

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE
SECWEPEMC INDIAN BAND and the TK'EMLUPS TE SECWEPEMC
INDIAN BAND, and CHIEF GARRY FESCHUK, on behalf of the SEHEL
T INDIAN BAND and the SEHEL T INDIAN BAND

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL OF CANADA

Defendant

MOTION RECORD OF THE PLAINTIFFS

(Motion for Settlement Approval)

February 22, 2023

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FEDERAL COURT
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SECWEPENC INDIAN BAND and the TK'EMLUPS TE
SECWEPENC INDIAN BAND, and CHIEF GARRY FESCHUK, on
behalf of the SECHELT INDIAN BAND and the SECHELT INDIAN
BAND

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL OF CANADA

Defendant

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TAB 1

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE
SECWEPEMC INDIAN BAND and the TK'EMLUPS TE SECWEPEMC
INDIAN BAND, and CHIEF GARRY FESCHUK, on behalf of the SECHELT
INDIAN BAND and the SECHELT INDIAN BAND

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL 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 February 27, 2023, at the Federal Court, in the City of Vancouver, in the Province of British Columbia.

THE MOTION IS FOR:

1. an order that the settlement agreement dated January 18, 2023 (together with all of its schedules, the "**Settlement Agreement**"), attached as **Schedule "A"** to this notice of motion, is a fair and reasonable settlement of the claims of the Band Class, and is in the best interests of the Band Class;

2. an order approving the Settlement Agreement pursuant to Rule 334.29 of the *Federal Courts Rules*, SOR/98-106, and directing that it shall be implemented in accordance with its terms;
3. an order and declaration that the Settlement Agreement is binding on the Defendant and on all members of the Band Class;
4. an order directing that notice of approval of the Settlement Agreement (the “**Notice**”) be given to the Band Class in accordance with the Notice Plan attached hereto as **Schedule “B”**, and the Notice shall be substantially the form of Notice attached hereto as **Schedule “C”**;
5. an order dismissing the claims of the Band Class Members as against the Defendant, with prejudice and without costs, and granting the comprehensive release in favour of the Defendant that is set out at ss. 27.01 – 27.09 of the Settlement Agreement;
6. an order that the not-for-profit entity incorporated by Plaintiffs pursuant to the *Canada Not-for-Profit Corporations Act*, SC 2009, c 23 or analogous federal legislation or legislation in any of the provinces or territories (the “**Not-For-Profit**”) will act as the sole trustee of the Trust, as defined by s. 1.01 the Settlement Agreement;
7. an order that Canada shall pay two billion eight hundred million Canadian dollars (\$2,800,000,000) (the “**Fund**”) forthwith and no later than thirty (30) days after the Implementation Date to settle the Trust;
8. an order that the Not-For-Profit, as sole trustee of the Trust, shall receive, hold, invest, manage and disburse the Trust for the benefit of the Band Class Members in accordance

- with the Settlement Agreement, the terms of the Trust as set out in a written trust agreement signed by the Not-For-Profit to indicate its acceptance of the Trust and the duties and obligations of trustee, and in accordance with the Investment Policy and Disbursement Policy attached as Schedules D and E to the Settlement Agreement;
9. an order that Canada shall make best efforts to exempt any income earned by the Trust from federal taxation, and Canada shall have regard to the measures that it took in similar circumstances for the class action settlements addressed in paragraph 81(1)(g.3) of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp.);
 10. an order that The Fund will be used in furtherance of the Four Pillars as defined by s. 21.03 and Schedule F of the Settlement Agreement;
 11. an order that neither the Fund nor income earned on the Fund can be used:
 - a) to fund individuals;
 - b) to fund commercial ventures;
 - c) as collateral or to secure loans; or
 - d) as a guarantee;
 12. an order that no monies paid out from the Trust to a Band Class Member may be subject to redirection, execution, or seizure by third Parties, including third party managers;
 13. 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 September 21, 2022, prior to the adjournment *sine die* of the common issues trial; and

14. 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;
2. an Amended Statement of Claim was filed June 17, 2013, a First Re-Amended Statement of Claim was filed on June 26, 2015;
3. by order of this Court dated June 18, 2015 (and subsequently amended), this action was certified as a class proceeding for a Class Period of 1920 to 1997 on behalf of three subclasses: the Survivor Class (sometimes referred to as the Day Scholars); the Descendant Class, consisting of the children of members of the Survivor Class (by birth or adoption); and the Band Class;
4. after almost a decade of hard-fought litigation, the Parties executed a settlement agreement dated June 4, 2021, to resolve the claims of the Survivor and Descendant Classes in their entirety;
5. on September 24, 2021, Justice McDonald approved the Survivor and Descendant Classes' settlement, pursuant to Rule 334.29 of the *Federal Court Rules*, as fair, reasonable, and in the interests of the Survivor and Descendant Classes, and without prejudice to the ongoing litigation of the Band Class;
6. at the request of the Parties, the Certification Order was amended on February 8, 2022. On February 11, 2022, the Representative Plaintiffs filed a Second Re-Amended Statement of Claim, which set out the continued claims of the Band Class.

7. pursuant to the amended Certification Order, the Band Class is defined as “the Tk’emlúps te Secwépmc Indian Band and the shíshálh Band and any other Indian Band that:
 - a) has or had some members who are or were Survivors, or in whose community a Residential School is or was located; and
 - b) is specifically added to this claim in relation to one or more specifically identified Residential Schools.”
8. the term “Survivors” in the above class definition is defined by the Second Re-Amended Statement of Claim as “all Aboriginal Persons who attended as a student or for educational purposes for any period at a Residential School, during the Class Period”;
9. on September 17, 2022, the Parties reached a framework to settle the Claim;
10. on September 21, 2022, at the request of the Parties, the Court adjourned the common issues trial *sine die* to facilitate ongoing settlement negotiations between the Parties;
11. the Parties executed the Settlement Agreement on January 18, 2023;
12. amongst other terms, the Settlement Agreement provides that:
 - a) Canada is to pay a lump-sum amount of \$2.8 billion to establish the Fund, to be held in the Trust for the benefit of the Band Class;
 - b) the Representative Plaintiffs will cause to be incorporated the Not-For-Profit as sole trustee of the Trust, to administer the Fund for the purposes of the Four Pillars, namely:

- (1) revitalizing and protecting Indigenous languages of the Band Class;
 - (2) protecting and revitalizing Indigenous cultures of the Band Class;
 - (3) protecting the heritage of the Band Class; and
 - (4) promoting wellness for Indigenous communities and their members;
13. the Settlement Agreement includes an Investment Policy and a Disbursement Policy that set requirements regarding how the Not-For-Profit will invest the Fund and disburses the Fund and income earned from investment of the Fund to the Class;
 14. the Settlement Agreement is subject to this Court's approval, pursuant to Rule 334.29 of the *Federal Court Rules*, before it is binding;
 15. the Settlement Agreement is the result of intensive arm's-length negotiations by experienced class action counsel, and is fair, reasonable, and in the best interests of the Band Class;
 16. the Settlement Agreement is supported by the Representative Plaintiffs;
 17. the Band Class Members were provided with notice of the proposed settlement and settlement approval motion hearing in accordance with the Order of this court dated January 21, 2023;
 18. if the Court approves the Settlement Agreement, the Plaintiffs will bring further motions for approval of the Notice of Settlement Approval;
 19. Rule 334.29 of the *Federal Courts Rules*, SOR/98-106;

20. the motion is made on consent and by agreement of the Defendant and the Plaintiffs; and
21. 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 Peter Grant, sworn February 20, 2023;
2. the affidavit of former Chief Shane Gottfriedson, affirmed February 21, 2023
3. the affidavit of former Chief Garry Feschuk, affirmed February 22, 2023;
4. the affidavit of former Chief Matthew Coon Come, affirmed February 20, 2023;
5. the affidavit of Jeanine Alphonse, sworn February 22, 2023; and
6. such further and other evidence as counsel may advise and this Honourable Court may permit.

February 22, 2023

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FEDERAL COURT

CLASS PROCEEDING

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE SECWEPENC INDIAN BAND and the TK'EMLUPS TE SECWEPENC INDIAN BAND, and CHIEF GARRY FESCHUK, on behalf of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND

PLAINTIFFS

and

HIS MAJESTY THE KING IN RIGHT OF CANADA as represented by THE ATTORNEY GENERAL OF CANADA

DEFENDANT

BAND CLASS SETTLEMENT AGREEMENT

WHEREAS:

- A. Canada and certain religious organizations operated Indian Residential Schools in which Indigenous children, their families, and communities suffered harms.
- B. Two primary objectives of the Indian Residential Schools system were to remove and isolate Indigenous children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture.
- C. The consequences of the Indian Residential Schools system were profoundly negative, and this system has had a lasting and damaging impact on Indigenous survivors, their families, and communities.
- D. On May 8, 2006, Canada entered into the Indian Residential Schools Settlement Agreement, which provided for compensation and other benefits to individuals in relation to their attendance at Indian Residential Schools.
- E. On August 15, 2012, the Plaintiffs filed a putative class action in the Federal Court bearing Court File No. T-1542-12, *Gottfriedson et al. v. His Majesty the King in Right of Canada*. The

Plaintiffs filed an Amended Statement of Claim on June 11, 2013, and a First Re-Amended Statement of Claim on June 26, 2015.

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

G. On June 4, 2021, the parties entered into the Day Scholars Survivor and Descendant Class Settlement Agreement, which provided compensation and other benefits to the Survivor Class and Descendant Class relating to the attendance of Day Scholars at Indian Residential Schools.

H. On September 24, 2021, pursuant to the terms of the Day Scholars Survivor and Descendant Class Settlement Approval Order, the Federal Court approved the Day Scholars Survivor and Descendant Class Settlement Agreement.

I. Under the terms of the Day Scholars Survivor and Descendant Class Settlement Approval Order, the claims of the Band Class continued notwithstanding the settlement of the claims of the Survivor Class and Descendant Class.

J. At the request of the Parties, the Federal Court amended the June 18, 2015 Certification Order on September 24, 2021 and again on February 8, 2022.

K. On February 11, 2022, the Representative Plaintiffs filed a Second Re-Amended Statement of Claim, which set out the continued claims of the Band Class.

L. The Band Class consists of 325 Bands that either are named as Representative Plaintiffs or have opted into the Action.

M. The Parties intend there to be a fair and comprehensive settlement of the claims of the Band Class that aligns with Canada's desire to ensure funding to support healing, wellness, education, heritage, language, and commemoration activities and which promotes the Four Pillars developed by the Representative Plaintiffs:

- a. Revival and protection of Indigenous languages;
- b. Revival and protection of Indigenous cultures;
- c. Protection and promotion of heritage; and
- d. Wellness for Indigenous communities and their members

N. Subject to the Settlement Approval Order, the claims of the Band Class shall be settled on the terms contained in this Agreement.

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. His Majesty the King in Right of Canada*;

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

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

“Band” or “Indian Band” means any entity that:

- a. Is either a “band” as defined in s. 2(1) of the *Indian Act* or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and
- b. Asserts that it holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

“Band Class” means any Indian Band that has opted in to this **Action** and is listed on Schedule C, which is the list of **Band Class Members** attached to the Order dated September 6, 2022;

“Band Class Member” means a member of the **Band Class** and **“Band Class Members”** means all of them, collectively;

“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 His Majesty the King 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 certifying this **Action** under the *Federal Courts Rules* dated June 18, 2015, as amended by order of the **Court** dated September 24, 2021, and further amended by order of the Court dated February 8, 2022, attached as Schedule B;

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

“**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 Scholars Settlement Approval Order**” means the Order of the **Court** dated September 24, 2021 approving the **Day Scholars Survivor and Descendant Class Settlement Agreement**;

“**Day Scholars Survivor and Descendant Class Settlement Agreement**” means the agreement executed on June 4, 2021 between the Parties and approved by the **Court** resulting in a full and final settlement of the claims of the **Survivor Class** and the **Descendant Class** in this **Action**;

“**Disbursement Policy**” means the Policy for the distribution of the income from the **Fund** and the **Fund** to the members of the **Band Class**, attached as Schedule E;

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

“**Four Pillars**” means the four core principles attached as Schedule F animating this **Agreement** and the management of the **Fund**, namely:

- a. revival and protection of Indigenous languages;
- b. revival and protection of Indigenous cultures;
- c. promotion and protection of heritage; and

d. wellness for Indigenous communities and their members.

“**Fund**” means the two billion eight hundred million dollars (\$2,800,000,000.00) to be paid by Canada into the **Trust** as referred to in Section 24;

“**Investment Policy**” is the Policy for the investment of the **Fund** to the **Band Class Members**, attached as Schedule D;

“**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**;

“**Indigenous**” includes Aboriginal peoples under s. 35 of the *Constitution Act, 1982*;

“**Opt In**” means any **Band** that has been added to the claim and is listed on Schedule “A” of the Order of the **Court** dated September 6, 2022;

“**Parties**” means the signatories to this **Agreement**;

“**Released Claims**” means those causes of action, liabilities, demands, and claims released pursuant to the **Settlement Approval Order**, as set out in Section 27 herein;

“**Releasor**” means each **Band Class Member** that is bound by this **Agreement** following the **Settlement Approval Order**;

“**Representative Plaintiffs**” means Tk'emlúps te Secwépemc Indian Band and Sechelt Indian Band as represented by Shane Gottfriedson and Garry Feschuk respectively;

“**Residential Schools**” means the institutions identified in the list of Indian Residential Schools attached as Schedule “A” to the **Certification Order** and later amended as Schedule “B” of the Order dated September 6, 2022;

“**shíshálh Nation**” means Sechelt Indian Band;

“**Survivor**” means any Indigenous person who attended as a student or for educational purposes for any period at a **Residential School**, during the **Class Period**; and

“**Trust**” means the entity established pursuant to Section 22.01 to receive, hold, invest, manage,

and disburse the **Fund** for the benefit of the **Band Class Members** in accordance with this **Agreement**.

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 Second Re-Amended Statement of Claim.

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 Band 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: Second Re-Amended Statement of Claim, filed February 11, 2022

Schedule B: Certification Order, June 18, 2015

Schedule B.1 September 24, 2021 Order (order only) + Schedule G of the Settlement Agreement

Schedule B.2 February 8, 2022 Order (order only)

Schedule C: List of Opted-In Band Class Members

Schedule D: Investment Policy

Schedule E: Disbursement Policy and Disbursement Formula

Schedule F: The Four Pillars

12. Entire Agreement

12.01 This Agreement constitutes the entire agreement among the Parties with respect to the Band 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.

13. No Effect on Treaties or Existing Agreements

13.01 Nothing in this Agreement shall affect, cancel, or supersede any treaty between Canada and any one or more Band Class Members, or any existing agreement between Canada and any one or more Band Class Members.

