, or other~~ Residential Schools, but who did not *reside* there.

55. The Agreement was approved by provincial and territorial superior courts from British Columbia to Quebec, and including the Northwest Territories, Yukon Territory and Nunavut, and the Agreement was implemented beginning on September 20, 2007.

56. On June 11, 2008, Prime Minister Stephen Harper on behalf of Canada, delivered an apology ("Apology") that acknowledged the harm done by Canada's Residential Schools Policy:

> *For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities. In the 1870's, the federal government, partly in order to meet its obligation to educate Aboriginal children, began to play a role in the development and administration of these schools.* ***Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture.*** *These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said,* ***"to kill the Indian in the child".*** *Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country.* ***[emphasis added]***

57. In this Apology, the Prime Minister made some important acknowledgments regarding the Residential Schools Policy and its impact on Aboriginal Children:

The Government of Canada built an educational system in which very young children were often forcibly removed from their homes, often taken far from their communities. Many were inadequately fed, clothed and housed. All were deprived of the care and nurturing of their parents, grandparents and communities. First Nations, Inuit and Métis languages and cultural practices were prohibited in these schools. Tragically, some of these children died while attending residential schools and others never returned home.

The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language.

The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.

* * *

We now recognize that it was wrong to separate children from rich and vibrant cultures and traditions, that it created a void in many lives and communities, and we apologize for having done this. We now recognize that, in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow, and we apologize for having done this. We now recognize that, far too often, these institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you. Not only did you suffer these abuses as children, but as you became parents, you were powerless to protect your own children from suffering the same experience, and for this we are sorry.

The burden of this experience has been on your shoulders for far too long. The burden is properly ours as a Government, and as a country. There is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again. You have been working on recovering from this experience for a long time and in a very real sense, we are now joining you on this journey. The Government of Canada sincerely apologizes and asks the forgiveness of the Aboriginal peoples of this country for failing them so profoundly.

58. Notwithstanding the Apology and the acknowledgment of wrongful conduct by Canada, as well as the call for recognition from Canada's Aboriginal communities and from the *Truth and Reconciliation Commission* in its Interim Report of February 2012, the exclusion of

the Survivor Class from the Agreement by Canada reflects Canada's continued failure to members of the Survivor Class. Canada continues, as it did from the 1970s until 2006 with respect to 'residential students', to deny the damage suffered by the individual Plaintiffs and the members of the Survivor, Descendant and Band Classes.

Canada's Breach of Duties to the Class Members

59. From the formation of the Residential Schools Policy to its execution in the form of forced attendance at the ~~Identified~~ Residential Schools, Canada utterly failed the Survivor Class members, and in so doing, destroyed the foundations of the individual identities of the Survivor Class members, stole the heritage of the Descendant Class members and caused incalculable losses to the Band Class members.

60. The Survivor Class members, Descendant Class members and Band Class members have all been affected by family dysfunction, a crippling or elimination of traditional ceremonies, and a loss of the hereditary governance structure which allowed for the ability to govern their peoples and their lands.

61. While attending the ~~Identified~~ Residential School the Survivor Class members were utterly vulnerable, and Canada owed them the highest fiduciary, moral, statutory, constitutionally-mandated and common law duties, which included, but were not limited to, the duty to protect Aboriginal Rights and prevent Cultural, Linguistic and Social Damage. Canada breached these duties, and failed in its special responsibility to ensure the safety and well-being of the Survivor Class while at the ~~Identified~~ Residential Schools.

Canada's Duties

62. Canada was responsible for developing and implementing all aspects of the Residential Schools Policy, including carrying out all operational and administrative aspects of Residential Schools. While the Churches were ~~often~~used as Canada's Agents to assist Canada in carrying out its objectives, those objectives and the manner in which they were carried out were the obligations of Canada. Canada was responsible for:

(a) the administration of the Act and its predecessor statutes as well as all other statutes relating to Aboriginal Persons and all Regulations promulgated under these Acts and their predecessors during the Class Period;

(b) the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessors and related Ministries and Departments, as well as the decisions taken by those ministries and departments;

(c) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of the ~~Identified~~ Residential Schools and for the creation, design and implementation of the program of education for Aboriginal Persons in attendance;

(d) the selection, control, training, supervision and regulation of the operators of the ~~Identified~~ Residential Schools, including their employees, servants, officers and agents, and for the care and education, control and well being of Aboriginal Persons attending the ~~Identified~~ Residential Schools;

(e) preserving, promoting, maintaining and not interfering with Aboriginal Rights, including the right to retain and practice their culture, spirituality, language and traditions and the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities; and

(f) the care and supervision of all members of the Survivor Class while they were in attendance at the ~~Identified~~ Residential Schools during the Class Period.

63. Further, Canada has at all material times committed itself to honour international law in relation to the treatment of its people, which obligations form minimum commitments to Canada's Aboriginal Peoples, including the Survivor, Descendant and Band Classes, and which have been breached. In particular, Canada's breaches include the failure to comply with the terms and spirit of:

(a) the *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277, entered into force Jan. 12, 1951,, and in particular Article 2(b), (c) and (e) of that convention, by engaging in the intentional destruction of the culture of Aboriginal Children and communities, causing profound and permanent cultural, psychological, emotional and physical injuries to the Class;

(b) the *Declaration of the Rights of the Child* (1959) G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 by failing to provide Aboriginal Children with the means necessary for normal development, both materially and spiritually, and failing to put them in a position to earn a livelihood and protect them against exploitation;

(c) the *Convention on the Rights of the Child*, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989), and in particular Articles 29 and 30 of that convention, by failing to provide Aboriginal Children with education that is directed to the development of respect for their parents, their cultural identities, language and values, and by denying the right of Aboriginal Children to enjoy their own cultures, to profess and practise their own religions and to use their own languages;

(d) the *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, in particular Articles 1 and 27 of that convention, by interfering with Class members' rights to retain and practice their culture, spirituality, language and traditions, the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities and the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities.

(e) the *American Declaration of the Rights and Duties of Man*, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System,* OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992), and in particular Article XIII, by violating Class members' right to take part in the cultural life of their communities.

(f) the *United Nations Declaration on the Rights of Indigenous Peoples,* G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007), endorsed by Canada 12 November 2010, and in particular article 8, 2(d), which commits to the provision of effective mechanisms for redress for forced assimilation.

64. Canada's obligations under international law inform Canada's common law, statutory, fiduciary, constitutionally-mandated and other duties, and a breach of the aforementioned international obligations is evidence of, or constitutes, a breach under domestic law.

Breach of Fiduciary and Constitutionally-Mandated Duties

65. Canada has constitutional obligations to, and a fiduciary relationship with, Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated the ~~Identified~~ Residential Schools and established the Residential Schools Policy. Through these acts, and by virtue of the *Constitution Act 1867*, the *Constitution Act, 1982*, and the provisions of the Act, as amended, Canada assumed the power and obligation to act in a fiduciary capacity with respect to the education and welfare of Class members.

66. Canada's constitutional duties include the obligation to uphold the honour of the Crown in all of its dealings with Aboriginal Peoples, including the Class members. This obligation arose with the Crown's assertion of sovereignty from the time of first contact and continues through post-treaty relationships. This is and remains an obligation of the Crown and was an obligation on the Crown at all material times. The honour of the Crown is a legal principle which requires the Crown to operate at all material times in its relations with Aboriginal Peoples from contact to post-treaty in the most honourable manner to protect the interests of the Aboriginal Peoples.

67. Canada's fiduciary duties obliged Canada to act as a protector of Class members' Aboriginal Rights, including the protection and preservation of their language, culture and their way of life, and the duty to take corrective steps to restore the Plaintiffs' culture, history and status, or assist them to do so. At a minimum, Canada's duty to Aboriginal Persons included the duty not to deliberately reduce the number of the beneficiaries to whom Canada owed its duties.

68. Canada's fiduciary duties and the duties otherwise imposed by the constitutional mandate assumed by Canada extend to the Descendant Class because the purpose of the assumption of control over the Survivor Class education was to eradicate from those Aboriginal Children their culture and identity, thereby removing their ability, as adults, to pass on to succeeding generations the linguistic, spiritual, cultural and behavioural bases of their people, as well as to relate to their families and communities and, ultimately, their ability to identify themselves as Aboriginal Persons to whom Canada owed its duties.

69. The fiduciary and constitutional duties owed by Canada extend to the Band Class because the Residential Schools Policy was intended to, and did, undermine and seek to destroy the way of life established and enjoyed by these Nations whose identities were and are viewed as collective.

70. Canada acted in its own self-interest and contrary to the interests of Aboriginal Children, not only by being disloyal to, but by actually betraying the Aboriginal Children and communities whom it had a duty to protect. Canada wrongfully exercised its discretion and power over Aboriginal People, and in particular children, for its own benefit. The Residential Schools Policy was pursued by Canada, in whole or in part, to eradicate what Canada saw as the "Indian Problem". Namely, Canada sought to relieve itself of its moral and financial responsibilities for Aboriginal People, the expense and inconvenience of dealing with cultures, languages, habits and values different from Canada's predominant Euro-Canadian heritage, and the challenges arising from land claims.

71. In breach of its ongoing fiduciary, constitutionally-mandated, statutory and common law duties to the Survivor, Descendant and Band Classes, Canada failed, and continues to fail, to

adequately remediate the damage caused by its wrongful acts, failures and omissions. In particular, Canada has failed to take adequate measures to ameliorate the Cultural, Linguistic and Social Damage suffered by the Survivor, Descendant and Band Classes, notwithstanding Canada's admission of the wrongfulness of the Residential Schools Policy since 1998.

Breach of Aboriginal Rights

72. The shíshálh and Tk'emlúps people, and indeed all members of the Band Class, from whom the individual Plaintiffs have descended have exercised laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans, these Nations have sustained their individual members, communities and distinctive cultures by speaking their languages and practicing their customs and traditions.

73. During the time when Survivor Class members attended the ~~Identified~~ Residential Schools, in compliance with the Residential Schools Policy, they were taught to speak English, were punished for using their traditional languages and were made ashamed of their traditional language and way of life. Consequently, by reason of the attendance at the ~~Identified~~ Residential Schools, the Survivor Class members' ability to speak their traditional languages and practice their shíshálh, Tk'emlúps, and other, spiritual, religious and cultural activities was seriously impaired and, in some cases, lost entirely. These Class members were denied the ability to exercise and enjoy their Aboriginal Rights, both individually and in the context of their collective expression within the Bands, some particulars of which include, but are not limited to:

(a) shíshálh, Tk'emlúps and other Aboriginal cultural, spiritual and traditional activities have been lost or impaired;

(b) the traditional social structures, including the equal authority of male and female leaders have been lost or impaired;

(c) the shíshálh, Tk'emlúps and other Aboriginal languages have been lost or impaired;

(d) traditional shíshálh, Tk'emlúps and Aboriginal parenting skills have been lost or impaired;

(e) shíshálh, Tk'emlúps and other Aboriginal skills for gathering, harvesting, hunting and preparing traditional foods have been lost or impaired; and,

(f) shíshálh, Tk'emlúps and Aboriginal spiritual beliefs have been lost or impaired.

74. The interference in the Aboriginal Rights of the Survivor Class has resulted in that same loss being suffered by their descendants and communities, namely the Descendant and Band Classes, all of which was the result sought by Canada.

75. Canada had at all material times and continues to have a duty to protect the Class members' Aboriginal Rights, including the exercise of their spiritual practices and traditional protection of their lands and resources, and an obligation not to undermine or interfere with the individual Plaintiffs' and Class members' Aboriginal Rights. Canada has failed in these duties, without justification, through its Residential Schools Policy.

Intentional Infliction of Mental Distress

76. The design and implementation of the Residential Schools Policy as a program of assimilation to eradicate Aboriginal culture constituted flagrant, extreme and outrageous conduct which was plainly calculated to result in the Cultural, Social and Linguistic Damage, and the mental distress arising from that damage, which was actually suffered by the members of the Survivor and Descendant Classes.

Negligence giving rise to Spiritual, ~~Physical, Sexual,~~ Emotional and Mental Abuse

77. Through its Agents, Canada was negligent and in breach of its duties of care to the Survivor Class, particulars of which include, but are not limited to, the following:

(a) it failed to adequately screen and select the individuals ~~to whom it delegated~~ who it hired either directly or through its ~~a~~Agents for the operation of the ~~Identified~~ Residential Schools, to adequately supervise and control the operations of the ~~Identified~~ Residential Schools, and to protect Aboriginal children from spiritual, ~~physical, sexual~~, emotional and mental abuse at the ~~Identified~~ Residential Schools, and as a result, such abuses did occur to Survivor Class members and Canada is liable for such abuses;

(b) it failed to respond appropriately or at all to disclosure of abuses in the ~~Identified~~ Residential Schools, and in fact, covered up such abuse and suppressed information relating to those abuses; and

(c) it failed to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed.

Vicarious Liability

78. Through its Agents, Canada breached its duty of care to the Survivor Class resulting in damages to the Survivor Class and is vicariously liable for all of the breaches and abuses committed on its behalf.

79. Further, or in the alternative, Canada is vicariously liable for the negligent performance of the fiduciary, constitutionally-mandated, statutory and common law duties of its Agents.

80. Additionally, the Plaintiffs hold Canada solely responsible for the creation and implementation of the Residential Schools Policy and, furthermore:

a. The Plaintiffs expressly waive any and all rights they may possess to recover from Canada, or any other party, any portion of the Plaintiffs' loss that may be attributable to the fault or liability of any third-party and for which Canada might reasonably be entitled to claim from any one or more third-party for contribution,

indemnity or an apportionment at common law, in equity, or pursuant to the British Columbia *Negligence Act*, R.S.B.C. 1996, c. 333, as amended; and

b. The Plaintiffs will not seek to recover from any party, other than Canada, any portion of their losses which have been claimed, or could have been claimed, against any third-parties.

Damages

81. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of mental distress and the breaches of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Survivor Class members, including the Representative Plaintiffs, suffered injury and damages including:

(a) loss of language, culture, spirituality, and Aboriginal identity;

(b) emotional and psychological harm;

(c) isolation from their family, community and Nation;

(d) deprivation of the fundamental elements of an education, including basic literacy;

(e) an impairment of mental and emotional health, in some cases amounting to a permanent disability;

(f) an impaired ability to trust other people, to form or sustain intimate relationships, to participate in normal family life, or to control anger;

(g) a propensity to addiction;

(h) alienation from community, family, spouses and children;

(i) an impaired ability to enjoy and participate in recreational, social, cultural, athletic and employment activities;

(j) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;

(k) deprivation of education and skills necessary to obtain gainfully employment;

(l) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the Residential School experience;

(m) sexual dysfunction;

(n) depression, anxiety and emotional dysfunction;

(o) suicidal tendencies;

(p) pain and suffering;

(q) loss of self-esteem and feelings of degradation, shame, fear and loneliness;,

(r) nightmares, flashbacks and sleeping problems;

(s) fear, humiliation and embarrassment as a child and adult;

(t) sexual confusion and disorientation as a child and young adult;

(u) impaired ability to express emotions in a normal and healthy manner;

(v) loss of ability to participate in, or fulfill, cultural practices and duties;

(w) loss of ability to live in their community and Nation; and

(x) constant and intense emotional, psychological pain and suffering.

82. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of harm and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Descendant Class members, including the Representative Plaintiffs, suffered injury and damages including:

(a) their relationships with Survivor Class members were impaired, damaged and distorted as a result of the experiences of Survivor Class members in the ~~Identified~~ Residential Schools; and,

(b) their culture and languages were undermined and in some cases eradicated by, amongst other things, as pleaded, the forced assimilation of Survivor Class members into Euro-Canadian culture through the operation of the ~~Identified~~ Residential Schools.

83. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of harm and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Band Class has suffered from the loss of the ability to fully exercise their Aboriginal Rights collectively, including the right to have a traditional government based on their own languages, spiritual practices, traditional laws

and practices and to have those traditions fully respected by the members of the Survivor and Descendant Classes and subsequent generations, all of which flowed directly from the individual losses of the Survivor Class and Descendant Class members' Cultural, Linguistic and Social Damage.

Grounds for Punitive and Aggravated Damages

84. Canada deliberately planned the eradication of the language, religion and culture of Survivor Class members and Descendant Class members, and the destruction of the Band Class. The actions were malicious and intended to cause harm, and in the circumstances punitive and aggravated damages are appropriate and necessary.

85. The Class members plead that Canada and its Agents had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses of Survivor Class members that were occurring at the ~~Identified~~ Residential Schools.

86. Despite this knowledge, Canada continued to operate the Residential Schools and took no steps, or in the alternative no reasonable steps, to protect the Survivor Class members from these abuses and the grievous harms that arose as a result. In the circumstances, the failure to act on that knowledge to protect vulnerable children in Canada's care amounts to a wanton and reckless disregard for their safety and renders punitive and aggravated damages both appropriate and necessary.

Legal Basis of Claim

87. The Survivor and Descendant Class members are Indians as defined by the *Indian Act*, R.S.C. 1985, c. 1-5. The Band Class members are bands made up of Indians so defined.

88. The Class members' Aboriginal Rights existed and were exercised at all relevant times pursuant to the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

89. At all material times, Canada owed the Plaintiffs and Class members a special and constitutionally-mandated duty of care, good faith, honesty and loyalty pursuant to Canada's constitutional obligations and Canada's duty to act in the best interests of Aboriginal People and especially Aboriginal Children who were particularly vulnerable. Canada breached those duties, causing harm.

90. The Class members descend from Aboriginal Peoples who have exercised their respective laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans to the present, the Aboriginal Peoples from whom the Plaintiffs and Class members descend have sustained their people, communities and distinctive culture by exercising their respective laws, customs and traditions in relation to their entire way of life, including language, dance, music, recreation, art, family, marriage and communal responsibilities, and use of resources.

Constitutionality of Sections of the *Indian Act*

91. The Class members plead that any section of the Act and its predecessors and any Regulation passed under the Act and any other statutes relating to Aboriginal Persons that provide or purport to provide the statutory authority for the eradication of Aboriginal People through the destruction of their languages, culture, practices, traditions and way of life, are in violation of sections 25 and 35(1) of the *Constitution Act* 1982, sections 1 and 2 of the *Canadian*

Bill of Rights, R.S.C. 1985, as well as sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* and should therefore be treated as having no force and effect.

92. Canada deliberately planned the eradication of the language, spirituality and culture of the Plaintiffs and Class members.

93. Canada's actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

94. The Plaintiffs plead and rely upon the following:

Federal Courts Act, R.S.C., 1985, c. F-7, s. 17;

Federal Courts Rules, SOR/98-106, Part 5.1 Class Proceedings;

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, ss. 3, 21, 22, and 23;

Canadian Charter of Rights and Freedoms, ss. 7, 15 and 24;

Constitution Act, 1982, ss. 25 and 35(1),

Negligence Act (British Columbia), R.S.B.C. 1996, c. 333;

The Canadian Bill of Rights, R.S.C. 1985, App. III, Preamble, ss. 1 and 2;

The Indian Act, R.S.C. 1985, ss. 2(1), 3, 18(2), 114-122 and its predecessors.

International Treaties:

Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force Jan. 12, 1951;

Declaration of the Rights of the Child (1959), G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354;

Convention on the Rights of the Child, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989);

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976;

American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System,* OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992); and

United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007), endorsed by Canada 12 November 2010.

The plaintiffs propose that this action be tried at Vancouver, BC.

June 11th, 2013

Peter R. Grant, on behalf of
all Solicitors for the Plaintiffs

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TAB 17

Court File No.: T-1542-12

FEDERAL COURT

Class Proceeding

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND and the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, CHARLOTTE ANNE VICTORINE GILBERT, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, DAPHNE PAUL, and RITA POULSEN

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN

DEFENDANT

STATEMENT OF DEFENCE

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1. Unless specifically admitted, the Defendant denies each and every allegation in the First Re-Amended Statement of Claim (the "statement of claim") and puts the Plaintiffs to the strict proof thereof.

2. The Defendant specifically denies the existence and breach of the duties alleged in paragraphs 1-3 of the statement of claim.

3. The Defendant denies the allegations contained in paragraphs 20-30, 39-49, 51, 53, 54, 58-71, 73-86, 88, 89-93, and the last sentences of paragraphs 35 and 38 of the statement of claim.

4. The Defendant has no knowledge of the allegations contained in paragraphs 19, 45, 31-38, 72, 87-88, 90 and the first sentence of paragraphs 5, 6, 9, 10, 12, 14, 16, and 17 of the statement of claim.

5. In response to paragraph 4 of the statement of claim, the following definitions apply to this statement of defence:

   (a) "CEP" means the "common experience payment", a lump sum payment available under the IRSSA to any former Residential School student who resided at any Residential School prior to December 31, 1997 and who was alive on May 30, 2005 and did not opt out, or is not deemed to have opted out of the IRSSA during the Opt-Out Periods or is a Cloud Student Class Member;

   (b) "Certification Order" means the Order of Justice Harrington dated June 18, 2015, certifying these proceedings as a class action;

   (c) "Class Period" means 1920-1997;

   (d) "Cloud Class Action" means the *Marlene C. Cloud et al.* v. *Attorney General of Canada et al.* (C40771) action certified by the Ontario Court of Appeal by Order entered at Toronto on February 16, 2005;

   (e) "Cloud Class Member" means an individual who is a member of the classes certified in the Cloud Class Action;

   (f) "Cloud Student Class Member" means an individual who is a member of the student class certified in the Cloud Class Action;

   (g) "day student" means an individual who attended classes at a Residential School as a student during the day but who did not reside at the Residential School;

   (h) "*Indian Act*" means the *Indian Act*, R.S.C. 1985, c. I-5 and its predecessors as have been amended from time to time;

(i) "IRSSA" means the Indian Residential Schools Settlement Agreement, dated May 10, 2006;

(j) "IRSSA Approval Orders" means the Orders set out in Schedule A hereto, approving the IRSSA;

(k) "IRSSA Class Member(s)" means all individuals who are members of the Class as defined in the IRSSA and IRSSA Approval Orders;

(l) "IRSSA Family Class" means all individuals who are members of the family class defined in the IRSSA Approval Orders;

(m) "KIRS" means Kamloops Indian Residential School;

(n) "parochial school" means a private primary or secondary school affiliated with a religious organization and whose curriculum includes general religious education in addition to secular subjects;

(o) "Residential School(s)" means all Indian Residential School(s) recognized under the IRSSA and listed in Schedule A to the Certification Order; and

(p) "SIRS" means Sechelt Indian Residential School;

THE PARTIES

6. In response to paragraphs 5, 6, 9, 10, 12, and 14 the Defendant admits that the individuals named in these paragraphs are the Representative Plaintiffs for the Survivor Class.

7. In response to paragraph 5, the Defendant admits that the Plaintiff Darlene Matilda Bulpit (née Joe) was born on August 13, 1948. The Defendant further admits that the Plaintiff Darlene Matilda Bulpit attended SIRS as a day student in at least October 1960, October 1961, May 1962 and September 1962.

8. In response to paragraph 6, the Defendant admits that the Plaintiff Frederick Johnson was born on July 21, 1960. The Defendant further admits that the

Plaintiff Frederick Johnson attended SIRS as a day student in at least March of 1967.

9. In response to paragraph 7, the Defendant admits that the Plaintiff Daphne Paul was born on January 13, 1948. The Defendant further admits that the Plaintiff Daphne Paul attended SIRS as a day student in at least December 1953, March 1954, June 1954, October 1954, January 1955, March 1955, September 1956, September 1957, September 1958, October 1960 and October 1961.

10. In response to paragraph 8, the Defendant admits that the Plaintiff Violet Catherine Gottfriedson was born on March 30, 1945. The Defendant further admits that the Plaintiff Violet Gottfriedson attended KIRS as a day student during the school years from September 1959 to June 1963.

11. In response to paragraph 12, the Defendant admits that the Plaintiff Charlotte Anne Victorine Gilbert (nee Larue) was born on May 24, 1952. The Defendant further admits that the Plaintiff Charlotte Gilbert attended KIRS as a day student during the school years between September 1959 and June 1966, with the exception of a period of time during which she briefly resided at KIRS. In further answer to paragraph 12, and the whole of the statement of claim as it relates to the Plaintiff Charlotte Gilbert, the Defendant says that the Plaintiff Charlotte Gilbert is an IRSSA Class Member and received payment of the CEP in relation to a period of residence at KIRS. Accordingly, all claims of the Plaintiff Charlotte Gilbert against Canada in relation to any Residential School or the operation of any Residential School have been released pursuant to the terms of the IRSSA and Approval Orders. The Defendant says that the claims of the Plaintiff Charlotte Gilbert should be dismissed.

12. In response to paragraph 14 of the statement of claim, the Defendant admits that the Plaintiff Diena Marie Jules was born on September 12, 1955. The Defendant further admits that the Plaintiff Diena Marie Jules attended KIRS as a day student during the school years from September 1962 to June 1967. In further response to paragraph 16 and the whole of the statement of claim as it relates to the Plaintiff

Diena Jules, the Defendant says that the Plaintiff Diena Jules resided at KIRS from September 1971-March 1972, received payment of the CEP and is an IRSSA Class Member. Further, the Plaintiff Diena Jules signed a Schedule P Release dated January 7, 2013. All claims of the Plaintiff Diena Jules against Canada in relation to any Residential School or the operation of any Residential School have been released pursuant to the terms of the IRSSA and Approval Orders. Further, all claims of the Plaintiff Diena Jules arising from or related to her participation in a program or activity associated with or offered at or through any Residential School and the operation of Residential Schools are released pursuant to the terms of the Schedule P release dated January 7, 2013. The Defendant says that the claims of the Plaintiff Diena Jules should be dismissed.

13. In response to paragraphs 16 and 17, the Defendant admits that the individuals named in these paragraphs are the Representative Plaintiffs for the Descendant Class.

14. In response to paragraph 16 of the statement of claim, the Defendant admits that the Plaintiff Rita Poulsen was born on March 8, 1974. The Defendant further admits that the Plaintiff Rita Poulsen's father attended SIRS as a day student in at least October 1960, October 1961, September 1962, November 1964, January 1966, June 1966, December 1966 and March 1967. In further response to paragraph 16 of the statement of claim, the Defendant says that the Plaintiff Rita Poulsen is an IRSSA Family Class Member and that her claims in these proceedings are in the nature of family class claims as defined in the IRSSA and underlying class actions and have been released pursuant to the IRSSA and the IRSSA Approval Orders. The Defendant says that the claims of the Plaintiff Rita Poulsen should be dismissed.

15. In response to paragraph 17 of the statement of claim, the Defendant admits that the Plaintiff Amanda Deanne Big Sorrel Horse was born on December 26, 1974. The Defendant further admits that the Plaintiff Amanda Big Sorrel Horse's mother attended KIRS as a day student during the school years from at least

September 1959-June 1963 and September 1965-June 1966. In further response to paragraph 17 of the statement of claim, the Defendant says that the Plaintiff Amanda Big Sorrel Horse is an IRSSA Family Class Member and that her claims in these proceedings are in the nature of a family class claim as defined in the IRSSA and underlying class actions and have been released pursuant to the IRSSA and IRSSA Approval Orders. The Defendant says that the claims of the Plaintiff Amanda Big Sorrel Horse should be dismissed.

16. In response to paragraph 18, the Defendant admits that the Indian Bands named in this paragraph are the Representative Plaintiffs for the Band Class. In further response to paragraph 18, the Defendant has no knowledge as to whether or not the Band Class general members represent the collective interests and authority for their respective communities and denies that they are the proper collectivities to exercise Aboriginal rights on behalf of the Plaintiffs.

17. In response to paragraph 20, the Defendant, Her Majesty the Queen in Right of Canada, as represented by the Attorney General of Canada says that the legal identity of the Defendant should properly be "Her Majesty the Queen" ("Canada") as ordered by this Court on October 25, 2013.

18. In response to paragraphs 19 and 25, the Defendant says that the Survivor Class, Descendant Class, and Band Class are as defined in the Certification Order.

HISTORY AND LEGISLATIVE CONTEXT

19. At the time of filing this statement of defence, the only Representative Plaintiffs for the Survivor Class who have been identified by the Plaintiffs attended either SIRS or KIRS. The Plaintiffs have not identified which other of the Residential Schools had Survivor Class members in attendance as day students during the Class Period. The opt-out period for Survivor Class members expires on November 30, 2015 (the "opt-out deadline").

20. Further, at the time of filing this statement of defence the only two members of the Band Class are the Tk'emlúps te Secwépemc Indian Band and the Sechelt

Indian Band. The only two Identified Residential Schools identified in connection with the Band Class members are SIRS and KIRS. The Certification Order provides that members of the Band Class may opt-in to the proceedings prior to February 29, 2016 (the "opt-in deadline"). Band Class members must have or have had some members who are or were members of the Survivor Class or have a Residential School located in their community and must be added to the claim with one or more specifically identified Residential Schools.

21. The identity of the specific Residential Schools at issue in these proceedings, at which some Survivor Class member(s) attended as day student(s) or which are connected to a Band Class member, will not be known until after the opt-in and opt out deadlines expire. What follows in this statement of defence is a general history of the Residential Schools, with particulars provided for the two Identified Residential Schools currently at issue in these proceedings, SIRS and KIRS. Further particulars of the history of other specific Residential Schools at issue in the proceedings will be provided following the expiry of the opt-in and opt-out deadlines.

22. In answer to the whole of the statement of claim, and in particular, paragraphs 1-3, 4(c), 21-30, 35, 38-49, 53-53, 56-58, 59-62, 65-71, 73-75, 76-77, 80-86 and 92-93, the Defendant denies that there was ever a "Residential School Policy" as alleged in the statement of claim, or at all.

23. Further, the Defendant denies that Canada intended to eradicate Aboriginal languages, culture, identity, or spiritual practices, as alleged in the Statement of Claim or at all.

24. At the time of Confederation in 1867, s. 91(24) of the *Constitution Act, 1867* gave Canada exclusive legislative authority in relation to "Indians and Lands reserved for the Indians". In 1876 Parliament enacted the *Indian Act* which has existed, as amended from time to time, ever since. The 1876 version of the *Indian Act* had only minor provisions relating to education.

25. Amendments to the *Indian Act* in 1894 would have enabled the Governor in Council to make regulations for the compulsory education of Indian children and to establish or declare existing schools to be industrial or boarding schools for Indians. It was not until 1920 that education for Indian children actually became compulsory, when Parliament enacted amendments to the *Indian Act*, which provided that every Indian child between the ages of seven and fifteen who was physically able to do so was required to attend a designated day, industrial or boarding school. The *Indian Act* was further amended in 1930 to change the upper age for mandatory school attendance to sixteen.

26. The requirement under the *Indian Act* for Indian children to attend school during the Class Period was consistent with provincial legislation in existence throughout most of Canada, which required non-Indian children to attend school. The requirement to attend school was a *bona fide* measure intended to ensure that all children, Indian and non-Indian alike, received an education and was similar to legislative requirements existing in other developed countries throughout the Class Period.

27. Pursuant to the *Indian Act*, during the Class Period most Aboriginal children received an education at day schools on their reserves. Other Aboriginal children received their education at Residential Schools, often because there were insufficient numbers of families to support a day school in a remote community, or because families were migrant.

28. The majority of children who attended Residential Schools during the Class Period lived at the Residential Schools. Only a small minority of Aboriginal children attended Residential Schools as day students during the Class Period.