14. No Derogation from Constitutional Rights

14.01 This Agreement is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them.

15. Benefit of the Agreement

15.01 This Agreement will enure to the benefit of and be binding upon the Parties, the Band Class Members, and their respective successors.

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 Band Class Member is located and the laws of Canada applicable therein and where there is a conflict, the laws of Canada shall take precedence.

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 A French translation of this Agreement will be prepared as soon as practicable after the execution of this Agreement. Canada will pay for the costs of translation. 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 the Implementation Date on the Parties and all Band Class Members. The Settlement Approval Order of the Court constitutes deemed approval of this Agreement by all of the Band 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.

NOT-FOR-PROFIT ENTITY

21. Establishing the Not-For-Profit Entity

21.01 After the signing of this Agreement, but before the Implementation Date, the Plaintiffs will cause to be incorporated a not-for-profit entity under the *Canada Not-for-profit Corporations Act*, SC 2009, c. 23, or analogous federal legislation or legislation in any of the provinces or territories (the legislation pursuant to which the not-for-profit entity is incorporated, including any amendments thereto or replacements thereof, is herein referred to as the “**Governing Corporate Statute**”) to act as trustee of the Trust.

21.02 The not-for-profit entity will be independent of the Government of Canada.

21.03 The not-for-profit entity will have as its purposes the Four Pillars, which are described in more detail in Schedule F:

- a. Revival and protection of Indigenous languages of the Band Class Members;

- b. Revival and protection of Indigenous cultures of the Band Class Members;
 - c. Wellness for Indigenous communities and their members; and
 - d. Protection and promotion of the heritage of the Band Class Members.
- 21.04 The not-for-profit entity will have three (3) first directors, to be appointed one each by Tk'emlúps te Secwépemc, shíshálh Nation, and the Grand Council of the Crees (Eeyou Istchee) and whose names shall be included on the documentation filed with the government ministry or department with jurisdiction for the issuance of the articles of incorporation for the not-for-profit entity under the Governing Corporate Statute.
- 21.05 The first directors shall form an interim board that will govern the not-for-profit entity for a term of no more than one year after the Implementation Date, or until the permanent board is constituted, whichever occurs first.
- 21.06 The not-for-profit entity shall have a permanent board consisting of nine (9) directors, all of whom must be Indigenous, and cannot be elected officials of any Band Class Members, and who will be elected by the members of the not-for-profit entity in accordance with its by-laws, articles of incorporation and the Governing Corporate Statute. In addition to the qualifications in the immediately preceding sentence (*i.e.*, must be Indigenous and cannot be an elected official of any Band Class Member), the permanent board shall be comprised of the following directors having the following qualifications:
- a. Three directors, one of whom shall be elected from only a candidate or candidates whose nomination for election or appointment to the board is approved in advance by Tk'emlúps te Secwépemc, one of whom shall be elected from only a candidate or candidates whose nomination for election or appointment to the board is approved in advance by shíshálh Nation, and one of whom shall be elected from only a candidate or candidates whose nomination for election or appointment to the board is approved in advance by the Grand Council of the Crees;
 - b. Five regional directors, whose election or appointment to the office of director of the not-for-profit entity (collectively, the “**Regional Directors**” and each a “**Regional Director**”) shall be in accordance with the following:
 - i One Regional Director for British Columbia and Yukon who shall be elected or appointed from among only a candidate or candidates each of whom is a member

of a Band Class Member of British Columbia or Yukon;

- ii One Regional Director for Alberta and Northwest Territories, who shall be elected or appointed from among only a candidate or candidates each of whom is a member of a Band Class Member of Alberta or Northwest Territories;
 - iii One Regional Director for Saskatchewan, who shall be elected or appointed from among only a candidate or candidates each of whom is a member of a Band Class Member of Saskatchewan;
 - iv One Regional Director for Manitoba, who shall be elected or appointed from among only a candidate or candidates each of whom is a member of a Band Class Member of Manitoba; and
 - v One Regional Director for Quebec, Ontario, and the Atlantic Provinces, who shall be elected or appointed from among only a candidate or candidates each of whom is a member of a Band Class Member of Quebec, Ontario, or one of the Atlantic Provinces; and
- c. One director who shall be elected or appointed from among only a candidate or candidates each of whom is approved in advance by Canada (herein referred to as the **“Canada Director”**) and shall be approved by the committee under Section 21.08
- 21.07 The Canada Director shall not hold the office of chair of the board of directors of the not-for-profit entity or the office of vice-chair of the board of directors of the not-for-profit entity, and shall not sit as chair in any meeting of the not-for-profit entity.
- 21.08 The first election of Regional Directors shall be from among only candidates selected by a committee of the board of directors of the not-for-profit entity, and the membership of this committee shall consist of one representative from each of Tk'emlúps te Secwépemc, shíshálh Nation, and the Grand Council of the Crees. The board of directors of the not-for-profit entity shall constitute such committee and appoint its members, one each upon the recommendation of, respectively, Tk'emlúps te Secwépemc, shíshálh Nation, and the Grand Council of the Crees. For certainty, it is understood and agreed that despite any vacancy on the committee, the members of the committee may exercise all the powers of the committee if a majority of the members remain on the committee.
- 21.09 Subsequent elections of Regional Directors shall be from among only candidates selected

by a committee of the board of directors of the not-for-profit entity, and the membership of this committee shall consist of one representative each of Tk'emlúps te Secwépemc, shíshálh Nation, the Grand Council of the Crees, the BC-Yukon region, the Alberta-Northwest Territories region, the Saskatchewan region, the Manitoba region, and the Quebec, Ontario, and Atlantic Provinces region. The board of directors of the not-for-profit entity shall constitute such committee and appoint its members, one each upon the recommendation of, respectively, Tk'emlúps te Secwépemc, shíshálh Nation, the Grand Council of the Crees the BC-Yukon region, the Alberta-Northwest Territories region, the Saskatchewan region, the Manitoba region, and the Quebec, Ontario, and Atlantic Provinces region. For certainty, it is understood and agreed that despite any vacancy on the committee, the members of the committee may exercise all the powers of the committee if a majority of the members remain on the committee.

22. Operation of the Not-For-Profit Entity

- 22.01 The not-for-profit entity will establish a Trust and as trustee under the Trust, the not-for-profit entity will receive, hold, invest, manage, and disburse the Fund for the benefit of the Band Class Members in accordance with this Agreement, the terms of the Trust as set out in a written trust agreement signed by the not-for-profit entity to indicate its acceptance of the Trust and the duties and obligations of trustee, and in accordance with the Investment Policy and Disbursement Policy attached as Schedules D and E.
- 22.02 The not-for-profit entity shall be the sole trustee of the Trust.
- 22.03 The duties and responsibilities of the directors of the not-for-profit entity will be:
- a. to establish the Trust;
 - b. to invest the Fund having regard to the Investment Policy;
 - c. to disburse the Fund to Band Class Members in accordance with the Disbursement Policy;
 - d. to engage the services of professionals to assist in fulfilling the directors' duties;
 - e. to hire an Executive Director to assist the Board of Directors in their duties, including the implementation of the Investment Policy as soon as practicable after the appointment of the first Directors;

- f. to exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances;
- g. to keep such books, records, and accounts as are necessary or appropriate to document the assets held by the not-for-profit entity; and
- h. to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities of the not-for-profit entity, the duties and obligations of the not-for-profit entity as trustee under the Trust, and to carry out the provisions of this Agreement.

22.04 The operational expenses of the not-for-profit entity, including reasonable disbursements incurred for the administration, management and investment of the Trust, will be funded from investment income. If there is no investment income for a year, all operational expenses, together with all reasonable disbursements incurred for the administration, management and investment of the Trust, will be paid out of capital. This payment out of capital will be reimbursed as soon as there is investment income available. The not-for-profit entity will be entitled to be paid its reasonable operational expenses for the 10-year period following the 20th anniversary of the establishment of the Trust, which it may set up as a reserve and set-off against and holdback from the final disbursement from the Fund to the Band Class Members in accordance with the Agreement.

22.05 No person may bring any action or take any proceeding against the not-for-profit entity, including its directors, officers, members, employees, agents, partners, associates, representatives, successors, or assigns of the not-for-profit entity, for any matter in any way relating to the Agreement, the administration of the Agreement, or the implementation of the Agreement, except with leave of this Court on notice to all affected parties.

23. Interim Board

23.01 The mandate of the interim board appointed in accordance with Section 21.04 shall be limited to the following:

- a. Hiring an interim executive director;
- b. Retaining financial and legal advisors;
- c. Establishing the Trust pursuant to Section 22.01

- d. Opening a bank account and taking other necessary steps to facilitate the receipt of the Fund into the Trust;
- e. Investing the Fund in accordance with the Investment Policy;
- f. Disbursing Planning Funds to each Band, pursuant to the Disbursement Policy; and
- g. Approving directors to fill the regional positions.

THE FUND

24.The Fund

- 24.01 Canada agrees to provide the lump sum amount of two billion eight hundred million dollars (\$2,800,000,000.00) to establish the Fund.
- 24.02 Canada shall forthwith, and no later than 30 days after the Implementation Date, settle the Fund upon the Trust established pursuant to Section 22.01.
- 24.03 The Fund will be used in furtherance of the Four Pillars, and will be invested and disbursed to the Band Class Members in accordance with the Investment Policy and Disbursement Policy.
- 24.04 Canada expressly agrees that the payment to establish the Fund is in addition to and not a replacement for any present or future funding or programming available to First Nations or other Indigenous groups (whether members of the Band Class or not), and that Band Class Members will not be denied, or receive reduced, funding or programming as a result of having received payments through the Fund.
- 24.05 Canada shall make best efforts to exempt any income earned by the Trust from federal taxation, and Canada shall have regard to the measures that it took in similar circumstances for the class action settlements addressed in paragraph 81(1)(g.3) of the *Income Tax Act*.
- 24.06 Neither the Fund nor the income earned from the Fund can be used:
- a. to fund individuals;
 - b. to fund commercial ventures;
 - c. as collateral or to secure loans; or

d. as a guarantee.

24.07 The Parties agree that no monies paid out from the Fund to a Band Class Member are subject to redirection, execution, or seizure by third parties and shall seek a term to this effect in the Settlement Approval Order.

IMPLEMENTATION OF THIS AGREEMENT

25. Notice Plans

25.01 The Parties agree that the Plaintiffs will seek an Order from the Court, on consent, approving a Settlement Agreement Notice Plan, whereby Band 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.

25.02 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 Band Class Members with notice of the Approval Order, information regarding the operation of the not-for-profit entity, and how Band Class Members receive funding from the Fund.

26. Settlement Approval Order

26.01 The Parties agree that a Settlement Approval Order concerning 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 Band Class Members; and
- c. ordering and declaring that the Band Class claims set out in the Second Re-Amended Statement of Claim, filed February 11, 2022, are dismissed, and giving effect to the releases and related clauses set out in Section 27 herein to ensure the conclusion of all Band Class claims.

27. Conclusion of Band Class Claims

27.01 Each Band Class Member ("Releasor") fully, finally and forever releases His Majesty the King in Right of Canada, its servants, agents, officers and employees, from any and all

actions, causes of action, common law, international law, Quebec civil law, and statutory liabilities, contracts, claims, and demands of every nature or kind and in any forum (“Claims”) available against Canada that were asserted or could have been asserted in relation to those asserted in the Second Re-Amended Statement of Claim regarding the purpose, creation, planning, establishment, setting up, initiating, funding, operation, supervision, control and maintenance of Residential Schools, the obligatory attendance of Survivors at Residential Schools, the Residential Schools system, and/or any Residential Schools policy or policies (the “Release”) and all such claims set out herein are dismissed on consent of the Parties as if determined on their merits.

- 27.02 For greater clarity, and without limiting the forgoing, the Claims do not relate to, or include any claims regarding, children who died or disappeared while in attendance at Residential School.
- 27.03 For greater clarity and without limiting the foregoing, the Release does not settle, compromise, release or limit in any way whatsoever any claims by the Releasers, in any other action, claim, lawsuit, or complaint regarding a declaration of Aboriginal or Treaty rights, a breach of Aboriginal rights, a breach of Treaty rights, a breach of fiduciary duty, or the constitutionality of any provision of the *Indian Act*, its predecessors or Regulations, other than claims related to the purpose, creation, planning, establishment, setting up, initiating, funding, operation, supervision, control and maintenance of Residential Schools, the obligatory attendance of Survivors at Residential Schools, the Residential School system, and/or any Residential Schools policy or policies as set out in Section 27.01.
- 27.04 Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasers against any person other than Canada. For greater clarity, and without limiting the foregoing, the Release cannot be relied upon by any Third Party, including any religious organization that was involved in the creation and operation of Residential Schools.
- 27.05 If any Releaser makes any claim or demand or takes any actions or proceedings, or continues such claims, actions, or proceedings against other person(s) or entities in relation to the allegations, matters or the losses or injuries at issue in the Action, including any claim against Provinces, Territories, other legal entities, or groups, including but not limited to religious or other institutions that were in any way involved with Residential Schools, the Releaser will expressly limit their claims so as to exclude any portion of loss for which

Canada may be found at fault or legally responsible for, or that Canada otherwise would have been liable to pay but for this Release.

27.06 Canada may rely on this Release as a defence to any lawsuit by the Releasers that purports to seek compensation from Canada for anything released through this Agreement.

27.07 Each Releaser is deemed to have agreed, warranted, and represented that it is the holder of the collective rights to whom the duties are owed on behalf of their respective communities as asserted in the Second Re-Amended Statement of Claim.

27.08 Canada may rely on this Agreement as a defence in the event that any other individual, group, or entity ("Third Party") pursues any action, claim, or demand for the claims or losses released by this Agreement and asserts that it, and not any Releaser, is the proper holder of the collective or community rights, is the community entity to whom the asserted duties were owed, or holds the authority to advance and release such claims, either because it is a sub-group within the Releaser entity or a larger entity to which the Releaser belongs, or is otherwise related, connected or derived.

27.09 If a court or tribunal determines that a Third Party, and not the Releaser, is the appropriate rights holder or otherwise owed the duties at issue, Canada may seek a set-off of the amounts paid to the Releaser through operation of this agreement.

27.10 The release provisions contained herein, revised as required for formatting only, will be included as terms of the Court Order approving the Settlement Agreement.

28. Deemed Consideration by Canada

28.01 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 Releasers 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

29. Class Counsel Fees and Disbursements

- 29.01 Any legal fees and disbursements of Class Counsel and proposed honoraria are the subject of the Fee Agreement, which is subject to review and approval by the Court.
- 29.02 Disbursements shall include costs associated with establishing the not-for-profit entity or Trust prior to the Implementation Date such that the not-for-profit entity or Trust is in a position to receive and invest the Fund.
- 29.03 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.

TERMINATION AND OTHER CONDITIONS

30. Termination of Agreement

- 30.01 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.
- 30.02 This Agreement will be rendered null and void and no longer binding on the Parties in the event that the Court does not grant its approval at the settlement approval hearing.