29. Not all Residential Schools had day students in attendance during the Class Period. During the Class Period, some of the Residential Schools offered classes for residential students only. Many of the other Residential Schools were residences only and did not hold classes for any students during the Class Period.

Further, some of the Residential Schools offered classes for day students during only some years of their operation.

30. During the Class Period, nearly all of the Residential Schools were controlled, operated, and managed throughout Canada by churches or church organizations, pursuant to agreements entered into between the relevant churches or church organizations and Canada. These churches or church organizations are defined in Article 1.01 and Schedules "B" and "C" of the IRSSA ("church organizations").

31. Beginning in or about 1948, in an effort to educate Aboriginal children wherever possible in association with other children, provinces and their school boards assumed, over time, increasing responsibility for the education of Aboriginal children. From 1948 forward, progressively greater numbers of Aboriginal children attended public schools operated by school boards under provincial jurisdiction. From 1948 to the end of the Class Period, the proportion of Aboriginal children attending Residential Schools decreased as increasing numbers of Aboriginal children attended day schools, parochial schools and provincial schools. Further, many of the Residential Schools that had provided classes ceased to do so and began to act as residences only and many of the Residential Schools closed entirely.

32. As of April 1, 1969, the then Department of Indian Affairs and Northern Development assumed the administration of Residential Schools. At all material times, the church organizations continued to have a role and responsibility in the management and operation of the Residential Schools, including the hiring, supervision and discipline of administrators, officers, supervisors, domestic staff and other support staff, including dormitory supervisors, and in the religious teaching, caring, upbringing, safety and protection of the children in attendance.

33. From the early 1970s onward, some Aboriginal entities began to assume responsibility for and control of the education of Aboriginal children. In 1973, Canada agreed to devolve control of the education of Aboriginal children to band

councils and Aboriginal education committees. By the mid 1970s, the Residential Schools which remained in operation were in many cases administered by local band councils or their nominees. Canada's role was limited in such cases to offering financial assistance and, occasionally, other assistance where requested by the responsible Aboriginal entity, whose day to-day care and control of the schools was established by agreements entered into with Canada.

THE OPERATION OF RESIDENTIAL SCHOOLS

34. At all material times during the Class Period, almost all of the Residential Schools were controlled or operated by the church organizations. Various church organizations had established industrial, boarding and Residential Schools for the education of Aboriginal children prior to Canada's involvement in the education of Aboriginal children. The church organizations continued to be involved in the operation and management of most of the Residential Schools throughout the entire Class Period.

35. The church organizations were responsible for the operation and administration of the Residential Schools. During the Class Period, the responsibilities of the church organizations involved in Residential Schools included, but were not limited to, the following:

    (a) selection, employment, hiring, supervision, training, discipline and dismissal of officers, agents, servants and employees at Residential Schools, including residential and educational staff at Residential Schools;

    (b) academic, religious and moral teachings of the students at Residential Schools;

    (c) development and implementation of school curricula at Residential Schools;

(d) supervision, day-to-day care, guidance and discipline of the students at Residential Schools;

(e) ensuring the well-being, care and safety of the students at Residential Schools, including the Survivor Class members;

(f) taking care of and looking out for the physical and spiritual well-being of the students at Residential Schools, including the Survivor Class members;

(g) to keep the students of Residential Schools, including the Survivor Class members, safe and free from harm; and

(h) to keep Canada apprised as to any situations dangerous or harmful to the students at Residential Schools, including the Survivor Class members.

36. Canada provided financial assistance to the church organizations for the operation of Residential Schools, pursuant to agreements with the church organizations. Canada also provided policy guidelines from time to time. Canada inspected and audited the Residential Schools from time to time to ensure that the church organizations were complying with their agreements with Canada and Canada's policy guidelines. Canada was not responsible for and did not undertake the day-to-day operations of the Residential Schools which were instead operated by church organizations.

37. A number of other governments, institutions, and organizations were also involved in and responsible for the operation of residential schools and education of Aboriginal children in general. For example, in some cases:

(a) Provincial and territorial governments bore responsibility for the education of Aboriginal children, often pursuant to agreements with Canada;

(b) Provincial governments established standards and curricula and undertook inspections of Residential Schools;

(c) Education was provided in provincial day schools to students who resided in Residential Schools, often under the auspices of or pursuant to agreements with local school boards; and

(d) Child welfare agencies were involved in or responsible for the admissions policies and procedures of Residential Schools, since many of the Aboriginal students who attended did so as orphans or abandoned children, or for other child welfare reasons.

38. The extent and years of Canada's involvement in the Residential Schools differs on a school-by-school basis. Further, the number of and years of attendance of Survivor Class members as day students at the Residential Schools, if any, differs on a school-by-school basis.

39. Canada will provide more detailed particulars of the operation of individual Residential schools as additional Residential Schools at which Survivor Class members attended or with which Band Class members are connected are identified.

40. The experience and treatment of Residential School students, including the Plaintiffs and members of the Survivor Class, was not uniform across all schools, church organizations, and time periods. Rather, such experiences and treatment varied widely depending on a host of factors, including, but not limited to: variations in curriculum by province, region, religious affiliation, school, and time period; the life experiences of individual students outside of school; whether the students spoke Aboriginal languages; students' degrees of fluency in Aboriginal languages, English or French at the time of entry into the school system; and their individual experiences of particular cultural and spiritual activities prior to, during, and following attendance at the schools.

41. Other factors which had an impact on the experience of individual students, including the Plaintiffs and members of the Survivor Class, in relation to their attendance include the composition of the student population and the presence or absence of a mix of nations, bands, language groups, religious affiliations, and genders within the school population.

42. The experiences of individual students at Residential Schools, including the Plaintiffs and members of the Survivor Class, were also affected by: the geographic location of the specific school; its relative remoteness from or connection to the non-Aboriginal population; the impact of increasing urbanization of Canada over the Class Period; variability of funding from school to school and year to year; differences in hiring practices and procedures; the relative economic status of the church organization responsible for the administration of the school; whether the Residential School was one of those where aboriginal languages were specifically encouraged; individual practice with regard to enforcement of attendance requirements; the presence or absence of Aboriginal staff; individual family circumstances of students; and variability of cultural practice and language use within particular bands and families within those bands..

43. The acts of which the Representative Plaintiffs complain are those of specific priests, nuns, brothers and others who taught at the schools rather than to any policy or action by Canada.

THE ESTABLISHMENT AND OPERATION OF KIRS AND SIRS

44. At the time of the filing of this Statement of Defence, KIRS and SIRS are the only two Identified Residential Schools named in the statement of claim. The Defendant pleads the following facts specifically in relation to the establishment and operation of KIRS and SIRS.

The church organizations involved in the establishment and operation of KIRS and SIRS

45. Various of the church organizations were involved in both KIRS and SIRS from their respective inceptions until their closures. The history of each of these church organizations is set out below.

The Archbishop and Bishops

46. The Vicariate Apostolic of British Columbia was erected in 1863 and was administered by a vicar apostolic. In 1890, the Vicariate Apostolic was erected into a diocese, the Diocese of New Westminster, administered by a bishop. In 1908, the Diocese of New Westminster was erected into the Archdiocese of Vancouver and, since that time, has been administered by an archbishop (the "Archbishop").

47. In 1945, the Diocese of Kamloops was erected out of a portion of the Archdiocese of Vancouver and is administered by a bishop (the "Bishop").

48. At the relevant times, as set out below, the Bishop of New Westminster, the Archbishop and the Bishop sought and obtained legislative approval for the creation of corporations sole to act as their secular legal personalities.

49. The Roman Catholic Bishop of New Westminster was a corporation sole created by the Roman Catholic Bishop of New Westminster Incorporation Act, S.B.C. 1893, c. 62.

50. The Roman Catholic Archbishop of Vancouver (the "Archbishop Corporation Sole"), the successor to The Roman Catholic Bishop of New Westminster, is a corporation sole created by The Roman Catholic Archbishop of Vancouver Incorporation Act, S.B.C. 1909, c. 62, as amended.

51. The Roman Catholic Bishop of Kamloops (the "Bishop Corporation Sole"), is a corporation sole created by The Roman Catholic Bishop of Kamloops Incorporation Act, S.B.C. 1947, c. 102, as amended.

The Oblates

52. The Congregation of the Missionary Oblates of Mary Immaculate (the "Congregation") is a clerical Congregation of pontifical right whose Constitutions and Rules, as amended from time to time since 1826, have been approved at the relevant times by Popes of the Roman Catholic Church. The Congregation has been known by various names, including: "The Congregation of the Oblates of the Most Holy Virgin Mary", "The Congregation of the Missionary Oblates of the Most Holy and Immaculate Virgin Mary" and "The Congregation of the Missionary Oblates of the Blessed and Immaculate Virgin Mary".

53. The Congregation is headed by a Superior General who, since 1905, has resided in Rome. The Congregation is currently organized into Provinces and Vice-Provinces and formerly into Provinces and Vicariates. A Province is headed by a Provincial, a Vice-Province is headed by a Vice-Provincial and a Vicariate was headed by a Vicar of Missions.

54. In 1926, the Oblate Province of St. Peter's of New Westminster was established, which was formerly part of the Oblate Vicariate of British Columbia. In 1968, St. Peter's of New Westminster Province was divided at the Alberta/Saskatchewan border and St. Paul's Vice-Province was established in the west. St. Peter's of New Westminster Province was renamed St. Peter's Province. In 1973, St. Paul's Vice-Province was established as a full Province.

55. The Congregation in British Columbia, including the Oblate Vicariate of British Columbia, St. Peter's of New Westminster Province, St. Peter's Province, St. Paul's Vice-Province and St. Paul's Province (collectively the "Congregation in BC") is civilly incorporated as "The Order of the Oblates of Mary Immaculate in

the Province of British Columbia" under the laws of the Province of British Columbia by An Act to Incorporate the Order of the Oblates of Mary Immaculate in the Province of British Columbia, S.B.C. 1891, c. 51, as amended (the "Oblates").

56. The Oblates have existed in British Columbia since 1891 (and the Congregation since 1860) for the purpose of, amongst others, establishing and carrying on schools and colleges, including schools for Aboriginal children.

57. In 1936, the Congregation, through the offices of its Superior General, and its provincials and Oblate bishops in Canada founded the Indian Welfare and Training Commission of the Oblates of Mary Immaculate, located in Ottawa, to coordinate the objectives of the Oblate bishops, Oblate provincials and Oblate priests who were, amongst other things, working to educate native peoples in Canada. This Commission, over time, was known under various names including: the Indian and Eskimo Welfare Commission; the Indian and Eskimo Welfare Commission of the Oblates; and, the Oblate Indian-Eskimo Council (at the relevant time, the "Council").

58. On August 10, 1960, the Council incorporated by letters patent "Oblate Services Oblats" in the Province of Ontario and by supplementary letters patent, dated May 31, 1962, changed the name of Oblate Services Oblats to Indianescom.

59. At all material times, the Congregation, through the offices of its Superior General, and its Provincials and Oblate bishops in Canada, including the Provincials of St. Peter's of New Westminster Province, St. Peter's Province and St. Paul's Province and the Vice-Provincial of St. Paul's Vice-Province, amongst others (collectively the "Congregation in Canada"), created, controlled and directed the Council, Oblate Services Oblats and Indianescom.

60. In or about 1976, the Council and Indianescom were dissolved and their assets were donated to the Canadian Catholic Conference, an association of Canadian bishops and archbishops.

The Sisters of Saint Ann

61. The Sisters of Saint Ann (the "Sisters of SA") is a female religious congregation of members of the Roman Catholic faith, duly incorporated under the laws of the Province of British Columbia by the Sisters of St. Ann's Incorporation Act, S.B.C. 1892, c. 58, as amended (the "Sisters of SA Corporation").

The Sisters of Instruction of the Child Jesus

62. The Sisters of Instruction of the Child Jesus (the "Sisters of ICJ") are a teaching and charitable order or association of the Roman Catholic faith, duly incorporated under the laws of the Province of British Columbia by An Act to Incorporate the Sisters of Instruction of the Child Jesus, S.B.C. 1913, c. 94, as amended (the "Sisters of ICJ Corporation").

Establishment of KIRS

63. KIRS, or its predecessor, was established in or about 1890 at the request or initiative of the Tk'emlúps te Secwépemc Indian Band, or its predecessor. Prior to that time, there was a Mission School at which some children, including the daughter of the then chief of the Kamloops Indian Band, paid fees to board and attend classes.

64. KIRS, or its predecessor, was established by one or more of the Archbishop, or his predecessor, the Bishop, the Oblates and the Sisters of SA.

65. Prior to the establishment of KIRS in or about 1890, the Tk'emlúps te Secwépemc Indian Band, or its predecessor was aware that the language of instruction at any school established by any religious organization and at which their children would attend, would be English. The Tk'emlúps te Secwépemc Indian Band was further aware that the doctrine of Christianity would be promulgated at any such school.

66. Canada is not liable for any loss of language or culture - if any, which is not admitted but specifically denied - occasioned by the request of the Tk'emlúps te Secwépemc Indian Band to have its members' children educated in English or taught Christian doctrine.

The Operation of KIRS

67. Until 1945, KIRS was located within the Archdiocese of Vancouver (or its predecessor). The Archbishop (and his secular legal personality the Archbishop Corporation Sole) was responsible for the Archdiocese of Vancouver and retained certain rights and authority over members of Catholic religious orders and congregations working in his archdiocese.

68. As of 1945, KIRS was located within the Diocese of Kamloops. The Bishop (and his secular legal personality the Bishop Corporation Sole) was responsible for the Diocese of Kamloops and retained certain rights and authority over members of Catholic religious orders and congregations working in his diocese.

69. KIRS was conducted under the auspices of the Roman Catholic Church by the Congregation in BC, the Archbishop, the Bishop, and the Sisters of SA and by their secular legal personalities the Oblates, the Archbishop Corporation Sole, the Bishop Corporation Sole and the Sisters of SA Corporation (collectively the "KIRS Church Organizations").

70. The Congregation in BC and the Oblates controlled, operated, administered and managed KIRS in conjunction with, or with the assistance of the Sisters of SA and the Sisters of SA Corporation, and in conjunction with, with the permission of, or on instructions from, the Archbishop and the Archbishop Corporation Sole and the Bishop and the Bishop Corporation Sole pursuant to an agreement with Canada that was partly written and partly oral, including, among other things, a Memorandum of Agreement dated September 25, 1962 between Canada and Indianescom.

71. Alternatively, the Sisters of SA or, in the alternative, individual members of the Sisters were employed at KIRS by one or more of the Archbishop, the Bishop or Congregation in BC, or, in the alternative, acted as their agent to provide teaching instruction to the students and to perform other duties at the KIRS pursuant to an agreement between the Sisters and one or more of the Archbishop, Bishop or Congregation in BC.

72. The KIRS Church Organizations were responsible for selecting, employing, supervising and training officers, agents, servants and employees at KIRS, including principals, administrators, officers, servants, supervisors and domestic staff working at KIRS.

73. The KIRS Church Organizations were responsible for disciplining or dismissing any principal, administrator, officer, servant, teacher, supervisor, domestic or other staff where, in their opinion, the circumstances warranted.

74. Pursuant to Order in Council P.C. 1969-613, administrators and child care workers at the Residential Schools were exempted from the provisions of the Public Service Employment Act, S.C. 1966-67, c. 71, as amended. As a result of the Service Contract, the Congregation in Canada and in particular the Congregation in BC and the Oblates were responsible for, among other things, the hiring, supervision and discipline of all administrators and child care workers for KIRS.

75. At all material times after April 1, 1969, the KIRS Church Organizations continued to have a major role in and be responsible for the operation and management of KIRS and the religious teachings, caring, upbringing, safety and protection of the students at KIRS.

Attendance of Class Members at KIRS

76. Throughout the Class Period, the majority of students attending KIRS were residential students. Day students were only in attendance at KIRS for a limited

period of time during the Class Period, between in or about the 1959/60 to the 1966/67 school years.

77. Beginning in or about the 1940s some residents of KIRS and children from the Tk'emlúps te Secwépemc Indian Band, or its predecessor, began attending provincial or parochial schools in Kamloops. Throughout the 1950s – 1960s classroom instruction at KIRS was phased out.

78. By the 1969-70 school year no classes were held at KIRS. From that time until the end of the Class Period all students still residing at KIRS attended provincial or parochial schools in Kamloops. During this time period, students from the Tk'emlúps te Secwépemc Indian Band who were living on reserve would have also attended provincial or parochial schools in Kamloops.

79. None of the Plaintiffs or members of the Survivor Class attended KIRS as day students after the 1969-70 school year.

80. In or about 1978, the Residential School at KIRS closed in its entirety.

Establishment of SIRS

81. SIRS, or its predecessor, was established in or about 1904 at the request or initiative of the Sechelt Indian Band, or its predecessor. It was established by one or more of the Archbishop, or his predecessor, the Oblates, and the Sisters of ICJ.

82. Prior to 1904, the Sechelt Indian Band was aware that the language of instruction at any school at which their children would attend would be English. It was further aware that the doctrine of Christianity would be promulgated at any such school.

83. Prior to 1904, the Sechelt Indian Band built a schoolhouse using funds obtained from its own logging efforts. In 1904, the Sechelt Indian Band, through the Bishop of New Westminster, secured the teaching and caregiving services of the

Sisters of ICJ to operate the school. At that time, the Sechelt Indian Band was aware that the education of its children at the school would include the teaching of Catholic doctrine. The Sechelt Indian Band petitioned the government to provide funds to assist with the completion and furnishing of the school and a grant for the boarding of the children. At that time, the stated desire of the Sechelt Indian Band was for their children to learn to speak and write English and that the children train under the Catholic sisters.

84. In 1923, the Sechelt Indian Band petitioned Canada to replace the French Catholic sisters at SIRS as the children were not learning English.

85. Canada is not liable for any loss of language or culture - if any, which is not admitted but specifically denied - occasioned by the request of the Sechelt Indian Band to have its members' children educated in English and taught by members of Christian orders.

The Operation of SIRS

86. SIRS was located within the Archdiocese of Vancouver (or its predecessor). The Archbishop (and his secular legal personality the Archbishop Corporation Sole) was responsible for the Archdiocese of Vancouver and retained certain rights and authority over members of Catholic religious orders and congregations working in his archdiocese.

87. SIRS was conducted under the auspices of the Roman Catholic Church by the Congregation in BC, the Archbishop, and the Sisters of ICJ and by their secular legal personalities the Oblates, the Archbishop Corporation Sole and the Sisters of ICJ Corporation (collectively the "Sechelt Church Organizations").

88. The Congregation in BC and the Oblates controlled, operated, administered and managed SIRS in conjunction with, or with the assistance of the Sisters of ICJ and the Sisters of ICJ Corporation, and in conjunction with, with the permission of, or on instructions from, the Archbishop (or its predecessor) and the Archbishop Corporation Sole, pursuant to agreements with Canada that were

partly written and partly oral, including agreements dated 1911, 1916, and September 25, 1962 as between Canada and the Archbishop, Canada and the Archbishop, and Canada and Indianescom, respectively.

89. Alternatively, the Sisters of ICJ or, in the alternative, individual members of the Sisters of ICJ were employed at the School by one or more of the Archbishop or Congregation in BC or, in the alternative, acted as their agent to provide teaching instruction to the students and to perform other duties at the SIRS pursuant to an agreement between the Sisters of ICJ and one or both of the Archbishop or Congregation in BC.

90. The Sechelt Church Organizations were responsible for selecting, employing, supervising and training officers, agents, servants and employees at SIRS, including principals, administrators, officers, servants, supervisors and domestic staff working at SIRS.

91. The Sechelt Church Organizations were responsible for disciplining or dismissing any principal, administrator, officer, servant, teacher, supervisor, domestic or other staff where, in their opinion, the circumstances warranted.

92. On April 1, 1969, the Memorandum of Agreement dated September 25, 1962 between Canada and Indianescom ceased to have effect and new written agreements were entered into between the Council and/or Indianescom and Canada.

93. On and after April 1, 1969, the Council and/or Indianescom contracted its services in residential schools to Canada and, in particular, with respect to Sechelt IRS (the "Service Contract").

94. Pursuant to Order in Council P.C. 1969-613, administrators and child care workers at the Schools were exempted from the provisions of the *Public Service Employment Act*, S.C. 1966-67, c. 71, as amended. As a result of the Service Contract, the Congregation in Canada and in particular the Congregation in BC

and the Oblates were responsible for, among other things, the hiring, supervision and discipline of all administrators and child care workers for Sechelt IRS.

95. At all material times after April 1, 1969, the Sechelt Church Organizations continued to have a major role in and be responsible for the operation and management of SIRS and the religious teachings, caring, upbringing, safety and protection of the students at SIRS.

Attendance of Class Members at SIRS

96. Throughout the Class Period, the majority of students attending SIRS were residential students. Day students were only in attendance at SIRS for a limited period of time during the Class Period, between in or about the 1953/54 to the 1962/3 school years.

97. As early as in or about 1948, some students residing at SIRS or from the Sechelt Indian Band were attending the provincial school in Sechelt.

98. After the 1968/69 school year there were no classes held at SIRS. The residence at SIRS was closed on or about June 30, 1975.

99. None of the Plaintiffs or members of the Survivor Class attended SIRS as day students after the 1968/69 school year.

STATEMENT OF RECONCILIATION

100. In response to paragraphs 49 and 50, the Statement of Reconciliation is as found in the "Address by the Honourable Jane Stewart Minister of Indian Affairs and Northern Development on the occasion of the unveiling of Gathering Strength — Canada's Aboriginal Action Plan", made on January 7, 1998 (the "Statement of Reconciliation"). Nothing in the Statement of Reconciliation constitutes an admission or admissible evidence of any of its contents.

THE IRSSA AND RELEASES

101. In response to paragraphs 51-55, the IRSSA was approved by the courts in nine jurisdictions and implemented on September 19, 2007.

102. The IRSSA was reached through a process of negotiation between Canada, former students of the Residential Schools, church organizations involved in running the schools, and the Assembly of First Nations and Inuit representatives. Pursuant to the IRSSA, the parties agreed to the settlement of all actions of the IRSSA Class Members in relation to Residential Schools. This includes various class actions, including the Cloud Class Action (*Marlene C. Cloud et al. v. Attorney General of Canada et al.* (C40771), which was brought on behalf of former students of the Mohawk Institute Residential School, and was certified by the Ontario Court of Appeal on February 16, 2005.

103. The IRSSA contains five key components: Common Experience Payment ("CEP"), Independent Assessment Process ("IAP"), an endowment of $125 million to the Aboriginal Healing Foundation, the establishment of the Truth and Reconciliation Commission, and funding in the amount of $20 million for national and community based commemorative projects.

104. Pursuant to Article 11 of the IRSSA, the claims of all IRSSA Class Members and Cloud Class Members arising from the operation of Residential Schools were fully, finally and forever released as against the defendants in those actions, including Canada, unless the IRSSA Class Member or Cloud Class Member opted out of the IRSSA.

105. Non-resident students of Residential Schools were not eligible for the CEP, but were eligible for compensation under the IRSSA's IAP for sexual abuse, certain serious physical abuse, and "other wrongful acts" suffered while attending a Residential School. The IRSSA required IAP claimants who did not reside at a Residential School to execute a release upon acceptance into the IAP. The release is set out in Schedule "P" to the IRSSA.

106. The Schedule "P" release, signed in consideration for an application being accepted into the IAP, is a full and final release of any cause of action relating in any way to the operation of Residential Schools. The Schedule P release expressly provides that the Defendant can rely on the release as a complete defence to any claim or action relating to the operation of the Residential Schools

107. The claims in these proceedings of all members of the Survivor Class who are also IRSSA Student Class Members or Cloud Student Class Members, and who did not opt out of the IRSSA, have been fully, finally, and forever released. Such claims are barred by Article 11 of the IRSSA and the corresponding paragraphs of the Approval Orders.

108. The claims in these proceedings of all members of the Descendant Class who are also members of the IRSSA Family Class or the family class in the Cloud Class Action, and who did not opt out of the IRSSA have been fully, finally, and forever released. Such claims are barred by Article 11 of the IRSSA and the corresponding paragraphs of the Approval Orders

109. The claims in these proceedings by any member of the Survivor Class who is also a non-resident claimant, as defined in Article 1.01 of the IRSSA, and who has executed a Schedule "P" release, have been fully, finally, and forever released. The Defendant relies on such executed Schedule P releases as a complete defence to these proceedings as against the signatories.

110. To the extent that the Plaintiffs' claims arise from events that occurred during the attendance at Residential Schools as *residents* of any members of the Plaintiff Classes, their family members or members of their communities or any impacts arising therefrom, such claims are barred by the IRSSA and Approval Orders.

THE APOLOGY

111. In response to paragraphs 56 and 57, on June 11, 2008, the Prime Minister of Canada, the Right Honourable Stephen Harper, made a Statement of Apology to

former students of Residential Schools, on behalf of the Government of Canada in the House of Commons ("Apology").

112. Nothing in the Statement of Apology constitutes an admission of liability or fact and the contents of the Statement of Apology are not admissible in evidence.

113. In the alternative, the Defendant pleads and relies upon: the *Apology Act*, S.B.C. 2006, c. 19; *Alberta Evidence Act*, R.S.A. 2000, c. A-18, s. 26.1; *Evidence Act*, S.S. 2006, as amended, c. E-11.2, c. 23.1; *The Apology Act*, S.M. 2007, c. 25; *Apology Act*, S.O. 2009, c. 3; *Apology Act*, S.N.S. 2008, c. 34; *Apology Act*, SNL 2009, c A-10.1; and *Apology Act*, SNWT 2013, c 14.

LEGAL BASIS

114. Canada admits that it wanted all Aboriginal people to be able to participate fully in all aspects of Canadian society, and that in pursuit of that goal it required that all Aboriginal children receive an education and that they be educated in English or French.

115. If an effect of the attendance of Aboriginal children at Residential Schools and in particular the attendance of Aboriginal children at Residential Schools as day students, was harm to Aboriginal people and Aboriginal culture as alleged by the Plaintiffs, which is denied, this harm was unintended and was not foreseeable at the material time.

116. At all times during the establishment and operation of the Residential Schools and throughout the Class Period, Canada acted with due care, in good faith, and within its legislative authority, including its authority with respect to the education of Aboriginal children. Further, the conduct of Canada must be measured by what was considered reasonable and appropriate at the time of the formulation and implementation of the alleged policies at issue. Moreover, and in any event, to the extent that harm is alleged to have arisen from the formulation and implementation of policy, Canada is immune from suit or liability.

117. The Plaintiffs have particularized their claim as not being based upon any allegation that requiring students to learn English constituted a breach of Canada's duties toward them. Canada denies that it had any other language policy with regard to the Plaintiffs and therefore could have no liability for their claimed loss of their traditional languages.

118. The Defendant denies that Canada sought to destroy the ability of the members of the Plaintiff classes to speak their Aboriginal language or to lose the customs or traditions of their culture by requiring that the formal education of Aboriginal children be conducted in English or French. This requirement was consistent with provincial standards of education during the Class Period. It was also a result of the express desire of some Aboriginal leaders expressed from time to time for schools modelled on the provincial schools, the presence of several Aboriginal nations with different languages at the same Residential School, a lack of teachers capable of teaching in Aboriginal languages and the lack of texts in the Aboriginal languages.

119. If particular members of the Plaintiff classes were in any manner punished or demeaned while in attendance at Residential School for speaking their Aboriginal languages or practicing their cultural or spiritual traditions, such actions were in no way directed by any policy set by Canada and some were directly contrary to policies set by Canada.

120. If individual members of the Plaintiff classes suffered losses of language and culture, such losses occurred as a result of a myriad of historical, personal, societal and community circumstances, as a result of the interaction of Aboriginal communities and mainstream society, as a result of the progressive urbanization of Canadian society, as part of an observable international trend towards the diminishing use of minority languages and culture, and not as a result of any acts or omissions of Canada or its employees or agents with respect to the operation of Residential Schools.

121. In specific answer to paragraph 40, the Defendant denies that Aboriginal culture was strictly suppressed by school administrators in compliance with the policy directives of Canada. Further, the specific acts alleged in paragraph 40, if they occurred, took place prior to the Class Period and were done by the Oblates. The Oblates were not the employees or agents of Canada and the acts alleged were not done at the direction of or in compliance with any policy of Canada. Further, the acts alleged had no connection to SIRS.

No Breach of Fiduciary Duty

122. The Plaintiff alleges a number of breaches of fiduciary duty.

123. The Defendant denies the existence of a fiduciary duty or obligation owed to members of the Plaintiff Classes, or any of them, as alleged in the statement of claim.

124. Governments will owe fiduciary duties only in limited and special circumstances, and these circumstances do not exist in this case.

125. The Defendant acknowledges that the relationship between the federal Crown and the Aboriginal peoples of Canada is a fiduciary one; however, the facts as alleged do not give rise to a fiduciary duty owed by Canada to members of the Plaintiff Classes, or any of them. No specific fiduciary duty is triggered or exists in respect of the circumstances pleaded by the Plaintiffs.

No breach of fiduciary duty through the establishment, funding, operation, supervision, control, maintenance or attendance of Survivor Class Members at Residential Schools

126. The Defendant denies that the establishment, funding, operation, supervision, control, maintenance or attendance of Survivor Class members at Residential School gave rise to a fiduciary duty as alleged or at all.

127. Further, Canada, in providing education to Aboriginal children pursuant to the *Indian Act*, did not put its own interests ahead of Aboriginal children, either at

all or in any way that could be conceived to be a betrayal of trust or loyalty. Further, at no time did Canada act in its own self interest or against the interests of the Plaintiffs or members of the Plaintiff Classes.

128. Further, there is no "cognizable Indian interest" present as asserted by the Plaintiffs. Canada did not exercise "discretionary control" over the Residential Schools and/or members of the Plaintiff Classes, or any of them. The facts necessary to ground a claim in fiduciary duty are not present in this case.

129. Alternatively, even if a fiduciary duty exists as alleged, which is denied, Canada did not breach such a duty through the purpose, establishment, funding, operation, supervision, control maintenance, attendance of Survivor Class members at, or support of, Residential Schools

No breach of fiduciary duty "not to destroy language or culture, aboriginal or otherwise"

130. The Defendant denies the existence of a fiduciary duty owed to members of the Survivor, Descendant and Band Class, or any of them, "not to destroy their language or culture, Aboriginal or otherwise," as alleged in the statement of claim.

131. The Defendant says that the Plaintiffs' claim respecting a fiduciary duty not to destroy language and culture is not cognizable at law.

132. To the extent that the Plaintiffs claim that Canada had a positive duty to promote Aboriginal languages, Canada denies that any such duty is known to law and denies that it had any such duty.

133. Further, the Plaintiffs have failed to properly particularize their claims respecting the various languages or cultural activities at issue. In the absence of the necessary material facts, the claim for breach of fiduciary duty not to destroy the Plaintiffs' languages or cultures ought to be struck

134. Alternatively, even if a fiduciary duty exists as alleged, which is denied, Canada did not breach such a duty.

No breach of fiduciary duty to protect the Survivor Class members from actionable mental harm

135. The Defendant denies the existence of a fiduciary duty to members of the Survivor Class, or any of them, to protect them from actionable mental harm as alleged in the statement of claim. The Plaintiffs have failed to identify sufficient particulars to support this claim. In the absence of the necessary material facts, the claim for breach of fiduciary duty to protect from actionable mental harm ought to be struck

136. Alternatively, even if such a fiduciary duty exists as alleged, which is denied, the Defendant did not breach such a duty.

RESPONSE TO CLAIM FOR CONSTITUTIONALLY MANDATED DUTIES

137. The Defendant denies that Canada breached constitutionally-mandated duties owed to members of the Survivor, Descendant and Band Class, or any of them, as alleged in the statement of claim, including through the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools.

138. The Plaintiffs have alleged that any section of the *Indian Act* or its predecessors that provides statutory authority for the eradication of Aboriginal people is in violation of the *Constitution Act, 1982* and should be treated as having no force and effect. The Plaintiffs have failed, however, to plead any material facts in support of this claim. In the absence of any material facts pled on this issue, this claim should be struck.

139. The Defendant denies the existence of the constitutionally-mandated duties the Plaintiffs allege are owed to the members of the Plaintiff Classes.

140. Alternatively, even if constitutionally-mandated duties exist, Canada did not breach such duties.

141. In the further alternative, if constitutionally-mandated duties exist, and if Canada breached such duties, any such breach is justified.

RESPONSE TO CLAIM FOR BREACH OF STATUTORY DUTIES

142. The Defendant denies that Canada breached statutory duties owed to members of the Survivor, Descendant and Band Class, or any of them, through the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools.

143. The Defendant denies the existence of statutory duties owed to members of the Plaintiff Classes or any of them.

144. To the extent that the Plaintiffs' claim is based upon dissatisfaction with the requirement for mandatory school attendance that was introduced in the *Indian Act*, such a claim is bound to fail. The requirement for mandatory school attendance was created by Parliament through legislation and was not simply imposed by the Crown. As such, the doctrine of Parliamentary Supremacy applies.

145. To the extent that the Plaintiffs have particularized their claim under this heading to one that is actually based upon discretionary statutory authority rather than statutory duties, no legal liability can arise from the exercise or non-exercise of such authority.

146. Alternatively, even if the alleged statutory duties exist, Canada did not breach such duties.

NO BREACH OF ABORIGINAL RIGHTS

147. The Plaintiffs allege the following Aboriginal Rights on their own behalf and on behalf of members of the Plaintiff Classes: (i) to speak their traditional languages; (ii) to engage in their traditional customs; (iii) to engage in their religious practices; and (iv) to govern themselves in their traditional manner.

148. The Plaintiffs have identified four general alleged Aboriginal rights or otherwise in their statement of claim, but have failed to identify any specific pre-contact practice, custom or tradition which supports the claimed rights. Further, the Plaintiffs have failed to identify the modern activity that has a reasonable degree of continuity with the pre-contact practice, custom or tradition. In the absence of the necessary material facts, the claim for breach of Aboriginal rights ought to be struck.

149. In addition, members of the Survivor and Descendant Class are not rights-holding collectives on whose behalf a sustainable Aboriginal rights claim can, as a matter of law, be advanced. Nor do the Plaintiffs have standing to bring any such Aboriginal rights claim on behalf of class members or any rights-holding Aboriginal groups that may be subsumed within the Survivor and Descendant Class.

150. The Defendant denies that the Sechelt Indian Band or the Tk'emlúps te Secwépemc Indian Band are the proper collectives to advance a claim for breach of the Aboriginal rights of the shishalh or the Secwépemc peoples, respectively. The Defendant says further that, while the Plaintiffs claim that "this claim applies to all Aboriginal Nations in Canada who had Day Scholars attend Residential Schools", they have failed to identify any other Aboriginal collectives with the authority to pursue the claim for breach of Aboriginal rights on behalf of their members.

151. The Defendant denies that Canada breached the Aboriginal rights or otherwise of members of the Plaintiff Classes, or any of them to speak their traditional

languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner.

152. The Defendant denies the existence, breach or infringement by Canada of the Aboriginal rights asserted by the Plaintiffs in their statement of claim.

153. The recognition and affirmation in 1982 of existing Aboriginal rights under s. 35 of the *Constitution Act, 1982* protects such rights from unjustifiable infringement by legislative action. The Plaintiffs have not asserted an Aboriginal right that is cognizable at law. Further, there has been no infringement of an Aboriginal right of the Plaintiffs by federal legislation or by act of the Federal Crown.

154. The Plaintiffs have particularized their claim as asserting that their Aboriginal right was to "rely on Canada to protect their languages, culture and spirituality". The alleged duty of Canada in this regard does not exist at law.

155. In the alternative, if Canada breached the Aboriginal rights or otherwise of the Plaintiffs to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner, any such breach is justified.

156. In the further alternative, there can be no retroactive or retrospective application of the alleged Aboriginal rights.

NO BREACH OF COMMON LAW DUTIES

157. The Defendant denies that it breached common law duties owed to the Survivor, Descendant and Band Class, or any of them, through the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools.

158. The Defendant denies the existence of common law duties owed to the Plaintiffs.

159. The Statement of Claim fails to identify any common law duties allegedly owed by Canada to the Plaintiffs, and as such, this claim should be struck.

160. Alternatively, even if common law duties exist, Canada did not breach such duties.

RESPONSE TO CLAIM FOR CULTURAL, LINGUISTIC AND SOCIAL DAMAGE AND IRREPARABLE HARM

161. The Plaintiffs allege that the Residential Schools Policy as defined in the statement of claim and the Residential Schools caused "Cultural, Linguistic and Social Damage" and "irreparable harm" to the Survivor, Descendant and Band Class. The plaintiffs do not provide a meaningful definition of what they say is "Cultural, Linguistic and Social Damage," and plead no material facts in support. Insufficient particulars of this claim are provided.

162. Cultural, linguistic and social damage is not a cause of action that is cognizable at law, and this claim therefore ought to be struck.

163. Irreparable harm is not a stand-alone cause of action, but rather forms part of the tripartite test for injunctive relief. As such, this claim ought to be struck.

NO NEGLIGENCE / INTENTIONAL INFLICTION OF MENTAL DISTRESS

164. The Defendant denies that Canada owed a duty of care to members of the Survivor Class, or any of them, to protect them from intentional infliction of mental distress as alleged in the statement of claim.

165. The facts pleaded do not satisfy the legal test for the creation of a duty of care.

166. Alternatively, Canada's conduct did not breach the standard of care.

167. A proximate relationship did not exist between Canada and members of the Survivor Class. Proximity is necessary to give rise to a duty of care. Furthermore, Canada could not have reasonably foreseen the acts and harms allegedly suffered by members of the Survivor Class at the Residential Schools.

168. In the alternative, if Canada owed a duty of care to members of the Survivor Class, or any of them, to protect them from intentional infliction of mental

distress, which is denied, Canada denies that members of the Survivor Class, or any of them, suffered damages as a result of Canada's conduct.

169. If the Survivor Class suffered damages, which is denied, the damage was not caused by Canada's conduct.

NO BREACH OF DUTY OF CARE TO PROTECT FROM ACTIONABLE MENTAL HARM

170. The Defendant denies that it owed a duty of care to members of the Survivor Class, or any of them, to protect them from actionable mental harm as alleged in the statement of claim. The Plaintiffs have failed to plead the necessary material facts to support this claim. In the absence of the necessary material facts, the claim for breach of duty of care to protect from actionable mental harm ought to be struck.

171. Any claim in negligence against Canada must be grounded in the negligence of individual Federal Crown agents or servants. Canada's liability in tort is limited to vicarious liability only. Canada pleads and relies on the *Crown Liability and Proceedings Act*, and its predecessor legislation.

172. To the extent that the Plaintiffs have claimed negligence directly against Canada, such a direct claim against Canada in negligence does not disclose a reasonable cause of action and ought to be struck.

173. Further, the court has no jurisdiction to consider claims with respect to intentional torts that occurred before May 14, 1953, when the *Crown Liability Act* came into effect.

NO CLAIM FOR BREACH OF INTERNATIONAL CONVENTIONS AND COVENANTS, AND INTERNATIONAL LAW

174. In response to paragraphs 63 and 64, Canada is a party to numerous international human rights conventions. Canada has ratified or acceded to, and is therefore bound at international law by the United Nations *Convention on the Prevention*

and Punishment of the Crime of Genocide (which came into force for Canada on December 2, 1952), the *International Covenant on Civil and Political Rights* (which came into force for Canada on August 19, 1976) and the *Convention on the Rights of the Child* (which came into force for Canada on January 12, 1992). As a member of the Organization of American States, Canada is also bound at international law by the rights of the *American Declaration of the Rights and Duties of Man* (as of January 8, 1990).

175. International human rights treaties binding on Canada may be a relevant and persuasive source for interpreting the scope and content of constitutional rights. Where applicable they may also form the basis of an interpretative presumption of conformity between the treaty and ordinary legislation as well as the common law. However, these treaties are not directly enforceable in Canadian law. A treaty provision alone cannot form the basis of an action in Canadian courts, even where that provision is binding on Canada as a matter of international law. Moreover, as a matter of general international law, States' obligations under treaties cannot be applied retroactively or retrospectively.

176. The Defendant denies that it at any time violated its obligations under the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* and pleads that the Convention itself does not give rise to a cause of action in Canadian law.

177. The Defendant denies that it at any time violated its obligations under the United Nations *International Covenant on Civil and Political Rights* and pleads that the Covenant itself does not give rise to a cause of action in Canadian law.

178. The Defendant denies that it at any time violated its obligations under the United Nations *Convention on the Rights of the Child* and pleads that the Convention itself does not give rise to a cause of action in Canadian law.

179. The Defendant denies that it at any time violated the obligations contained in the *American Declaration of the Rights and Duties of Man* and pleads that the Declaration does not itself give rise to a cause of action in Canadian law.

180. The Defendant states that the United Nations *Declaration of the Rights of the Child* and the United Nations *Declaration on the Rights of Indigenous Peoples* constitute non-binding instruments and do not impose international legal obligations that are binding on Canada. The Defendant denies that it at any time violated these non-binding Declarations and pleads that they do not themselves give rise to a cause of action in Canadian law nor any interpretive presumption of conformity.

181. Further, to the extent that any of these international instruments may inform the interpretation of Canadian constitutional and legislative provisions and the common law, the Defendant pleads that its conduct has been consistent with the international obligations or norms set out in them.

182. In addition, the Plaintiffs have failed to identify particulars of the alleged breaches of international law.

VICARIOUS LIABILITY

183. The Defendant acknowledges that some individual Plaintiffs were subjected to specific actions as alleged by some individual priests, nuns, brothers and others, but more generally denies that the Plaintiffs and the members of the Plaintiff Classes were subjected to all of the wrongful acts alleged in the statement of claim, including, *inter alia*, attempts to eradicate their languages and culture or the negligent or intentional infliction of mental harm. In the alternative, any wrongful acts were not caused by the breach of any duty of Canada or its employees or agents, but solely by the acts or omissions of the church organizations, their employees or agents, for which Canada is not liable.

184. In the alternative, if any employees or agents of the Canada conducted the wrongful acts alleged, Canada is not vicariously liable for those acts. The alleged

wrongful acts were not authorized by Canada, were not consistent with Canada's policy, and were not sufficiently related to the course or scope of employment or agency by Canada or acts authorized within the course or scope of employment or agency by Canada so as to justify the imposition of vicarious liability on it.

185. If any of the persons alleged to have committed the wrongful acts alleged ever became employees or agents of Canada, the Defendant pleads that the church organizations who selected and trained those persons continue to be liable for their actions on the grounds of negligence or negligent misrepresentation, particulars of which are as follows:

(a) The church organizations were the initial employers of such persons, and had regular contact with them in the course of their day to day management and operation of the Residential Schools. Accordingly, they had or ought to have had, knowledge regarding the qualifications and suitability of such persons for employment at the schools and their treatment of the students who attended the schools.

(b) During the material times, they failed to report any concerns to Canada about the qualifications or suitability of such persons for employment at the Residential Schools, but rather held such persons out as being competent employees and appropriate persons to have contact with the students.

(c) They knew that Canada had very little or no knowledge regarding the qualifications or suitability of such persons for employment at the schools, or their treatment of students who attended the schools, and that Canada relied exclusively upon their knowledge and expertise in retaining such individuals, particularly since Canada was not involved in the day-to-day operations of the Residential Schools. Accordingly, it was reasonable in the circumstances for Canada to rely on the representations made by the church organizations regarding such persons.

186. Canada cannot be held vicariously liable in tort for conduct of Crown servants prior to May 14, 1953, which is the date upon which the subsection 3(1)(a) of the *Crown Liability Act*, S.C. 1952-53, c. 30 came into force. Prior to that time, pursuant to the *Exchequer Court Act*, RSC 1927, c. 34, as amended by S.C. 1938, c. 28, Canada could only be held liable for negligence of a Crown servant acting within the scope of his or her duties of employment. Furthermore, prior to the amendment of the *Exchequer Court Act*, Canada could only be held liable for the negligence of a Crown servant on a public work. The Defendant denies any such negligence with respect to the Plaintiffs' claim.

DAMAGES AND CAUSATION

187. If the Plaintiffs or the members of the Plaintiff Classes suffered any damage, losses or injuries as alleged, such losses or injuries were not caused by any acts or omissions of Canada or for which Canada is liable. Rather, such damage, losses or injuries were caused by other actors and other factors unrelated to Canada's conduct. Those other factors include events prior to and subsequent to the attendance of Survivor class members at Residential Schools. Those other actors include religious organizations that operated the Residential Schools, and their members and employees. Further, the damage, losses and injuries alleged by the Plaintiffs are exaggerated, remote and unforeseeable.

188. The Plaintiffs have limited their claim against the Defendant to that portion of any responsibility for compensable harms for which the Defendant might be severally liable, and have waived their claims against the church organizations that founded and operated the Residential Schools. To the extent that the Plaintiffs have suffered any harm, such harm is entirely attributable to those religious organizations and to the priests, nuns, brothers and others who acted on their behalf and not to the Defendant.

189. In the alternative, to the extent that the Defendant is liable for any portion of the Plaintiffs damage, losses or injuries, the Defendant relies upon paragraph 80(a) of the statement of claim and claims an apportionment of damages.

190. To the extent that members of the Band Class requested that industrial, boarding, day or residential schools be established for the education of their children prior to and during the Class Period, the Defendant says that the members of the Band Class consented to and desired the teaching of English or French to their children. To the extent that such consent was not revoked, it is a defence to the claims of the Band Class, or in the alternative, the Defendant is not liable for any portion of damages, if any, which flow from such consent.

191. To the extent that the parents or families of members of the Survivor Class chose to send their children to Residential Schools as day students when alternatives were available and / or chose not to teach them their Aboriginal languages, the Defendant says that it is not liable for the consequences of those choices.

192. To the extent that members of the Survivor class claim that they have suffered loss of their respective languages, which is not admitted, the Defendant says that such losses would have been attributable to a variety of factors. Most of these were beyond Canada's control and cannot give rise to liability. To the extent that education in English (or French) may have been a contributing factor, Canada says that the Plaintiffs have particularized their claim as not being based upon that factor.

193. If members of the Plaintiff Classes, or any of them, suffered any of the damage, losses or injuries alleged, such damage, losses or injuries were not caused by any acts or omissions of Canada or for which Canada is liable. Rather, such damage, losses or injuries were caused by factors unrelated to Canada's conduct, including but not limited to events prior and subsequent to the Plaintiff Class members' alleged attendance at the Residential Schools.

194. The Defendant denies that the circumstances alleged, if proven, were such as to give rise to liability for special, punitive, exemplary or aggravated damages.

195. If the Plaintiffs suffered any of the damage, losses or injuries alleged as a result of any acts or omissions of Canada for which Canada is liable, which is not

admitted but denied, the individual Plaintiffs and members of the Plaintiff Classes were each under a duty to exercise reasonable diligence and ordinary care in attempting to minimize their damages after the occurrence of damage, losses or injury as alleged in the statement of claim. The Defendant pleads that the Plaintiffs and members of the Plaintiff Classes, individually or as a group, failed to take reasonable actions which would have tended to mitigate damages

196. In answer to paragraphs 27 to 30, 39-45, 51, 59, 60, 62, 65, 73, 76-77 and 80, the Defendant says that if the Plaintiffs or the members of the Plaintiff Classes suffered any damage, losses or injuries as alleged, which is denied, such losses or injuries were caused by the acts or omissions of the church organizations either prior or subsequent to the establishment of Residential Schools and for which Canada is not liable.

197. The Plaintiffs are seeking the assessment of an aggregate damages award from the Court. The Defendant denies that such an award could be assessed in this case even if liability were found, which is denied. The circumstances of each member of the Plaintiff Classes are unique, as are the circumstances of every potential class member. There was no common experience amongst students at the same Residential School, much less at different Residential Schools. The allegations of breach of cultural and/or linguistic rights, be they Aboriginal rights or otherwise, are infinitely varied for each Class Member. Even if liability could be found, which is denied, it is simply not possible for the Court to assess an aggregate damages award in the circumstances.

LIMITATIONS OF ACTIONS

198. In further answer to the whole of the Statement of Claim, the Plaintiffs' claims are statute-barred and Canada pleads and relies on section 39(2) of the *Federal Courts Act*, R.S.C., 1985, c. F-7.

199. In the alternative and in further answer to the whole of the Statement of Claim, the Plaintiffs' claims are statute-barred by provincial and territorial limitations

statutes pursuant to section 39(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, and Canada pleads and relies on: *Limitation Act*, R.S.B.C 1996, c. 266; *Limitation Act*, S.B.C. 2012, c. 13; *Limitations Act*, R.S.A. 2000, c. L-12; *The Limitations Act*, S.S. 2004, c. L-16.; *The Limitations of Actions Act*, C.C.S.M, c. L150; *Limitations Act, 2002*, S.O. 2002, c. 24; *Civil Code of Quebec*, C.Q.L.R. c. C-1991; *Limitation of Actions Act*, S.N.B. 2009, c. L-8.5; *Limitations of Actions Act*, R.S. 1989, c. 258; *Statute of Limitations*, R.S.P.E.I 1988, c. S-7; *Limitations Act*, S.N.L. 1995, c. L-16.1; *Limitations of Actions Act*, R.S.Y. 2002, c. 139; *Limitations of Actions Act*, R.S.N.W.T. 1988, c. L-8.

200. The Defendant pleads and relies upon the *Crown Liability and Proceedings Act,* RSC 1985, c. C-50, and the *Crown Liability Act*, SC 1952-53, c. 30. Canada also relies on the equitable doctrines of *laches* and acquiescence.

201. The Plaintiffs claim prejudgment interest; however, the failure of the Plaintiffs to give sufficient particulars of the damages claimed and the basis of such claims causes Canada to be unable to evaluate such claims. Consequently, the Plaintiffs are disentitled from claiming prejudgment interest. In the alternative, if the Plaintiffs are entitled to prejudgment interest, such interest may be awarded only for a period beginning on February 1, 1992, at the earliest by virtue of s. 36(6) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, and s. 31(6) of the *Crown Liability and Proceedings Act*.

RELIEF SOUGHT

202. The Defendant asks that the Plaintiffs' action be dismissed with costs.

DATE: September 8, 2015

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TAB 18

Court File No.: T-1542-12

FEDERAL COURT

Class Proceeding

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND and the TK'EMLÚPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, CHARLOTTE ANNE VICTORINE GILBERT, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, DAPHNE PAUL, and RITA POULSEN

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN

DEFENDANT

AMENDED STATEMENT OF DEFENCE

Overview

1. This is a national class action involving students who attended Residential Schools during the day but who returned to their homes and families at night. These students are referred to as "Day Scholars".

2. The Defendant, Her Majesty the Queen ("Canada"), acknowledges that the period of operation of Residential Schools was a dark and painful chapter in our country's history that resulted in harm to many Indigenous persons across the country.

3. Canada admits that at times before and during the Class Period, federal government officials or their agents sought, through formal or informal approaches, to use Residential Schools as a means to assimilate Indigenous peoples into the dominant culture. Some of these harmful approaches included contributing to the removal of Indigenous children from their families and communities and housing them in Residential Schools, and by discouraging or inhibiting the use of Indigenous languages and cultural practices at those schools.

4. Canada also acknowledges that reconciliation will be furthered by resolving the legacy of such schools. Canada is committed to achieving such reconciliation, including with any Day Scholars who may have suffered harm as a result of their attendance at Residential Schools, their descendants, and with any Indigenous communities that suffered losses as a further result of the impacts on Day Scholars.

5. Canada further acknowledges that any assessment of the practical and legal implications of the Residential Schools legacy must take into consideration the experiences of Indigenous individuals who attended those schools as well as their unique perspective on Canada's role and responsibility for those experiences. That includes any responsibility flowing from the operation of Canada's laws, policies and relationships with respect to those schools.

6. The experience of Day Scholars is not identical to that of individuals who attended as residents of those schools. While the context is different in several key respects, the impacts may have been no less severe for some of the children involved. Day Scholars were not removed from their families and their communities; rather, the children went home to their families at night and in many instances, their community remained involved in their lives.

7. The parties maintain differing views about precisely what federal policies were in place with respect to Residential Schools, and in particular, with respect to Day Scholar attendance, across the country and over the entire Class Period. The parties similarly have differing views on who is legally responsible to compensate for any harms caused by or through the creation and operation of those schools.

8. Canada admits that the actions of federal government officials or their agents noted above were, in hindsight, utterly and entirely inappropriate. Canada disagrees with the Plaintiffs'

allegations that such actions, as alleged in the statement of claim, constituted breaches of the fiduciary, constitutional, statutory, and common law or other duties alleged (i.e. were unlawful).

9. Canada is committed to reconciliation with the Day Scholars by agreeing to the terms of a legal settlement that fully reflects the circumstances of those students. If resolution of this proceeding is not possible, the parties may require judicial guidance to resolve the differences set out above, as further defined in these pleadings.

FACTS

10. Canada specifically denies the Plaintiffs are entitled to the relief claimed in paragraphs 1-3 of the First Re-Amended Statement of Claim (the "statement of claim").

11. In response to paragraph 4 of the statement of claim, the following definitions apply to this statement of defence:

    (a) "CEP" means the "common experience payment", a lump sum payment available under the IRSSA to any former Residential School student who resided at any Residential School prior to December 31, 1997 and who was alive on May 30, 2005 and did not opt out, or is not deemed to have opted out of the IRSSA during the Opt-Out Periods or is a Cloud Student Class Member;

    (b) "Certification Order" means the Order of Justice Harrington dated June 18, 2015, certifying these proceedings as a class action;

    (c) "Class Period" means 1920-1997;

    (d) "Cloud Class Action" means the *Marlene C. Cloud et al.* v. *Attorney General of Canada et al.* (C40771) action certified by the Ontario Court of Appeal by Order entered at Toronto on February 16, 2005;

    (e) "Cloud Class Member" means an individual who is a member of the classes certified in the Cloud Class Action;

(f) "Cloud Student Class Member" means an individual who is a member of the student class certified in the Cloud Class Action;

(g) "Day Scholar" means an individual who attended classes at a Residential School as a student during the day but who did not reside at the Residential School;

(h) "*Indian Act*" means the *Indian Act*, R.S.C. 1985, c. I-5 and its predecessors as have been amended from time to time;

(i) "IRSSA" means the Indian Residential Schools Settlement Agreement, dated May 10, 2006;

(j) "IRSSA Approval Orders" means the Orders set out in Schedule A hereto, approving the IRSSA;

(k) "IRSSA Class Member(s)" means all individuals who are members of the Class as defined in the IRSSA and IRSSA Approval Orders;

(l) "IRSSA Family Class" means all individuals who are members of the family class defined in the IRSSA Approval Orders;

(m) "KIRS" means Kamloops Indian Residential School;

(n) "parochial school" means a private primary or secondary school affiliated with a religious organization and whose curriculum includes general religious education in addition to secular subjects;

(o) "Residential School(s)" means all Indian Residential School(s) recognized under the IRSSA and listed in Schedule A to the Certification Order; and

(p) "SIRS" means Sechelt Indian Residential School;

THE PARTIES

12. In response to paragraph 20 of the statement of claim, Canada admits that the Attorney General of Canada is the representative of Her Majesty the Queen in right of Canada. The

federal Crown exercises exclusive jurisdiction over Indians and lands reserved for Indians pursuant to section 91(24) of the *Constitution Act, 1867*, (UK), 30 & 31 Victoria, c. 3.

13. In response to paragraphs 5, 6, 9, 10, 12, and 14, Canada admits that the individuals named in these paragraphs are the Representative Plaintiffs for the Survivor Class.

14. In response to paragraph 5, Canada admits that the Plaintiff Darlene Matilda Bulpit (née Joe) was born on August 13, 1948. Canada further admits that the Plaintiff Darlene Matilda Bulpit attended SIRS as a Day Scholar in at least October 1960, October 1961, May 1962 and September 1962.

15. In response to paragraph 6, Canada admits that the Plaintiff Frederick Johnson was born on July 21, 1960 and died on March 28, 2017. Canada further admits that the Plaintiff Frederick Johnson attended SIRS as a Day Scholar in at least March of 1967.

16. In response to paragraph 7, Canada admits that the Plaintiff Daphne Paul was born on January 13, 1948. Canada further admits that the Plaintiff Daphne Paul attended SIRS as a Day Scholar in at least December 1953, March 1954, June 1954, October 1954, January 1955, March 1955, September 1956, September 1957, September 1958, October 1960 and October 1961.

17. In response to paragraph 8, Canada admits that the Plaintiff Violet Catherine Gottfriedson was born on March 30, 1945 and died on April 15, 2016. Canada further admits that the Plaintiff Violet Gottfriedson attended KIRS as a Day Scholar during the school years from September 1959 to June 1963.

18. In response to paragraph 12, Canada admits that the Plaintiff Charlotte Anne Victorine Gilbert (née Larue) was born on May 24, 1952. Canada further admits that the Plaintiff Charlotte Gilbert attended KIRS as a Day Scholar during the school years between September 1959 and June 1966, with the exception of a period of time during which she briefly resided at KIRS.

19. In response to paragraph 14 of the statement of claim, Canada admits that the Plaintiff Diena Marie Jules was born on September 12, 1955. Canada further admits that the Plaintiff Diena

Marie Jules attended KIRS as a Day Scholar during the school years from September 1962 to June 1967.

20. In response to paragraphs 16 and 17, Canada admits that the individuals named in these paragraphs are the Representative Plaintiffs for the Descendant Class.

21. In response to paragraph 16 of the statement of claim, Canada admits that the Plaintiff Rita Poulsen was born on March 8, 1974. Canada further admits that the Plaintiff Rita Poulsen's father attended SIRS as a Day Scholar in at least October 1960, October 1961, September 1962, November 1964, January 1966, June 1966, December 1966 and March 1967.

22. In response to paragraph 17 of the statement of claim, Canada admits that the Plaintiff Amanda Deanne Big Sorrel Horse was born on December 26, 1974. Canada further admits that the Plaintiff Amanda Big Sorrel Horse's mother attended KIRS as a Day Scholar during the school years from at least September 1959-June 1963 and September 1965-June 1966.

23. In response to paragraph 87 of the statement of claim, Canada admits that by operation of the definitions in the statement of claim, Survivor Class members are Indians as defined under the *Indian Act*, R.S.C. 1985, c. I-5. Canada also admits that the Band Class members are bands as defined under the *Indian Act*. However, by operation of the definitions in the statement of claim, it is outside Canada's knowledge whether all Descendant Class members and individual members of the bands in the Band Class are Indians as defined under the *Indian Act*.

24. In response to paragraph 18, Canada admits that the Indian Bands named in this paragraph are the Representative Plaintiffs for the Band Class.

25. Canada recognizes that the rights of Indigenous peoples as affirmed by section 35 of the *Constitution Act, 1982* include rights related to Indigenous languages.

26. Canada recognizes that all relations with Indigenous peoples, including members of the Sechelt Indian Band (referred to as the shíshálh or shíshálh band) and of the Tk'emlúps te Secwépemc Indian Band need to be based on the recognition and implementation of their right to self-determination, including the right of self-government.

27. In response to paragraphs 31-35, 59-61 and 72-75, Canada acknowledges that the pre-contact practices of the Tk'emlúps te Secwépemc Indian Band members' ancestors included practices and traditions that were integral to their distinctive culture. The particulars of these pre-contract practices are outside Canada's knowledge. Canada also acknowledges that Secwepemctsin is the traditional language of the Secwépemc people. As noted above, Canada recognizes that the rights of Indigenous peoples as affirmed by section 35 of the *Constitution Act, 1982* include rights related to Indigenous languages. However, to date no determination has been made with respect to the modern Aboriginal rights that flow from those practices and the speaking of that language.

28. Similarly, in response to paragraphs 36-38, 59-61 and 72-75, Canada acknowledges that the pre-contact practices of the Sechelt Indian Band members' ancestors included practices and traditions that were integral to their distinctive culture. The particulars of these pre-contract practices are outside Canada's knowledge. Canada also acknowledges that Shashishalhem is the traditional language of the shíshálh Nation. As noted above, Canada recognizes that the rights of Indigenous peoples as affirmed by section 35 of the *Constitution Act, 1982* include rights related to Indigenous languages. However, to date no determination has been made with respect to the modern Aboriginal rights that flow from those practices and the speaking of that language.

29. In response to paragraphs 31-35, 88 and 90 of the statement of claim, Canada acknowledges that the Tk'emlúps te Secwépemc Indian Band is a member of the broader Secwépemc Nation. To date no determination has been made whether the Tk'emlúps te Secwépemc Indian Band would be the holder of any Aboriginal rights that might accrue to its collective membership, or whether any such rights would instead by held by the larger collectivity or all Secwepemctsin speakers or by smaller Secwépemc collectivities, such as crest groups or traditional bands. Canada says that any Aboriginal rights that may exist would reside with the modern collectivity that best represents the collectivity that held the rights as of the date of contact.

30. Further, in response to paragraphs 36-38, 88, and 90, Canada acknowledges that the Sechelt Indian Band is comprised of descendants of the shíshálh Nation and that the shíshálh Nation is traditionally comprised of four sub-groups that occupied portions of the lower coast of British Columbia.

31. Canada acknowledges that the Sechelt Indian Band has also entered into a self-government agreement and Canada enacted the *Sechelt Indian Band Self-Government Agreement Act*, S.C. 1986, c. 27.

32. In light of the above, Canada admits that the Sechelt Indian Band and Tk'emlúps te Secwépemc Indian Band may have standing to advance some of the claims asserted in connection with their own First Nation. Each First Nation within the Band Class is unique; every First Nation within the Band Class will have its own particular circumstances. Accordingly, it will fall to the Court to determine this issue with respect to each Band Class member.

33. In response to paragraphs 19 and 25, Canada says that the Survivor Class, Descendant Class, and Band Class are as defined in the Certification Order.

34. At the time of filing this statement of defence, the only Representative Plaintiffs for the Survivor Class who have been identified by the Plaintiffs attended either SIRS or KIRS. Schedule "A" to the Certification Order sets out the other Residential Schools in this action. The opt-out period for Survivor Class members expired on November 30, 2015 (the "opt-out deadline").

35. Further, in addition to the two Representative Band Classes, the Tk'emlúps te Secwépemc Indian Band and the Sechelt Indian Band, an additional 99 bands have opted in to the Band Class. The only two Identified Residential Schools identified in connection with the Band Class members are SIRS and KIRS. Band Class members must have or have had some members who are or were members of the Survivor Class or have a Residential School located in their community and must be added to the claim with one or more specifically identified Residential Schools. Canada has no knowledge of the basis on which all members of the Band Class have opted in.