31. Amendments

- 31.01 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.

CONFIDENTIALITY

32. Confidentiality of Negotiations

- 32.01 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, continues in force.

CO-OPERATION**33.Co-operation**

33.01 Upon execution of this Agreement, the Parties will co-operate and make best efforts to obtain Court approval of this Agreement and make reasonable efforts to obtain the support and participation of the Band Class Members in all aspects of this Agreement. If this Agreement is not approved by the Court, the Parties shall negotiate in good faith to cure any defects identified by the Court.

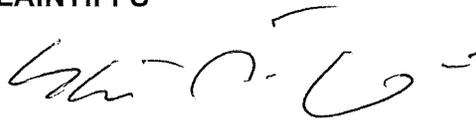
34.Public Announcements

34.01 Shortly after all parties have signed this Agreement, the Parties shall release a joint public statement announcing the settlement in a form to be agreed by the Parties, and at a mutually agreed time, will make public announcements in support of this Agreement. The Parties will continue to speak publicly in favour of the Agreement as reasonably requested by any Party.

[The remainder of this page is left intentionally blank. Signature pages follow]

IN WITNESS WHEREOF the Parties have executed this Agreement as of this 18th day of January, 2023.

FOR THE REPRESENTATIVE PLAINTIFFS



Tk'emlúps te Secwépemc, per
Shane Gottfriedson
Former Chief



Tk'emlúps te Secwépemc, per
~~Kúkpi7 Rosanne Casimir~~ Acting Kúkpi7 (Chief), Joshua Gottfriedson

shíshalh Nation, per
Garry Feschuk
Former Chief

shíshalh Nation, per
hiwus

FOR THE DEFENDANT HIS MAJESTY THE KING
IN RIGHT OF CANADA

Darlene Bess
Chief, Finances, Results and Delivery Officer
Crown-Indigenous Relations and Northern
Affairs Canada

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Former Chief

Tk'emlúps te Secwépemc, per
Kukpi7 Rosanne Casimir



shíshalh Nation, per
Garry Feschuk
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shíshalh Nation, per
Garry Feschuk
Former Chief

shíshalh Nation, per
hiwus

**FOR THE DEFENDANT HIS MAJESTY THE KING
IN RIGHT OF CANADA**

Bess, Darlene  Digitally signed by Bess, Darlene
Date: 2023.01.18 18:37:41 -05'00'

Darlene Bess
Chief, Finances, Results and Delivery Officer
Crown-Indigenous Relations and Northern
Affairs Canada

FOR CLASS COUNSEL



Waddell Phillips Professional Corporation, per
John K. Phillips, K.C.

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

Diane Soroka Avocate Inc., per
Diane H. Soroka

FOR CLASS COUNSEL

Waddell Phillips Professional Corporation, per
John K. Phillips, K.C.



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



Diane Soroka Avocate Inc., per
Diane H. Soroka



SCHEDULE A

CLASS PROCEEDING**FORM 171A - Rule 171****FEDERAL COURT****Court File No. T-1542-12**

e-document ID 795

F I L E D	COUR FÉDÉRALE	D É P O S É
	11-FEB-2022	
Natasha Brant		
Ottawa, ONT	doc	323

BETWEEN:

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

CHIEF GARRY FESCHUK, on behalf of the SECHELT INDIAN BAND and 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: 90 Sparks Street Ottawa, ON K1A 0H9

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 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 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 Indian Bands in the Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Indian 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)”, “Aboriginal People(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) “Indian Band” means any entity that:
 - (i) Is either a "band" as defined in s.2(1) of the *Indian Act* or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and
 - (ii) Asserts that it holds rights recognized and affirmed by section 35 of the *Constitution Act*, 1982.
- (g) “Class” means the Tk’emlúps te Secwépemc Indian Band and the shíshálh band and any other Indian Band(s) that:
 - (i) has or had some members who are or were Survivors, or in whose community a Residential School is or was located; and

- (ii) is specifically added to this claim in relation to one or more specifically identified Residential Schools.
- (h) “Canada” means the Defendant, Her Majesty the Queen in right of Canada as represented by the Attorney General of Canada;
- (i) “Class Period” means 1920 to 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) “Identified Residential School(s)” means one or more of the KIRS or the SIRS or any other Residential School specifically identified by a member of the Class;
- (l) “KIRS” means the Kamloops Indian Residential School;
- (m) “Residential Schools” means all Indian Residential Schools recognized under the Agreement;
- (n) “Residential Schools Policy” means the policy of Canada with respect to the implementation of Indian Residential Schools;
- (o) “SIRS” means the Sechelt Indian Residential School;
- (p) “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.

THE PARTIES

The Plaintiffs

3. The Tk’emlúps te Secwépemc Indian Band and the shíshálh band are 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 Residential Schools, including 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 individuals who *resided at* Canada's Residential Schools by way of the Agreement implemented in 2007, and subsequently, the settlement of the claims of those individuals who attended at Canada's Residential Schools in this and other proceedings.

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 Class members.

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 Class members to whom Canada owed fiduciary and constitutionally-mandated duties. The Residential Schools Policy was intended to eradicate Aboriginal identity, culture, language, and spiritual practices. This assimilation would result in a reduction in the number of individuals identifying as Aboriginal, and with that would be a reduction in Canada's obligations to Aboriginal individuals and Indian Bands, as Aboriginal individuals who no longer identify as Aboriginal would be unlikely 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 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 shíshálh 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. The Class members have all been affected by Cultural, Linguistic and Social Damage which has impaired the ability of Class members to govern their peoples and their lands.

Canada's Duties

35. 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.

36. 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, Article 8, 2(d), which commits to the provision of effective mechanisms for redress for forced assimilation, and the additional following provisions: Preamble, Articles 1-15, 17-28, 31, 33-46.

37. 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

38. Canada has constitutional obligations to, and a fiduciary relationship with, Aboriginal People and Indian Bands in Canada. Canada assumed the responsibility for educating Aboriginal children, and prevented Aboriginal Persons and Class members from doing so, by adopting and implementing the Residential Schools Policy, which included creating, planning, establishing, setting up, initiating, operating, financing, supervising, controlling and regulating a program of assimilation through the Residential Schools. Through the assumption of this role, and/or 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.

39. 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.

40. 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 and Indian Bands,

including the Class members, included the obligation to respect their Aboriginal Rights and not to deliberately seek to assimilate them, reduce their numbers, undermine, harm or impair them.

41. Canada breached the fiduciary and constitutional duties owed by Canada to the Class by targeting for destruction the collective identity and way of life established and enjoyed by the Class members.

42. Canada acted in its own self-interest and contrary to the interests of the Class members, not only by being disloyal to, but by actually betraying these communities which it had a duty to protect. Canada wrongfully exercised its discretion and power over Aboriginal Peoples, 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 and communities, 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.

43. In further 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

44. 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 Indian Bands have sustained their individual members, communities and distinctive cultures by speaking their languages and practicing their customs and traditions.

45. 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 Indian Bands, some particulars of which include, but are not limited to:

- (a) shísháhlh, Tk'emlúps and other Indian Bands' 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 shísháhlh, Tk'emlúps and other Aboriginal languages have been lost or impaired;
- (d) traditional shísháhlh, Tk'emlúps and Aboriginal parenting skills have been lost or impaired;
- (e) shísháhlh, Tk'emlúps and other Aboriginal skills for gathering, harvesting, hunting and preparing traditional foods have been lost or impaired; and,
- (f) shísháhlh, Tk'emlúps and Aboriginal spiritual beliefs have been lost or impaired.

46. Canada had at all material times and continues to have a duty to respect, honour and 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. Canada breached the Class members' Aboriginal Rights and caused the Class members Cultural, Linguistic and Social Harm.

Vicarious Liability

47. Canada is vicariously liable for the negligent performance of the fiduciary, constitutionally-mandated, statutory and common law duties of its Agents.

48. 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

49. 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 members have 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

50. 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

51. The Class members are Indian Bands, being collectives of Aboriginal Peoples who recognize their shared cultural and linguistic identities.

52. 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.

53. 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 Peoples and communities. Canada breached those duties, causing harm.

54. 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.

Application of the Quebec Charter

55. Where the aforementioned acts of Canada and its agents took place in the province of Quebec, they constitute breaches of article 1457 of the *Civil Code of Quebec*, CQLR c CCQ-1991, and the *Charter of Human Rights and Freedoms*, CQLR c C-12.

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, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, ss. 7, 15, 25, 35(1);

The Canadian Bill of Rights, S.C., 1960, c.44, Preamble, ss. 1 and 2;

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

Indigenous Languages Act S.C. 2019, c.23, Preamble, ss.2-10, 23-24;

Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24, s.2-4, and Schedule (Articles 6-7);

United Nations Declaration on the Rights of Indigenous Peoples Act, s.c. 2021, c. 14, Preamble, s.2, ss. 4-6, Schedule;

Civil Code of Quebec, CQLR c CCQ-1991, Article 1457;

Charter of Human Rights and Freedoms, CQLR c C-12, ss. 1, 4, 5, 39, 41, 43.

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, preamble and Articles 1-5;

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, preamble and Principles 1-10;

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), Preamble, Articles 1-9, 11-20, 24-25, 27-32, 34, 36-37, 39;

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, Preamble, Articles 1-3, 5-9, 12, 16-19, 21-27;

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), Preamble, Articles 1-3, 6, 8, 12, 13, 15, 22;

United Nations Resolution A/RES/60/147, December 16, 2005, Preamble, ss.1-3, and Annex; 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, Article 8, 2(d), Preamble, and Articles 1-15, 17-28, 31, 33-46.

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

Amended January 13, 2022

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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 SEHEL T INDIAN
BAND AND THE SEHEL T 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 (Cowessess, 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 Igloodik/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

Date: 20210924

Docket: T-1542-12

Citation: 2021 FC 988

Vancouver, British Columbia, September 24, 2021

PRESENT: The Honourable Madam Justice McDonald**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 IN T-1542-12

THIS COURT ORDERS that:

1. The Settlement Agreement dated June 4, 2021 and attached as Schedule “A” 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 Courts Rules*, SOR/98-106, and shall be implemented in accordance with its terms;
2. The Settlement Agreement, is binding on all 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;
3. 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;

8. 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. 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. 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. Prior to the Implementation Date, the Parties will identify and propose an Independent Reviewer or Independent Reviewers for Court appointment.
12. 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.
13. The Certification Order of Justice Harrington, dated June 18, 2015, will be amended as requested.

14. The Plaintiffs are granted leave to amend the First Re-Amended Statement of Claim in the form attached hereto.

15. There will be no costs of this motion.

“Ann Marie McDonald”

Judge

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.

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- 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;

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- 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:

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- 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;

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- 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;

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- 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

Federal Court



Cour fédérale

Date: 20220208

Docket: T-1542-12

Ottawa, Ontario, February 8, 2022

PRESENT: Madam Justice McDonald**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****ORDER****(Representative Plaintiffs' Motion to Extend the Band Class Opt-In Period)**

UPON MOTION by the Representative Plaintiffs for an Order varying the Certification Order dated June 18, 2015 (the "Certification Order"), an Order that the opt-in period for Indian Bands to be added as Class members be extended to May 31, 2022, an Order approving a Notice to potential Class members in the form attached as Schedule "A", an Order directing the

Representative Plaintiffs to distribute the Notice to potential Class members in accordance with the Representative Plaintiffs' plan of notice, as set out in the affidavit of Peter R. Grant, and an Order granting leave to amend the First Re-Amended Statement of Claim in the form attached hereto as Schedule "B";

AND UPON ON READING the Affidavit of Peter R. Grant, sworn January 12, 2022, filed, and upon reviewing the Certification Order and the pleadings and proceedings herein;

AND UPON NOTING the consent of the Defendant to the relief sought on this motion;

AND CONSIDERING that the relief sought herein is in the best interests of the Class as a whole;

THIS COURT ORDERS that:

1. Pursuant to Rule 334.19 of the *Federal Courts Rules*, the definition of "Band Class" set out at paragraph 1(a) of the Certification Order, as previously amended to "Class" by paragraph 13 and Schedule G of the Order dated September 24, 2021, is hereby struck and amended with the definition of "Class" below, and the definition of "Indian Band" is added as paragraph 1 (f) m. of the Certification Order, as follows:

1 (a) "Class" means the Tk'emlúps te Secwépemc Indian Band and the shíshálh band and any other Indian Band that:

- (i) has or had some members who are or were Survivors, or in whose community a Residential School is or was located; and
- (ii) is specifically added to this claim in relation to one or more specifically identified Residential Schools.

1 (f) m. "Indian Band" means any entity that:

- (i) Is either a "band" as defined in s.2(1) of the *Indian Act* or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and
 - (ii) Asserts that it holds rights recognized and affirmed by section 35 of the Constitution Act, 1982.
2. All Indian Bands, as defined in paragraph 1 of this Order that otherwise meet the eligibility requirements set out in paragraph 1(a) of this Order for being a Class member but have not already opted into and therefore been added to the claim shall have from the date of this Order until May 31, 2022 at 11:59 pm PST (the "Additional Opt-in Period") to opt into this action;
3. Pursuant to Rule 334.32(5) of the *Federal Courts Rules*, the form of notice of the Additional Opt-in Period, and opt in form included in the notice, set out at Schedule "A" to this Order (the "Notice") is approved for dissemination to Indian Bands not already Class members by this Court;
4. Pursuant to Rule 334.32(4) of the *Federal Courts Rules*, that the Representative Plaintiffs shall provide notice of the Additional Opt-in Period to all Indian Bands not already Class members as soon as reasonably practicable, by:
 - (a) Posting the Notice on this class proceeding's websites at www.justicefordayscholars.ca and www.bandreparations.ca.
 - (b) Posting the Notice (or links to the notice) on the website of Class Counsel;
 - (c) Direct mailing and emailing the Notice to all Indian Bands known to Class Counsel, or made known to Class Counsel by the Defendant that are not already Class members;

5. Class Counsel, within 7 days of this Order, shall produce to the Defendant a list of all Indian Bands known to Class Counsel to whom Class Counsel intends to disseminate the Notice in accordance with paragraph 4(c) (the “List of Bands”);
6. The Defendant shall produce to Class Counsel a list of, and contact information for, any other Indian Band it believes may be eligible to opt-into this action that is not on the List of Bands, Class Counsel shall thereafter promptly disseminate the Notice to that/those Indian Band(s);
7. Within 14 days of the expiry of the Additional Opt-in Period, Class Counsel shall provide to the Court a list of Indian Bands that have opted into this action during the Additional Opt-in Period;
8. Within 14 days of the expiry of the Additional Opt-in Period, Class Counsel shall provide to the Defendant a list of Indian Bands that have opted into this action during the Additional Opt-in Period, together with the bases identified by each Indian Band of its eligibility to opt into the Class, including the Indian Residential School(s) at issue and the years at issue (“Opt-in Information”);
9. By March 1, 2022, Class Counsel shall provide the Defendant with Opt-in Information relating to each Indian Band that is a Class Member as of the date of this Order;
10. Within 60 days of expiry of the Additional Opt-in Period, the Defendant may examine the Representative Plaintiffs for discovery for up to two hours each, unless extended by further Order, solely for the purpose of addressing any issues arising from the addition of new Class members;

11. A case management conference shall be arranged with the Court prior to August 5, 2022 to address any outstanding issues related to pre-trial deadlines or issues raised by newly opted in Class members;
12. The style of cause is amended, with immediate effect, as proposed by the Representative Plaintiffs in Schedule “B”, and the Representative Plaintiffs are granted leave to amend the First Re-Amended Statement of Claim in the form attached hereto as Schedule “B”; and
13. There shall be no costs of this motion.