ACKNOWLEDGING WRONGS OF OUR RESIDENTIAL SCHOOLS

36. In response to paragraphs 20, 21-26, 29-30, 39-47, 84 and 92 and the statement of claim as a whole, Canada admits that the period of operation of Residential Schools in Canada was a dark and painful chapter in our country's history. At times, federal government officials sought, through formal or informal approaches (generically, "policies") to use Residential Schools as a means to assimilate Indigenous peoples into the dominant culture. This included egregiously removing and isolating Indigenous children from their families and communities, and discouraging or inhibiting them from using their respective Indigenous languages, customs or traditions.

37. In response to paragraphs 49 and 50, the Statement of Reconciliation is as found in the "Address by the Honourable Jane Stewart Minister of Indian Affairs and Northern Development on the occasion of the unveiling of Gathering Strength — Canada's Aboriginal Action Plan", made on January 7, 1998 (the "Statement of Reconciliation").

38. As noted in the Statement of Reconciliation, Canada acknowledges that our country's historical treatment of its Indigenous peoples has caused "*an erosion of the political, economic and social systems of Aboriginal people and nations*". With respect to the legacy of Residential Schools, Canada expresses "*profound regret for past actions of the Federal Government that have contributed to these difficult pages in the history of our relationship together*". The Statement of Reconciliation is part of a number of measures taken to advance Canada's commitment to achieving such reconciliation including, with Day Scholars who may have suffered damage as a result of attendance at Residential Schools.

39. In response to paragraphs 56-58, on June 11, 2008, the Prime Minister of Canada, the Right Honourable Stephen Harper, made a Statement of Apology to former students of Residential Schools, on behalf of the Government of Canada, in the House of Commons ("Apology").

40. As noted in the Apology, Canada acknowledges that Residential Schools separated over 150,000 Indigenous children from their families and communities. The Apology also accurately noted in those respects that two objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and

cultures, and to assimilate them into the dominant culture. As indicated in the Apology, Canada acknowledges that these acts and attempts at assimilation were wrong, have caused great harm, and have no place in our country.

41. The Apology is part of a number of measures taken to advance Canada's commitment to achieving reconciliation, including with any Day Scholars who may have suffered harm as a result of attendance at Residential Schools.

42. Canada further acknowledges that the attendance of Indigenous children at Residential Schools, particularly but not exclusively those who attended as residents, contributed to significant harms to many of them, their descendants and their communities. This harm included not only physical and sexual abuse, but the erosion of Indigenous cultural and linguistic practices.

DIFFERING CONDUCT AND HARMS

43. However, in answer to the whole of the statement of claim, and in particular, paragraphs 1-3, 21-30, 35, 38-49, 56-58, 59-62, 65-71, 73-75, 76-77, 80-86 and 92-93, Canada – in line with the paragraphs that follow – denies that there was ever a single "Residential School Policy" universally applicable to all class members and/or across the entire Class Period, as alleged in the statement of claim.

44. In order to allow the Court to have an accurate appreciation of the factual context, all with a view to pursuing a just settlement agreement, Canada brings the following precisions to some of the factual claims made in the statement of claim.

45. The extent and years of Canada's involvement in the Residential Schools differs on a school-by-school basis. Further, the number of and years of attendance of Survivor Class members as Day Scholars at the Residential Schools differs on a school-by-school basis.

46. Further, the majority of children who attended Residential Schools during the Class Period lived at the Residential Schools. Only a small minority of Indigenous children attended Residential Schools as Day Scholars during the Class Period.

47. In addition, not all Residential Schools had Day Scholars in attendance during the Class Period. During the Class Period, some of the Residential Schools offered classes for residential students only. Many of the other Residential Schools were residences only and did not hold classes for any students during the Class Period. Further, some of the Residential Schools offered classes for Day Scholars during only some years of their operation.

48. The experience and treatment of Residential School students, including the Plaintiffs and members of the Survivor Class, was also not uniform across all schools, church organizations, and time periods. Rather, such experiences and treatment varied widely depending on a host of factors, including, but not limited to: variations in curriculum by province, region, religious affiliation, school, and time period; the life experiences of individual students outside of school; whether the students spoke Indigenous languages; students' degrees of fluency in Indigenous languages, English or French at the time of entry into the school system; and their individual experiences of particular cultural and spiritual activities prior to, during, and following attendance at the schools.

49. Other factors which had an impact on the experience of individual students, including the Plaintiffs and members of the Survivor Class, in relation to their attendance include the composition of the student population and the presence or absence of a mix of nations, bands, language groups, religious affiliations, and genders within the school population.

50. The experiences of individual students at Residential Schools, including the Plaintiffs and members of the Survivor Class, were also affected by: the geographic location of the specific school; its relative remoteness from or connection to the non-Indigenous population; the impact of increasing urbanization of Canada over the Class Period; variability of funding from school to school and year to year; differences in hiring practices and procedures; the relative economic status of the church organization responsible for the administration of the school; whether the Residential School was one of those where Indigenous languages were specifically encouraged; individual practice with regard to enforcement of attendance requirements; the presence or absence of Indigenous staff; individual family circumstances

of students; and variability of cultural practice and language use within particular bands and families within those bands.

51. The statement of claim alleges that Canada intended, with respect to all class members and throughout the entire Class Period, to eradicate Indigenous languages. Canada denies that this is an accurate description. While not denying Canada's role in the harms done to Indigenous culture, identity, spiritual and linguistic practices as a result of Residential Schools, the details provided herein aim to identify the particulars of the scope of Canada's role in context with other contributing factors.

THE FEDERAL LEGISLATIVE CONTEXT

52. At the time of Confederation in 1867, s. 91(24) of the *Constitution Act, 1867* gave Canada exclusive legislative authority in relation to "Indians and Lands reserved for the Indians". In 1876 Parliament enacted the *Indian Act* which has existed, as amended from time to time, ever since. The 1876 version of the *Indian Act* had only minor provisions relating to education.

53. Amendments to the *Indian Act* in 1894 would have enabled the Governor in Council to make regulations for the compulsory education of Indian children and to establish or declare existing schools to be industrial or boarding schools for Indians. In 1920, education for Indian children became compulsory, when Parliament enacted amendments to the *Indian Act*, which provided that every Indian child between the ages of seven and fifteen who was physically able to do so was required to attend a designated day, industrial or boarding school. The *Indian Act* was further amended in 1930 to change the upper age for mandatory school attendance to sixteen.

54. While the experiences students had at Residential Schools was clearly different and more harmful to Indigenous children in various respects, the requirement under the *Indian Act* for Indian children to attend school during the Class Period was consistent with provincial legislation in existence throughout most of Canada, which required non-Indian children to attend school. The requirement to attend school was a *bona fide*, even if in hindsight a deeply misguided, measure intended to ensure that all children, Indian and non-Indian alike,

received an education and was similar to legislative requirements existing in other developed countries throughout the Class Period.

55. Pursuant to the *Indian Act*, during the Class Period most Indigenous children received an education at day schools on their reserves. Other Indigenous children received their education at Residential Schools, at times because there were insufficient numbers of families to support a day school in a remote community, or because families were traveling away from their communities for extended periods of time for employment purposes.

56. As of April 1, 1969, the then Department of Indian Affairs and Northern Development assumed the administration of Residential Schools. At all material times, the church organizations continued to have a role and responsibility in the management and operation of the Residential Schools, as detailed below.

THE OPERATION OF RESIDENTIAL SCHOOLS

57. In response to paragraph 62 of the statement of claim, at all material times during the Class Period almost all of the Residential Schools were controlled or operated by the church organizations pursuant to agreements entered into between the relevant churches or church organizations and Canada. These churches or church organizations are defined in Article 1.01 and Schedules "B", "C", "G" and "H" of the IRSSA ("church organizations"). Various church organizations had established industrial, boarding and Residential Schools for the education of Indigenous children prior to Canada's involvement in the education of Indigenous children. The church organizations continued to be involved in the operation and management of most of the Residential Schools throughout the entire Class Period.

58. The church organizations were also responsible for the operation and administration of the Residential Schools. During the Class Period, the responsibilities of the church organizations involved in Residential Schools included, but were not limited to, the following:

    (a) selection, employment, hiring, supervision, training, discipline and dismissal of officers, agents, servants and employees at Residential Schools, including residential and educational staff at Residential Schools;

(b) academic, religious and moral teachings of the students at Residential Schools;

(c) development and implementation of school curricula at Residential Schools;

(d) supervision, day-to-day care, guidance and discipline of the students at Residential Schools;

(e) ensuring the well-being, care and safety of the students at Residential Schools, including the Survivor Class members;

(f) taking care of and looking out for the physical and spiritual well-being of the students at Residential Schools, including the Survivor Class members;

(g) to keep the students of Residential Schools, including the Survivor Class members, safe and free from harm; and

(h) to keep Canada apprised as to any situations dangerous or harmful to the students at Residential Schools, including the Survivor Class members.

59. Canada provided financial assistance to the church organizations for the operation of Residential Schools, pursuant to agreements with the church organizations. Canada also provided policy guidelines from time to time. Canada inspected and audited the Residential Schools from time to time to ensure that the church organizations were complying with their agreements with Canada and Canada's policy guidelines. Canada was not responsible for and did not undertake the day-to-day operations of the Residential Schools which were instead operated by church organizations.

60. Beginning in or about 1948, in an effort to educate Indigenous children wherever possible in association with other children, provinces and their school boards assumed, over time, increasing responsibility for the education of Indigenous children. From 1948 forward, progressively greater numbers of Indigenous children attended public schools operated by school boards under provincial jurisdiction. From 1948 to the end of the Class Period, the proportion of Indigenous children attending Residential Schools decreased as increasing numbers of Indigenous children attended day schools, parochial schools and provincial

schools. Further, many of the Residential Schools that had provided classes ceased to do so and began to act as residences only and many of the Residential Schools closed entirely.

61. A number of other governments, institutions, and organizations were also involved in and responsible for the operation of Residential Schools and education of Indigenous children in general. For example, in some cases:

(a) Provincial and territorial governments bore responsibility for the education of Indigenous children, often pursuant to agreements with Canada;

(b) Provincial governments established standards and curricula and undertook inspections of Residential Schools;

(c) Education was provided in provincial day schools to students who resided in Residential Schools, often under the auspices of or pursuant to agreements with local school boards; and

(d) Child welfare agencies were involved in or responsible for the admissions policies and procedures of Residential Schools, since many of the Indigenous students who attended did so as orphans or abandoned children, or for other child welfare reasons.

62. From the early 1970s onward, some Indigenous entities began to assume some responsibility for and varying forms of control of the education of Indigenous children. In 1973, Canada agreed to devolve some forms of control with respect to the education of Indigenous children to band councils and Indigenous education committees. By the mid-1970s, the Residential Schools which remained in operation were in many cases administered by local band councils or their nominees. Canada's role was limited in such cases to offering financial assistance and, occasionally, other assistance where requested by the responsible Indigenous entity, whose day to-day care and control of the schools was established by agreements entered into with Canada.

63. Canada will provide more detailed particulars of the operation of individual Residential Schools, other than KIRS and SIRS, the details of which are provided below, at which Survivor Class members attended or with which Band Class members are connected, to the

extent they become necessary and relevant in light of the stage parties are at in this class proceeding.

64. The majority of the acts of which the Representative Plaintiffs complain are those of specific priests, nuns, brothers and others who taught at the schools. To the extent the statement of claim refers to other acts or omissions of officials or agents of Canada that have harmed class members, those are not acts that give rise to causes of action. Nevertheless, Canada remains committed to pursuing reconciliation through a settlement agreement as Canada has done through the IRSSA and other claims for historical harms done to Indigenous children.

THE ESTABLISHMENT AND OPERATION OF KIRS AND SIRS

65. At the time of the filing of this Statement of Defence, KIRS and SIRS are the only two Identified Residential Schools named in the statement of claim. Canada pleads the following facts specifically in relation to the establishment and operation of KIRS and SIRS.

The church organizations involved in the establishment and operation of KIRS and SIRS

66. Various church organizations were involved in both KIRS and SIRS from their respective inceptions until their closures. The history of each of these church organizations is set out below.

The Archbishop and Bishops

67. The Vicariate Apostolic of British Columbia was erected in 1863 and was administered by a vicar apostolic. In 1890, the Vicariate Apostolic was erected into a diocese, the Diocese of New Westminster, administered by a bishop. In 1908, the Diocese of New Westminster was erected into the Archdiocese of Vancouver and, since that time, has been administered by an archbishop (the "Archbishop").

68. In 1945, the Diocese of Kamloops was erected out of a portion of the Archdiocese of Vancouver and is administered by a bishop (the "Bishop").

69. At the relevant times, as set out below, the Bishop of New Westminster, the Archbishop and the Bishop sought and obtained legislative approval for the creation of corporations sole to act as their secular legal personalities.

70. The Roman Catholic Bishop of New Westminster was a corporation sole created by the *Roman Catholic Bishop of New Westminster Incorporation Act*, S.B.C. 1893, c. 62.

71. The Roman Catholic Archbishop of Vancouver (the "Archbishop Corporation Sole"), the successor to The Roman Catholic Bishop of New Westminster, is a corporation sole created by *The Roman Catholic Archbishop of Vancouver Incorporation Act*, S.B.C. 1909, c. 62, as amended.

72. The Roman Catholic Bishop of Kamloops (the "Bishop Corporation Sole"), is a corporation sole created by *The Roman Catholic Bishop of Kamloops Incorporation Act*, S.B.C. 1947, c. 102, as amended.

The Oblates

73. The Congregation of the Missionary Oblates of Mary Immaculate (the "Congregation") is a clerical Congregation of pontifical right whose Constitutions and Rules, as amended from time to time since 1826, have been approved at the relevant times by Popes of the Roman Catholic Church. The Congregation has been known by various names, including: "The Congregation of the Oblates of the Most Holy Virgin Mary", "The Congregation of the Missionary Oblates of the Most Holy and Immaculate Virgin Mary" and "The Congregation of the Missionary Oblates of the Blessed and Immaculate Virgin Mary".

74. The Congregation is headed by a Superior General who, since 1905, has resided in Rome. The Congregation is currently organized into Provinces and Vice-Provinces and formerly into Provinces and Vicariates. A Province is headed by a Provincial, a Vice-Province is headed by a Vice-Provincial and a Vicariate was headed by a Vicar of Missions.

75. In 1926, the Oblate Province of St. Peter's of New Westminster was established, which was formerly part of the Oblate Vicariate of British Columbia. In 1968, St. Peter's of New Westminster Province was divided at the Alberta/Saskatchewan border and St. Paul's Vice-

Province was established in the west. St. Peter's of New Westminster Province was renamed St. Peter's Province. In 1973, St. Paul's Vice-Province was established as a full Province.

76. The Congregation in British Columbia, including the Oblate Vicariate of British Columbia, St. Peter's of New Westminster Province, St. Peter's Province, St. Paul's Vice-Province and St. Paul's Province (collectively the "Congregation in BC") is civilly incorporated as "The Order of the Oblates of Mary Immaculate in the Province of British Columbia" under the laws of the Province of British Columbia by *An Act to Incorporate the Order of the Oblates of Mary Immaculate in the Province of British Columbia*, S.B.C. 1891, c. 51, as amended (the "Oblates").

77. The Oblates have existed in British Columbia since 1891 (and the Congregation since 1860) for the purpose of, amongst others, establishing and carrying on schools and colleges, including schools for Indigenous children.

78. In 1936, the Congregation, through the offices of its Superior General, and its provincials and Oblate bishops in Canada founded the Indian Welfare and Training Commission of the Oblates of Mary Immaculate, located in Ottawa, to coordinate the objectives of the Oblate bishops, Oblate provincials and Oblate priests who were, amongst other things, working to educate Indigenous peoples in Canada. This Commission, over time, was known under various names including: the Indian and Eskimo Welfare Commission; the Indian and Eskimo Welfare Commission of the Oblates; and, the Oblate Indian-Eskimo Council (at the relevant time, the "Council").

79. On August 10, 1960, the Council incorporated by letters patent "Oblate Services Oblats" in the Province of Ontario and by supplementary letters patent, dated May 31, 1962, changed the name of Oblate Services Oblats to Indianescom.

80. At all material times, the Congregation, through the offices of its Superior General, and its Provincials and Oblate bishops in Canada, including the Provincials of St. Peter's of New Westminster Province, St. Peter's Province and St. Paul's Province and the Vice-Provincial of St. Paul's Vice-Province, amongst others (collectively the "Congregation in Canada"), created, controlled and directed the Council, Oblate Services Oblats and Indianescom.

81. In or about 1976, the Council and Indianescom were dissolved and their assets were donated to the Canadian Catholic Conference, an association of Canadian bishops and archbishops.

The Sisters of Saint Ann

82. The Sisters of Saint Ann (the "Sisters of SA") is a female religious congregation of members of the Roman Catholic faith, duly incorporated under the laws of the Province of British Columbia by the *Sisters of St. Ann's Incorporation Act*, S.B.C. 1892, c. 58, as amended (the "Sisters of SA Corporation").

The Sisters of Instruction of the Child Jesus

83. The Sisters of Instruction of the Child Jesus (the "Sisters of ICJ") are a teaching and charitable order or association of the Roman Catholic faith, duly incorporated under the laws of the Province of British Columbia by *An Act to Incorporate the Sisters of Instruction of the Child Jesus*, S.B.C. 1913, c. 94, as amended (the "Sisters of ICJ Corporation").

Establishment of KIRS

84. KIRS, or its predecessor, was established in or about 1890 at the request or initiative of the Tk'emlúps te Secwépemc Indian Band, or its predecessor. Prior to that time, there was a Mission School at which some children, including the daughter of the then chief of the Kamloops Indian Band, paid fees to board and attend classes.

85. KIRS, or its predecessor, was established by one or more of the Archbishop, or his predecessor, the Bishop, the Oblates and the Sisters of SA.

86. Canada states that any attempts to teach English and Christianity at a school would have some unavoidable implications on students' use of their Indigenous languages and cultures. Nevertheless, Canada explicitly acknowledges that many of the significant harms suffered by Indigenous students at Residential Schools would not have been incurred but for the unique circumstances in those schools. These circumstances included offensive and inappropriate conduct of individuals operating the schools, as well as federal government

practices such as removing and isolating the students from their families and communities as noted above.

87. Canada is not liable for any loss of language or culture that was an unavoidable implication of the Tk'emlúps te Secwépemc Indian Band members' children being educated in English or taught Christian doctrine, and the Plaintiffs, in their reply and statement of claim, indicate that their claim is rather with respect to the manner in which the education was provided and other harmful events done at Residential Schools. Nevertheless, Canada is acting to revitalize Indigenous languages and culture with the support of Indigenous peoples, for example through Bill C-91, Indigenous Languages Act.

The Operation of KIRS

88. Until 1945, KIRS was located within the Archdiocese of Vancouver (or its predecessor). The Archbishop (and his secular legal personality the Archbishop Corporation Sole) was responsible for the Archdiocese of Vancouver and retained certain rights and authority over members of Catholic religious orders and congregations working in his archdiocese.

89. As of 1945, KIRS was located within the Diocese of Kamloops. The Bishop (and his secular legal personality the Bishop Corporation Sole) was responsible for the Diocese of Kamloops and retained certain rights and authority over members of Catholic religious orders and congregations working in his diocese.

90. KIRS was conducted under the auspices of the Roman Catholic Church by the Congregation in BC, the Archbishop, the Bishop, and the Sisters of SA and by their secular legal personalities the Oblates, the Archbishop Corporation Sole, the Bishop Corporation Sole and the Sisters of SA Corporation (collectively the "KIRS Church Organizations").

91. The Congregation in BC and the Oblates controlled, operated, administered and managed KIRS in conjunction with, or with the assistance of the Sisters of SA and the Sisters of SA Corporation, and in conjunction with, with the permission of, or on instructions from, the Archbishop and the Archbishop Corporation Sole and the Bishop and the Bishop Corporation Sole pursuant to an agreement with Canada that was partly written and partly

oral, including, among other things, a Memorandum of Agreement dated September 25, 1962 between Canada and Indianescom.

92. Alternatively, the Sisters of SA or, in the alternative, individual members of the Sisters were employed at KIRS by one or more of the Archbishop, the Bishop or Congregation in BC, or, in the alternative, acted as their agent to provide teaching instruction to the students and to perform other duties at the KIRS pursuant to an agreement between the Sisters and one or more of the Archbishop, Bishop or Congregation in BC.

93. The KIRS Church Organizations were responsible for selecting, employing, supervising and training officers, agents, servants and employees at KIRS, including principals, administrators, officers, servants, supervisors and domestic staff working at KIRS.

94. The KIRS Church Organizations were responsible for disciplining or dismissing any principal, administrator, officer, servant, teacher, supervisor, domestic or other staff where, in their opinion, the circumstances warranted.

95. Pursuant to Order in Council P.C. 1969-613, administrators and child care workers at the Residential Schools were exempted from the provisions of the *Public Service Employment Act,* S.C. 1966-67, c. 71, as amended. As a result of the Service Contract, the Congregation in Canada and in particular the Congregation in BC and the Oblates were responsible for, among other things, the hiring, supervision and discipline of all administrators and child care workers for KIRS.

96. At all material times after April 1, 1969, the KIRS Church Organizations continued to have a major role in and be responsible for the operation and management of KIRS and the religious teachings, caring, upbringing, safety and protection of the students at KIRS.

Attendance of Class Members at KIRS

97. Throughout the Class Period, the majority of students attending KIRS were residential students. Day Scholars were only in attendance at KIRS for a limited period of time during the Class Period, between in or about the 1959/60 to the 1966/67 school years.

98. Beginning in or about the 1940s some residents of KIRS and children from the Tk'emlúps te Secwépemc Indian Band, or its predecessor, began attending provincial or parochial schools in Kamloops. Throughout the 1950s – 1960s classroom instruction at KIRS was phased out.

99. By the 1969-70 school year no classes were held at KIRS. From that time until the end of the Class Period all students still residing at KIRS attended provincial or parochial schools in Kamloops. During this time period, students from the Tk'emlúps te Secwépemc Indian Band who were living on reserve would have also attended provincial or parochial schools in Kamloops.

100. Therefore, in the alternative, even if there were Day Scholars at KIRS after the 1966/67 year, which is not admitted, none of the Plaintiffs or members of the Survivor Class attended KIRS as Day Scholars after the 1969-70 school year.

101. In or about 1978, the Residential School at KIRS closed in its entirety.

Establishment of SIRS

102. SIRS, or its predecessor, was established in or about 1904 at the request or initiative of the Sechelt Indian Band, or its predecessor. It was established by one or more of the Archbishop, or his predecessor, the Oblates, and the Sisters of ICJ.

103. Prior to 1904, the Sechelt Indian Band built a schoolhouse using funds obtained from its own logging efforts. In 1904, the Sechelt Indian Band, through the Bishop of New Westminster, secured the teaching and caregiving services of the Sisters of ICJ to operate the school. The Sechelt Indian Band petitioned the government to provide funds to assist with the completion and furnishing of the school and a grant for the boarding of the children

104. Canada states that any attempts to teach English and Christianity at a school would have some unavoidable negative implications on students' use of their Indigenous languages and cultures. Nevertheless, Canada explicitly acknowledges that many of the significant harms suffered by Indigenous students at Residential Schools would not have been incurred but for the unique circumstances that applied to these schools. These circumstances included

offensive and inappropriate conduct of individuals operating the schools, as well as federal government practices such as removing and isolating the students from their families and communities.

105. Canada is not liable for any loss of language or culture that was an unavoidable implication of the Sechelt Indian Band members' children being educated in English or taught Christian doctrine, and the Plaintiffs, in their reply and statement of claim, indicate that their claim is rather with respect to the manner in which the education was provided and other harmful events done at Residential Schools. Nevertheless, Canada is acting to revitalize Indigenous languages and culture with the support of Indigenous peoples, for example through Bill C-91, *Indigenous Languages Act*.

The Operation of SIRS

106. SIRS was located within the Archdiocese of Vancouver (or its predecessor). The Archbishop (and his secular legal personality the Archbishop Corporation Sole) was responsible for the Archdiocese of Vancouver and retained certain rights and authority over members of Catholic religious orders and congregations working in his archdiocese.

107. SIRS was conducted under the auspices of the Roman Catholic Church by the Congregation in BC, the Archbishop, and the Sisters of ICJ and by their secular legal personalities the Oblates, the Archbishop Corporation Sole and the Sisters of ICJ Corporation (collectively the "Sechelt Church Organizations").

108. The Congregation in BC and the Oblates controlled, operated, administered and managed SIRS in conjunction with, or with the assistance of the Sisters of ICJ and the Sisters of ICJ Corporation, and in conjunction with, with the permission of, or on instructions from, the Archbishop (or its predecessor) and the Archbishop Corporation Sole, pursuant to agreements with Canada that were partly written and partly oral, including agreements dated 1911, 1916, and September 25, 1962 as between Canada and the Archbishop, Canada and the Archbishop, and Canada and Indianescom, respectively.

109. Alternatively, the Sisters of ICJ or, in the alternative, individual members of the Sisters of ICJ were employed at the School by one or more of the Archbishop or Congregation in BC

or, in the alternative, acted as their agent to provide teaching instruction to the students and to perform other duties at the SIRS pursuant to an agreement between the Sisters of ICJ and one or both of the Archbishop or Congregation in BC.

110. The Sechelt Church Organizations were responsible for selecting, employing, supervising and training officers, agents, servants and employees at SIRS, including principals, administrators, officers, servants, supervisors and domestic staff working at SIRS.

111. The Sechelt Church Organizations were responsible for disciplining or dismissing any principal, administrator, officer, servant, teacher, supervisor, domestic or other staff where, in their opinion, the circumstances warranted.

112. On April 1, 1969, the Memorandum of Agreement dated September 25, 1962 between Canada and Indianescom ceased to have effect and new written agreements were entered into between the Council and/or Indianescom and Canada.

113. On and after April 1, 1969, the Council and/or Indianescom contracted its services in Residential Schools to Canada and, in particular, with respect to Sechelt IRS (the "Service Contract").

114. Pursuant to Order in Council P.C. 1969-613, administrators and child care workers at the Schools were exempted from the provisions of the *Public Service Employment Act*, S.C. 1966-67, c. 71, as amended. As a result of the Service Contract, the Congregation in Canada and in particular the Congregation in BC and the Oblates were responsible for, among other things, the hiring, supervision and discipline of all administrators and child care workers for Sechelt IRS.

115. At all material times after April 1, 1969, the Sechelt Church Organizations continued to have a major role in and be responsible for the operation and management of SIRS and the religious teachings, caring, upbringing, safety and protection of the students at SIRS.

Attendance of Class Members at SIRS

116. Throughout the Class Period, the majority of students attending SIRS were residential students. Day Scholars were only in attendance at SIRS for a limited period of time during the Class Period, between in or about the 1952/53 to the 1968/69 school years.

117. As early as in or about 1948, some students residing at SIRS or from the Sechelt Indian Band were attending the provincial school in Sechelt.

118. After the 1968/69 school year there were no classes held at SIRS. The residence at SIRS was closed on or about June 30, 1975.

119. None of the Plaintiffs or members of the Survivor Class attended SIRS as Day Scholars after the 1968/69 school year.

THE IRSSA AND RELEASES

120. In response to paragraphs 51-55, the IRSSA was approved by the courts in nine jurisdictions and implemented on September 19, 2007.

121. The IRSSA was reached through a process of negotiation between Canada, former students of the Residential Schools, church organizations involved in running the schools, and the Assembly of First Nations and Inuit representatives. Pursuant to the IRSSA, the parties agreed to the settlement of all actions of the IRSSA Class Members in relation to Residential Schools. This includes various class actions, including the Cloud Class Action (*Marlene C. Cloud et al. v. Attorney General of Canada et al.* (C40771), which was brought on behalf of former students of the Mohawk Institute Residential School, and was certified by the Ontario Court of Appeal on February 16, 2005.

122. The IRSSA contains five key components: Common Experience Payment ("CEP"), Independent Assessment Process ("IAP"), an endowment of $125 million to the Aboriginal Healing Foundation, the establishment of the Truth and Reconciliation Commission, and funding in the amount of $20 million for national and community based commemorative projects.

123. Pursuant to Article 11 of the IRSSA, the claims of all IRSSA Class Members and Cloud Class Members arising from the operation of Residential Schools were released as against the defendants in those actions, including Canada, unless the IRSSA Class Member or Cloud Class Member opted out of the IRSSA.

124. Non-resident students of Residential Schools were not eligible for the CEP, but were eligible for compensation under the IRSSA's IAP for sexual abuse, certain serious physical abuse, and "other wrongful acts" suffered while attending a Residential School. The IRSSA required IAP claimants who did not reside at a Residential School to execute a release upon acceptance into the IAP. The release is set out in Schedule "P" to the IRSSA.

125. The Schedule "P" release, signed in consideration for an application being accepted into the IAP, is a full and final release of any cause of action relating in any way to the operation of Residential Schools. The Schedule P release expressly provides that Canada can rely on the release as a complete defence to any claim or action relating to the operation of the Residential Schools

126. The claims in these proceedings of all members of the Survivor Class who are also IRSSA Student Class Members or Cloud Student Class Members, and who did not opt out of the IRSSA, have been released. Such claims are barred as a result of being included in and subject to Article 11 of the IRSSA and the corresponding paragraphs of the Approval Orders.

127. The claims in these proceedings of all members of the Descendant Class who are also members of the IRSSA Family Class or the family class in the Cloud Class Action, and who did not opt out of the IRSSA have been released. Such claims have been fully resolved between the Plaintiffs and Canada and are barred as a result of being included in and subject to to Article 11 of the IRSSA and the corresponding paragraphs of the Approval Orders. The IRSSA was a significant step in reconciliation of historical wrongs and insofar as that resolution bears on the claims set out in the statement of claim, the IRSSA applies so as to avoid re-litigating previous agreements.

128. The claims in these proceedings by any member of the Survivor Class who is also a non-resident claimant, as defined in Article 1.01 of the IRSSA, and who has executed a Schedule

"P" release, have been released. Canada relies on such executed Schedule P releases as a complete defence to these proceedings as against the signatories.

129. To the extent that the Plaintiffs' claims arise from events that occurred during the attendance at Residential Schools as *residents* of any members of the Plaintiff Classes, their family members or members of their communities or any impacts arising therefrom, such claims are barred as a result of being included in and subject to the IRSSA and Approval Orders.

130. In further answer to paragraph 12, and the whole of the statement of claim as it relates to the Plaintiff Charlotte Gilbert, Canada says that the Plaintiff Charlotte Gilbert is an IRSSA Class Member and received payment of the CEP in relation to a period of residence at KIRS. Accordingly, all claims of the Plaintiff Charlotte Gilbert against Canada in relation to any Residential School or the operation of any Residential School have been released pursuant to the terms of the IRSSA and Approval Orders. Canada says that the claims of the Plaintiff Charlotte Gilbert should be dismissed.

131. In further response to paragraph 16 and the whole of the statement of claim as it relates to the Plaintiff Diena Jules, Canada says that the Plaintiff Diena Jules resided at KIRS from September 1971-March 1972, received payment of the CEP and is an IRSSA Class Member. Further, the Plaintiff Diena Jules signed a Schedule P Release dated January 7, 2013. All claims of the Plaintiff Diena Jules against Canada in relation to any Residential School or the operation of any Residential School have been released pursuant to the terms of the IRSSA and Approval Orders. Further, all claims of the Plaintiff Diena Jules arising from or related to her participation in a program or activity associated with or offered at or through any Residential School and the operation of Residential Schools are released pursuant to the terms of the Schedule P release dated January 7, 2013. Canada says that the claims of the Plaintiff Diena Jules should be dismissed.

132. In further response to paragraph 16 of the statement of claim, Canada says that the Plaintiff Rita Poulsen is an IRSSA Family Class Member and that her claims in these proceedings are in the nature of family class claims as defined in the IRSSA and underlying class actions and have been released pursuant to the IRSSA and the IRSSA Approval Orders. Canada says that the claims of the Plaintiff Rita Poulsen should be dismissed.

133. In further response to paragraph 17 of the statement of claim, Canada says that the Plaintiff Amanda Big Sorrel Horse is an IRSSA Family Class Member and that her claims in these proceedings are in the nature of a family class claim as defined in the IRSSA and underlying class actions and have been released pursuant to the IRSSA and IRSSA Approval Orders. Canada says that the claims of the Plaintiff Amanda Big Sorrel Horse should be dismissed.

LEGAL BASIS

134. As noted above, Canada admits that at all material times federal governments required all Indigenous children to attend schools, including Residential Schools, and that they be educated in English or French. Canada further admits that at times in our country's history, federal governments attempted to assimilate Indigenous children into the dominant culture, in part through the use of Residential Schools, and contributed to harms suffered by Indigenous children, as noted above.

135. However, Canada states that at all times during the establishment and operation of the Residential Schools and throughout the Class Period, against the standards of the day, Canada acted with due care and thus in good faith, and within its legislative authority, including its authority with respect to the education of Indigenous children. In hindsight, Canada recognizes that the overall objectives of Residential Schools were wrong. Further, the conduct of Canada must be measured by what was considered reasonable and appropriate at the time of the formulation and implementation of the alleged policies at issue. Moreover, and in any event, to the extent that harm is alleged to have arisen from the formulation and implementation of policy, the law recognizes that policy is immune from suit or liability.

136. In those respects, Canada affirms the significance of the Statement of Reconciliation and the Apology, and their importance for Canada's commitment to reconciliation. As a matter of law, affirmed by statutory authority, admissions of fact or liability in relation to the specific experiences of Day Scholars at Residential Schools, which are in some respects person and time specific, cannot, without more, be grounded in the Statement of Reconciliation or Apology.

137. In this respect, Canada pleads and relies upon: the *Apology Act*, S.B.C. 2006, c. 19; *Alberta Evidence Act*, R.S.A. 2000, c. A-18, s. 26.1; *Evidence Act*, S.S. 2006, as amended, c. E-11.2, c. 23.1; *The Apology Act*, S.M. 2007, c. 25; *Apology Act*, S.O. 2009, c. 3; *Apology Act*, S.N.S. 2008, c. 34; *Apology Act*, SNL 2009, c A-10.1; and *Apology Act*, SNWT 2013, c 14.

138. In response to paragraphs 73-76, 84 and 92 of the statement of claim, while Canada admits that at times, federal governments attempted to use Residential Schools to assimilate Indigenous peoples into the dominant culture, Canada denies that those governments at all material times and with respect to all members of the Plaintiff classes, sought to destroy the ability of all the members of the Plaintiff classes to speak their Indigenous language or to lose the customs or traditions of their culture by requiring that the formal education of Indigenous children be conducted in English or French. Rather, as noted above, the language training and prohibitions against speaking Indigenous languages changed over time and from facility to facility. Further, while the experiences at the Residential Schools were obviously different and more harmful, the language requirements themselves were consistent with provincial standards of education during the Class Period. Canada now recognizes that even though it acted in good faith and with its best understanding of due care at that point in our history, the overall objectives of Residential Schools were wrong and resulted in harm to many Indigenous persons across the country.

139. Some loss of language, customs or traditions was in part a result of the unavoidable implications of being taught English and Christian doctrine, the presence of several Indigenous nations with different languages at the same Residential School, a lack of teachers capable of teaching in Indigenous languages and the lack of texts in the Indigenous languages.

140. To the extent that members of the Plaintiff classes were in any manner punished or demeaned while in attendance at Residential School for speaking their Indigenous languages or practicing their cultural or spiritual traditions, such actions were not required by any policy by a federal government and, depending on when, where and exactly what occurred, it could have been directly contrary to policies set by the federal government of the time. However,

as noted above, Canada is committed to Indigenous language revitalization with the support of Indigenous peoples through Bill C-91, *Indigenous Languages Act*.

141. To the extent that individual members of the Plaintiff classes suffered losses of language and culture as a result of their attendance at Residential Schools, such losses were also caused by a myriad of historical, personal, societal and community circumstances, the interaction of Indigenous communities and the dominant culture, the progressive urbanization of Canadian society, and as part of an observable international trend towards the diminishing use of minority languages and culture. While the actions of federal governments may have contributed to those losses in various ways, such losses were not as a result of any unlawful acts or omissions of Canada or its employees or agents with respect to the operation of Residential Schools.

142. In specific answer to paragraph 40, Canada denies that any such suppression of Indigenous culture by school administrators was done to be in compliance with any policy directives of Canada. Further, to the extent that the specific acts alleged in paragraph 40, if they occurred, took place prior to the Class Period they do not form part of the causes of action at issue in this case. Further, those acts were done by the Oblates. The Oblates were not the employees or agents of Canada and the acts alleged were not done at the direction of or to comply with any policy of Canada. Further, the acts alleged had no connection to SIRS.

No Breach of Fiduciary Duty

143. Canada acknowledges that the relationship between the federal Crown and the Indigenous peoples of Canada is fiduciary in nature and, in specific circumstances, that relationship grounds fiduciary duties. However, that relationship itself does not result in a generalized or overarching duty upon the federal Crown. As such, not every legal claim arising out of this context gives rise to a claim for breach of a fiduciary duty. The facts as alleged in the statement of claim do not give rise the fiduciary duties alleged to be owed by Canada to members of the Plaintiff Classes in paragraphs 22, 30, 61, 65-71, 79, and 81-83.

144. Alternatively, even if a fiduciary duty exists as alleged, which is denied, Canada did not breach such a duty to class members through the purpose, establishment, funding, operation,

supervision, control, maintenance, attendance of Survivor Class members at, or support of, Residential Schools.

145. Further, the Plaintiffs have failed to properly particularize their claims respecting the various languages or cultural activities at issue.

No Breach of Constitutionally-Mandated Duties

146. In further response to paragraphs 22, 30, 61, 65-71, 79, 81-83 and 91 of the statement of claim, Canada denies that it breached constitutionally-mandated duties owed to members of the Survivor, Descendant and Band Class, or any of them, as alleged in the statement of claim.

147. The Plaintiffs have alleged that any section of the *Indian Act,* its predecessors, any regulations under the *Indian Act* and any other statutes that provides statutory authority for the eradication of Indigenous people is in violation of the *Constitution Act, 1982* and should be treated as having no force and effect. The Plaintiffs have failed, however, to plead any material facts in support of this claim.

148. In response to paragraph 66, Canada recognizes that it must uphold the Honour of the Crown, which requires the federal government and its departments, agencies, and officials to act with honour, integrity, good faith, and fairness in all of its dealings with Indigenous peoples. The Honour of the Crown exists apart from litigation and extends beyond concepts of recognized causes of action and legal liability. The Honour of the Crown is not a stand-alone cause of action, and grounds no legal claim in the circumstances of this case. Further, the Plaintiffs have failed to particularize any other constitutionally-mandated duties they generally allege are owed to the members of the Plaintiff Classes. While without such further particularization, Canada cannot further respond with respect to whether such duties were breached and, if so, whether any breach was justified in the circumstances, nevertheless, Canada has acted to uphold the Honour of the Crown.

No Breach of Statutory Duties

149. Canada denies that it breached statutory duties owed to members of the Survivor, Descendant and Band Class, or any of them, through the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools.

150. Canada denies the existence of statutory duties owed to members of the Plaintiff Classes or any of them, but Canada will reconsider the matter should additional particulars of the statutory duties be provided.

151. To the extent that the Plaintiffs' claim is based upon dissatisfaction with the requirement for mandatory school attendance that was introduced in the *Indian Act*, such a claim is bound to fail. The requirement for mandatory school attendance was created by Parliament through legislation and was not simply imposed by the Crown. As such, the doctrine of Parliamentary Supremacy applies.

152. To the extent that the Plaintiffs have particularized their claim under this heading to one that is actually based upon discretionary statutory authority rather than statutory duties, no legal liability can arise from the exercise or non-exercise of such authority.

153. Alternatively, even if the alleged statutory duties exist, Canada did not breach such duties.

No Breach of Aboriginal Rights

154. The Plaintiffs allege the following Aboriginal Rights on their own behalf and on behalf of members of the Plaintiff Classes: (i) to speak their traditional languages; (ii) to engage in their traditional customs; (iii) to engage in their religious practices; and (iv) to govern themselves in their traditional manner.

155. The Plaintiffs have identified four general Aboriginal rights or other rights in their statement of claim, but have failed to adequately particularize the material facts required to support such claims. In the absence of the necessary material facts, Canada is not able to further

respond to those allegations and the Court is not in a position to apply the analysis/test with respect to the existence of the alleged rights.

156. It is not known to Canada whether members of the Survivor and Descendant Class are rights-holding collectives on whose behalf a sustainable Aboriginal rights claim can, as a matter of law, be advanced for their respective First Nations. Nor is it known to Canada whether the Plaintiffs have standing to bring any such Aboriginal rights claim on behalf of class members or any rights-holding Indigenous groups that may be subsumed within the Survivor and Descendant Class. Canada asks the Plaintiffs to prove that they are in a legal position to advance these claims.

157. Canada has no knowledge of whether the Sechelt Indian Band or the Tk'emlúps te Secwépemc Indian Band are the proper collectives to advance a claim for breach of the Aboriginal rights of the shishalh or the Secwépemc peoples, respectively. Canada says further that, while the Plaintiffs claim that "this claim applies to all Aboriginal Nations in Canada who had Day Scholars attend Residential Schools", they have not yet identified any other Indigenous collectives who have the authority to pursue the claim for breach of Aboriginal rights on behalf of their members. Canada asks the Plaintiffs to prove that they are in a legal position to advance these claims.

158. Canada denies that it breached or unjustifiably infringed the Aboriginal or other rights of members of the Plaintiff Classes, or any of them, to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner.

159. To the extent the Plaintiffs allege in the statement of claim that they hold any other rights, the Plaintiffs have not sufficiently particularized them. Without such further particularization, Canada cannot respond to the Plaintiffs' allegation that such rights have been unjustifiably infringed.

160. The recognition and affirmation in 1982 of existing Aboriginal rights under s. 35 of the *Constitution Act, 1982* protects such rights from unjustifiable infringement. The Plaintiffs have not sufficiently particularized an Aboriginal right that is cognizable at law. Without

such further particularization, Canada cannot respond to the Plaintiffs' allegation that such specific rights have been unjustifiably infringed.

161. The Plaintiffs have particularized their claim as asserting that their Aboriginal right was to "rely on Canada to protect their languages, culture and spirituality". Canada acknowledges there are Aboriginal rights pursuant to s. 35 of the *Constitution Act, 1982* with respect to language. However, the alleged positive duty on Canada in this regard does not exist at law, as alleged in the statement of claim.

No Breach of Common Law Duties

162. In response to paragraphs 22, 30, 61, 65-71, and 77-83 of the statement of claim, Canada denies that it breached common law duties owed to the Survivor, Descendant and Band Class, or any of them, through the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools.

163. Canada denies the existence, or alternatively the scope and implications of common law duties owed to the Plaintiffs, as alleged in the statement of claim.

164. Alternatively, even if common law duties exist, Canada did not breach such duties.

Response to Claim for Cultural, Linguistic and Social Damage and Irreparable Harm

165. The Plaintiffs allege that the Residential Schools Policy as defined in the statement of claim and the Residential Schools caused "Cultural, Linguistic and Social Damage" and "irreparable harm" to the Survivor, Descendant and Band Class. The plaintiffs do not provide a meaningful definition of what they say is "Cultural, Linguistic and Social Damage," and plead insufficient material facts and particulars to fully assess or respond to those allegations.

166. However, as noted above, Canada acknowledges that there were federal government policies before and during the Class Period that addressed the creation and operation of Residential Schools, and that the attendance of Indigenous children at such schools, particularly but not

exclusively as residents, contributed to varying degrees of harm to such children, their descendants and their communities, including with regard to the erosion of Indigenous cultural and linguistic practices.

167. Cultural, linguistic and social damage is not a known cause of action at law.

168. Irreparable harm is not a stand-alone cause of action, but rather forms part of the tripartite test for injunctive relief.

No Negligence / Intentional Infliction of Mental Distress

169. The facts pleaded do not satisfy the legal test for the creation of a common law duty of care, in private law on the part of Canada, to protect members of the Survivor Class from intentional infliction of mental distress. Canada denies it owed such a private law duty, or alternatively, that it or any servants or agents for whose actions it is liable breached such a duty.

170. Alternatively, Canada's conduct did not breach the standard of care.

171. A proximate relationship did not exist between Canada and members of the Survivor Class. At common law, proximity is necessary to give rise to a duty of care. Furthermore, Canada could not have reasonably foreseen the acts and nature or scope of all of the harms allegedly suffered by members of the Survivor Class at the Residential Schools.

172. If the Survivor Class suffered damages, those damages were not caused by any conduct for which Canada is liable.

No Breach of Duty of Care to Protect from Actionable Mental Harm

173. The Plaintiffs have failed to plead the necessary material facts to support the claim that Canada owed a private law duty of care recognized at common law to members of the Survivor Class, or any of them, to protect them from actionable mental harm as alleged in the statement of claim, and Canada denies it had such a duty.

174. Any claim in negligence against Canada must be grounded in the negligence of individual Federal Crown agents or servants. Canada's liability in tort is limited to vicarious liability only. Canada pleads and relies on the *Crown Liability and Proceedings Act*, and its predecessor legislation.

175. To the extent that the Plaintiffs have claimed negligence directly against Canada, such a direct claim against Canada in negligence does not disclose a reasonable cause of action.

176. Further, the court has no jurisdiction to consider claims with respect to intentional torts that occurred before May 14, 1953, when the *Crown Liability Act* came into effect.

No Claim for Breach of International Conventions and Covenants, and International Law

177. In response to paragraphs 63 and 64, Canada is a party to numerous international human rights conventions. Canada has ratified or acceded to, and is therefore bound at international law by the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* (which came into force for Canada on December 2, 1952), the *International Covenant on Civil and Political Rights* (which came into force for Canada on August 19, 1976) and the *Convention on the Rights of the Child* (which came into force for Canada on January 12, 1992). As a member of the Organization of American States, Canada is also bound at international law by the rights of the *American Declaration of the Rights and Duties of Man* (as of January 8, 1990).

178. International human rights treaties binding on Canada may be a relevant and persuasive source for interpreting the scope and content of constitutional rights. Where applicable they may also form the basis of an interpretative presumption of conformity between the treaty and ordinary legislation as well as the common law. However, these treaties are not directly enforceable in Canadian law. A treaty provision alone cannot form the basis of an action in Canadian courts, even where that provision is binding on Canada as a matter of international law. Moreover, as a matter of general international law, States' obligations under treaties cannot be applied retroactively or retrospectively.

179. Canada denies that it at any time violated its obligations under the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* and pleads that the Convention itself does not give rise to a cause of action in Canadian law.

180. Canada denies that it at any time violated its obligations under the United Nations *International Covenant on Civil and Political Rights* and pleads that the Covenant itself does not give rise to a cause of action in Canadian law.

181. Canada denies that it at any time violated its obligations under the United Nations *Convention on the Rights of the Child* and pleads that the Convention itself does not give rise to a cause of action in Canadian law.

182. Canada denies that it at any time violated the obligations contained in the *American Declaration of the Rights and Duties of Man* and pleads that the Declaration does not itself give rise to a cause of action in Canadian law.

183. The Crown is fully committed to meeting its international human rights obligations and commitments, including the implementation of the United Nations *Declaration on the Rights of Indigenous Peoples* ("UNDRIP"). International declarations for which Canada has expressed support, such as the UNDRIP and the *Declaration of the Rights of the Child*, set out international standards and principles that may be used as a contextual aid in interpreting domestic law where there is ambiguity.

184. UNDRIP empowers each jurisdiction to develop the implementation of its articles and the Government of Canada is in the process of engaging with Indigenous peoples and other Canadians on this issue. These efforts form part of Canada's commitments to pursue reconciliation and move toward a renewed nation-to-nation, government-to-government, and Inuit-Crown relationship with Indigenous peoples based on recognition of rights, respect, co-operation and partnership as the foundation for transformative change and includes the commitment to a federal review of laws, policies and operational practices. The implementation of UNDRIP will ultimately be achieved, in a manner consistent with Canada's constitutional framework, through a combination of legislation, state action and action initiated and taken by Indigenous peoples themselves.

185. However, Canada states that the United Nations *Declaration of the Rights of the Child* and the United Nations *Declaration on the Rights of Indigenous Peoples* do not have direct effect in domestic law, meaning they do not themselves give rise to a cause of action in Canadian law, or alternatively, with respect to the past conduct and legal claims at issue in this case.

186. Further, to the extent that any of these international instruments may inform the interpretation of Canadian constitutional and legislative provisions and the common law, Canada pleads that its conduct has been consistent with the international obligations or norms set out in them that existed at all material times.

187. In addition, the Plaintiffs have failed to identify particulars of the alleged breaches of international law.

Vicarious Liability

188. Canada acknowledges that some individual Plaintiffs were subjected to specific actions, as alleged, by some individual priests, nuns, brothers and others. However, in response to paragraphs 78-80 and the statement of claim as a whole, any wrongful acts were not caused by the breach of any duty of Canada or its employees or agents, but solely by the acts or omissions of the church organizations, their employees or agents, for which Canada is not liable.

189. In the alternative, if any employees or agents of Canada conducted the wrongful acts alleged, to the extent that any of those acts were not authorized by Canada, were not consistent with Canada's policy, and were not sufficiently related to the course or scope of employment or agency by Canada or acts authorized within the course or scope of employment or agency by Canada, Canada is not vicariously liable for such acts.

190. If any of the persons alleged to have committed the wrongful acts alleged ever became employees or agents of Canada, Canada pleads that the church organizations who selected and trained those persons continue to be liable for their actions on the grounds of negligence or negligent misrepresentation, particulars of which are as follows:

(a) The church organizations were the initial employers of such persons, and had regular contact with them in the course of their day to day management and operation of the Residential Schools. Accordingly, they had or ought to have had, knowledge regarding the qualifications and suitability of such persons for employment at the schools and their treatment of the students who attended the schools.

(b) During the material times, they failed to report any concerns to Canada about the qualifications or suitability of such persons for employment at the Residential Schools, but rather held such persons out as being competent employees and appropriate persons to have contact with the students.

(c) They knew that Canada had very little or no knowledge regarding the qualifications or suitability of such persons for employment at the schools, or their treatment of students who attended the schools, and that Canada relied exclusively upon their knowledge and expertise in retaining such individuals, particularly since Canada was not involved in the day-to-day operations of the Residential Schools. Accordingly, it was reasonable in the circumstances for Canada to rely on the representations made by the church organizations regarding such persons.

191. Canada cannot be held vicariously liable in tort for conduct of Crown servants prior to May 14, 1953, which is the date upon which the subsection 3(1)(a) of the *Crown Liability Act*, S.C. 1952-53, c. 30 came into force. Prior to that time, pursuant to the *Exchequer Court Act*, RSC 1927, c. 34, as amended by S.C. 1938, c. 28, Canada could only be held liable for negligence of a Crown servant acting within the scope of his or her duties of employment. Furthermore, prior to the amendment of the *Exchequer Court Act*, Canada could only be held liable for the negligence of a Crown servant on a public work. Canada denies any such negligence with respect to the Plaintiffs' claim.

DAMAGES AND CAUSATION

192. Canada acknowledges that erosion has occurred to the prevalence of Indigenous cultural practices, as well as the knowledge and use of Indigenous languages across Canada, and that

a variety of acts of federal governments and their agents over time have contributed to such erosion, as noted above.

193. To the extent that the Plaintiffs or the members of the Plaintiff Classes suffered any damage, losses or injuries as alleged in paragraphs 27-30, 39-45, 59, 60, 62, 65, 73, 76-77, 80-83 of the statement of claim, as a result of their attendance at Residential Schools, such losses or injuries were not caused by any unlawful acts or omissions of Canada or for which Canada is liable. Rather, such damage, losses or injuries were caused or contributed to by conduct of other actors and other factors unrelated to Canada's lawful conduct. Those other factors include events prior to and subsequent to the attendance of Survivor class members at Residential Schools with respect to which Canada is not liable. Those other actors include religious organizations that operated the Residential Schools, and their members and employees. Canada asks the Plaintiffs to demonstrate the alleged damages, losses, and injuries are neither too remote and/or unforeseeable to be recoverable in law.

194. The Plaintiffs have limited their claim against Canada to that portion of any responsibility for compensable harms for which the Canada might be severally liable, and have waived their claims against the church organizations that founded and operated the Residential Schools. To the extent that the Plaintiffs have suffered any harm, such harm is entirely attributable to those religious organizations and to the priests, nuns, brothers and others who acted on their behalf, and is not attributable to any unlawful actions for which Canada may be liable.

195. In the alternative, to the extent that Canada is liable for any portion of the Plaintiffs damage, losses or injuries, Canada relies upon paragraph 80(a) of the statement of claim and claims an apportionment of damages.

196. To the extent that members of the Survivor class claim that they have suffered loss of their respective languages, Canada says that such losses would have been attributable to a variety of factors, which for some class members and to varying degrees may have included some aspects of their attendance at the Residential School. Most, if not all, of those aspects were beyond Canada's control and cannot give rise to liability. To the extent that education in

English (or French) may have been a contributing factor, Canada says that the Plaintiffs have particularized their claim as not being based upon that factor.

197. In response to paragraphs 84-86 and 93 of the statement of claim, Canada denies that its actions were malicious or intended to cause harm, or alternatively, Canada denies the scope and extent of harm alleged by the Plaintiffs. Canada denies that it and any agents for whom it was liable had "specific and complete knowledge of the physical, psychological, emotional, cultural and sexual abuses" as alleged.

198. Further, Canada denies its conduct or those of its agents for whom it was responsible, constituted "a wanton and reckless disregard for [the] safety" of the Survivor Class members.

199. Accordingly, Canada states that the circumstances do not give rise to liability for punitive, exemplary or aggravated damages.

200. The Plaintiffs are seeking the assessment of an aggregate damages award from the Court. Canada denies that such an award could be assessed in this case even if liability were found, which is denied. The circumstances of each member of the Plaintiff Classes are unique, as are the circumstances of every potential class member. There was no common experience amongst students at the same Residential School, much less at different Residential Schools. The allegations of breach of cultural and/or linguistic rights, be they Aboriginal rights or otherwise, are infinitely varied for each Class Member. Even if liability could be found, which is denied, it is simply not possible for the Court to assess an aggregate damages award in the circumstances.

CROWN IMMUNITY AND PREJUDGMENT INTEREST

201. Canada pleads and relies upon the Crown Liability and Proceedings Act, RSC 1985, c. C-50, except section 32 therein, and the Crown Liability Act, SC 1952-53, c. 30.

202. The Plaintiffs claim prejudgment interest; however, the failure of the Plaintiffs to give sufficient particulars of the damages claimed and the basis of such claims causes Canada to be unable to evaluate such claims. Consequently, the Plaintiffs are disentitled from claiming prejudgment interest. In the alternative, if the Plaintiffs are entitled to prejudgment interest,

such interest may be awarded only for a period beginning on February 1, 1992, at the earliest by virtue of s. 36(6) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, and s. 31(6) of the *Crown Liability and Proceedings Act*.

RELIEF SOUGHT

203. Canada asks that the Plaintiffs' action be dismissed with costs.

DATE: April 8, 2019

Christie Harvey

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TAB 19

Federal Court Cour fédérale

Date: 20150417

Docket: T-1542-12

Vancouver, British Columbia, April 17, 2015

PRESENT: The Honourable Mr. Justice Harrington

PROPOSED CLASS PROCEEDING

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND AND THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE SECHELT INDIAN BAND AND THE SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE AND RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

ORDER

UPON MOTION by the Defendant to strike the Affidavits of Dr. Marianne Ignace and Dr. John Milloy;

UPON considering the record, the written representations of the parties, and the oral representations on behalf of the Defendant;

THIS COURT ORDERS that the motion is dismissed, costs in the cause.

To the extent the Affidavits touch upon the issue of there being a cause of action, they are irrelevant. To the extent they deal with commonality, parts thereof have proved helpful in being a vehicle to present historical documents and to deal generally with the loss of indigenous languages;

These Affidavits were filed in support of a motion to certify a class proceeding. It is not necessary to consider whether or not they would be admissible at a trial.

"Sean Harrington"
Judge

Federal Court  Cour fédérale

Date: 20150618

Docket: T-1542-12

Citation: 2015 FC 766

Ottawa, Ontario, June 18, 2015

PRESENT: The Honourable Mr. Justice Harrington

PROPOSED CLASS ACTION

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND AND THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE SECHELT INDIAN BAND AND THE SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE AND RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

ORDER

FOR REASONS GIVEN on 3 June 2015, reported at 2015 FC 706;

THIS COURT ORDERS that:

1. The above captioned proceeding shall be certified as a class proceeding with the following conditions:

a. The Classes shall be defined as follows:

Survivor Class: all Aboriginal persons who attended as a student or for educational purposes for any period at a Residential School, during the Class Period, excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the Indian Residential Schools Settlement Agreement.

Descendant Class: the first generation of persons descended from Survivor Class Members or persons who were legally or traditionally adopted by a Survivor Class Member or their spouse.

Band Class: the Tk'emlúps te Secwépemc Indian Band and the Sechelt Indian Band and any other Indian Band(s) which:

(i) has or had some members who are or were members of the Survivor Class, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically Identified Residential Schools.

b. The Representative Plaintiffs shall be:

For the Survivor Class:

Violet Catherine Gottfriedson

Charlotte Anne Victorine Gilbert

Diena Marie Jules

Darlene Matilda Bulpit

Frederick Johnson

Daphne Paul

For the Descendant Class:

Amanda Deanne Big Sorrel Horse

Rita Poulsen

For the Band Class:

Tk'emlúps te Secwépemc Indian Band

Sechelt Indian Band

c. The Nature of the Claims are:

Breaches of fiduciary and constitutionally mandated duties, breach of Aboriginal Rights, intentional infliction of mental distress, breaches of International Conventions and/or Covenants, breaches of international law, and negligence committed by or on behalf Canada for which Canada is liable.

d. The Relief claimed is as follows:

By the Survivor Class:

i. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties to the Survivor Class Representative Plaintiffs and the other Survivor Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools;

ii. a Declaration that members of the Survivor Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

iii. a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) of the Survivor Class;

iv. a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Survivor Class;

v. a Declaration that Canada is liable to the Survivor Class Representative Plaintiffs and other Survivor Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties, and Aboriginal Rights and for the intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose,

establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Residential Schools;

vi. general damages for negligence, breach of fiduciary, constitutionally-mandated, statutory and common law duties, Aboriginal Rights and intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, for which Canada is liable;

vii. pecuniary damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, loss of educational opportunities, breach of fiduciary, constitutionally-mandated, statutory and common law duties, Aboriginal Rights and for intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Survivor Class for which Canada is liable;

viii. exemplary and punitive damages for which Canada is liable; and

ix. pre-judgment and post-judgment interest and costs.

By the Descendant Class:

i. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties owed to the Descendant Class Representative Plaintiffs and the other Descendant Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools;

ii. a Declaration that the Descendant Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner

iii. a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) of the Descendant Class;

iv. a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Descendant Class;

v. a Declaration that Canada is liable to the Descendant Class Representative Plaintiffs and other Descendant Class members for the damages caused by its breach of fiduciary and constitutionally-mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at, and support of, the Residential Schools;

vi. general damages for breach of fiduciary and constitutionally-mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, for which Canada is liable;

vii. pecuniary damages and special damages for breach of fiduciary and constitutionally-mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Descendant Class for which Canada is liable;

viii. exemplary and punitive damages for which Canada is liable; and

ix. pre-judgment and post-judgment interest and costs.

By the Band Class:

i. a Declaration that the Sechelt Indian Band and Tk'emlúps te Secwépemc Indian Band, and all members of the Band Class, have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;

ii. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties, as well as breaches of International Conventions and Covenants, and breaches of international law, to the Band Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance,

obligatory attendance of Survivor Class members at, and support of, the SIRS and the KIRS and other Identified Residential Schools;

iii. a Declaration that the Residential Schools Policy and the KIRS, the SIRS and Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Band Class;

iv. a Declaration that Canada was or is in breach of the Band Class members' linguistic and cultural rights, (Aboriginal Rights or otherwise), as well as breaches of International Conventions and Covenants, and breaches of international law, as a consequence of its establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Residential Schools Policy, and the Identified Residential Schools;

v. a Declaration that Canada is liable to the Band Class members for the damages caused by its breach of fiduciary and constitutionally mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;

vi. non-pecuniary and pecuniary damages and special damages for breach of fiduciary and constitutionally mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the ongoing cost

of care and development of wellness plans for members of the bands in the Band Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Band Class for which Canada is liable;

vii. The construction and maintenance of healing and education centres in the Band Class communities and such further and other centres or operations as may mitigate the losses suffered and that this Honourable Court may find to be appropriate and just;

viii. exemplary and punitive damages for which Canada is liable; and

ix. pre-judgment and post-judgment interest and costs.

e. The Common Questions of Law or Fact are:

a. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a fiduciary duty owed to the Survivor, Descendant and Band Class, or any of them, not to destroy their language and culture?

b. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach the cultural and/or linguistic rights, be they Aboriginal Rights or otherwise of the Survivor, Descendant and Band Class, or any of them?

c. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a fiduciary duty owed to the Survivor Class to protect them from actionable mental harm?

d. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a duty of care owed to the Survivor Class to protect them from actionable mental harm?

e. If the answer to any of (a)-(d) above is yes, can the Court make an aggregate assessment of the damages suffered by the Class as part of the common issues trial?

f. If the answer to any of (a)-(d) above is yes, was the Defendant guilty of conduct that justifies an award of punitive damages; and

g. If the answer to (f) above is yes, what amount of punitive damages ought to be awarded?

f. The following definitions apply to this Order:

a. "Aboriginal(s)", "Aboriginal Person(s)" or "Aboriginal Child(ren)" means a person or persons whose rights are recognized and affirmed by the *Constitution Act* , 1982, s. 35;

b. "Aboriginal Right(s)" means any or all of the Aboriginal and treaty rights recognized and affirmed by the *Constitution Act, 1982*, section. 35;

c. "Act" means the *Indian Act*, R.S.C. 1985, c. I-5 and its predecessors as have been amended from time to time;

d. "Agreement" means the Indian Residential Schools Settlement Agreement dated May 10, 2006 entered into by Canada to settle claims relating to Residential Schools as approved in the orders granted in various jurisdictions across Canada;

e. "Canada" means the Defendant, Her Majesty the Queen;

f. "Class Period" means 1920 to 1997;

g. "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the educational, governmental, economic, cultural, linguistic, spiritual and social customs, practices and way of life, traditional governance structures, as well as to the community and individual security and wellbeing, of Aboriginal Persons;

h. "Identified Residential School(s)" means the KIRS or the SIRS or any other Residential School specifically identified as a member of the Band Class;

i. "KIRS" means the Kamloops Indian Residential School;

j. "Residential Schools" means all Indian Residential Schools recognized under the Agreement and listed in Schedule "A" appended to this Order

which Schedule may be amended from time to time by Order of this Court.;

k. "Residential Schools Policy" means the policy of Canada with respect to the implementation of Indian Residential Schools; and

l. "SIRS" means the Sechelt Indian Residential School.

g. The manner and content of notices to class members shall be approved by this Court. Class members in the Survivor and Descendent class shall have until October 30, 2015 in which to opt-out, or such other time as this Court may determine. Members of the Band Class will have 6 months within which to opt-in from the date of publication of the notice as directed by the Court, or other such time as this Court may determine.

h. Either party may apply to this Court to amend the list of Residential Schools set out in Schedule "A" for the purpose of these proceedings.