"Ann Marie McDonald"

Judge

SCHEDULE C
SCHEDULE "A"

List of Class Members

September 2, 2022

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
1	NT	Deh Gah Got'ie Council	Fort Providence (Sacred Heart)	IRS Located in Community
2	NT	Deline First Nation dissolved Sept 1, 2016 and became Deline Got'ine Government	Federal Hostel at Fort Franklin; Inuvik (Grollier Hall)	IRS Located in Community; IRS Attended by Member(s)
3	NT	Deninu K'ue FN	Fort Resolution (St. Joseph's)	IRS Located in Community
4	NT	Ka'a'gee Tu FN	Fort Smith (Breynat Hall); Fort Simpson (Lapointe Hall)	IRS Attended by Member(s)
5	NT	Katlodeeche FN	Fort Smith - Grandin College	IRS Located in Community
6	NT	Liidlil Kue FN	Fort Simpson (Lapointe Hall)	IRS Located in Community
7	NT	Lutsel K'e Dene FN	Fort Resolution (St. Joseph's)	IRS Attended by Member(s)
8	NT	Nahanni Butte Dene Band	Fort Simpson (LaPointe Hall)	IRS Attended by Member(s)
9	NT	Smith's Landing First Nation	Holy Angels (Fort Chipewyan, École des Saint-Anges); Fort Simpson (Bompas Hall); Fort Smith (Breynat Hall); Fort Smith - Grandin College	IRS Located in Community; IRS Attended by Member(s)
10	NT	West Point FN	Fort Providence (Sacred Heart)	IRS Attended by Member(s)
11	BC	Adams Lake IB	Kamloops	IRS Attended by Member(s)
12	BC	Ahousaht	Christie (Clayoquot; Kakawis); Ahousaht	IRS Located in Community
13	BC	Ashcroft Indian Band	St. George's (Lytton)	IRS Located in Community
14	BC	?aq'am	Cranbrook (St. Eugene's, Kootenay)	IRS Located in Community
15	BC	Bonaparte IB	Kamloops	IRS Attended by Member(s)
16	BC	Boothroyd IB	St. George's (Lytton)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
17	BC	Beecher Bay FN	Alberni	IRS Attended by Member(s)
18	BC	590 Bridge River IB	Kamloops; St. Mary's (Mission)	IRS Attended by Member(s)
19	BC	Canim Lake Band	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
20	BC	Cayoose Creek IB	Cariboo (St. Joseph's, William's Lake); Kamloops; St George's (Lytton); St. Mary's (Mission)	IRS Attended by Member(s)
21	BC	Chawathil FN	St. Mary's (Mission)	IRS Attended by Member(s)
22	BC	Cheslatta Carrier Nation	Lejac (Fraser Lake)	IRS Attended by Member(s)
23	BC	Cheam First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
24	BC	Coldwater IB	Kamloops	IRS Located in Community
25	BC	Cook's Ferry IB	St. George's (Lytton)	IRS Attended by Member(s)
26	BC	Cowichan Tribes	Kuper Island; St. Mary's (Mission)	IRS Located in Community; IRS Attended by Member(s)
27	BC	Da'naxda'xw/Awaetlala Nation	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Located in Community
28	BC	Douglas First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
29	BC	Esdilagh First Nations	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
30	BC	Ehattesaht Chinehkint	Christie (Clayoquot, Kakawis)	IRS Located in Community; IRS Attended by Member(s)
31	BC	Esk'eteme	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
32	BC	Fort Nelson First Nation	Kamloops	IRS Attended by Member(s)
33	BC	Gitanmaax	Lejac (Fraser Lake); Alberni; Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
34	BC	Gitanyow Huwilp Society	Alberni	IRS Attended by Member(s)
35	BC	Gitga'at	Edmonton (Poundmaker, replaced Red Deer Industrial); Alberni	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
36	BC	Gitsegukla IB	Edmonton (Poundmaker, replaced Red Deer Industrial); Alberni	IRS Attended by Member(s)
37	BC	Gitxaala Nation	Coqualeetza from 1924 to 1940; Alberni; St. George's (Lytton); Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
38	BC	Hagwilget Village Council	Lejac (Fraser Lake)	IRS Attended by Member(s)
39	BC	Haisla FN	Kitimaat	IRS Located in Community
40	BC	Halalt FN	Kuper Island	IRS Attended by Member(s)
41	BC	Heiltsuk Nation	Alberni	IRS Attended by Member(s)
42	BC	High Bar First Nation	Kamloops	IRS Attended by Member(s)
43	BC	Homalco IB	Kamloops; Sechelt; St. Mary's (Mission)	IRS Attended by Member(s)
44	BC	Hupačasath FN	Alberni	IRS Attended by Member(s)
45	BC	Huu-ay-aht FNs	Alberni	IRS Attended by Member(s)
46	BC	Kanaka Bar IB	St. George's (Lytton)	IRS Located in Community; IRS Attended by Member(s)
47	BC	Kitasoo Xai'xais Nation	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home); Alberni	IRS Attended by Member(s)
48	BC	Kispiox Band #532	Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
49	BC	Kitselas FN	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
50	BC	Klahoose First Nation	Sechelt	IRS Attended by Member(s)
51	BC	K'ómoks First Nation	Kuper Island; Sechelt	IRS Located in Community
52	BC	Kwantlen FN	Kuper Island; St. Mary's (Mission)	IRS Attended by Member(s)
53	BC	Kwikwetlem First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
54	BC	Leq'amel FN	St. Mary's (Mission)	IRS Attended by Member(s)
55	BC	Lheidli Tienneh	Lejac (Fraser Lake)	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
56	BC	Lhoosk'uz Dené Nation	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
57	BC	Lil'wat Nation	St. Mary's (Mission)	IRS Attended by Member(s)
58	BC	Little Shuswap Lake Band	Kamloops	IRS Located in Community; IRS Attended by Member(s)
59	BC	Lower Kootenay IB	Cranbrook (St. Eugene's, Kootenay)	IRS Located in Community
60	BC	Lower Nicola IB	Kamloops; St. George's (Lytton); Lejac (Fraser Lake); Coqualeetza from 1924 to 1940; St. Mary's (Mission); Cranbrook (St. Eugene's, Kootenay); Sechelt; Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
61	BC	Lower Similkameen IB	Kamloops; Cranbrook (St. Eugene's, Kootenay)	IRS Attended by Member(s)
62	BC	Lyackson First Nation	Kuper Island	IRS Attended by Member(s)
63	BC	Lytton First Nation	St. George's (Lytton)	IRS Located in Community
64	BC	Malahat Nation	Kuper Island	IRS Attended by Member(s)
65	BC	McLeod Lake IB	Lejac (Fraser Lake)	IRS Attended by Member(s)
66	BC	Musqueam IB	St. Paul's (Squamish, North Vancouver)	IRS Attended by Member(s)
67	BC	Nadleh Whut'en	Lejac (Fraser Lake)	IRS Attended by Member(s)
68	BC	Namgis FN	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Located in Community
69	BC	Nanoose FN	Alberni	IRS Attended by Member(s)
70	BC	Nakazdli Whut'en	Lejac (Fraser Lake); Cariboo (St. Joseph's, William's Lake); Kamloops	IRS Attended by Member(s)
71	BC	Nazko FN	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community; IRS Attended by Member(s)
72	BC	Nee Tahi Buhn IB	Lejac (Fraser Lake)	IRS Attended by Member(s)
73	BC	Neskonlith FN	Kamloops	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
74	BC	Nisga'a Village of Gitlaxt'aamiks formerly New Aiyansh	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
75	BC	Nooaitch IB	Kamloops	IRS Attended by Member(s)
76	BC	Nuxalk FN	Alberni; Cariboo (St. Joseph's, William's Lake); Coqualeetza from 1924 to 1940; St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
77	BC	Okanagan IB	Kamloops	IRS Attended by Member(s)
78	BC	Old Masset Village Council	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
79	BC	Oregon Jack Creek	Kamloops	IRS Attended by Member(s)
80	BC	Osoyoos IB	Kamloops; Cranbrook (St. Eugene's, Kootenay)	IRS Located in Community
81	BC	Peters FN	Kamloops	IRS Located in Community
82	BC	Penelakut Tribe	Kuper Island	IRS Located in Community
83	BC	Penticton IB	Kamloops; Coqualeetza from 1924 to 1940; Cranbrook (St. Eugene's, Kootenay)	IRS Located in Community
84	BC	Prophet River FN	Lejac (Fraser Lake); Lower Post	IRS Attended by Member(s)
85	BC	Red Bluff IB (Lhtako Dene Nation)	Lejac (Fraser Lake); St. Mary's (Mission); Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
86	BC	Saulteau First Nations	Grouard to December 1957; Edmonton (Poundmaker, replaced Red Deer Industrial).	IRS Attended by Member(s)
87	BC	Seabird Island Band	St. Mary's (Mission); Coqualeetza from 1924 to 1940; Kamloops	IRS Located in Community; IRS Attended by Member(s)
88	BC	Sechelt FN	Sechelt	IRS Located in Community
89	BC	Shackan IB	Kamloops	IRS Located in Community
90	BC	Shuswap Band	Cranbrook (St. Eugene's, Kootenay); Kamloops	IRS Located in Community
91	BC	Simpchw FN	Kamloops	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
92	BC	Skatin	St. Mary's (Mission); Coqualeetza from 1924 to 1940	IRS Located in Community
93	BC	Skawahlook FN	Kuper Island	IRS Attended by Member(s)
94	BC	Skeetchestn IB	Kamloops	IRS Attended by Member(s)
95	BC	Songhees Nation	Kuper Island	IRS Attended by Member(s)
96	BC	Spuzzum First Nation	St. Mary's (Mission); St. George's (Lytton); Kamloops	IRS Attended by Member(s)
97	BC	Stellat'en FN	Lejac (Fraser Lake)	IRS Attended by Member(s)
98	BC	Sts'ailes	St. Mary's (Mission)	IRS Attended by Member(s)
99	BC	Stswecem'c Xgat'tem First Nation	Kamloops; Coqualeetza from 1924 to 1940; Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
100	BC	Sliammon FN (Tla'amin Nation)	Sechelt	IRS Attended by Member(s)
101	BC	Soowahlie IB	Coqualeetza from 1924 to 1940	IRS Attended by Member(s)
102	BC	Squamish Nation	St. Paul's (Squamish, North Vancouver)	IRS Located in Community
103	BC	Shxwhay Village	St. Mary's (Mission)	IRS Attended by Member(s)
104	BC	Siska Indian Band	St. George's (Lytton)	IRS Located in Community
105	BC	Skidegate FN	Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
106	BC	Skwah First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
107	BC	Splatsin	Cranbrook (St. Eugene's, Kootenay); Kamloops	IRS Attended by Member(s)
108	BC	Sumas FN	St. Mary's (Mission)	IRS Located in Community
109	BC	Tahltan Band	Lower Post	IRS Attended by Member(s)
110	BC	Taku River Tlingit FN	Lower Post	IRS Attended by Member(s)
111	BC	T'it'q'et	St. Mary's (Mission)	IRS Attended by Member(s)
112	BC	Tk'emlups te Secwepemc	Kamloops	IRS Located in Community
113	BC	Tla-o-qui-aht FN	Christie (Clayoquot, Kakawis); Ahousaht	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
114	BC	Tl'etinqox Government	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
115	BC	Toosey IB	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
116	BC	Tsartlip FN	Kuper Island	IRS Attended by Member(s)
117	BC	Tsawwassen FN	St. Mary's (Mission)	IRS Attended by Member(s)
118	BC	Tsawout First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
119	BC	Tsal'alh (Seton Lake IB)	Kamloops	IRS Attended by Member(s)
120	BC	Tsashaht FN	Alberni	IRS Located in Community
121	BC	Tsleil-Waututh Nation	St. Paul's (Squamish, North Vancouver)	IRS Located in Community
122	BC	Tsideldel FN	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
123	BC	Ts'kw'aylaxw First Nation	Kamloops	IRS Located in Community
124	BC	T'Sou-ke FN	Kuper Island	IRS Attended by Member(s)
125	BC	Tzeachten FN	St. Mary's (Mission); Coqualeetza from 1924 to 1940	IRS Located in Community; IRS Attended by Member(s)
126	BC	Uchucklesaht Tribe Government	Alberni	IRS Located in Community
127	BC	Ulkatcho IB	Anahim Lake Dormitory (September 1968 to June 1977)	IRS Located in Community
128	BC	Upper Nicola Band	Kamloops	IRS Attended by Member(s)
129	BC	Westbank FN	Cranbrook (St. Eugene's, Kootenay); Kamloops	IRS Attended by Member(s)
130	BC	West Moberly First Nations	Grouard to December 1957	IRS Attended by Member(s)
131	BC	Wet'suwet'en First Nation	Lejac (Fraser Lake); Kamloops; St. Mary's (Mission)	IRS Located in Community; IRS Attended by Member(s)
132	BC	We Wai Kai Nation	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home); Alberni	IRS Attended by Member(s)
133	BC	We Wai Kum FN	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
134	BC	Williams Lake IB	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
135	BC	Whispering Pines Clinton Indian Band	Kamloops; Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
136	BC	Witset FN	Lejac (Fraser Lake)	IRS Attended by Member(s)
137	BC	Xatsull FN (Soda Creek)	Cariboo (St. Joseph's, William's Lake); Coqualeetza from 1924 to 1940; Kamloops; Lejac (Fraser Lake)	IRS Located in Community
138	BC	Xeni Gwet'in First Nations Government	Kamloops; Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
139	BC	Yekooche FN	Lejac (Fraser Lake)	IRS Attended by Member(s)
140	BC	Yunesit'in Government	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
141	YT	Kwanlin Dün First Nation	Yukon Hall (Whitehorse/Protestant Hostel); Coudert Hall (Whitehorse Hostel/Student Residence - replaced by Yukon Hall); Whitehorse Baptist Mission	IRS Located in Community
142	YT	Tr'ondëk Hwëch'in	St. Paul's Hostel from September 1920 to June 1943	IRS Located in Community
143	YT	First Nation of Na-Cho Nyäk Dun	Carcross (Chooulta)	IRS Located in Community; IRS Attended by Member(s)
144	YT	White River First Nation	Lower Post	IRS Located in Community
145	AB	Alexis Nakota Sioux Nation	Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
146	AB	Athabasca Chipewyan FN	Holy Angles (Fort Chipewyan, École des Saint-Anges)	IRS Located in Community
147	AB	Bearspaw FN	Morley (Stony/Stoney, replaced McDougall Orphanage)	IRS Located in Community
148	AB	Beaver Lake Cree Nation	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Located in Community
149	AB	Blood Tribe	St. Mary's (Blood, Immaculate Conception); St. Paul's (Blood)	IRS Located in Community
150	AB	Cold Lake FNs	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Attended by Member(s)
151	AB	Dene Tha' First Nation	Assumption (Hay Lake)	IRS Located in Community
152	AB	Driftpile Cree Nation	Joussard (St. Bruno's) Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)	IRS Located in Community; IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
153	AB	Duncan's First Nation	Grouard to December 1957	IRS Attended by Member(s)
154	AB	Ermineskin Tribe	Ermineskin (Hobbema)	IRS Located in Community
155	AB	Enoch Cree Nation	Edmonton, Ermineskin (Hobbema)	IRS Attended by Member(s)
156	AB	Fort McKay FN	Holy Angels (Fort Chipewyan, École des Saint-Anges)	IRS Attended by Member(s)
157	AB	Frog Lake FN	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Attended by Member(s)
158	AB	Horse Lake FN	Sturgeon Lake (Calais, St. Francis Xavier)	IRS Attended by Member(s)
159	AB	Kapawe'no First Nation	Grouard to December 1957	IRS Located in Community
160	AB	Kehewin Cree Nation	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart); Onion Lake Anglican (see Prince Albert)	IRS Located in Community; IRS Attended by Member(s)
161	AB	Little Red River Cree Nation	Fort Vermilion (St. Henry's)	IRS Attended by Member(s)
162	AB	Louis Bull Tribe	Ermineskin (Hobbema)	IRS Attended by Member(s)
163	AB	Lubicon Lake Band #453	Joussard (St. Bruno's)	IRS Attended by Member(s)
164	AB	Mikisew Cree First Nation	Holy Angels (Fort Chipewyan, École des Saint-Anges)	IRS Located in Community
165	AB	Montana FN	Ermineskin (Hobbema)	IRS Attended by Member(s)
166	AB	Paul First Nation	St. Albert (Youville); Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Located in Community
167	AB	Piikani Nation	Sacred Heart (Peigan, Brocket); St. Cyprian (Queen Victoria's Jubilee Home, Peigan)	IRS Located in Community