"Sean Harrington"
Judge

SCHEDULE "A"
to the Order of Justice Harrington

LIST OF RESIDENTIAL SCHOOLS

British Columbia Residential Schools

Ahousaht

Alberni

Cariboo (St. Joseph's, William's Lake)

Christie (Clayoquot, Kakawis)

Coqualeetza from 1924 to 1940

Cranbrook (St. Eugene's, Kootenay)

Kamloops

Kuper Island

Lejac (Fraser Lake)

Lower Post

St George's (Lytton)

St. Mary's (Mission)

St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)

Sechelt

St. Paul's (Squamish, North Vancouver)

Port Simpson (Crosby Home for Girls)

Kitimaat

Anahim Lake Dormitory (September 1968 to June 1977)

Alberta Residential Schools

Assumption (Hay Lake)

Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)

Crowfoot (Blackfoot, St. Joseph's, Ste. Trinité)

Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)

Edmonton (Poundmaker, replaced Red Deer Industrial)

Ermineskin (Hobbema)

Holy Angels (Fort Chipewyan, École des Saint-Anges)

Fort Vermilion (St. Henry's)

Joussard (St. Bruno's)

Lac La Biche (Notre Dame des Victoires)

Lesser Slave Lake (St. Peter's)

Morley (Stony/Stoney, replaced McDougall Orphanage)

Old Sun (Blackfoot)

Sacred Heart (Peigan, Brocket)

St. Albert (Youville)

St. Augustine (Smokey-River)

St. Cyprian (Queen Victoria's Jubilee Home, Peigan)

St. Joseph's (High River, Dunbow)

St. Mary's (Blood, Immaculate Conception)

St. Paul's (Blood)

Sturgeon Lake (Calais, St. Francis Xavier)

Wabasca (St. John's)

Whitefish Lake (St. Andrew's)

Grouard to December 1957

Sarcee (St. Barnabas)

Saskatchewan Residential Schools

Beauval (Lac la Plonge)

File Hills

Gordon's

Lac La Ronge (see Prince Albert)

Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)

Marieval (Cowesess, Crooked Lake)

Muscowequan (Lestock, Touchwood)

Onion Lake Anglican (see Prince Albert)

Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)

Regina

Round Lake

St. Anthony's (Onion Lake, Sacred Heart)

St. Michael's (Duck Lake)

St. Philip's

Sturgeon Landing (replaced by Guy Hill, MB)

Thunderchild (Delmas, St. Henri)

Crowstand

Fort Pelly

Cote Improved Federal Day School (September 1928 to June 1940)

Manitoba Residential Schools

Assiniboia(Winnipeg)

Birtle

Brandon

Churchill Vocational Centre

Cross Lake (St. Joseph's, Norway House)

Dauphin (replaced McKay)

Elkhorn (Washakada)

Fort Alexander (Pine Falls)

Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)

McKay (The Pas, replaced by Dauphin)

Norway House

Pine Creek (Campeville)

Portage la Prairie

Sandy Bay

Notre Dame Hostel (Norway House Catholic, Jack River Hostel, replaced Jack River Annex at Cross Lake)

Ontario Residential Schools

Bishop Horden Hall (Moose Fort, Moose Factory)

Cecilia Jeffrey (Kenora, Shoal Lake)

Chapleau (St. Joseph's)

Fort Frances (St. Margaret's)

McIntosh (Kenora)

Mohawk Institute

Mount Elgin (Muncey, St. Thomas)

Pelican Lake (Pelican Falls)

Poplar Hill

St. Anne's (Fort Albany)

St. Mary's (Kenora, St. Anthony's)

Shingwauk

Spanish Boys' School (Charles Garnier, St. Joseph's)

Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)

St. Joseph's/Fort William

Stirland Lake High School (Wahbon Bay Academy) from September 1, 1971 to June 30, 1991

Cristal Lake High School (September 1, 1976 to June 30, 1986)

Quebec Residential Schools

Amos

Fort George (Anglican)

Fort George (Roman Catholic)

La Tuque

Point Bleue

Sept-Îles

Federal Hostels at Great Whale River

Federal Hostels at Port Harrison

Federal Hostels at George River

Federal Hostel at Payne Bay (Bellin)

Fort George Hostels (September 1, 1975 to June 30, 1978)

Mistassini Hostels (September 1, 1971 to June 30, 1978)

Nova Scotia Residential Schools

Shubenacadie

Nunavut Residential Schools

Chesterfield Inlet (Joseph Bernier, Turquetil Hall)

Federal Hostels at Panniqtuug/Pangnirtang

Federal Hostels at Broughton Island/Qikiqtarjuaq

Federal Hostels at Cape Dorset Kinngait

Federal Hostels at Eskimo Point/Arviat

Federal Hostels at Igloolik/Iglulik

Federal Hostels at Baker Lake/Qamani'tuaq

Federal Hostels at Pond Inlet/Mittimatalik

Federal Hostels at Cambridge Bay

Federal Hostels at Lake Harbour

Federal Hostels at Belcher Islands

Federal Hostels at Frobisher Bay/Ukkivik

Federal Tent Hostel at Coppermine

Northwest Territories Residential Schools

Aklavik (Immaculate Conception)

Aklavik (All Saints)

Fort McPherson (Fleming Hall)

Ford Providence (Sacred Heart)

Fort Resolution (St. Joseph's)

Fort Simpson (Bompas Hall)

Fort Simpson (Lapointe Hall)

Fort Smith (Breynat Hall)

HayRiver-(St. Peter's)

Inuvik (Grollier Hall)

Inuvik (Stringer Hall)

Yellowknife (Akaitcho Hall)

Fort Smith -Grandin College

Federal Hostel at Fort Franklin

Yukon Residential Schools

Carcross (Chooulta)

Yukon Hall (Whitehorse/Protestant Hostel)

Coudert Hall (Whitehorse Hostel/Student Residence -replaced by Yukon Hall)

Whitehorse Baptist Mission

Shingle Point Eskimo Residential School

St. Paul's Hostel from September 1920 to June 1943

Federal Court | Cour fédérale

Facsimile Transmittal Form / Formulaire d'acheminement par télécopieur

TO / DESTINATAIRE(S) :

1. **Name / Nom : John Kingman Phillips - Waddell Phillips Professional Corporation**
   Telephone / Téléphone : (647) 220-7420 **Facsimile / Télécopieur : (416) 477-1657**
   E-mail / Courriel : john@waddellphillips.ca

2. **Name / Nom : Diane H. Soroka, Barrister & Solicitor**
   Telephone / Téléphone : (514) 939-3384 **Facsimile / Télécopieur : (514) 939-4014**
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3. **Name / Nom : Jessica Labranche - Pape Salter Teillet LLP**
   Telephone / Téléphone : (416) 916-2989 **Facsimile / Télécopieur : (416) 916-3726**
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4. **Name / Nom : Peter R. Grant - Peter Grant & Associates**
   Telephone / Téléphone : (604) 685-1229 **Facsimile / Télécopieur : (604) 685-0244**
   E-mail / Courriel : pgrant@grantnativelaw.com

5. **Name / Nom : Michael P. Doherty - Department of Justice Canada**
   Telephone / Téléphone : (604) 666-2061 **Facsimile / Télécopieur : (604) 666-2710**
   E-mail / Courriel : michael.doherty@justice.gc.ca

FROM / EXPÉDITEUR : Cynthia Leaver **Registry Assistant / Adjointe du greffe - Ottawa** **Telephone / Téléphone :** (613) 992-4238 **Facsimile / Télécopieur : (613) 952-3653**	**DATE :** March 20, 2018 **TIME / HEURE :** 3:20 p.m. Total number of pages (including this page) / Nombre de pages (incluant cette page) : **3**

SUBJECT / OBJET :

Court File No. / N° du dossier de la Cour: **T-1542-12**

Between / entre: **Chief Shane Gottfriedson et al. v. Her Majesty the Queen in Right of Canada**

Enclosed is a true copy of the Direction of the Honourable Mr. Justice Harrington, dated March 20, 2018.

*Pursuant to section 20 of the Official Languages Act all **final** decisions, orders and judgments, including any reasons given therefore, issued by the Court are issued in both official languages. In the event that such documents are issued in the first instance in only one of the official languages, a copy of the version in the other official language will be forwarded on request when it is available.*

*Conformément à l'article 20 de la Loi sur les langues officielles, les décisions, ordonnances et jugements **définitifs** avec les motifs y afférents, sont émis dans les deux langues officielles. Au cas où ces documents ne seraient émis, en premier lieu, que dans l'une des deux langues officielles, une copie de la version dans l'autre langue officielle sera transmise, sur demande, dès qu'elle sera disponible.*

Federal Court Cour fédérale

Date: 20180320

Docket: T-1542-12

Ottawa, Ontario, March 20, 2018

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND AND THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE SECHELT INDIAN BAND AND THE SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE AND RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

DIRECTION

Following a case management conference conducted by telephone yesterday, March 19, 2018;

THE COURT HEREBY DIRECTS that:

1. There shall be a settlement conference conducted in the courthouse at 701 West Georgia Street, Vancouver, British Columbia, commencing on May 2, 2018, at 9:30 a.m. for duration not to exceed three (3) days.

2. By April 24, 2018, the parties shall unilaterally, confidentially and under seal, deliver and serve a summary of what has transpired to date and the issues they wish to discuss at the settlement conference.

3. No settlement proposals shall be made in the written submissions, which shall not exceed more than five (5) pages in length.

4. A follow up settlement conference, if need be, is tentatively scheduled for May 24 and May 25, 2018, in Vancouver or in Ottawa.

"Sean Harrington"
Judge

Federal Court  Cour fédérale

Date: 20180910

Docket: T-1542-12

Ottawa, Ontario, September 10, 2018

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND AND THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE SECHELT INDIAN BAND AND THE SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE AND RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

DIRECTION

THE COURT HEREBY DIRECTS that:

1. The mediation shall continue at the Federal Court, 701 West Georgia Street, Vancouver, British Columbia, on November 8, 2018, commencing at 9:30 a.m., for a duration not to exceed two (2) days.

2. Representatives of the parties with decision-making powers shall be present.

"Sean Harrington"
Judge

Federal Court Cour fédérale

Date: 20190214

Docket: T-1542-12

Vancouver, British Columbia, February 14, 2019

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND AND THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE SECHELT INDIAN BAND AND THE SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE AND RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

PURSUANT TO A JUDICIAL DISPUTE RESOLUTION SESSION held on February 14, 2019 in Vancouver, British Columbia;

AND UPON the consent of all parties;

THIS COURT ORDERS as follows:

1. The Defendant will pay the sum of $1,468,073.71 in costs consequent on the judicial dispute resolution.

"Sean Harrington"

Judge

Federal Court | Cour fédérale

Facsimile Transmittal Form / Formulaire d'acheminement par télécopieur

TO / DESTINATAIRE(S):

1. Name / Nom : **Peter Grant**, Barrister and Solicitor, Grant Huberman, Vancouver, BC

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Telephone / Téléphone :

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2. Name / Nom : **John Phillips**, Barrister and Solicitor, Waddell Philips Professional Corporation, Toronto, ON

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3. Name / Nom : **Lorne Lachance**, Barrister and Solicitor, Department of Justice, Vancouver, BC

Facsimile / Télécopieur : **604-755-5942**
Telephone / Téléphone :

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☐ Left voice message / suite au message vocal

4. Name / Nom :

Facsimile / Télécopieur :
Telephone / Téléphone :

☐ As requested / tel que demandé
☐ Left voice message / suite au message vocal

5. Name / Nom :

Facsimile / Télécopieur :
Telephone / Téléphone :

☐ As requested / tel que demandé
☐ Left voice message / suite au message vocal

FROM / EXPÉDITEUR :

Joyce Fan, Registry Officer

Telephone / Téléphone : **(604) 666-3232**
Facsimile / Télécopieur : (604) 666-8181

DATE: 14-FEB-2019

TIME / HEURE : 12:50 PM

Total no. of pages (including this page) / Nombre de pages (incluant cette page) : 3

SUBJECT / OBJET :

Court File No. / N° du dossier de la Cour : **T-1542-12**

Between / entre : ***Chief Shane Gottfriedson et al v. HMTQ***

Enclosed is a true copy of **Order** / Judgment / Reasons of / Vous trouverez ci-joint une copie conforme de l'ordonnance / jugement / motifs de: **Mr. Justice Harrington**

Dated / date : **February 14, 2019**

COMMENTS / REMARQUES :

Please note that Rule 395 of the *Federal Courts Rules* has changed and the Registry will not be sending certified copies of decisions of the Court, unless a copy is requested by the party. If you do require a copy, please advise the Registry in writing.

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Conformément à l'article 20 de la Loi sur les langues officielles, les décisions, ordonnances et jugements définitifs avec les motifs y afférents, sont émis dans les deux langues officielles. Au cas où ces documents ne seraient émis, en premier lieu, que dans l'une des deux langues officielles, une copie de la version dans l'autre langue officielle sera transmise, sur demande, dès qu'elle sera disponible.

Federal Court Cour fédérale

Facsimile Transmittal Form / Formulaire d'acheminement par télécopieur

TO / DESTINATAIRE(S):

1. Name / Nom : **Peter Grant**, Barrister and Solicitor, Grant Huberman, Vancouver, BC

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2. Name / Nom : **John Phillips**, Barrister and Solicitor, Waddell Philips Professional Corporation, Toronto, ON

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3. Name / Nom : **Lorne Lachance**, Barrister and Solicitor, Department of Justice, Vancouver, BC

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5. Name / Nom :

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FROM / EXPÉDITEUR :

Joyce Fan, Registry Officer

Telephone / Téléphone : **(604) 666-3232**
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DATE: 15-FEB-2019

TIME / HEURE : 1:15 PM

Total no. of pages (including this page) / Nombre de pages (incluant cette page) : 5

SUBJECT / OBJET :

Court File No. / N° du dossier de la Cour :**T-1542-12**

Between / entre : ***Chief Shane Gottfriedson et al v. HMTQ***

Enclosed is a true copy of **Order** / Judgment / Reasons of / Vous trouverez ci-joint une copie conforme de l'ordonnance / jugement / motifs de: **Mr. Justice Harrington**

Dated / date : **February 15, 2019**

COMMENTS / REMARQUES :

Please note that Rule 395 of the *Federal Courts Rules* has changed and the Registry will not be sending certified copies of decisions of the Court, unless a copy is requested by the party. If you do require a copy, please advise the Registry in writing.

Federal Court Cour fédérale

Date: 20190215

Docket: T-1542-12

Vancouver, British Columbia, February 15, 2019

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND AND THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE SECHELT INDIAN BAND AND THE SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE AND RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

UPON MOTION by the Plaintiffs for:

1. A Direction that the Defendant review and amend its Statement of Defence in accordance with the Attorney General of Canada's Directive of Civil Litigation Involving Indigenous Peoples on or before February 28, 2019 or such other date as the Court directs;

2. A Direction that this class action proceeding be set down on expedited basis for trial;

3. A Direction setting the schedule for the expedited trial on the basis of the Plaintiffs' litigation plan attached to the Affidavit of Amy Abrahamson filed in support of this motion, leading to a three-month trial commencing on May 1, 2020 or such other schedule or trial date as this Court directs;

4. A Direction ordering the hearing of a one-day motion to be scheduled on a date mutually agreed upon by the parties in March 2019 to address the Plaintiffs' request for:

    a. an Order that the Defendant be required to pay the costs and disbursements, including by not limited to the costs for experts' reports, incurred by the Plaintiffs on a solicitor-and-client basis from June 3, 2015 to January 16, 2019 during the purported 'exploratory discussions and negotiations to settle this Class Action;

b. an Order that the Defendant contribute to the costs and disbursements incurred by the Plaintiffs from January 17, 2019 to the end of trial, the filing of a Notice of Withdrawal, execution of a signed final settlement agreement between the parties, or the filing of a Consent Order settling and concluding the class proceeding, whichever is latest, such costs to be on the basis of one third of the actual costs of the trial of this matter or those costs incurred to bring the Common Issues relating to the Band Class to trial, such costs to be subject to review by an independent party appointed by this Court;

5. The costs of this motion in any event of the cause; and

6. Such further and other relief as this Honourable Court deems just.

UPON reviewing the motion records of both parties and considering the oral representations of counsel of the parties;

UPON the parties reaching some accommodation;

THIS COURT ORDERS that:

1. The Defendant is given leave to file an Amended Statement of Defence on or before April 1, 2019, to address any appropriate amendments in light of the Attorney General of Canada's *Directive on Civil Litigation Involving Indigenous Peoples,* the whole without prejudice to such right the Plaintiffs may have to contest the adequacy of such amendments, if any.

2. The motion for directions that this Class Action proceeding be set down for trial as an expedited hearing and that the schedule be on the basis of the litigation plan attached to the Affidavit of Amy Abrahamson is adjourned *sine die*.

3. Given the consent order issued February 14, 2019 the matter of the Plaintiffs' costs from June 3, 2015 to January 18, 2019 is no longer in issue.

4. As regards the motion for advance costs, Plaintiffs are at liberty to serve and file their motion by March 15, 2019 and the Defendant has until April 3, 2019 to serve and file a motion record in reply, leading to a hearing, not to exceed one day, in Ottawa on April 9, 2019 commencing at 09:30 in the forenoon.

5. The costs of the motion are reserved.

"Sean Harrington"
Judge

Federal Court  Cour fédérale

Date: 20191204

Docket: T-1542-12

Ottawa, Ontario, December 4, 2019

PRESENT: The Chief Justice

PROPOSED CLASS ACTION

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND AND THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE SECHELT INDIAN BAND AND THE SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE AND RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

ORDER

UPON hearing the case management conference held on Monday, December 2, 2019;

THIS COURT ORDERS that the Plaintiffs' motion concerning document production issues will be heard by the Court on Friday, February 14, 2020, to commence at 9:30 a.m., at the Federal Court, 180 Queen Street West, in the City of Toronto, in the Province of Ontario, for a duration not exceeding four (4) hours.

THIS COURT FURTHER ORDERS that an in-person case management conference will be heard on Thursday, May 7, 2020, to commence at 10:00 a.m., at the Federal Court, Pacific Centre, 701 West Georgia Street, 3rd floor, in the City of Vancouver, in the Province of British Columbia, for a duration not exceeding one (1) day, if required.

THIS COURT FURTHER ORDERS that on the same day, the Court will hear any motions the parties wish to bring. If further motions are proposed, the parties are directed to discuss related scheduling issues and to report to the Court on a timely basis.

"R.L. Barnes"
Judge

Federal Court  Cour fédérale

Date: 20200116

Docket: T-1542-12

Ottawa, Ontario, January 16, 2020

PRESENT: The Honourable Mr. Justice Barnes

PROPOSED CLASS ACTION

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND AND THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE SECHELT INDIAN BAND AND THE SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE AND RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

ORDER

IT IS ORDERED that the trial of this matter take place before this Court at the Pacific Centre - 3rd floor, 701 Georgia Street West, in the City of Vancouver, British Columbia, on Tuesday, the 7th day of September, 2021, at 09:30 in the forenoon for a duration of seventy-four (74) days.

"R.L. Barnes"
Judge

Federal Court Cour fédérale

Date: 20200824

Docket: T-1542-12

Ottawa, Ontario, August 24, 2020

PRESENT: The Honourable Mr. Justice Barnes

PROPOSED CLASS ACTION

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND AND THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE SECHELT INDIAN BAND AND THE SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, DOREEN LOUISE SEYMOUR, CHARLOTTE ANNE VICTORINE GILBERT, VICTOR FRASER, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE, DAPHNE PAUL, AARON JOE AND RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

ORDER

THIS MOTION, made by the Plaintiffs for an Order, on consent, that the trial of this matter be bifurcated;

ON READING the consent of the parties:

THIS COURT ORDERS that:

1. "Band Class Aggregate Damages Issue" means Common Question of Law or Fact (e) set out in the Order of the Honourable Mr. Justice Harrington dated June 18, 2015 ("If the answer to any of Common Questions of Law or Fact (a)-(d) is yes, can the Court make an aggregate assessment of the damages suffered by the Class as part of the common issues trial?") as it relates to the Band Class only;

2. the common issues trial is to be bifurcated, and the Band Class Aggregate Damages Issue is to be determined separately from, and subsequent to, the adjudication and determination, including any appeals ("Final Determination") of the other certified common questions to be determined at the common issues trial (the "Other Common Questions"), at a time and place, and for a duration, to be fixed by the judicial administrator in consultation with the parties and the Case Management Judge;

3. the parties are to proceed to the commencement of the trial of the Other Common Questions without having documentary or oral discovery, or leading evidence, as to any matter that relates solely to the Band Class Aggregate Damages Issue;

4. documentary and oral discovery on any matter that relates solely to the Band Class Aggregate Damages Issue shall be conducted following the Final Determination of the Other Common Questions;

5. for clarity, the first phase of the common issues trial, pertaining to the Other Common Questions, shall commence, as ordered in the January 16, 2020, order of this Court, on Tuesday, the 7th day of September, 2021, at 09:30 a.m., at the courthouse at the Pacific Centre – 3rd floor, 701 Georgia Street West, in the City of Vancouver, British Columbia;

6. the timing of the second phase of the common issues trial, pertaining to the Band Class Aggregate Damages Issue, shall be determined based on the nature and scope of documentary and oral discovery reasonably required on that issue, based on the Final Determination of the Other Common Questions; and

7. there shall be no costs of this motion.

"R.L. Barnes"
Judge

Federal Court Cour fédérale

Date: 20210610

Docket: T-1542-12

Fredericton, New Brunswick, June 10, 2021

PRESENT: Madam Justice McDonald

CLASS PROCEEDING

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND AND THE TK'EMLÚPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE SECHELT INDIAN BAND AND THE SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR~~, CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER~~, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST~~, ~~SHELLY NADINE HOEHNE~~, DAPHNE PAUL, ~~AARON JOE~~ AND RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

ORDER

UPON MOTION by the Representative Plaintiffs for an order approving the short-form and long-form Notice of Proposed Settlement and Settlement Approval Hearing (the "Notices"), appointing a Notice Administrator, and approving the form, content, and method of dissemination of the Notice of Hearing as set out in the Notice Plan;

AND UPON READING the Notice of Motion, and the Affidavit of Tina Q. Yang, sworn May 27, 2021, and upon being advised of the consent of the Defendant, and upon being advised that ACI Argyle Communications Inc. has consented to its appointment as the Notice Administrator;

THIS COURT ORDERS that:

1. The short-form and long-form Notice of Proposed Settlement and Settlement Approval Hearing ("Notices") are approved.

2. The Representative Plaintiffs' plan for dissemination of the Notices (the "Plan") is approved.

3. ACI Argyle Communications Inc. is appointed as the Notice Administrator to perform the functions set out in the Notice Plan, including to arrange for the Notices to be translated into French and certain Indigenous languages.

4. The costs associated with the Notice Plan, including the costs of the Notices, shall be paid by the Defendant, regardless of whether the proposed settlement is approved.

5. Class Counsel shall produce to the Notice Administrator a complete list of those putative Survivor Class Members who have identified themselves and provided their mailing address, email address, and/or phone number to Class Counsel, together with their mailing address, email address, and/or phone number, in an Excel spreadsheet format, within 14 days of the Court's Order.

6. The Claims Administrator shall use the information provided pursuant to paragraph 5 solely for the purpose of effecting notice of the proposed settlement of this class action to the Class Members and for no other purpose, and that such use of the Class Members' personal information does not breach the Class Members' statutory or common law privacy rights.

7. This Order compels the production of the information outlined in paragraph 5 by Class Counsel within the meaning of applicable privacy laws, and that the Order satisfies the requirements of s. 7(3)(c) of the *Personal Information Protection and Electronic documents Act*, S.C. 2000, c. 5, and all equivalent provincial and territorial legislative provisions.

8. Class Counsel is released from any and all obligations pursuant to any and all applicable privacy laws, including common law, statutes, and regulations, in relation to the disclosure of personal information required by the order.

9. Class Counsel shall receive any class member statements of support or objection which are delivered by 11:59 p.m. PST on August 20, 2021, and shall deliver any statements of support or objection received to the Court and to the Defendant at least seven business days prior to the settlement approval hearing scheduled to commence September 7, 2021.

10. There shall be no costs of this motion.

"Ann Marie McDonald"
Judge

TAB 20

Court File No. T-1542-12

CLASS PROCEEDING
FEDERAL COURT

B E T W E E N:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~ CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE HOEHNE,~~ DAPHNE PAUL~~, AARON JOE~~ and RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

WRITTEN REPRESENTATIONS OF THE PLAINTIFFS

MOTION FOR SETTLEMENT APPROVAL

August 27, 2021

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SOLICITORS FOR THE PLAINTIFFS

TO: **THE ADMINISTRATOR**
Federal Court

AND TO: **DEPARTMENT OF JUSTICE CANADA**
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SOLICITORS FOR THE DEFENDANT

TABLE OF CONTENTS

PART I - OVERVIEW

> *It is not possible to take the pain and suffering away and heal the bodies and spirits, certainly not in this proceeding. The best that can be done is to have a fair and reasonable settlement of the litigation.*[1]

1. Canada's establishment and operation of the Indian Residential Schools ("Residential School") system has been widely recognized as a cultural genocide: a "systematic, government-sponsored attempt to destroy Aboriginal culture and languages…".[2]

2. This action was commenced as an attempt to redress some of the wrongs done by the Residential School system, and to seek justice specifically for the losses of language and culture endured by Day Scholars—a group of former students who attended Residential Schools during the day but did sleep there overnight (the Survivor Class)—as well as their children (the Descendant Class), and certain Indigenous Bands which elected to opt in to the litigation as part of the Band Class.

3. After nearly a decade of hard-fought litigation, and only a few months prior to the scheduled commencement of what was scheduled to be a fifteen-week-long common issues trial, the parties reached a proposed partial settlement which would, if approved, fully resolve the claims of the Survivor and Descendant Classes, while permitting the Band Class claims to continue to be litigated.

4. Although it is, as this Court has previously noted, not possible for a legal proceeding to actually undo the Class Members' pain and suffering, or to heal their bodies and spirits, the best

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[1] *McLean v. Canada*, 2019 FC 1075 at para. 3.

[2] Affidavit of Peter Grant, sworn August 25, 2021 ("Grant Affidavit") at para 7, **Plaintiffs' Motion Record ("MR"), Tab 8**;
Truth and Reconciliation Commission, "Honouring the Truth, Reconciling for the Future, Summary of the Final Report of the Truth and Reconciliation Commission of Canada" (2015) ("TRC Summary Report") at p. 153, online (pdf): < https://nctr.ca/records/reports/>.

outcome now is to accomplish a fair and reasonable settlement of the litigation,[3] and that is what the parties have done here.

5. The proposed settlement will provide timely, fair compensation for the settling Classes, and it will provide, at long last, recognition of the harm that Day Scholars endured at Residential Schools. Without this settlement, the Class Members will have to await the uncertain result of a lengthy, vigorously contested common issues trial, likely followed by years of appeals, and then likely many further years to conduct thousands of individual assessments. The proposed settlement also provides access to benefits for the estates of thousands of deceased Day Scholars, who would have been unlikely to make any recovery from a court-ordered judgment.

6. The parties submit that the proposed settlement represents a fair and reasonable resolution of the Survivor and Descendant Class claims, and that it is in the best interests of those Class Members. After a very robust notice program, the majority of the Class Members who provided written statements of position agree and also support the approval of the settlement.

7. In light of the considerable evidence that the proposed settlement is a fair and reasonable compromise, as compared to what might reasonably have been accomplished at trial, this settlement ought to be approved by this Court.

PART II - FACTS

A. Factual background

(i) The Residential School system

8. According to the Truth and Reconciliation Commission (TRC), "Canada's residential school system for Aboriginal children was an education system in name only for much of its existence. These residential schools were created for the purpose of separating Aboriginal children

[3] *McLean v. Canada*, 2019 FC 1075 at para. 3.

from their families, in order to minimize and weaken family ties and cultural linkages, and to indoctrinate children into a new culture—the culture of the legally dominant Euro-Christian."[4] The Truth and Reconciliation Commission concluded that Canada's assimilationist policy towards Aboriginal people, including the establishment and operation of Residential Schools, was cultural genocide.[5] The government of Canada accepted the findings of the TRC.

9. While Residential Schools were often operated by churches and religious orders ("Church Entities"), they were created and operated under the authority of, and pursuant to the supervision and direction of, Canada. Canada began funding and controlling the operation of Residential Schools as early as 1868, and maintained control over the IRS system until the last Residential School closed in 1997.[6]

10. In 1920, the Parliament of Canada amended the *Indian Act* to make it compulsory for "every Indian child" between the ages of 7 and 15 to attend either a Residential School or other federally established school, as determined by Canada.[7] Thus, the certified Class Period in this action commences in 1920 and ends in 1997.[8]

11. While most students who attended Residential Schools resided at the schools, the Day Scholars attended as students during the day only and did not live at the Residential Schools, residing elsewhere at night.[9] In many cases, Day Scholars came from Indigenous communities that

[4] Grant Affidavit at para 8, **MR, Tab 8**;
TRC Summary Report at p. v.
[5] Grant Affidavit at para 9, **MR, Tab 8**;
TRC Summary Report at p. 1.
[6] Grant Affidavit at paras 11, 13, **MR, Tab 8**.
[7] Grant Affidavit at para 12, **MR, Tab 8**.
[8] Order (Certification) of Justice Harrington, issued June 18, 2015 ("Certification Order"), **MR, Tab 19b**.
[9] Grant Affidavit at para 15, **MR, Tab 8.**

had or were located near Residential Schools, which is what allowed them to return home at night.[10] This was the case for most of the Survivor Class Representative Plaintiffs.[11]

12. There were Day Scholars at various Residential Schools throughout the certified Class Period, with numbers increasing significantly in the post-World-War-II period, before tapering off in the 1960s through 1980s, owing first to the conversion of Indian Residential Schools into administratively separate Indian Day Schools and residences (the so-called "administrative split"),[12] and second to the closure of Residential Schools outright.[13]

13. As separately administered institutions, the Indian Day Schools are not part of the IRS system, and were the subject of a different, now-settled, class action, *McLean v. Canada*, bearing Federal Court File Number T-2169-16 (the "McLean Class Action"). Day School students were excluded from IRSSA completely, including the IAP, and therefore the McLean Class Action also advanced—and the McLean Settlement resolved—claims relating to sexual and/or physical abuse, and serious psychological harms, in addition to the loss of language and culture claims which are the basis of this action.

14. The plaintiffs' actuarial expert, Dr. Rita Aggarwala, has estimated that there were somewhere between 14,554 and 22,870 Day Scholars in total, and that there will be somewhere between 10,779 and 16,939 Day Scholars alive as of September 7, 2021, the date of the commencement of this Court's settlement approval hearing.[14] Given that the majority of Day Scholars attended Residential School between 1945 and 1980, a rough profile of the Survivor Class

[10] Grant Affidavit at para 17, **MR, Tab 8.**
[11] Affidavit of Diena Jules, sworn August 23, 2021 ("Jules Affidavit") at paras 5-7, **MR, Tab 3**;
Affidavit of Darlene Bulpit, sworn August 23, 2021 ("Bulpit Affidavit") at paras 4-5, **MR, Tab 5**;
Affidavit of Daphne Paul, sworn August 23, 2021 ("Paul Affidavit") at paras 4-5, **MR, Tab 4**.
[12] Affidavit of Martin Reiher, sworn August 12, 2021 ("Reiher Affidavit") at para 20, **MR, Tab 9**.
[13] Grant Affidavit at para 16, **MR, Tab 8**.
[14] Expert Report of Rita Aggarwala, dated August 19, 2021 ("Aggarwala Expert Report") at pp 1-2, Exhibit "C" to the Affidavit of Rita Aggarwala, sworn August 20, 2021 ("Aggarwala Affidavit"), **MR, Tab 10**.

is a relatively older population of approximately 11,000 to 17,000 individuals over 40 years old, most of whom are between 60 and 80 years old.

15. The evidence of the Survivor Class Representative Plaintiffs has been consistent that their daytime and classroom experiences were similar to those experienced by all other children (including resident students) who attended Residential Schools.[15] Since some of the Survivor Class Representative Plaintiffs attended Residential School as both a Day Scholar and a resident student, they are well-placed to make this observation.[16] The Plaintiffs' expert historian, Dr. John Milloy, concluded that Residential School students were generally subjected to a concerted effort to assimilate them, and to eradicate their traditional ontology, language, spirituality and culture.[17] In the classroom, and in their experiences at Residential Schools generally, Day Scholars were subjected to the same treatment, curriculum, and pedagogy as all other children at Residential Schools.[18]

16. The adults who were entrusted with educating Day Scholars at Residential Schools instead punished and abused Day Scholars for speaking their languages, and denigrated, prohibited, and insulted their cultural beliefs and practices.[19]

[15] Grant Affidavit at para 18, **MR, Tab 8**.
[16] Affidavit of Charlotte Gilbert, sworn August 23, 2021 ("Gilbert Affidavit") at para 9, **MR, Tab 2**;
Jules Affidavit at para 7, **MR, Tab 3**.
[17] Affidavit of John Milloy, sworn November 12, 2013 at paras 29-41 ("Milloy Affidavit"), Exhibit "A" to Grant Affidavit, **MR, Tab 8**.
[18] Milloy Affidavit at paras 8(c), 8(e), 26, 33, 41, 48, Exhibit "A" to Grant Affidavit, **MR, Tab 8**;
See also e.g. Gilbert Affidavit at para 10, **MR, Tab 2**.
[19] Grant Affidavit at para 19, **MR, Tab 8**;
Gilbert Affidavit at paras 10, 12, **MR, Tab 2**;
Jules Affidavit at paras 10-13, **MR, Tab 3**;
Bulpit Affidavit at paras 12-16, **MR, Tab 5**;
Paul Affidavit at paras 10-13, **MR, Tab 4**.

(ii) IRSSA

17. In 2006, Canada, representatives for Residential School survivors, and various Church Entities entered into the Indian Residential Schools Settlement Agreement ("IRSSA"), which was intended to be a comprehensive settlement agreement to resolve outstanding litigation arising from the long and tragic history of sexual, physical, and psychological abuse and other harms suffered by thousands of First Nations, Métis and Inuit children in Indian Residential Schools. The stated purpose of IRSSA was to provide a "fair, comprehensive and lasting resolution of the legacy of Residential Schools" and to promote "healing, education, truth and reconciliation and commemoration."[20]

18. Compensation under IRSSA for individual Residential School survivors took two forms:

a. survivors who resided at a Residential School were eligible for a Common Experience Payment ("CEP") in recognition of the general harm suffered by virtue of attending and residing at Residential Schools, in the amount of $10,000 for one school year or part thereof, and $3,000 for any subsequent year or part thereof;[21] and

b. students, whether resident or not, who suffered sexual abuse and/or serious physical abuse arising from or connected to the operation of a Residential School could apply for compensation through the Individual Assessment Process ("IAP").[22]

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[20] Grant Affidavit at para 21, **MR, Tab 8**.
[21] Grant Affidavit at para 22, 52, **MR, Tab 8**;
Indian Residential School Settlement Agreement (8 May 2006) ("IRSSA") at art. 5.02, online (pdf): *Residential Schools Settlement* <https://www.residentialschoolsettlement.ca/IRS%20Settlement%20Agreement-%20ENGLISH.pdf>;
Certification Order at para 8, **MR, Tab 19b**.
[22] Grant Affidavit at para 22, **MR, Tab 8**;
"Schedule D: Independent Assessment Process (IAP) for Continuing Indian Residential School Abuse Claims" (May 2006), online (pdf): *Residential Schools Settlement* <https://www.residentialschoolsettlement.ca/Schedule_D-IAP.PDF>.

19. Day Scholars were eligible to apply for compensation for abuse through IAP, but were specifically excluded from receiving CEP because they did not live at Residential Schools. At the time of IRSSA, Canada's position was that, because Day Scholars were not taken from their families and forced to reside at Residential Schools, their experiences differed from that of resident students, and therefore they were not entitled to the same compensation.[23]

B. Nature & history of this action

(i) Commencement

20. Tk'emlúps te Secwépemc ("Tk'emlúps", also known as "Kamloops Indian Band" or "Tk'emlúps te Secwépemc Indian Band") and shíshálh Nation ("shíshálh", also known as "Sechelt Indian Band" or "shíshálh Band") are two of the First Nations which had Residential Schools on their reserve lands, and consequently had a large number of community members who attended as Day Scholars. The exclusion of Day Scholars from the CEP portion of IRSSA, and the corresponding lack of recognition for the common experiences of Day Scholars at Residential Schools, caused significant anger and frustration in these First Nations. In late 2010, the then-Chiefs of those First Nations (Shane Gottfriedson and Garry Feshuk, respectively), decided that their Nations would come together to fight on behalf of Day Scholars, including by retaining a legal team of experienced class action and Aboriginal law lawyers to consider legal options.[24]

21. This action was commenced by way of a statement of claim filed in Federal Court on August 15, 2012. The claim was later amended on June 11, 2013, and again after certification on June 26, 2015.[25]

[23] Grant Affidavit at paras 23-24, **MR, Tab 8**.
[24] Grant Affidavit at paras 4, 20, 26-30, 49, 86, **MR, Tab 8**.
[25] Grant Affidavit at para 32, **MR, Tab 8**.

22. With regard to the Survivor and Descendant Classes, the focus of this lawsuit is on remedying the gap that was left by IRSSA – specifically, seeking recognition and compensation on behalf of the Survivor and Descendant Classes for the loss of Indigenous language and culture which they endured as a result of the forced attendance of Survivor Class Members at Residential Schools.[26] The core claims in the Plaintiffs' pleading are that the purpose, operation and management of the Residential Schools destroyed Survivor and Descendant Class Members' language and culture, and violated their cultural and linguistic rights.[27]

(ii) Jurisdiction motion

23. There were a number of procedural pre-certification motions. Most significantly, in 2013, Canada brought a motion to stay the action pursuant to s. 50.1 of the *Federal Courts Act*, on the grounds that it wished to bring third party claims against a number of Church Entities for contribution and indemnity. Canada took the position that the Federal Court did not have jurisdiction over the third party claims, and therefore the action should be stayed. Canada's motion was unsuccessful,[28] as was the subsequent appeal.[29]

24. As part of their response to Canada's attempt to stay the action, the Plaintiffs amended their claim on June 11, 2013, to make clear that they were seeking only several liability against Canada limited to the damage caused by its own wrongs in the creation and management of the Residential School system, and not any damage for which the Church Entities may be liable.[30]

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[26] Grant Affidavit at para 34, **MR, Tab 8**.
[27] First Re-Amended Statement of Claim, filed June 26, 2015 ("First Re-Amended Claim") at paras 1-2, **MR, Tab 16**.
[28] *Gottfriedson v Canada*, 2013 FC 546.
[29] *Canada (Attorney General) v. Gottfriedson*, 2014 FCA 55.
[30] Grant Affidavit at para 38, **MR, Tab 8**;
First Re-Amended Claim at para 80, **MR, Tab 16**.

25. Despite this amendment, Canada nonetheless filed third party claims against five religious organizations said to be involved in running the Residential Schools in Kamloops and Sechelt. These claims were struck by Justice Harrington on the basis that, since the Plaintiffs only sought redress against Canada severally, and Canada would therefore not be able to flow that liability through to third parties by way of contribution or indemnity.[31]

(iii) Certification

26. In support of the certification motion, each of the eleven proposed representative plaintiffs swore affidavits discussing their personal experiences with Residential Schools. Canada then elected to conduct extensive cross-examinations of each of them, forcing them to relive parts of their harrowing experiences with Residential Schools once again, a process which many of them found traumatic.[32] By the time of the certification motion hearing, several of the originally named plaintiffs had decided not to continue on with the action, in part because of the psychological burden of being a representative plaintiff.[33]

27. During the four-day certification motion hearing, Canada took strong positions, including:

a. moving unsuccessfully to strike the evidence of Dr. John Milloy, the plaintiffs' expert historian, and Dr. Marianne Ignace, the plaintiffs' expert in linguistics and in Secwepemctsín;

b. arguing that none of the five elements of the certification test were met, because:

(i) the claims disclosed no reasonable causes of action, as the issue of Residential Schools was a policy decision of the Government of Canada, and the issue of good or bad policy is not justiciable;

[31] *Gottfriedson v. Canada*, 2013 FC 1213 at paras.3-4
[32] Grant Affidavit at para 41, **MR, Tab 8**.
[33] Grant Affidavit at para 35, **MR, Tab 8**.

(ii) the class definitions were overbroad and lacked any basis in fact;

(iii) the proposed common issues were not capable of class-wide determination – instead each issue would require individual findings of fact and legal analysis; and

(iv) a class proceeding was not the preferable procedure for the resolution of the claims for various reasons including that the claims would devolve into a determination of a multitude of individual issues and that the determination of Aboriginal rights are incompatible with class action procedure;

c. arguing that all of the Class Members' claims were time-barred; and

d. arguing that the Survivor and Descendant Class Members' claims were released pursuant to: the deemed general release granted in favour of Canada and the Church Entities in IRSSA; and the release signed by Survivor Class Members who had applied to access the IAP.

28. Despite Canada's arguments against certification, Justice Harrington certified the action as a class proceeding on June 3, 2015, and certified common questions of fact or law pertaining to each of the three subclasses to be determined at the common issues trial.[34]

29. Following certification, in 2016, the Grand Council of the Crees (Eeyou Istchee) ("GCC"), under the leadership of former Grand Chief of the GCC Matthew Coon Come, joined with Tk'emlúps and shíshálh in providing both leadership and support for the ongoing prosecution of this action. The GCC is the political body that represents approximately 18,000 Crees of the James Bay region of Northern Quebec.[35]

[34] Certification Order, **MR, Tab 19b**.
[35] Grant Affidavit at para 48, **MR, Tab 8**.

(iv) The Classes & Representative Plaintiffs

30. At certification, Justice Harrington defined the three subclasses as follows:[36]

a. the Survivor Class, consisting of all Aboriginal persons who attended as a student or for educational purposes for any period at a Residential School, during the Class period, excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under IRSSA;

b. the Descendant Class, consisting of the first generation of persons descended from Survivor Class members or persons who were legally or traditionally adopted by a Survivor Class Member or their spouse; and

c. the Band Class, consisting of Tk'emlúps te Secwépemc Indian Band and the shíshálh Band and any other Aboriginal Indian Bands(s) which:

(i) has or had some members who are or were members of the Survivor Class, or in whose community a Residential School is located; and

(ii) is specifically added to this claim with one or more specifically identified Residential Schools.

31. After several of the original named plaintiffs were unable to continue on with the action, the Certification Order named the following individual Representative Plaintiffs:[37]

a. Violet Catherine Gottfriedson, Charlotte Anne Victorine Gilbert, Diena Marie Jules, Darlene Matilda Bulpit, Frederick Johnson, and Daphne Paul for the Survivor Class; and

b. Amanda Big Sorrel Horse and Rita Poulsen for the Descendant Class.

32. Violet Gottfriedson passed away in April 2016, and Frederick Johnson passed away in January 2017.[38] Their deaths were a tragic loss for the other Representative Plaintiffs and for their families and communities, as well as a painful reminder that the Survivor Class Members are an aging population.

[36] Certification Order, **MR, Tab 19b**.
[37] Certification Order, **MR, Tab 19b**.
[38] Grant Affidavit at para 37, **MR, Tab 8**.

33. Each of the six living Representative Plaintiffs has sworn an affidavit in support of this motion for settlement approval. In their affidavits, they detail the reasons why they believe that this settlement is fair, reasonable, and in the best interests of the Class Members, and ought to be approved by the Court – including, for the Survivor Class Representative Plaintiffs, their fear that, the longer the litigation continues without resolution, the more of their fellow Class Members will die without receiving justice for, or even acknowledgement of, the harms they endured as a result of Residential Schools.[39]

(v) Canada's defences & preparation for trial

34. In April 2019, in response to the Directive on Civil Litigation Involving Indigenous Peoples issued by the former Minister of Justice and Attorney-General of Canada, the Honourable Jody Wilson-Raybould, and at the request of the Representative Plaintiffs, Canada filed an Amended Statement of Defence. Although Canada's amended pleading acknowledged that the operation of Residential Schools was a dark and painful chapter in Canada's history, Canada nevertheless maintained blanket denials of the Plaintiffs' claims, pleading that:[40]

a. the experiences and treatment of Class Members varied so widely as to make a class action untenable;

b. in many cases, the Survivor and Descendent Class Members' claims were released by the releases contained in IRSSA;

[39] Gilbert Affidavit at para 24, **MR, Tab 2**;
Jules Affidavit at para 23, **MR, Tab 3**;
Bulpit Affidavit at para 26, **MR, Tab 5**;
Paul Affidavit at para 26, **MR, Tab 4.**

[40] Amended Statement of Defence, filed April 8, 2019 at paras 43-50, 123-133, 135, 138-144, 146, 149-150, 156-164, 167-182, 193-196, **MR, Tab 18**.

c. in establishing and operating Residential Schools, when measured against the standards of the day, Canada acted with due care and in good faith, and within its legislative authority;

d. Canada did not breach any fiduciary, statutory, constitutional or common law duties owed to the Class Members;

e. Canada did not breach the Aboriginal Rights of the Class Members in the operation of Residential Schools;

f. Canada did not owe a private law duty of care to protect members of the Survivor Class from intentional infliction of mental distress, and if it did, it did not breach the standard of care; and

g. any damages suffered by the Plaintiffs were not caused by Canada.

35. Canada's approach meant that a trial was necessary on all issues with the exception of limitation periods. On January 16, 2020, Justice Barnes ordered that the trial of the action would commence on September 7, 2021, for a duration of 74 days.[41]

36. On August 24, 2020, at the request of the Parties, the Court ordered that the common issues trial be bifurcated and that the common question of fact and law regarding aggregate damages for the Band Class would be determined apart from, and subsequent to, the adjudication and determination of the other certified common questions.[42]

37. In the meantime, the parties began to prepare for trial in earnest, including negotiating a common issues trial plan, engaging in extensive documentary discovery, delivering expert reports, preparing requests to admit, and so on.[43]

[41] Order (Trial) of Justice Barnes, issued January 16, 2020, **MR, Tab 19h**.
[42] Order (Bifurcation) of Justice Barnes, issued August 24, 2020, **MR, Tab 19i**.
[43] Grant Affidavit at para 62, **MR, Tab 8**.

38. The Representative Plaintiffs elected to conduct their examinations for discovery via written interrogatories; in order to prepare their questions, Class Counsel reviewed the almost 120,000 documents produced by Canada. The Defendants elected to conduct examinations for discovery of the Representative Plaintiffs orally, and those were scheduled to take place between March 15 and April 9, 2021.[44]

C. Settlement discussions

(i) 2017-2019 settlement discussions

39. On October 20, 2016, Mister Bennett appointed Thomas Isaac, a lawyer at Cassels, Brock & Blackwell LLP, to be the Minister's Special Representative ("MSR") to conduct exploratory discussions with the Representative Plaintiffs and Class Counsel. Between January and July 2017, the MSR met with Representative Plaintiffs and Class Counsel ten times.[45]

40. In March 2017, the Representative Plaintiffs put forward a proposed framework for settlement, on the following terms: a) the Survivor Class Members would receive the same settlement benefits as those which were provided under the CEP for resident students of Residential Schools ($10,000 for the first year of attendance at a Residential School and $3,000 for every year thereafter); b) a trust fund would be established for the benefit of the Descendant Class; and c) a framework would be developed for resolving the Band Class claim. Owing to the number of deaths of Survivor Class Members, including two Representative Plaintiffs, Violet Gottfriedson and Frederick Johnson, the latter who died shortly after the first negotiation session, the Representative Plaintiffs proposed resolving the claims of the Survivor and Descendant Classes prior to resolving the claims of the Band Class.[46]

[44] Grant Affidavit at para 62, **MR, Tab 8**.
[45] Grant Affidavit at para 51, **MR, Tab 8**.
[46] Grant Affidavit at para 52, **MR, Tab 8**.

41. Formal settlement negotiations began in February 2018 in Vancouver, but were unsuccessful. Later in 2018, the parties engaged in several rounds of judicial dispute resolution but, by early 2019, the Parties had made little headway and settlement negotiations broke down as several areas of serious disagreement remained.

(ii) 2021 Offer to Settle

42. Throughout the litigation, and through the failed first round of settlement discussions, the Representative Plaintiffs' objectives for any potential resolution were as follows:[47]

a. **No Day Scholar left behind**: a primary purpose of this action was to include all Day Scholars who had been excluded from the CEP. This meant ensuring that all Day Scholars who died on or after May 30, 2005, be included in any settlement;

b. **A simple, streamlined and speedy claims process**: the Representative Plaintiffs recognized that many Day Scholars do not have records of their attendance at school, and any onerous evidentiary requirement would result in individuals with valid claims being denied recovery. Similarly, if the claims process itself were too difficult, it would result in individuals with valid claims being left out;

c. **No cap**: the settlement should be negotiated on the basis of a compensation amount for each Survivor Class Member, not on an overall number for the Class as a whole. The Representative Plaintiffs were intent on avoiding a situation where the individual amount received by Survivors was dependent on the number of claims;

d. **No reliance upon IRSSA releases**: the Representative Plaintiffs took the position that, since Day Scholars had been unjustly left out of the CEP portion of IRSSA, the IRSSA releases should not be used against the Survivors and Descendants; and

[47] Grant Affidavit at para 65, **MR, Tab 8**.

e. **No prejudice to the Band Class**: the Representative Plaintiffs saw the importance of prioritizing the resolution of the Survivor and Descendant Classes' claims. At the same time, however, it was essential that the Band Class claim not be prejudiced out of a desire to resolve the Survivor and Descendant Classes' claims quickly.

43. Those objectives were not met during the 2017-2019 settlement discussions, and so the parties returned to active litigation. Then, in February 2021, Mr. Isaac contacted Class Counsel to reactivate settlement negotiations. In light of the looming trial date, Mr. Isaac was authorized to put Canada's best offer forward at the outset, which Mr. Isaac delivered to Class Counsel on March 4, 2021. The key parts of the offer to settle were:[48]

a. severance of the claims of the Band Class from the claims of the Survivor and Descendant Classes;

b. the claims of the Survivor Class would be settled on the following terms:

(i) $10,000.00 payments would be made to each eligible Day Scholar who attended a Residential School (a list of eligible schools to be agreed upon) during the Class Period so long as they had not already received compensation for the same school year through the CEP of IRSSA or the *McLean* Federal Indian Day Schools Settlement;

(ii) any Day Scholar who was alive as of May 30, 2005, or their "effective estate", would be eligible to apply, in accord with the CEP eligibility date;

(iii) funding for individual compensation would be uncapped to ensure that all eligible Day Scholars, or their effective estates, as applicable, who apply would receive $10,000.00;

[48] Grant Affidavit at paras 63-64, 66, **MR, Tab 8**.

(iv) Canada would not rely on IRSSA releases, including the IAP releases, for the purposes of the settlement; and

(v) Canada would not seek any reduction for those Day Scholars, and the effective estates as applicable, who had received a CEP under IRSSA;

c. the claims of the Survivor and Descendant Classes would be settled on the following terms:

(i) Canada would fund $50,000,000.00 to support the establishment of a foundation or trust independent of the Government of Canada and established under appropriate not-for-profit legislation; and

(ii) the foundation or trust would provide funding for projects to support healing, wellness, education, language, culture and commemoration activities for Survivor and Descendant Class Members.

44. Class Counsel were aware that the offer represented Canada's "best case scenario" – if Canada's offer to settle was not accepted as a basis for negotiating a settlement, the parties would return to litigation, and would have to litigate a full trial in September 2021, with all the risks that a trial entails, including the risk of further years of delays due to appeals.[49]

45. Class Counsel were of the opinion that Canada's offer addressed the Representative Plaintiffs' objectives for resolution in a meaningful way, paving the way for more fruitful settlement discussions even though Canada did not agree to the $10,000 for the first year and $3,000 for any year thereafter model for settlement of the Survivor Class. After extensive discussion, and on hearing Class Counsel's recommendation, the Survivor and Descendant Class

[49] Grant Affidavit at para 68, **MR, Tab 8**.

Representative Plaintiffs agreed unanimously to accept Canada's offer and instructed Class Counsel to negotiate a Settlement Agreement based on that offer.[50]

46. Negotiations of the terms of the Day Scholars Survivor and Descendant Class Settlement Agreement (the "Settlement Agreement") took place between the acceptance of the offer to settle on March 12, 2021, and the signing of the Settlement Agreement on June 3 and 4, 2021.[51] These negotiations focused on other elements of a proposed resolution which were not included in Canada's offer to settle, including:

a. all aspects of the process to make a claim for the $10,000 payment, including the process by which family members could apply on behalf of the estates of deceased Day Scholars;

b. for the purposes of determining eligibility, determining a list of Residential Schools that had or could have had Day Scholars;

c. further details regarding the foundation or trust that would receive the $50,000,000 payment;

d. the terms of any release;

e. how to ensure that Survivor Class members had access to legal support through the claims process at no cost to them; and

f. payment of legal fees and disbursements.

D. The proposed settlement

(i) Terms of the Settlement Agreement

47. The key terms of the Settlement Agreement are as follows:[52]

[50] Grant Affidavit at para 70, **MR, Tab 8**.
[51] Grant Affidavit at para 72, **MR, Tab 8**.
[52] Settlement Agreement, dated June 4, 2021 ("Settlement Agreement"), **MR, Tab 1a**.

Day Scholar Compensation Payments

a. each eligible Survivor Class Member who makes a claim will receive a $10,000.00 Day Scholar Compensation Payment, with no deductions for legal fees, costs of administration, or any other reason (including Canada's commitment to make best efforts to ensure that there is no claw back of government collateral benefits resulting from receipt of a Day Scholar Compensation Payment);

b. an eligible Survivor Class Member is any Survivor Class Member who attended a Residential School listed at Schedule "E" to the Settlement Agreement as a Day Scholar for even part of a school year, so long as they have not already received compensation for that school year as part of the CEP or the *McLean* Settlement;

c. Schedule "E" contains two lists of schools: List 1, comprising all of the Residential Schools confirmed in the historical record to have had Day Scholars; and List 2, comprising all of the Residential Schools which were not confirmed in the historical record not to have had Day Scholars (*i.e.* which may have had Day Scholars);

d. for any Day Scholar who has died since the CEP eligibility cut-off of May 30, 2005, but who would otherwise eligible, one of their descendants/heirs will be eligible to access the Estate Claims Process to make a claim for a Day Scholar Compensation Payment for distribution to the Day Scholar's estate;

e. there is no cap on the number of Day Scholar Compensation Payments – all approved claims will be paid in full;

Claims Process

f. both the Claims Process and the Estate Claims Process are to be simple and accessible to encourage all eligible individuals to make claims. This includes

minimal requirements for supporting documentation, and in the case of claimants who attended one or more List 1 Residential Schools as a Day Scholar, no requirement whatsoever for supporting documentation;

g. the Claims Administrator to be appointed by the Court is to ensure that its processes are simple, accessible, and trauma-informed, and to utilize its discretion in favour of the claimant wherever possible during the Claims Process;

h. the Claims Process explicitly mandates that presumptions must be made in favour of claimants, and allowances have been built in for difficulties associated with the time that has elapsed (*e.g.* Canada must consult its attendance records for the five years before and after the dates of attendance included in a claim form);

i. the Estate Claims Process is designed so that, even where there is no legally designated estate representative, the descendants/heirs of eligible deceased Day Scholars can apply and receive compensation for distribution to the estate. Payment is not required to be made in the name of the Estate of the Day Scholar (which would limit payment to a legally designated estate representative), but rather can be made directly to an heir for distribution to the estate, and a process has been designed to reconcile conflicts that may arise between heirs;

j. in order to avoid re-traumatization, no personal narrative setting out details of experiences at Residential School is required for any claimant;

Reconsideration

k. claimants will have the right to seek reconsideration if their claims are denied on the merits, whereas Canada will have no right to seek reconsideration;

l. reconsideration will not be an appeal process, but rather a *de novo* process overseen by a Court-appointed Independent Reviewer, wherein claimants have the ability to adduce supporting documentation for their claims (but are not required to do so);

m. any claimant filing for reconsideration will be able to receive legal assistance at no cost from Class Counsel;

Claim administration

n. Canada will pay for all costs of claims administration, including reconsideration;

o. the claim period will be open for twenty-one months, with an additional three months during which claimants may file late;

Revitalization Fund

p. a $50,000,000.00 Day Scholars Revitalization Fund will be established to support healing, wellness, education, language, culture, heritage, and commemoration projects for the benefit of Survivor and Descendant Class Members;

q. the Day Scholars Revitalization Fund will be Indigenous-led, and will be operated by a not-for-profit Revitalization Society that is independent of Canada (save for one out of at least five directors who will be appointed by Canada);

r. the Revitalization Society will develop and implement a policy to assess applications to obtain project funding from the Revitalization Fund;

s. the Revitalization Society's expenses will be funded from investment income, maximizing the amounts to be spent on projects for the benefit of Survivor and Descendant Class Members;

Release & Band Class litigation

t. in exchange for the compensation set out above, the claims of the Survivors and Descendants will be dismissed, with prejudice, and the Survivor and Descendant Class Members will release Canada from any other liability relating to their attendance or their parents' attendance, respectively, at Residential Schools;

u. the terms of the Settlement Agreement are without prejudice to the ongoing litigation of the Band Class claims; and

v. the Certification Order of Justice Harrington and the statement of claim will be amended to reflect that only the Band Class claims are proceeding.

48. The parties have not yet finalized the draft Claim Form or Estate Claim Form, but they are working to develop claim forms which are in satisfaction of the Claims Process Principles from the Settlement Agreement, which are intended to minimize the burden on claimants, and to provide claimants with a process which is straight-forward, accessible, and trauma-informed.[53]

49. In order to be ready to receive the $50,000,000 payment within 30 days of the Implementation Date, the Day Scholars Revitalization Society was incorporated under the *Societies Act* of British Columbia on August 20, 2021. The Society will be registered in each Canadian jurisdiction.[54]

(ii) Distribution of Notice of Proposed Settlement

50. Notice of the proposed partial settlement was distributed to the Class Members in accordance with Notice Plan approved by this Court's June 10, 2021, order.[55] The components of the Notice Plan were extensive and varied, including a website, various types of advertisements, a press release, a Facebook group, a series of informational webinars led by Class Counsel, media

[53] Grant Affidavit at paras 80-82, **MR, Tab 8**.
[54] Grant Affidavit at para 85, **MR, Tab 8**.
[55] Order (Notice Approval) of Justice McDonald, issued June 10, 2021, **MR, Tab 19j**.

outreach, community group outreach, and a direct mailout to over 3,000 putative Survivor Class Members who submitted intake forms to Class Counsel.[56]

51. Class Counsel also independently provided notice to the provincial and territorial public guardians and trustees, the Assembly of First Nations ("AFN"), the AFN Regional Chiefs, and a number of other leaders of Indigenous governance organizations.[57]

52. Given the total estimated reach of the Notice Plan as compared to Dr. Aggarwala's estimates of the size of the Survivor Class, Class Counsel are of the opinion that the Class Members have received meaningful notice of the proposed settlement and the settlement approval hearing.

(iii) Class Member statements

53. In total, as of August 25, 2021, Class Counsel received only 34 statements from putative Class Members regarding their opinion of the Settlement Agreement, under half of which are objections. All statements received have been filed with the court under seal to protect the privacy of the Class Members. The objections contain the following major themes:[58]

a. $10,000 is an insufficient amount to compensate for the loss of language, culture and spirituality suffered by Survivors;

b. $10,000 is an insufficient amount compared to the much higher awards available in other settlements for survivors of Residential/Day Schools;

c. $10,000 is an insufficient amount to compensate for the level of physical, sexual and/or emotional abuse suffered by Survivors;

d. it is unfair that Survivor Class Members who attended Residential School as a Day Scholar for longer would not receive larger compensation payments;

[56] Affidavit of Roanne Argyle, sworn August 23, 2021 ("Argyle Affidavit") at para 4, **MR, Tab 12**.
[57] Grant Affidavit at paras 97, 99, **MR, Tab 8**.
[58] Grant Affidavit at para 101, **MR, Tab 8**.

e. the amount dedicated to the Revitalization Trust should be reduced in favour of increasing the value of the Day Scholar Compensation Payments; and

f. there should be no eligibility date for the estate claims process.

E. Appointment of Claims Administrator

54. The parties jointly propose that Deloitte LLP ("Deloitte") be appointed as Claims Administrator. Deloitte's credentials are set out in detail in the Affidavit of Joelle Gott, sworn in support of this motion.

55. Deloitte has significant experience acting as a claims administrator in large national class actions brought on behalf of Indigenous class members regarding historic wrongs, including acting currently as court-appointed administrator of the McLean Settlement claims process. As a result of this experience, Deloitte has well-established processes for the receipt, management, and protection of sensitive personal information, which will not have to be re-created for this mandate.[59]

56. The parties are satisfied that Deloitte has the resources, both in terms of personnel and technology, to provide prompt and sufficient support to permit the claims process to proceed smoothly.[60]

F. Proposed amended Band Class documents

57. Since the Settlement Agreement does not affect the claims of the Band Class, which will continue to be litigated, the parties are in agreement that it will be appropriate for the certification order and the Claim to be amended to reflect that only the Band Class claims remain in dispute.