168	AB	Saddle Lake Cree Nation	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Located in Community
169	AB	Samson Cree Nation	Ermineskin (Hobbema)	IRS Located in Community
170	AB	Sawridge FN	Grouard to December 1957	IRS Attended by Member(s)
171	AB	Siksika Nation	Crowfoot (Blackfoot, St. Joseph's, Ste. Trinite)	IRS Attended by Member(s)
172	AB	Stoney FN	Morley (Stony/Stoney, replaced McDougall Orphanage)	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
173	AB	Sturgeon Lake Cree Nation	Sturgeon Lake (Calais, St. Francis Xavier)	IRS Located in Community
174	AB	Sucker Creek FN	Joussard (St. Bruno's)	IRS Located in Community
175	AB	Sunchild First Nation	Ermineskin (Hobbema)	IRS Attended by Member(s)
176	AB	Tallcree Tribal Government	Fort Vermilion (St. Henry's)	IRS Attended by Member(s)
177	AB	Tsuut'ina Nation	Sarcee (St. Barnabas)	IRS Located in Community
178	AB	Whitefish Lake IB	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Attended by Member(s)
179	AB	Woodland Cree FN	Joussard (St. Bruno's)	IRS Attended by Member(s)
180	SK	Ahtakakoop Cree Nation	Kamloops	IRS Attended by Member(s)
181	SK	Beardy's & Okemasis First Nation	St. Michael's (Duck Lake)	IRS Attended by Member(s)
182	SK	Big Island Lake Cree Nation	Beauval (Lac la Plonge)	IRS Attended by Member(s)
183	SK	Buffalo River Dene Nation	Beauval (Lac la Plonge)	IRS Located in Community; IRS Attended by Member(s)
184	SK	Canoe Lake Cree First Nation	Beauval (Lac la Plonge)	IRS Attended by Member(s)
185	SK	Carry the Kettle FN	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
186	SK	Clearwater River Dene Nation	Beauval (Lac la Plonge)	IRS Located in Community
187	SK	Cote FN	Cote Improved Federal Day School (September 1928 to June 1940)	IRS Located in Community
188	SK	Cowessess FN #73	Marieval (Cowessess, Crooked Lake)	IRS Located in Community
189	SK	English River FN	Beauval (Lac la Plonge)	IRS Located in Community
190	SK	Fishing Lake FN	Muscovequan (Lestock, Touchwood)	IRS Located in Community
191	SK	George Gordon FN	Gordon's	IRS Located in Community
192	SK	Kahkewistahaw FN	Marieval (Cowessess, Crooked Lake)	IRS Attended by Member(s)
193	SK	Keeseekoose FN	St. Philip's	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
194	SK	Key FN	St. Philip's	IRS Attended by Member(s)
195	SK	Lac La Ronge IB	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	IRS Located in Community
196	SK	Little Black Bear Band	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
197	SK	Little Pine First Nation	Thunderchild (Delmas, St. Henri); Onion Lake Anglican (see Prince Albert)	IRS Attended by Member(s)
198	SK	Montreal Lake Cree Nation	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	IRS Located in Community
199	SK	Muskoday First Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
200	SK	Muskowekwan First Nation	Muscowequan (Lestock, Touchwood)	IRS Located in Community
201	SK	Nekaneet First Nation	Gordon's	IRS Attended by Member(s)
202	SK	Ocean Man First Nation #69	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
203	SK	Ochapowace Nation	Round Lake	IRS Located in Community
204	SK	Okanese FN	File Hills	IRS Located in Community
205	SK	Onion Lake	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge) ; St. Anthony's (Onion Lake, Sacred Heart)	IRS Located in Community
206	SK	Pasqua First Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Located in Community
207	SK	Piapot First Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Located in Community
208	SK	Pheasant Rump Nakota FN #68	Marieval (Cowessess, Crooked Lake); Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Located in Community; IRS Attended by Member(s)
209	SK	Red Earth First Nation	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	IRS Located in Community
210	SK	Star Blanket Cree Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Located in Community
211	SK	Sweetgrass First Nation	St. Anthony's (Onion Lake, Sacred Heart)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
212	SK	Thunderchild First Nation	Onion Lake Anglican(see Prince Albert); Thunderchild (Delmas, St. Henri)	IRS Located in Community; IRS Attended by Member(s)
213	SK	Wahpeton Dakota Nation	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	IRS Attended by Member(s)
214	SK	White Bear First Nations	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
215	SK	Zagime Anishinabek (Formerly Sakimay FNs)	Marieval (Cowessess, Crooked Lake)	IRS Located in Community
216	SK	Waterhen Lake FN	Beauval (Lac la Plonge)	IRS Attended by Member(s)
217	MB	Berens River FN	Portage la Prairie; Brandon	IRS Attended by Member(s)
218	MB	Bunibonibee Cree Nation	Birtle; Brandon; Portage la Prairie	IRS Attended by Member(s)
219	MB	Bloodvein River FN	Assiniboia (Winnipeg)	IRS Attended by Member(s)
220	MB	Little Black River FN	Dauphin (replace McKay)	IRS Attended by Member(s)
221	MB	Ebb and Flow First Nation	Sandy Bay	IRS Attended by Member(s)
222	MB	Fisher River Cree Nation	Birtle	IRS Attended by Member(s)
223	MB	Gambler First Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
224	MB	Lake Manitoba First Nation	Assiniboia (Winnipeg)	IRS Attended by Member(s)
225	MB	Sagkeeng FN	Fort Alexander (Pine Falls)	IRS Located in Community; IRS Attended by Member(s)
226	MB	Long Plain FN	Brandon; Portage la Prairie	IRS Located in Community; IRS Attended by Member(s)
227	MB	Mathias Colomb Cree Nation	Sturgeon Landing (replaced by Guy Hill, MB); Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	IRS Attended by Member(s)
228	MB	Misipawistik Cree Nation	Brandon	IRS Attended by Member(s)
229	MB	Nisichawayasihk Cree Nation	McKay (The Pas, replaced by Dauphin)	IRS Attended by Member(s)
230	MB	Norway House Cree Nation	Notre Dame Hostel (Norway House Catholic, Jack River	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
			Hostel, replaced Jack River Annex at Cross Lake); Norway House	
231	MB	O-Pipon-Na-Piwin Cree Nation	Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	IRS Attended by Member(s)
232	MB	Pinaymootang First Nation	Birtle	IRS Attended by Member(s)
233	MB	Poplar River FN	Norway House, Cross Lake (St. Joseph's, Norway House); Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	IRS Attended by Member(s)
234	MB	Pine Creek FN	Pine Creek (Campeville)	IRS Located in Community
235	MB	Roseau River Anishinabe FN	Fort Alexander (Pine Falls); Birtle; Portage la Prairie; Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
236	MB	Sandy Bay Ojibway FN	Portage la Prairie; Sandy Bay	IRS Located in Community; IRS Attended by Member(s)
237	MB	Sioux Valley Dakota Nation	Brandon	IRS Attended by Member(s)
238	MB	St. Theresa Point FN	Assiniboia (Winnipeg)	IRS Attended by Member(s)
239	MB	Swan Lake FN	Portage la Prairie	IRS Attended by Member(s)
240	MB	Tataskweyak Cree Nation	Dauphin (replaced McKay)	IRS Attended by Member(s)
241	MB	Tootinaowaziibeeng Treaty Reserve #292	Pine Creek (Campeville)	IRS Attended by Member(s)
242	MB	Waywayseecappo FN	Birtle	IRS Located in Community
243	MB	York Factory FN	Dauphin (replaced McKay)	IRS Attended by Member(s)
244	ON	Algonquins of Pikwakanagan First Nation	Mohawk Institute; Spanish Boys' School (Charles Garnier, St. Joseph's)	IRS Attended by Member(s)
245	ON	Aamjiwnaang FN-Chippewas of Sarnia	Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	IRS Attended by Member(s)
246	ON	Alderville FN	Mount Elgin (Muncey, St. Thomas)	IRS Attended by Member(s)
247	ON	Animakee Wa Zhing #37	Cecilia Jeffrey (Kenora, Shoal Lake)	IRS Located in Community; IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
248	ON	Aroland FN	McIntosh (Kenora)	IRS Attended by Member(s)
249	ON	Big Grassy River First Nation	Cecilia Jeffrey (Kenora, Shoal Lake)	IRS Attended by Member(s)
250	ON	Caldwell First Nation	Mount Elgin (Muncey, St. Thomas)	IRS Attended by Member(s)
251	ON	Cat Lake FN	Pelican Lake (Pelican Falls)	IRS Attended by Member(s)
252	ON	Chapleau Cree FN	Chapleau (St. John's); Shingwauk	IRS Located in Community; IRS Attended by Member(s)
253	ON	Chippewas of the Thames FN	Mount Elgin (Muncey, St. Thomas)	IRS Located in Community
254	ON	Chippewas of Kettle and Stony Point First Nation (formerly Kettle Point First Nation and Stony Point First Nation)	Mount Elgin (Muncey, St. Thomas); Mohawk Institute	IRS Attended by Member(s)
255	ON	Chippewas of Rama First Nation	Mohawk Institute	IRS Attended by Member(s)
256	ON	Constance Lake First Nation	St. Anne's (Fort Albany)	IRS Attended by Member(s)
257	ON	Couchiching FN	Fort Frances (St. Margaret's)	IRS Located in Community; IRS Attended by Member(s)
258	ON	Curve Lake FN	Mohawk Institute	IRS Attended by Member(s)
259	ON	Delaware Nation (Moravian of the Thames)	Mohawk Institute; Mount. Elgin (Muncey, St. Thomas); Shingwauk	IRS Attended by Member(s)
260	ON	Fort Albany FN	St. Anne's (Fort Albany)	IRS Located in Community
261	ON	Fort William FN	St. Joseph's/Fort William	IRS Located in Community
262	ON	Fort Severn FN	Pelican Lake (Pelican Falls)	IRS Attended by Member(s)
263	ON	Ginoogaming FN	St. Joseph's/Fort William	IRS Attended by Member(s)
264	ON	Grassy Narrows FN	McIntosh (Kenora)	IRS Attended by Member(s)
265	ON	Kashechewan FN	St. Anne's (Fort Albany)	IRS Attended by Member(s)
266	ON	Kitchenuhmaykoosib Inninuwug	Pelican Lake (Pelican Falls); Cecilia Jeffrey (Kenora, Shoal Lake); Poplar Hill	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
267	ON	Lac Seul First Nation	Cecilia Jeffrey (Kenora, Shoal Lake); Pelican Lake (Pelican Falls)	IRS Attended by Member(s)
268	ON	M'Chigeeng FN	Spanish Boys' School (Charles Garnier, St. Joseph's)	IRS Attended by Member(s)
269	ON	Mississauga First Nation	Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	IRS Attended by Member(s)
270	ON	Mississaugas of the Credit First Nation	Mohawk Institute	IRS Attended by Member(s)
271	ON	Mississaugas of Scugog Island First Nation	Mohawk Institute	IRS Attended by Member(s)
272	ON	MoCreebec Eeyoud Council of the Cree	Bishop Horden Hall (Moose Fort, Moose Factory)	IRS Located in Community
273	ON	Moose Cree FN	Bishop Horden Hall (Moose Fort, Moose Factory)	IRS Located in Community
274	ON	Mohawks of the Bay of Quinte	Mohawk Institute	IRS Attended by Member(s)
275	ON	Munsee-Delaware Nation	Mount Elgin (Muncey, St. Thomas)	IRS Attended by Member(s)
276	ON	Naicatchewenin FN	Fort Frances (St. Margaret's)	IRS Attended by Member(s)
277	ON	Naotkamegwaning FN	Cecilia Jeffrey (Kenora, Shoal Lake); Fort Frances (St. Margaret's); McIntosh (Kenora); St. Mary's (Kenora, St. Anthony's)	IRS Attended by Member(s)
278	ON	Nipissing First Nation	Spanish Boys' School (Charles Garnier, St. Joseph's)	IRS Attended by Member(s)
279	ON	Nigigoonsiminikaaning First Nation	Fort Frances (St. Margaret's)	IRS Attended by Member(s)
280	ON	Ojibways of Onigaming	St. Mary's (Kenora, St. Anthony's); Fort Frances (St. Margaret's)	IRS Attended by Member(s)
281	ON	Oneida Nation the Thames	Mount Elgin (Muncey, St. Thomas)	IRS Located in Community
282	ON	Pikangikum FN	Poplar Hill	IRS Attended by Member(s)
283	ON	Sachigo Lake FN	Poplar Hill	IRS Attended by Member(s)
284	ON	Sheguiandah FN	Shingwauk; Spanish Boys' School (Charles Garnier, St. Joseph's); Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
285	ON	Taykwa Tagamou Nation	St. Anne's (Fort Albany)	IRS Attended by Member(s)
286	ON	Temagami FN	Shingwauk	IRS Attended by Member(s)
287	ON	Wabigoon Lake Ojibway Nation	St. Mary's (Kenora, St. Anthony's)	IRS Attended by Member(s)
288	ON	Wahgoshig First Nation	Mohawk Institute	IRS Located in Community; IRS Attended by Member(s)
289	ON	Wauzhushk Onigum Nation (Rat Portage) #153	St. Mary's (Kenora, St. Anthony's)	IRS Located in Community
290	ON	Wiikwemkoong Unceded Territory	Spanish Boys' School (Charles Garnier, St. Joseph's); Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's);	IRS Located in Community
291	ON	Weenusk First Nation	St. Anne's (Fort Albany)	IRS Located in Community
292	ON	Whitefish River First Nation	Spanish Boys' School (Charles Garnier, St. Joseph's)	IRS Attended by Member(s)
293	ON	Whitesand First Nation	Fort Frances (St. Margaret's)	IRS Attended by Member(s)
294	QC	Abénakis de Wôlinak	Sept-Îles	IRS Attended by Member(s)
295	QC	Communaute Ancinapek de Kitcisakik	Amos	IRS Attended by Member(s)
296	QC	Les Innu De Ekuanitshit	Sept-Îles	IRS Attended by Member(s)
297	QC	Cree Nation of Chisasibi	Fort George (Anglican); Fort George (Roman Catholic)	IRS Located in Community
298	QC	Cree Nation of Mistissini	La Tuque; Mistassini Hostels (September 1, 1971 to June 30, 1978)	IRS Located in Community; IRS Attended by Member(s)
299	QC	Cree Nation of Nemaska	Bishop Horden Hall (Moose Fort, Moose Factory); Shingwauk; La Tuque	IRS Attended by Member(s)
300	QC	Cree Nation of Waswanipi	Mohawk Institute; La Tuque	IRS Attended by Member(s)
301	QC	Cree Nation of Wemindji	Fort George (Anglican)	IRS Attended by Member(s)
302	QC	Nation Huronne-Wendat	La Tuque	IRS Attended by Member(s)
303	QC	Innus de Ekuanitshit	Sept-Îles	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
304	QC	Innu Takuaikan Uashatmak Mani Utenam	Sept-Îles	IRS Located in Community; IRS Attended by Member(s)
305	QC	Listuguj Mi'gmaq Government	Shubenacadie	IRS Attended by Member(s)
306	QC	Kanesatake Mohawk	Shingwauk	IRS Located in Community; IRS Attended by Member(s)
307	QC	Kebaowek First Nation	Spanish Boys' School (Charles Garnier, St. Joseph's); Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	IRS Attended by Member(s)
308	QC	Long Point FN	Amos	IRS Attended by Member(s)
309	QC	Naskapi Nation of Kawawachikamach	La Tuque	IRS Located in Community
310	QC	Nation anishnabe du Lac Simon	Amos	IRS Located in Community; IRS Attended by Member(s)
311	QC	Odanak	Shingwauk	IRS Attended by Member(s)
312	QC	Oujé-Bougoumou Cree Nation	La Tuque	IRS Attended by Member(s)
313	QC	Pekuakamiulnuatsh Takuhikan	Pointe Bleue	IRS Located in Community
314	QC	Whapmagoostui FN	Federal Hostels at Great Whale River	IRS Located in Community
315	QC	The Crees of Waskaganish FN	Bishop Horden Hall (Moose Fort, Moose Factory)	IRS Attended by Member(s)
316	NB	Elsipogtog First Nation, formerly Big Cove Band, formerly Richibucto Tribe of Indians (#003)	Shubenacadie	IRS Attended by Member(s)
317	NB	Eel Ground First Nation	Shubenacadie	IRS Attended by Member(s)
318	NB	Eel River Bar First Nation	Shubenacadie	IRS Attended by Member(s)
319	NB	Fort Folly	Shubenacadie	IRS Attended by Member(s)
320	NB	Indian Island	Shubenacadie	IRS Attended by Member(s)
321	NB	Kingsclear First Nation	Shubenacadie	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
322	NB	Oromocto	Shubenacadie	IRS Attended by Member(s)
323	NB	Tobique First Nation	Shubenacadie	IRS Attended by Member(s)
324	NS	Sipekne'katik Band	Shubenacadie	IRS Located in Community
325	PE	Abegweit FN	Shubenacadie	IRS Attended by Member(s)
326	PE	Lennox Island Band	Shubenacadie	IRS Located in Community; IRS Attended by Member(s)

SCHEDULE “B”**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)

Lesser Slave Lake (St. Peter's)

Morley (Stony/Stoney, replaced McDougall Orphanage)

Old Sun (Blackfoot)

Sacred Heart (Peigan, Brocket)

St. Albert (Youville)

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 (Cowessess, 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)

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)

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)

Hay River (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 D
INVESTMENT POLICY**

1. The Board, or the Interim Board, as the case may be, shall at all times manage the money of the Trust/not-for-profit entity in a prudent manner.
2. Upon receipt of the funding, the Trust shall deposit the funds required to make the initial payment to the Bands, as well as to pay for the operation of the Trust/not-for-profit entity for the first year, in a bank account in the name of the Trust/not-for-profit entity.
3. The remainder of the funds shall be invested in accordance with professional investment advice for a period of one year, or until the full Board is constituted.
4. Once the full Board is constituted, it shall engage the services of one or more professional investment advisors or firms to assist it in the long-term planning and investment required to ensure, to the extent possible, the availability of funds for initiatives undertaken by the Band Class Members to fulfill the objectives of the Four Pillars.
5. The money will be invested in accordance with professional advice in a manner which will maintain the capital for 20 years.
6. Subject to Section 22.04 of the Agreement, after 20 years, the Trust shall disburse the remaining funds to the Band Class in accordance with the Disbursement Formula, with adjustments for remoteness, upon receipt of a further plan for use of the funds in accordance with the Four Pillars.
7. Any investment income earned on the capital shall be disbursed to the Band Class in accordance with the Disbursement Policy.

SCHEDULE E
DISBURSEMENT POLICY
AND DISBURSEMENT FORMULA

It is acknowledged that the sole purpose of the Fund is to assist Band Class Members in repairing the harms done to them by the Residential Schools as set out in the Statement of Claim (as amended) in accordance with the Four Pillars which guide the Agreement.

The Board, once constituted, will create a Disbursement Policy. This Disbursement Policy shall include the following:

1. **Band Entitlement** – each Band Class Member shall be entitled to the following disbursements:
 - a. **Planning Funds:** Upon receipt of the money provided for in this Agreement, the Trust will disburse an initial amount of \$200,000 to each Band for the purposes of developing a plan to carry out one or more of the objectives and purposes of the Four Pillars;
 - b. **Initial Kick-Start Funds:** Upon receipt and review of a plan from a Band, the Trust shall disburse the Initial Kick-Start Funds, which shall be equal to the Band's proportionate share of \$325,000,000, with 40% attributable for base rate, with the remaining 60% to be used to adjust for population. The base rate is an equal amount payable to each Band. The Board will determine an appropriate adjustment for remoteness for the Initial Kick-Start Funds, with any such funds required to account for remoteness being in addition to the \$325,000,000, and taken from capital.
 - c. **Annual Entitlement:** Each Band will receive a share of annual investment income that is available for distribution. Each Band's Annual Entitlement will be based on the Disbursement Formula. The Trust may, at its discretion, choose not to disburse all the income in any given year in order to ensure sufficient funding for years in which there is less income due to market conditions.
2. **Furtherance of the Four Pillars** – For both the Initial Kick-Start Funds and the Annual Entitlement, each Band must spend the funds in accordance with their plans, and on initiatives that further the Four Pillars.
3. **Disbursement Formula** – The Board will establish a Disbursement Formula which provides a base rate to each Band, a per capita adjustment based on the relative population of the Band and an amount for additional costs in case of remoteness. This Disbursement Formula will be used to calculate the amount of each Band's entitlement for the Annual Funds. The Disbursement Formula set by the Board must include a 40% attributable for base rate, with the remaining 60% to be used to adjust for population and for remoteness. Within the 60%,

the Board will consider and determine an appropriate population adjustment and remoteness adjustment.

4. **Reporting** - Each Band shall establish an initial efficient and simplified 10 year plan as well as yearly update reporting which will assist the Board in ensuring that the funding is being used for the Four Pillars. Following the initial 10 years each Band will be required to provide an additional 10 year plan and followed by yearly reporting. After 20 years, each Band will submit a further plan for use of the Band's share of the disbursement of the remaining funds pursuant to s. 6 of the Investment Policy, followed by periodic reporting for 10 years or until the funds are expended, whichever occurs first.
5. **Deferred distribution** – Each Band can elect to leave any of the funds to which it is entitled in the Fund to accrue income and to be drawn down later based upon their plan. In the event that a Band does not submit a plan to the Board, the distribution to that Band will be automatically deferred until they have provided a plan to carry out the objectives and purposes of the Four Pillars.
6. **Restrictions on use** – The Disbursement Policy will make clear of the following restrictions on use:
 - a. Funding will be for the objectives and purposes of one or more of the Four Pillars;
 - b. No funding will be given for initiatives which duplicate government programs or for which government funding is available. However, if the government funding only covers certain elements of an initiative (e.g., salaries), but does not cover a different element of the initiative (e.g., capital expenditures), funding may be given for the elements not covered by government funding;
 - c. No funding will be given to individuals for individual purposes;
 - d. No funding will be given for commercial ventures;
 - e. No funding can be used as collateral or to secure loans or used as any other form of guarantee; and
 - f. Funding is not subject to redirection, execution, or seizure by third parties, including third party managers; funding must only be used for the support of the Four Pillars by the Band recipient.

Schedule F The Four Pillars

PILLAR 1: REVIVAL AND PROTECTION OF INDIGENOUS LANGUAGE

Indigenous languages are sacred. Our languages are the keystone of our connection to each other and to the land. As expressed by the Assembly of First Nations, our languages were given to us by the Creator as an integral part of life and to allow us to interact with each other and the natural world. Embodied in our languages is our unique relationship to the Creator, our attitudes, beliefs, values and the fundamental notion of what is truth. Language is the principal means by which culture is accumulated, shared and transmitted from generation to generation. The key to identity and retention of culture is the revival and protection of our languages.

It is recognized and acknowledged that the traditional languages of our peoples are diverse. Language varies from community to community, sometimes operating like dialects. Each Band Class Member has the right to define for itself what constitutes an Indigenous language within its own nation.

The first pillar is the **revival and protection of our languages**, and may include initiatives with one or more of the following goals:

- Protecting and reviving the languages of our people.
- Encouraging our elders to pass on their knowledge of traditional languages to younger generations. Our elders will teach that our languages are not only about spoken and written words but are about our values, beliefs, rituals, songs, dances, spirituality, and social behaviours.
- Strengthening the bonds between language and the land.
- Teaching spoken and written languages to speakers of all levels, with a goal of having fluent speakers of our traditional languages.
- Enhancing the dignity, self-worth and sense of belonging of our peoples through the use of their own languages.
- Advancing individuals' language education.

PILLAR 2: REVIVAL AND PROTECTION OF INDIGENOUS CULTURE

Culture is how we express ourselves as nations. Culture helps maintain, and is a product of, ongoing relationships within our nations, our ancestors and the land. Protecting our culture means preserving the relationships through which our culture is both sustained and adapted. Our cultures are dynamic. Culture is a complex whole that includes knowledge, practices, customs, art, norms, beliefs, and any other capabilities and habits that offer a sense of meaning as peoples.

It is recognized and acknowledged that each Band Class Member has its own culture, beliefs,

traditions, worldviews and customs. Each has a unique experience on the land and with each other, but are all connected.

The second pillar is the **revival and protection of our cultures**, and may include initiatives with one or more of the following goals:

- Preserving and strengthening knowledge of our cultures and traditions.
- Reviving traditional cultural skills and practices.
- Passing knowledge of our traditional cultures, values, goals and practices to future generations.
- Forging bonds with the land and its resources through acknowledgment and use of cultural practises.
- Sharing traditional knowledge from older generations to younger generations.

PILLER 3: PROTECTION AND PROMOTION OF HERITAGE

Heritage consists of the traditions and way of life passed down through generations and inherited by our peoples today. Heritage is closely connected to, but distinct, from culture. Heritage is about maintaining a connection to the past, through the present and into the future. It is about stewardship and maintenance of traditions and practices, as well as stewardship of our lands and waters.

It is recognized and acknowledged that each Band Class Member has its own heritage that is unique.

The third pillar is the **protection and promotion of heritage** and may include initiatives with one or more of the following goals:

- Preserving and strengthening knowledge of our shared inheritance.
- Passing knowledge of heritage to future generations.
- Preserving knowledge of the creation and maintenance of our material cultures.
- Fostering connection to and protection of lands and waters.
- Sustaining our resources in our lands.
- Fostering multiculturalism from nation to nation.

PILLER 4: WELLNESS FOR INDIGENOUS COMMUNITIES AND PEOPLE

Wellness consists of emotional, physical, spiritual and mental health and wellbeing. Wellness involves healthy relationships, wisdom, respect and responsibility.

It is recognized and acknowledged that wellness is connected to our cultures, traditions, and knowledge, and that wellness of our communities and peoples is best achieved through practicing

our cultures and traditions, and through connection to the land.

Residential Schools have caused intergenerational harms that have had and continue to have a devastating impact on the wellness of our peoples. The fourth pillar is the promotion of **wellness for our communities and our people** to address these harms and may include initiatives with one or more of the following goals:

- Promoting holistic and traditional modes of wellness.
- Creating strong and healthy families in our communities.
- Raising our children and youth in a positive and healthy environment.
- Creating individual empowerment.
- Promoting the physical well-being of our people.
- Protecting and reviving healthful eating with traditional foods.
- Fostering relationships with the land.
- Promoting the practice of traditional values such as self-respect, respect toward others, humility, love, caring, sharing, honesty, and discipline.
- Addressing social harms that are the result of intergenerational trauma, including lateral violence, suicide, and drug and alcohol addiction and abuse.

Note: The goals listed under each Pillar are examples and not meant to exhaust the initiatives that may be undertaken under any of the Pillars but rather to show the types of initiatives that may be covered under the Four Pillars.

Gottfriedson et al. v. His Majesty the King in Right of Canada**(Court File No. T-1542-12)****Plan of Dissemination – Notice of Settlement Approval**

The notice of settlement approval (“**Notice**”) will be sent directly to all Band Class Members. Class Counsel will take further steps to confirm that Class Members have received the Notice.