[59] Affidavit of Joelle Gott, sworn on August 25, 2021, **MR, Tab 11**
[60] Grant Affidavit at para 157, **MR, Tab 8**.

PART III - ISSUES

58. The issues on this motion are:

a. ISSUE 1: Is the Settlement Agreement fair, reasonable, and in the best interests of the Class, and should the Court approve it?

b. ISSUE 2: Should the Court appoint Deloitte as Claims Administrator?

c. ISSUE 3: Should the Court amend the Certification Order and grant leave to amend the Plaintiffs' First Re-Amended Statement of Claim?

PART IV - THE LAW

A. Settlement approval

(i) General principles of settlement approval

59. Rule 334.29 of the *Federal Courts Rules* provides that "a class proceeding may be settled only with the approval of a judge."[61]

60. The test for court approval of a settlement of a class action is whether, in all of the circumstances, the proposed settlement is fair, reasonable, and in the best interests of the class as a whole.[62]

61. In assessing a proposed settlement, the court engages in a stand-alone assessment of the fairness and reasonableness of the terms of the settlement, as well as a comparative analysis with "what would probably be achieved at trial, discounting for any defences, legal or evidentiary hurdles or other risks that would have to be confronted and overcome if the matter were to proceed to trial".[63]

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[61] *Federal Courts Rules*, SOR/98-106, rule 334.29(1).
[62] *Merlo v. Canada*, 2017 FC 533 at para. 16.
[63] *Brown v. Canada (Attorney General)*, 2018 ONSC 3429 at para. 12; see also *Hodge v. Neinstein*, 2019 ONSC 439 at para. 42.

62. A proposed class action settlement is not required to be perfect in order to be approved, and only needs to fall within a zone or range of reasonableness.[64] Reasonableness does not dictate a single possible outcome, so long as the settlement falls within the zone. This principle recognizes the reality of the uncertainties of law and fact in any particular case, and the concomitant risks and costs necessarily inherent in taking any litigation to completion.

63. Not every provision in a proposed settlement must meet the test of reasonableness – some will, some will not. This result is inherent in the negotiation and compromises of a settlement.[65] A proposed settlement must be looked at as a whole and the alternative of there being no settlement at all, with the parties being forced to resume litigation, must also be factored into the comparative analysis.[66]

64. In making an assessment of whether a settlement is reasonable and in the best interests of the class, the court may consider the following non-exhaustive list of factors: (a) the likelihood of recovery or likelihood of success; (b) the amount and nature of discovery, evidence or investigation; (c) the terms and conditions of the proposed settlement; (d) the future expense and likely duration of litigation; (e) the recommendation of neutral parties, if any; (f) the number of objectors and nature of objections; (g) the presence of arm's length bargaining and the absence of collusion; (h) the information conveying to the court the dynamics of, and the positions taken by, the parties during the negotiations; (i) the degree and nature of communications by counsel and the representative plaintiff with class members during the litigation; and (j) the recommendation and experience of counsel.[67]

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[64] *Châteauneuf v. Canada*, 2006 FC 286 at para. 7.
[65] *McLean v. Canada*, 2019 FC 1075 at para. 77.
[66] *Riddle v. Canada*, 2018 FC 641 at para. 33.
[67] *Condon v. Canada*, 2018 FC 522 at para. 19.

65. These factors are merely guidelines and it is likely that, in the circumstances of any given case, one or more of the factors may given more weight than the others, some criteria may not be satisfied, and others may be irrelevant.[68]

66. The law of class proceedings, including settlement approval, is to be given a generous, broad, liberal and purposive interpretation in order to promote the goals of class proceedings – namely: judicial economy, access to justice, and behaviour modification.[69] While the court must seriously scrutinize a settlement and ensure that "class members' interests are not being sacrificed",[70] settlement through compromise at an early stage in litigation furthers the important judicial economy objective of class proceedings,[71] and has the practical benefit of expediting payment to class members, which constitutes access to justice.

67. Settlements allow the parties to resolve issues for themselves and are "much preferred to a judge made determination with which neither or even one of the parties might be pleased."[72] There is thus a strong presumption that an arms-length settlement negotiated in good faith should not be readily rejected:[73]

> The parties are, after all, best placed to assess the risks and costs (financial and human) associated with taking complex class litigation to its conclusion. The rejection of a multi-faceted settlement…also carries the risk that the process of negotiation will unravel and the spirit of compromise will be lost.

68. Settlements recommended by reputable class action counsel are "presumed to be fair".[74] As held by Horkins J in *Serhan v. Johnson & Johnson*:[75]

> [w]here the parties are represented, as they are in this case, by reputable counsel with expertise in class action litigation, the court is entitled to assume, in the absence of evidence to the contrary, that

[68] *Condon v. Canada*, 2018 FC 522 at para. 20.
[69] *Hollick v. Toronto (City)*, 2001 SCC 68 at para. 15, [2001] 3 SCR 158.
[70] *Hodge v. Neinstein*, 2019 ONSC 439 at para. 40.
[71] *Bancroft-Snell v Visa Canada Corporation*, 2015 ONSC 7275 at para. 49.
[72] *Seed v Ontario*, 2017 ONSC 3534 at para. 14.
[73] *Manuge v. Canada*, 2013 FC 341 at para. 6.
[74] *Riddle v. Canada*, 2018 FC 641 at para. 33.
[75] *Serhan v. Johnson & Johnson*, 2011 ONSC 128 at para. 55, cited in *Heyder v. Canada (Attorney General)*, 2019 FC 1477 at para. 64.

> it is being presented with the best reasonably achievable settlement and that class counsel is staking his or her reputation and experience on the recommendation.

69. Importantly, the Court's role in assessing a proposed settlement is not to modify or alter the substantive terms of a settlement.[76] The Court cannot "tinker" with terms and conditions or direct the parties to revisit certain aspects of an executed settlement agreement. It is established that a proposed settlement is a complete package, and that the settlement approval process is therefore a "take it or leave it" proposition.[77]

70. Just as in individual litigation, a class action settlement may be in the best interests of those affected by it even when it is not perfect, particularly when the risks and the costs of a trial are considered.[78]

71. Unlike in individual litigation, the overriding concern when assessing a class action settlement is the wellbeing of the entire class as a collective. It is not open to the Court to assess the interests of individual class members in isolation from the whole class.[79]

(ii) Key terms and conditions of the settlement

72. The key terms and conditions of the settlement are described at paragraph 47 above. Certain of those terms are particularly noteworthy in the analysis of whether the proposed settlement is fair and reasonable and in the best interests of the Class Members.

(a) The quantum of the Day Scholar Compensation Payments

73. During the IRSSA negotiation process, Canada specifically rejected any attempts to include Day Scholars in the CEP, or to negotiate a CEP-similar compensation for Day Scholars.[80] For Canada to compromise so substantially from its original position and to agree to fund the Day

[76] *Manuge v. Canada*, 2013 FC 341 at para. 5.
[77] *McLean v. Canada*, 2019 FC 1075 at para. 70.
[78] *Châteauneuf v. Canada*, 2006 FC 286 at para. 7.
[79] *McLean v. Canada*, 2019 FC 1075 at para. 68.
[80] Grant Affidavit at para 120, **MR, Tab 8**.

Scholar Compensation Payments is a substantial benefit which remediates the wrong that was done when Day Scholars were excluded from the CEP under IRSSA.

74. Although the Day Scholar Compensation Payments are a flat rate of $10,000 and do not include the additional $3,000 per year from the CEP structure, there are benefits to this structure as well:

a. the flat-rate structure was a concession to negotiate for a more generous eligibility cut-off date[81] – by going all the way back to the May 30, 2005, CEP eligibility cut-off date, many more people will ultimately receive compensation through this proposed settlement than would have been able to recover from a judgment and;

b. by eliminating the need to prove specific periods of attendance, the agreed-upon Claims Process was able to be simplified substantially. Claimants will not be required to verify and document their claimed periods of attendance with precision in order to recover, which will make it much easier for claims to be successfully made in a timely manner.

75. The $10,000 flat-rate quantum of the Day Scholar Compensation Payments is comparable to the $10,000 Level 1 award in the McLean Settlement harms grid (which is meant to compensate for mocking or belittling by reason of Indigenous language and culture, and unreasonable or disproportionate acts of discipline or punishment including those relating to Indigenous language and culture), which was previously approved by this Court as being fair and reasonable. Higher levels in the McLean Settlement harms grid all pertain to experiences of serious physical or sexual abuse that are not at issue in the Action because Day Scholars were eligible to bring claims regarding such abuse through the IAP of IRSSA.[82]

[81] Grant Affidavit at para 121, **MR, Tab 8**.
[82] Indian Day Schools Compensation Grid, Exhibit "J" to Grant Affidavit, **MR, Tab 8**.

76. Thus, although the comparison is not exact, the harms which are intended to be compensated by the $10,000 Day Scholar Compensation Payments are roughly equivalent to the harms intended to be compensated by the $10,000 Level 1 awards in the court-approved McLean Settlement.

77. As discussed above, there is no monetary amount that is sufficient to compensate fully for the Class Members' loss of Indigenous language and culture. It is important, however, for any resolution to the Survivor Class Members' claims to provide actual recognition of these losses, and some compensation for them – Class Counsel are of the opinion that the quantum of the Day Scholar Compensation Payments accomplishes both these goals.

(b) The Day Scholars Revitalization Fund

78. The $50,000,000 Day Scholars Revitalization Fund is a key benefit of the settlement and an appropriate way to resolve the claims of the Descendant Class. A fund of this type cannot be ordered by the court and is only achievable through a settlement.

79. Funds of this type have been a common way to resolve family/descendant claims in "Indigenous Children" class actions, including IRSSA, the McLean Settlement and the settlement in *Riddle v. Canada* (the "Sixties Scoop Settlement"), a class action brought on behalf of Indigenous people and families who had been affected by the "Sixties Scoop", the large-scale removal, or "scooping" of Indigenous children from their homes and adoption into predominantly non-Indigenous families which occurred primarily in the 1960s.

80. The Revitalization Fund appears to provide the most benefit *per capita* of any of the funds in the cases listed above:

a. Day Scholars Revitalization Fund - $50,000,000 for the children of between 14,554 and 22,870 Day Scholars;

b. IRSSA commemoration projects and Aboriginal Healing Foundation - $145,000,000 for the family members of approximately 150,000 Residential School survivors;[83]

c. McLean Settlement Legacy Fund - $200,000,000 for the family members of approximately 120,000 Day School survivors;[84] and

d. Sixties Scoop Settlement Foundation - $50,000,000 for the family members of approximately 22,400 Sixties Scoop survivors.[85]

81. The proposed structure of the Revitalization Fund and Society are designed to minimize taxation of the Fund in order to ensure the maximum amount of any income earned on the money is used for the stated purposes rather than losing a portion of the income to taxes.[86]

(c) The Schedule "E" Schools Lists

82. The original list of Residential Schools appended as Schedule "A" to Justice Harrington's Certification Order included all of the institutions included in IRSSA, even hostels where children lived in residences without schools attached and which therefore did not have, or could not have had, Day Scholars. No research was done into the issue at that time.[87]

83. In order to generate the more refined Schools Lists at Schedule "E" of the Settlement Agreement, Class Counsel and Canada worked closely together to make joint decisions based on intensive review of a broad range of documents and information sources.[88] As part of its own information-gathering, Canada drew on work completed by an independent research firm it

[83] *Canada (Attorney General) v. Fontaine*, 2017 SCC 47 at para. 1, [2017] 2 SCR 205.
[84] *McLean v. Canada*, 2019 FC 1075 at paras. 8, 12.
[85] *Brown v. Canada (Attorney General)*, 2018 ONSC 3429 at paras. 8, 17.
[86] Grant Affidavit at para 132, **MR, Tab 8**.
[87] Reiher Affidavit para 15, **MR, Tab 9**.
[88] Grant Affidavit at paras 133-135, **MR, Tab 8**.

retained to conduct new primary research specific to Day Scholar attendance at Residential Schools.[89]

84. To the best of the parties' knowledge and abilities, the only Residential Schools removed from the original certified list and not appearing in either Schedule "E" List are those which could not have had Day Scholars because they were hostels and did not offer classroom instructions, or because they closed prior to the beginning of the Class Period.[90]

85. The Schools Lists are a substantial benefit to the Class Members. As with the flat-rate structure, the creation of the Schools Lists has allowed for the claims process to be simplified substantially and to incorporate a very low burden of proof for claimants.[91]

86. The adversarial testimonial process from the IAP, including forcing claimants to be cross-examined in individual hearings, has been criticized judicially – see, for example, *Fontaine v. Canada (Attorney General)*, 2018 ONSC 103, where the Court stated that it was "painful to watch and painfully obvious…that it is painful and a revictimization for survivor claimants…to have to testify about what occurred at the IRSs…".

87. Even in other settlements with less onerous claims processes, however, there is typically still a requirement for claimants to provide personal narratives in writing regarding the painful experiences giving rise to their claims. As has been noted by the Representative Plaintiffs in their affidavits sworn in support of this motion, re-living Residential School experiences is a painful and traumatizing experience[92] – even in a paper-based process, the re-traumatizing aspect of reliving these experiences cannot be avoided.

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[89] Reiher Affidavit at paras 17-18, **MR, Tab 9**.
[90] Reiher Affidavit at para 21, **MR, Tab 9**;
Grant Affidavit at paras 134, 139, **MR, Tab 8**.
[91] Grant Affidavit at paras 134-36, **MR, Tab 8**.
[92] Gilbert Affidavit at paras 25-26, **MR, Tab 2**;
Jules Affidavit at para 24, **MR, Tab 3**;
Bulpit Affidavit at paras 27-28, **MR, Tab 5**;

88. By contrast, the Claims Process in this proposed settlement results in as little emotional burden as possible. The List 1 claim process requires absolutely no supporting narrative or documentation whatsoever, while the List 2 claim process requires only a brief statutory declaration regarding where the claimant stayed overnight while they attended Residential School as a Day Scholar.[93] This unprecedented low burden of proof is a substantial benefit to the Class Members, who will find it correspondingly easier to make claims and receive the compensation they deserve.

(d) Reconsideration claims

89. Class Counsel have already engaged in extensive planning with regard to providing free legal services for claimants seeking reconsideration of their claims.[94] The ability of claimants to access free legal services in support of reconsideration is a significant benefit.

(e) The Band Class litigation

90. Class Counsel have been careful to protect and promote the best interests of the Band Class Members throughout the negotiation of the proposed settlement for the Survivor and Descendant Classes. In particular, the releases of liability in the Settlement Agreement were specifically negotiated so that they will not prejudice the ongoing litigation of the Band Class, and any issues which form part of the Band Class claims have been carved out of the proposed settlement.[95]

(f) De-linking the Fee Agreement

91. Class Counsel and Canada negotiated the terms of the Day Scholars Survivor and Descendant Class Settlement Fee Agreement ("Fee Agreement") separately from the negotiations

Paul Affidavit at para 27, **MR, Tab 4**.
[93] Claims Process for Day Scholar Compensation Payment, Schedule "C" to Settlement Agreement, **MR, Tab 1a**.
[94] Grant Affidavit at paras 140-144, **MR, Tab 8**.
[95] Grant Affidavit at paras 145-47, **MR, Tab 8**.

of the Settlement Agreement. Throughout both sets of negotiations, both Class Counsel and Canada were clear that Settlement Agreement benefits would never be reduced in order to fund the Fee Agreement, and that failure to finalize the Fee Agreement would in no way impact the Settlement Agreement.[96]

92. The Fee Agreement precludes any possibility that the legal fees amounts and disbursements to be paid to Class Counsel would come from the compensation for the Class Members, or reduce the compensation for the Class Members in any way.

(g) Timing

93. The claims period is unusually lengthy: 21 months, plus 3 months of leeway for late claims.[97] This is also a substantial benefit for the Class Members.

94. There is a strict timeframe (45 days) for Canada's assessment of claims. Since the settlement is uncapped, and claims can be paid out as they are approved, the strict timeframe will help to ensure that claimants receive their Day Scholar Compensation Payments in a timely fashion.[98]

95. Overall, the proposed settlement, "considered in its overall context, provides significant advantages to Class Members which continued litigation might not have achieved."[99]

(iii) Likelihood of success/recovery

96. Most cases involving historic wrongdoing face a number of evidentiary problems, and the issue is exacerbated where, as here, the case is a complex one involving a lengthy period of time, and many institutions. As a result, as this Court noted in approving the McLean Settlement:

[96] Grant Affidavit at paras 149-150, **MR, Tab 8**.
[97] Settlement Agreement at art 1.01 (definitions of "Claims Period" and "Ultimate Claims Period"), **MR, Tab 1a**.
[98] Claims Process for Day Scholar Compensation Payment, Schedule "C" to Settlement Agreement, **MR, Tab 1a**.
[99] *Wenham v. Canada (Attorney General)*, 2020 FC 588 at para. 60.

"[w]hile there may be some assurance of some success, its nature and breadth is clearly uncertain." This type of case "cries out for settlement."[100]

97. Even when this litigation was first commenced, counsel were aware that the Plaintiffs and Classes faced substantial litigation risk, including:[101]

a. **Limitation defences**: In *Blackwater v. Plint*, Chief Justice Brenner of the British Columbia Supreme Court held that any claims regarding treatment of students at a Residential School, other than those of a sexual nature, were subject to a general two-year limitation period.[102] A subsequent decision by the British Columbia Court of Appeal explicitly left open the question of whether a limitation period could bar a claim brought for loss of language and culture caused by attendance at a Residential School;[103]

b. **Novel claim for damages for loss of Indigenous language and culture**: at the time that this action was commenced, it was the first time a lawsuit in Canada had asserted a claim for damages for the loss of Indigenous language and culture. The novelty of the legal claim added substantial risk, which has previously been recognized by this Court when approving the Sixties Scoop Settlement;[104] and

c. **Impact of IRSSA releases**: IRSSA was intended to be a final resolution of any and all claims relating to Residential Schools.[105] Accordingly, it contained a "deemed release" that purported to release the claims of all attendees at Residential Schools, including Day Scholars, "in relation to an Indian Residential School or the

[100] *McLean v. Canada*, 2019 FC 1075 at para. 79.
[101] Grant Affidavit at para 31, **MR, Tab 8**.
[102] *Blackwater v. Plint*, 2001 BCSC 997 at paras. 260-281.
[103] *Blackwater v. Plint*, 2003 BCCA 671 at para. 82.
[104] *Riddle v. Canada*, 2018 FC 641 at para. 47.
[105] See *e.g.* the language used in the Preamble to the IRSSA.

operation of Indian Residential Schools".[106] Similarly, many Day Scholars who sought to receive compensation through the IAP for sexual or serious physical abuse were required to sign a further "Final Legal Release" which further purported to release the signatory's claims "arising from or related to their "participation in program or activity associated with or offered at or through any Indian Residential School" and "the operation of Indian Residential Schools".[107] The existence of both the general deemed release and the IAP release created a further substantial risk to the claims of many Survivor and Descendant Class Members.

98. Although Canada eventually stopped asserting the limitation defences, it continued to contest this litigation vigorously on almost every other front. As outlined above, Canada's Amended Statement of Claim is full of denials of both liability and damages.

99. In addition to the litigation risks anticipated at the commencement of the action, and as outlined above, new issues also arose in the course of Canada's defence.

100. The issue of causation was one of Canada's primary focuses in defending the action through the years. Specifically, Canada had highlighted an argument that it intended to advance at trial that, for Day Scholars, attendance at Residential Schools did not cause loss of language and culture on a "but for" standard, given the assimilationist pressures present in Canadian society generally.[108] This causation argument is also a significant issue with regard to the claims of the Descendant Class, whose loss of language and culture would have had to be tied directly to their parents' attendance at Residential School as Day Scholars.[109]

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[106] IRSSA at s. 11.01. The wording contained in the IRSSA was implemented in the various Approval Orders issued by provincial superior courts, which implemented the IRSSA.
[107] "Schedule 'P' IAP Final Legal Release", online (pdf): *Residential Schools Settlement* <https://www.residentialschoolsettlement.ca/ScheduleP.pdf>.
[108] *Clements v. Clements*, 2012 SCC 32 at para. 8, [2012] 2 SCR 181.
[109] Grant Affidavit at para 108, **MR, Tab 8**.

101. The Descendant Class also faced the real possibility that a court would not find that a duty of care was owed to them, particularly on the basis of lack of proximity to satisfy the *Cooper*/*Anns* test.[110]

102. There was also the issue of apportioning liability to the Church Entities which had been involved in the operation of Residential Schools. The Representative Plaintiffs took the position that the Church Entities' involvement had been at Canada's direction and pursued only Canada's several liability. Canada fought this approach strenuously, albeit ultimately unsuccessfully, and argued that relevant Church Entities should be included in the proceeding. Even once the possibility of adding Church Entities as third parties had been foreclosed, Canada continued to highlight that it intended to argue that liability still rested with the Church Entities, which, in addition to defeating the Class Members' claims, would have resulted in a virtually impossible evidentiary disaster, given the sheer number of Church Entities.[111]

103. This did not mean, however, that Canada had abandoned the issue of the Church Entities' liability. Throughout Canada's defence of the litigation over the subsequent years, including during the parties' discussions regarding the Trial Plan, Canada highlighted that it intended to argue liability rested with the Church Entities.[112]

104. Finally, with regard to damages, in addition to the novelty of the claim for damages for loss of culture and language, there was a further risk that, even if the Court found that there was an entitlement to these damages, the Court could still find that an aggregate damages award was not appropriate for a variety of reasons, including an inability to fix quantum on an aggregate scale without individual precedents, or the need for individual Class Members' evidence.[113]

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[110] *Cooper v. Hobart*, 2001 SCC 79 at paras. 31-39, [2001] 3 SCR 537.
[111] Grant Affidavit at paras 109-111, **MR, Tab 8**.
[112] Grant Affidavit at para 111, **MR, Tab 8**.
[113] *Federal Courts Rules*, SOR/98-106, rules 334.26, 334.27.

105. Although Class Counsel and the Plaintiffs take the position that all of these litigation risks were, and are, surmountable, a holistic consideration of the litigation risks and pitfalls demonstrates that the settlement is a compromise which falls within the zone of reasonableness, and which therefore should receive court approval.

(iv) Amount and nature of pre-trial activities

106. The proposed settlement was reached in the lead-up to the first portion of the common issues trial, meaning that thousands of documents had been exchanged and reviewed, and that the parties were completely immersed in the issues. Since they had already reviewed almost all of the available evidence,[114] Class Counsel clearly had enough information available to them to negotiate sensibly with the Defendant and reach a reasonable settlement.[115]

(v) Arm's-length bargaining/dynamics of negotiations

107. The parties underwent a lengthy preliminary set of settlement discussions, including two failed rounds of judicial mediation, and began preparing full-bore for trial before finally being able to reach the settlement agreement.

108. In total, the parties engaged in approximately two years of settlement discussions amidst seven other years of hard-fought litigation.

109. "Given the record in this case, the aggressive litigation posture of Canada and the dogged determination of the Class", there can be no doubt that the bargaining was arm's length, in the absence of collusion.[116]

[114] Grant Affidavit at para 90, **MR, Tab 8**.
[115] *Silver v Imax Corp.*, 2016 ONSC 403 at para. 24.
[116] *Wenham v. Canada (Attorney General)*, 2020 FC 588 at paras. 73, 75.

(vi) Recommendation of Class Counsel

110. Class Counsel are a very experienced group of class action and Aboriginal law lawyers. Not only do they have formidable subject matter expertise and knowledge, but they were all intimately involved with IRSSA,[117] the most closely related precedent case which directly gave rise to this litigation. They recommend this Settlement Agreement as being fair, reasonable, and in the best interests of the Survivor and Descendant Class Members.[118]

111. As noted above, Canada's final offer to settle, and the Settlement Agreement, effectively addressed the Representative Plaintiffs' primary objectives for resolution, particularly the principle that none of the Day Scholars who were unjustly excluded from the CEP portion of IRSSA would be left behind from this settlement. This was the basis for Class Counsel's recommendation to accept the offer to settle and, ultimately, to enter into the Settlement Agreement.[119]

(vii) Communication with Class Members/expressions of support and objection

112. Since the public announcement of the proposed settlement on June 7, 2021, hundreds of putative Class Members have contacted Class Counsel by phone, email and mail regarding the Settlement Agreement or settlement approval notice hearing, and a member of the Class Counsel team has responded to every single one of these inquiries.[120]

113. The number of objections which have been received is low, relative to the estimated size of the Survivor and Descendant Classes, and also relative to the number of inquiries received by Class Counsel from putative Class Members. In fact, the objections are out-numbered by the statements of support from Class Members.

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[117] Grant Affidavit at para 20, **MR, Tab 8**.
[118] Grant Affidavit at paras 88, 92, **MR, Tab 8**.
[119] Grant Affidavit at paras 68, 70, **MR, Tab 8**.
[120] Argyle Affidavit at para 7, **MR, Tab 12**.

114. Class Counsel are of the opinion that the low number of objections received, despite a robust two-month-long Notice Plan, reflects that there is broad support for the Settlement Agreement amongst the Class Members.[121]

(viii) Future expense and likely duration of litigation

115. Although this settlement was achieved close to the commencement of the first part of the common issues trial, the nature of this case makes it quite likely that any trial judgment would be appealed as far as possible, meaning that it could be years after an initial judgment is rendered before it becomes final.

116. Additionally, even once the first part of the common issues trial was resolved, there would still be the second part of the common issues trial to proceed. Following that, if the court found that an aggregate damages award would not be appropriate, there would be yet further years of delay in order to hold thousands of individual hearings to resolve individual damages issues – if such a process would even be possible given limited court resources.

117. The Survivor Class Members are an elderly population, and it is estimated that approximately 2,000 of them have died since the May 30, 2005, CEP eligibility cut-off date,[122] including two of the Representative Plaintiffs. Every further delay results in the loss of more Class Members, and therefore must be avoided if there is a fair and reasonable alternative like the proposed settlement. In circumstances like these, "it is in the interests of the class members to have a timely and prompt payment."[123]

[121] Grant Affidavit at paras 103-104, **MR, Tab 8**.
[122] Aggarwala Expert Report at p 1, Exhibit "C" to the Aggarwala Affidavit, **MR, Tab 10**.
[123] *McCarthy v. Canadian Red Cross Society* (2001), [2001] OJ 2474 at para. 18.

(ix) Conclusion

118. The alternative to approving this settlement would be that the Survivor and Descendant Class Members go on to trial, and then possible appeals. Not only would further years of litigation delay compensation for elderly Class Members, it would result in a judgment where some of the key benefits from the settlement (such as the establishment of the Day Scholars Revitalization Fund) could not be achieved.

119. The Survivor and Descendant Class claims have been ably prosecuted by Class Counsel to date. Having fully canvassed the litigation risks and the available evidence, Class Counsel now recommend the proposed settlement.

120. After almost a decade of fighting to no longer be left behind, it is well beyond time for the Survivor and Descendant Class Members to receive closure, to receive recognition and compensation for their experiences, and to feel as if they are walking the path of reconciliation with other Residential School survivors.

B. Appointment of Claims Administrator

121. A claims administrator is appropriate if it is reputable and experienced in administrating class action settlements.[124] A further factor in favour of such an appointment may be the proposed claims administrator's earlier involvement and familiarity with the action.[125]

122. Deloitte is more than qualified to act as Claims Administrator and to administrator the Day Scholars Compensation Payments claims process. Deloitte has a wealth of general class action settlement administration experience, and currently acts as court-appointed claims administrator in the McLean Settlement, from which many useful lessons can, and will be, drawn to assist with

[124] *Green v. Tecumseh Products of Canada Limited*, 2016 BCSC 217 at para. 49.
[125] *Donohue v Baja Mining*, 2016 ONSC 1569 at para. 38.

ensuring that the administration of the claims process in this action proceeds as smoothly and efficiently as possible.

C. Amendment of Band Class documents

123. The parties have made considerable efforts to come to agreement on an amended certification order and amended statement of claim, so that these foundational documents reflect the shape and core issues of the litigation moving forward, should the Settlement Agreement be approved.[126]

PART V - ORDER SOUGHT

124. The Plaintiffs respectfully request that this Court make an Order:

a. declaring that the Settlement Agreement is a fair and reasonable settlement of the claims of the Survivor and Descendent Classes, and is in the best interests of the Survivor and Descendant Classes;

b. declaring that the Settlement Agreement is approved pursuant to Rule 334.29(1) of the *Federal Courts Rules*, SOR/98-106, and directing that it shall be implemented in accordance with its terms and granting the comprehensive release in favour of the Defendant that is set out therein at ss. 42.01 and 43.01;

c. dismissing the claims of the Survivor and Descendant Class Members as against the Defendant, with prejudice and without costs;

d. appointing Deloitte LLP as the Claims Administrator, as defined in the Settlement Agreement, to carry out the duties assigned to that role in the Settlement Agreement;

[126] Grant Affidavit at para 148, **MR, Tab 8**.

e. contingent on the Court's approval of the Settlement Agreement, amending the Certification Order of Justice Harrington, dated June 18, 2015, in the form attached to the Plaintiffs' Notice of Motion as Schedule "B";

f. contingent on the Court's approval of the Settlement Agreement, granting the Plaintiffs leave to amend the First Re-Amended Statement of Claim filed June 26, 2015, in the form attached to the Plaintiffs' Notice of Motion as Schedule "C"; and

g. declaring that, if the Settlement Agreement is not approved, the parties are all restored, without prejudice, to their respective positions as such existed on February 1, 2021, prior to commencement of settlement negotiations.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of August, 2020.

John Kingman Phillips
Peter R. Grant
Diane Soroka
W. Cory Wanless
Tina Q. Yang

SCHEDULE "A" – JURISPRUDENCE

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25 *McCarthy v. Canadian Red Cross Society* (2001), [2001] OJ 2474

26 *Green v. Tecumseh Products of Canada Limited*, 2016 BCSC 217

27 *Donohue v Baja Mining*, 2016 ONSC 1569

SCHEDULE "B" – LEGISLATION

***Federal Courts Rules*, SOR/98-106**

334.26 (1) If a judge determines that there are questions of law or fact that apply only to certain individual class or subclass members, the judge shall set a time within which those members may make claims in respect of those questions and may

(a) order that the individual questions be determined in further hearings;

(b) appoint one or more persons to evaluate the individual questions and report back to the judge; or

(c) direct the manner in which the individual questions will be determined.

Judge may give directions

(2) In those circumstances, the judge may give directions relating to the procedures to be followed.

Who may preside

(3) For the purposes of paragraph (1)(a), the judge who determined the common questions of law or fact, another judge or, in the case of a claim referred to in subsection 50(3), a prothonotary may preside over the hearings of the individual questions.

Defendant's liability

334.27 In the case of an action, if, after determining common questions of law or fact in favour of a class or subclass, a judge determines that the defendant's liability to individual class members cannot be determined without proof by those individual class members, rule 334.26 applies to the determination of the defendant's liability to those class members.

Settlements

Approval

334.29 (1) A class proceeding may be settled only with the approval of a judge.

Binding effect

(2) On approval, a settlement binds every class or subclass member who has not opted out of or been excluded from the class proceeding.