A comprehensive list of Band Class Members is attached as Schedule “A” to the Order of Justice McDonald dated September 6, 2022, as amended January 23, 2023. Because this is an opt-in class action, all 325 Class Members are known to Class Counsel. Further, Class Counsel have had direct contact with each Class Member, including in February 2022, as part of the re-opened opt-in process, and again in January 2023, in order to provide notice of the proposed settlement and settlement approval hearing.

Class Counsel have maintained a comprehensive spreadsheet of contact information for each Class Member, including email addresses, mailing addresses, fax numbers (where available) and phone numbers.

DIRECT CONTACT

The Court-approved Notice will be sent directly to the administrative and/or political office of each Class Member by email, mail and, where available, fax by March 10, 2023. The Notice requests that Class Members confirm receipt of the Notice with Class Counsel to ensure that Notice is effective.

Class Counsel will contact the administrative and/or political office of each Class Member that does not confirm receipt of the Notice, directly by phone, to ensure that all Class Members have, in fact, received the Notice.

WEBSITE

The information in the Notice will be posted at www.bandrepairs.ca by March 3, 2023.

LANGUAGES

The Notice will be sent to the Class Members in English and French. Key information from the Notices will also be made available in six of the most commonly used Indigenous languages – James Bay / Eastern Cree, Plains Cree, Ojibwe, Dene, Inuktitut, and Mi’kmaq – as soon as practicable on www.bandrepairs.ca.

CLASS COUNSEL CONTACT

Class Counsel have established a dedicated toll-free number and email address in order to receive inquiries from Class Members and from the general public. Class Counsel will use the toll-free number and email address to communicate the information contained in the Notice.

Gottfriedson et al. v. His Majesty the King in Right of Canada
(Court File No. T-1542-12)

**INDIAN RESIDENTIAL SCHOOLS
BAND REPARATIONS CLASS ACTION
NOTICE OF SETTLEMENT APPROVAL**

IMPORTANT

You are receiving this Notice because your Band has opted into (*i.e.*, joined) the *Gottfriedson* Band Reparations Class Action.

The Settlement Agreement has received the Federal Court's approval. It is now final and binding on all members of the Band Class.

PLEASE READ THIS NOTICE CAREFULLY TO UNDERSTAND HOW YOUR BAND'S RIGHTS WILL BE AFFECTED.

Please confirm that your Band has received this Notice by emailing Class Counsel at bandclass@waddellphillips.ca.

BAND REPARATIONS CLASS ACTION

The Band Reparations Class Action is a lawsuit against the Government of Canada. The lawsuit is about the collective harm suffered by Indigenous communities as a result of Indian Residential Schools. The lawsuit says that the Government of Canada is responsible for damages to Indigenous *communities* caused by the Indian Residential School system, and in particular, the collective harm suffered by Indigenous communities due to the loss of language and culture because of Indian Residential Schools.

This lawsuit is not about harms suffered by individual survivors who attended Indian Residential Schools. Instead, it is about the collective harm suffered by Indigenous communities as a group as a result of Indian Residential Schools.

This lawsuit was brought by representative plaintiff First Nations Tk'emlúps te Secwépemc and shíshálh Nation (the "**Representative Plaintiff Bands**"), with the support of the Grand Council of the Crees (Eeyou Istchee) (the "**Three Nations**").

325 First Nations Bands are part of the lawsuit. In order to participate, Bands had to "opt-in" or "join" the class action. The opt-in period is now closed, and it is no longer possible to join the lawsuit. For a complete list of which Bands joined the lawsuit, go to www.bandreparations.ca

SETTLEMENT APPROVAL

On [•], 2023 the Federal Court has approved the Settlement Agreement reached between the Representative Plaintiffs and the Government of Canada, which fully and finally resolves the Band Reparations Class Action. As part of the settlement approval process, the Federal Court determined that the Settlement Agreement is fair, reasonable, and in the best interests of the Class Members. This means that **the Settlement Agreement is now final and binding on the parties.**

SETTLEMENT AGREEMENT OVERVIEW

- The Government of Canada will pay \$2.8 billion to the Trust/Not-For-Profit for the benefit of the Class Members in accordance with the Four Pillars;
- The case will not proceed to a trial; and
- The Band Class Members will not be able to bring future lawsuits against Canada for the collective harms suffered by that Band as a result of Indian Residential Schools.

For greater clarity, the Settlement Agreement will not impact any possible claims regarding children who died or disappeared while in attendance at Residential Schools.

Because your Band has opted in to the Band Reparations Class Action as a Class Member, your Band is bound by the terms of the Settlement Agreement.

DETAILED TERMS OF SETTLEMENT AGREEMENT

The agreement is based on the **Four Pillars principles**, namely:

- Revival and protection of **Indigenous languages**;
- Revival and protection of **Indigenous cultures**;
- **Wellness** for Indigenous communities and their members;
- Promotion and protection of **heritage**.

The **key terms** of the settlement agreement are:

- The government of Canada will make a payment of **\$2,800,000,000.00 (two billion eight hundred million dollars)** (the “**Fund**”) to a Trust/Not-For-Profit to fully and finally resolve the Band Reparations Class Action.
- The Trust/Not-For-Profit will be responsible for prudently investing the Fund, and for distributing the Fund to the 325 class members to support the **Four Pillar principles** in accordance with the Disbursement Policy.
- The **Disbursement Policy** will include the following:
 - **Planning funds:** Each Band Class member will receive an initial one-time payment of \$200,000 for the purposes of developing a plan to carry out one or more of the objectives and purposes of the Four Pillars;
 - **Initial Kick-Start Funds:** Upon receipt and review of a plan from a band, the Fund shall disburse the Initial Kick-Start Funds, which shall be equal to the Band’s proportionate share of \$325,000,000, with 40% attributable for base rate, with the remaining 60% to be used to adjust for population. The base rate is an equal amount payable to each Band. The Board will determine an appropriate adjustment for remoteness for the Initial Kick-Start Funds, with any such funds required to account for remoteness being in addition to the \$325,000,000.
 - **Annual Entitlement:** Each Band will receive a share of annual investment income that is available for distribution. That share will be equal to the Band’s proportionate share, adjusted for population and remoteness.
- All monies that remain in the Fund after the payment of the Planning Funds and the Kick-Start Funds will be prudently invested by the Trust/Not-For-Profit in accordance with professional investment advice.
- The Fund will operate for a period of 20 years. For the 20-year life of the Fund, the Annual Entitlement payments will be made from the investment income earned from the Fund. The capital of the Fund will be maintained.
- At the end of the 20-year life of the Fund, the remaining funds consisting of the capital of the Fund and any undisbursed investment income will be disbursed to the Class. Each Band’s share will be equal to the Band’s proportionate share of the remaining funds.
- The Trust/Not-For-Profit will be responsible for determining the Disbursement Policy, which will consist of a base rate, a population adjustment, and a

remoteness adjustment. That formula will allocate 40% to base rate, and 60% to population and remoteness adjustments.

- The Trust/Not-For-Profit will be governed by a board of nine Indigenous directors, eight of which will be selected through a process involving the Representative Plaintiff Bands and, in the case of Regional Directors, by the Class Members, and one of which will be chosen by Canada.
- The Trust/Not for Profit will have regional representation.
- In exchange for the benefits of the agreement, the Band Class members are deemed to agree to a release which will prevent them from bringing any legal claims in future against Canada regarding the collective harms caused to them by the creation and operation of Indian Residential Schools.
- Lawyers' fees and expenses will be paid by the Government of Canada and will not be deducted from the compensation paid to the Band Class. Canada has agreed to pay \$20,000,000.00 (twenty million dollars) to reimburse the Three Nations that provided funding for this litigation, and for all legal fees and expenses incurred by Class Counsel. These fees and expenses [must be/were] approved by the Court.

FURTHER INFORMATION

More information about your rights and details of the settlement (including the settlement agreement) can be found on the bandreparations.ca website.

Class Counsel can be reached at:

Waddell Phillips Professional Corporation

Phone: 1-888-370-1045 (toll-free)

Fax: 416-477-1657

Email: bandclass@waddellphillips.ca

Att'n: Band Reparations Class Action

36 Toronto Street, Suite 1120

Toronto, ON

M5C 2C5

Gottfriedson et al. c. Sa Majesté le Roi du chef du Canada
(N° de dossier du greffe : T-1542-12)

**RECOURS COLLECTIF EN RÉPARATION PRÉSENTÉ PAR
LES BANDES CONCERNANT LES PENSIONNATS INDIENS
AVIS D'APPROBATION DU RÈGLEMENT**

IMPORTANT

Vous recevez cet avis parce que votre bande a choisi de participer (autrement dit, elle s'est jointe) au recours collectif *Gottfriedson* en réparation présenté par les bandes.

L'accord de règlement a été approuvé par la Cour fédérale. L'accord est donc définitif et lie tous les membres du groupe des bandes.

LISEZ ATTENTIVEMENT CET AVIS POUR COMPRENDRE COMMENT LES DROITS DE VOTRE BANDE SERONT AFFECTÉS.

Veillez confirmer que votre bande a reçu le présent avis en envoyant un courriel aux avocats du groupe au courriel : bandclass@waddellphillips.ca.

RECOURS COLLECTIF EN RÉPARATION PRÉSENTÉ PAR LES BANDES

Le recours collectif en réparation présenté par les bandes est une action en justice contre le gouvernement du Canada. Cette action porte sur les préjudices collectifs subis par les communautés autochtones en raison des pensionnats indiens. L'action en justice allègue que le gouvernement du Canada est responsable des dommages causés aux *communautés* autochtones par le système des pensionnats indiens, et plus particulièrement du préjudice collectif subi par les communautés autochtones en raison de la perte de leur langue et de leur culture à cause des pensionnats indiens.

Cette action en justice ne porte pas sur les préjudices subis par les survivants individuels qui ont fréquenté les pensionnats indiens, mais sur les préjudices collectifs subis par les communautés autochtones en tant que groupe à cause des pensionnats indiens.

Cette action en justice a été intentée par les Premières Nations Tk'emlúps te Secwépemc et la Nation shishàlh (les « Bandes représentatives des demandeurs »), avec le soutien du Grand Conseil des Cris (Eeyou Istchee).

Au total, 325 bandes des Premières Nations font partie de cette action en justice. Pour pouvoir participer, les bandes ont dû choisir de « s'inscrire » ou de « se joindre » au

recours collectif. La date limite pour être inclus dans ce recours est maintenant passée et il n'est plus possible de s'y joindre. Pour obtenir la liste complète des bandes qui se sont jointes à l'action en justice, consultez le site www.bandreparations.ca.

ACCORD DE RÈGLEMENT

Le [•], 2023, la Cour fédérale a approuvé l'accord de règlement conclu entre les Bandes représentatives des demandeurs et le gouvernement du Canada et cet accord résout complètement et définitivement le recours collectif en réparation présenté par les bandes. En approuvant l'accord de règlement, la Cour fédérale a déterminé que l'accord est équitable, raisonnable et dans les meilleurs intérêts du groupe. Ceci veut dire que **l'accord de règlement est maintenant définitif et lie les parties.**

APERÇU DE L'ACCORD DE RÈGLEMENT

- Le gouvernement du Canada effectuera un paiement de 2,8 milliards de dollars à une fiducie/un organisme sans but lucratif au bénéfice des membres du groupe selon les principes des quatre piliers;
- Il n'y aura pas un procès sur le fond; and
- Les membres du groupe des bandes seront empêchés d'intenter à l'avenir des actions en justice contre le Canada relativement aux préjudices collectifs que les pensionnats indiens leur ont été causés.

Pour plus de clarté, l'accord de règlement n'aura pas d'incidence sur toutes réclamations éventuelles concernant les enfants décédés ou disparus pendant leur fréquentation des pensionnats.

Comme votre bande s'est jointe à ce recours collectif en tant que membre du groupe, votre bande est liée par les provisions de l'accord.

TERMES DÉTAILLÉS DE L'ACCORD DE RÈGLEMENT

L'accord est fondé sur les principes **des quatre piliers**, à savoir :

- Revitalisation et protection **des langues autochtones**;
- Revitalisation et protection **des cultures autochtones**;
- **Bien-être** des communautés autochtones et de leurs membres;
- Promotion et protection du **patrimoine**.

Les principales conditions de l'accord de règlement sont les suivantes :

- Le gouvernement du Canada effectuera un paiement de **2,8 milliards de dollars** (le « Fonds ») à une fiducie/un organisme sans but lucratif afin de régler entièrement et définitivement le recours collectif en réparation présenté par les bandes.
- La fiducie/l'organisme sans but lucratif sera chargé(e) d'investir prudemment le Fonds et de le distribuer aux 325 membres du recours collectif afin de soutenir **les principes des quatre piliers**, conformément à la Politique de décaissement.
- La **Politique de décaissement** comprendra les éléments suivants :
 - **Fonds de planification** : chaque membre du groupe des bandes recevra un paiement initial unique de 200,000\$ pour l'élaboration d'un plan visant à réaliser un ou plusieurs des objectifs et des buts des quatre piliers;
 - **Fonds de démarrage initial** : sur réception et examen du plan d'une bande, le Fonds versera les fonds de démarrage initial, qui seront égaux à la part proportionnelle de 325 millions de dollars de la bande, 40 % étant attribuables au taux de base, et les 60 % restants devant servir au rajustement en fonction de la taille de la population. Le taux de base est un montant égal payable à chaque bande. Le Conseil déterminera un rajustement approprié en fonction de l'éloignement de la bande pour les fonds de démarrage initiaux, ces fonds devant tenir compte de l'éloignement étant en sus des 325 millions de dollars;
 - **Droit annuel** : chaque bande recevra une part du revenu annuel d'investissement qui est disponible pour la distribution. Cette part sera égale à la part proportionnelle de la bande, rajustée en fonction de la taille de la population et de l'éloignement.
- Toutes les sommes qui restent dans le Fonds après le versement des fonds de planification et des fonds de démarrage seront investies avec prudence par la fiducie/l'organisme sans but lucratif conformément aux conseils professionnels en matière d'investissement.
- Le Fonds exercera ses activités pendant une période de 20 ans.
- Pendant la durée de vie de 20 ans du Fonds, les paiements annuels de droits seront effectués à partir des revenus d'investissement du Fonds. Le capital du Fonds sera conservé.
- À la fin de la durée de vie de 20 ans du Fonds, les fonds restants, composés du capital du Fonds et de tout revenu d'investissement non décaissé, seront versés

au groupe. La part revenant à chaque bande sera égale à sa part proportionnelle dans les fonds restants.

- La fiducie/l'organisme à but non lucratif sera chargé(e) de déterminer la Politique de décaissement, qui consistera en un taux de base, un rajustement pour la taille de la population et un rajustement pour l'éloignement. Cette formule attribuera 40 % au taux de base, et 60 % aux rajustements en fonction de la taille de la population et de l'éloignement.
- La fiducie/l'organisme sans but lucratif sera dirigé(e) par un conseil de neuf administrateurs autochtones, dont huit seront choisis par les Bandes représentatives des demandeurs et par les membres du groupe, et un sera choisi par le Canada.
- La fiducie/la fondation disposera d'une représentation régionale.
- En échange des avantages découlant de l'accord, les membres du groupe des bandes sont réputés accepter une décharge qui les empêchera d'intenter à l'avenir toute action en justice contre le Canada relativement aux préjudices collectifs qui leur ont été causés par la création et le fonctionnement des pensionnats indiens.
- Les frais et les dépenses juridiques seront payés par le gouvernement du Canada et ne seront pas déduits de l'indemnisation versée au groupe des bandes. Le Canada a accepté de payer 20 millions de dollars pour rembourser les Trois Nations qui ont fourni des fonds pour ce litige ainsi que pour payer tous les frais et dépenses juridiques engagés par les avocats du groupe. Ces frais et dépenses [doivent être / ont été] approuvés par la Cour.

RENSEIGNEMENTS SUPPLÉMENTAIRES

Vous trouverez de plus amples renseignements sur vos droits et sur les détails du règlement (y compris l'accord de règlement) sur le site Web bandreparations.ca.

Les avocats du groupe peuvent être joints à l'adresse suivante :

Waddell Phillips Professional Corporation

Téléphone : 1 888 370-1045 (sans frais)

Télécopieur : 416 477-1657

Courriel : bandclass@waddellphillips.ca

Att'n : Band Reparations Class Action

36 Toronto Street, Suite 1120

Toronto, ON M5C 2C5

TAB 2

Court File No. T-1542-12

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N:

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

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL 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 the principal of Peter R. Grant Law Corporation, and am, along with John K. Phillips, K.C., and Diane Soroka, senior Class Counsel in this Action. 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.
2. This affidavit is sworn in support of the Representative Plaintiffs' motion for approval of the Band Class Settlement Agreement pertaining to the Band Class claim, executed January 18, 2023 (the "**Settlement Agreement**"), which, if approved, will resolve this class action in its entirety. A copy of the Settlement Agreement is attached as **Exhibit "A"** to this affidavit.

3. Unless otherwise defined, capitalized terms in this affidavit have the meanings set out in the Settlement Agreement.

4. Nothing in this affidavit is intended to, or does, waive solicitor-client privilege over Class Counsel's discussions with the Representative Plaintiffs or any other Class Members.

I. MY BACKGROUND

5. I have almost exclusively practiced Aboriginal law since 1976, with a focus on litigation and negotiation on behalf of Indigenous clients.

6. I lived with and worked for the Gitksan and the Wet'suwet'en in their territory in northern British Columbia from 1977 until 1995. I recall one young chief with whom I worked closely from the time I went north described to me the difficulty in advancing issues to assist his community as similar to crabs in a pail who pulled down the crab who was almost to the top of the pail. When I did not understand, he explained that as soon as an Aboriginal person started to take on leadership and move things forward, he would be attacked by his own people and accordingly it was hard to progress on issues critical to their nation. Years later, Chief Garry Feschuk of shíshálh Nation, explained to me that Canada's Residential School policies, the attempted destruction of his nation's language and culture, and the undermining of their traditions and those other nations whose leaders he had known as a chief over the years, had led to "lateral violence" and dysfunction in the communities where community members attacked and undermined advances made by leadership. I realized at that time that this was the same scenario as that young Gitksan chief had described to me in 1977.

7. Throughout my career, I have litigated numerous and often precedent-setting cases related to Aboriginal title, Aboriginal rights, and treaty rights including acting as senior counsel for the

Gitksan and the Wet'suwet'en in the leading Aboriginal title case known as *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 and counsel for the Plaintiffs in the seminal Residential School trials and appeals in *Blackwater v. Plint et al*, *FSM v. Clarke* and *Aleck v. Clarke*. These latter three cases were the first trials against Canada and church entities regarding Residential Schools. I argued *Blackwater v. Plint* to the Supreme Court of Canada on the question of the liability of Canada and the church entities.

8. I have also negotiated resource development agreements between governments, corporations and the Crown and treaties of peace and friendship between neighbouring First Nations.

9. I have appeared at the Supreme Court of Canada eleven times in cases involving Aboriginal law issues, including in *Delgamuukw v British Columbia* and *Blackwater v. Plint*.

10. I was chair of the National Aboriginal Law Section of the Canadian Bar Association from 1996-1998, and Canadian Bar Association Aboriginal Law Representative on the Federal Bench and Bar Liaison Committee from 1999 to 2010.

11. I have represented survivors of Indian Residential Schools (“**Residential Schools**” or “**IRSs**”) in litigation since 1995 when I was first retained to sue Canada and the Anglican Church for assaults that occurred at St. George’s IRS in Lytton, British Columbia in *FSM v Clarke et al*. I also represented William Blackwater and 27 other survivors of Alberni IRS in *Blackwater v Plint et al*., *FSM* and *Blackwater* were the first Residential School cases to go to trial.

12. The *FSM* and *Blackwater* cases, together with class actions commenced in other provinces and the political action of the former National Chief of the Assembly of First Nations, Phil Fontaine, led to the negotiation of the Indian Residential School Settlement Agreement (“**IRSSA**”)

in 2006. I was directly involved in these negotiations as part of the group of lawyers who represented over 12,000 individual Residential School survivors. Our group was known as Independent Counsel and is a party and signatory to the IRSSA. Since the signing of the IRSSA, I have been the representative for Independent Counsel on the National Administration Committee, which is responsible for supervising the implementation of IRSSA. I have been the chair of the National Administration Committee since 2010.

13. I continue to practice exclusively in the area of Aboriginal law. The focus of my current legal work is acting as senior Class Counsel in this Action and acting as counsel in *Malii v The King*, which is the Aboriginal title action of the Gitanyow Nation.

II. OVERVIEW OF THE LITIGATION

14. This is a class action lawsuit against Canada for designing and implementing national Indian Residential School policies in which Canada forced Indigenous children to attend IRSs with the underlying goal of assimilation – taking the “Indian out of the child” – and which resulted in great harm not only to the children who attended IRSs, but also to the communities of which they were a part. The Class Period runs from 1920, when the *Indian Act* was amended to make attendance of Indian children at an *Indian Act* school mandatory, until 1997, when the last IRS was closed.

15. This Action was originally certified as a class action on behalf of three classes: the Survivor Class (sometimes referred to as the Day Scholars), the Descendant Class (consisting of the children of members of the Survivor Class by birth or adoption), and the Band Class.

16. On June 4, 2021, the Representative Plaintiffs and the defendant reached a settlement with respect to the Survivor and Descendant Classes (the “**Day Scholar Settlement**”), which this Court approved by order dated September 24, 2021.

17. The Day Scholar Settlement was without prejudice to the Band Class claims, which remained ongoing. The Band Class claims are about the collective harm suffered by Indigenous communities as a result of Residential Schools. The Representative Plaintiffs say that Canada is responsible for damages to Indigenous communities caused by Canada’s Residential School policies, and in particular, the collective harm suffered by Indigenous communities due to the loss of language and culture because of Residential Schools.

18. The Settlement Agreement resolves the claims of the Band Class, and in so doing resolves all remaining parts of this Action.

III. THE INDIAN RESIDENTIAL SCHOOL SYSTEM

19. As a result of my work as legal counsel in Residential School abuse cases, negotiation of the IRSSA, and as senior Class Counsel in this Action, I am familiar with the history of the IRS system, including the historical work of Dr. John Milloy, a history professor who wrote *A National Crime: The Canadian Government and the Residential School System*, Chapter 10 of the *Report of the Royal Commission on Aboriginal Peoples* regarding Residential Schools, and a report for the Royal Commission entitled *Suffer the Little Children: A History of the Federal Government's Residential School System, 1830-1992*. I am also familiar with the history of the Residential School System as described by the Truth and Reconciliation Commission (“TRC”).

20. Based on my experience and knowledge described above, I summarize the history of the Indian Residential School system below. I am not presenting myself as an expert historian. For the

purposes of this affidavit, I rely on the history of the IRS system as found by the TRC and set out in “Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada” and *The Final Report of the Truth and Reconciliation Commission of Canada, Volume 5, Canada’s Residential Schools: The Legacy*. Because of its size, I have not attached *The Final Report of the Truth and Reconciliation Commission of Canada* as an exhibit to this affidavit. It is, however, in the public domain and can be accessed online at the website for the National Centre for Truth and Reconciliation: <https://nctr.ca/records/reports/#trc-reports>. I also rely on the expert opinion report of Dr. John Milloy prepared for this litigation which was served on Canada on December 7, 2020, and my preparation of Dr. Milloy for his examination-in-chief, and cross examination at trial in this Action. I have appended a copy of Dr. Milloy’s expert opinion report to this Affidavit as **Exhibit “B”**. As negotiations to resolve the case did not commence until a few days before the scheduled start of the trial on September 9, 2022, I had fully prepared Dr. Milloy for his expected evidence at trial.

21. Prior to the start of the Class Period, Indigenous peoples across the land that later became Canada had their own distinctive languages and cultures that they had developed, practiced, retained and transmitted from generation to generation over thousands of years.

22. Starting in the 1870s and continuing for over 100 years, Canada funded, oversaw and, together with certain religious organizations, operated a system of 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

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.

23. The Truth and Reconciliation Commission concluded that “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

24. Canada began funding the operation of Residential Schools 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. In 1910 and again in 1962 Canada entered into funding agreements with the religious organizations regarding the operation of IRSs, which among other things, required IRSs to be run in accordance with regulations and standards set and monitored by Canada. In 1953, Canada passed the Indian Residential School Regulations (*Regulations With Respect to Teaching, Education, Inspection, and Discipline for Indian Residential Schools, made and Established by the Superintendent General of Indian Affairs Pursuant to Paragraph [a] of Section 114 of the Indian Act*).

25. In 1920, the beginning of the Class Period in this Action, Parliament 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 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

² TRC Summary Report, p. v.

the *Act*, including the “authority to enter any place where he has reason to believe that there are Indian children”. Although these provisions relating to truancy remain in the *Indian Act* until the present time, they were finally declared unconstitutional in 1982 (see *R. v. B.*, 6 CCC (2d) 359 — 135 DLR (3d) 285 , 1982 CanLII 3260 (ON CJ), <<https://canlii.ca/t/g9t0f>>)

26. Canada maintained control over Residential Schools until the last Residential School closed in 1997.

27. The TRC concluded that Canada’s assimilationist policy towards Aboriginal people, including the establishment and operation of Residential Schools, was cultural genocide:³

For over a century, the central goals of Canada’s Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. **The establishment and operation of residential schools were a central element of this policy, which can best be described as “cultural genocide”.**

28. Canada has repeatedly acknowledged the assimilationist intent of Residential Schools and the harm done by the IRS system to Indigenous children who attended these schools, their families, and their communities.

29. On June 11, 2008, the then-Prime Minister of Canada, the Right Honourable Stephen Harper, made a Statement of Apology to survivors of Indian Residential Schools, on behalf of the Government of Canada. 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 Indigenous cultures and spiritual beliefs were inferior and unequal.

³ TRC Summary Report, p. 1 (emphasis added).

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.” A copy of the Statement of Apology is attached as **Exhibit “C”** to this affidavit.

30. The Right Honourable Justin Trudeau, the Prime Minister of Canada, has issued similar statements acknowledging the harms caused by the IRS system. For example, on August 29, 2022, the Prime Minister’s Office issued a statement which read:

“Residential schools are a shameful part of our history that continue to have a deep and lasting impact on Survivors, their families and their communities across the country... The residential school system in Canada robbed Indigenous children of their childhoods. It attempted to assimilate them, forcing them to abandon their languages, cultures, spiritualities, traditions and identities.”

A copy of the statement of the Prime Minister’s Office dated August 29, 2022 is attached as **Exhibit “D”** to this affidavit.

31. In other words, there is no dispute between the Plaintiffs and Defendant that the IRS policies caused grievous damage to all Indigenous cultures and has led to a catastrophic decline in all Indigenous languages over the past 100 years. “Aboriginal languages have survived. But only barely. Very few Aboriginal languages are in good health today.”⁵ As found by the TRC:

Aboriginal students were forced to abandon their languages and cultural practices. They became alienated from their families, their communities, and ultimately from themselves. This damage was passed down through the generations, as former students found themselves unable or unwilling to teach their own children Aboriginal languages and cultural ways.⁶

⁵ Final Report of the TRC, Vol 5, p. 112.

⁶ Final Report of the TRC, Vol. 5 pp 104-105.

32. In particular, the IRS system disrupted, and in some cases eliminated, the intergenerational transmission of language and culture. As found by the TRC: “While initially Survivors could return to communities where their languages and cultures were still alive and vibrant, with each successive generation of Survivors, there was a greater weakening of community cultural and linguistic strength.”⁷ For example, in the case of the Representative Plaintiff shíshálh Nation, within the span of a few generations, *she shashíshálhem* went from being the dominant language spoken in the community, to being a severely endangered language with no fully fluent speakers. shíshálh Nation lost their last fluent speakers within the last few years, while this Action was being litigated.

B. Indian Residential School Settlement Agreement (“IRSSA”)

33. 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 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.”

34. Compensation under the IRSSA for individual Residential School survivors took two forms. First, survivors who *resided at* an IRS were eligible for a lump sum Common Experience Payment (“CEP”) in recognition of the general harm suffered as a result of attending and residing at Residential Schools. Second, survivors who suffered sexual abuse and/or serious physical abuse

⁷ Final Report of the TRC, Vol 5, p. 105.

arising from or connected to the operation of an IRS could apply for compensation through the Individual Assessment Process (“IAP”).⁸ In addition, the IRSSA also provided for:

- a. the establishment of a Truth and Reconciliation Commission;
- b. funding for measures to support healing, including the creation of the Indian Residential Schools Resolution Health Support program and an endowment to the Aboriginal Healing Foundation; and
- c. funding for commemorative activities.

35. Survivors who attended Residential Schools during the day but did not stay there overnight (“Day Scholars”) were eligible to apply for compensation through the IAP for sexual abuse and/or serious physical abuse, but were specifically excluded from receiving a CEP because they did not live at Residential Schools. Day Scholars who did apply for a CEP received rejection letters stating that, as Day Scholars, they were ineligible for a CEP.

36. The IRSSA did not address the collective harms suffered by Indigenous communities as a collective as a result of Canada’s IRS policies thereby effectively excluding those Indigenous communities from the settlement and an opportunity for reconciliation.

IV. HISTORY OF THIS ACTION

A. Origins of the Action

37. This class action was intended to address two gaps left by the IRSSA: first, the exclusion of Day Scholars from receipt of the CEP, and second, the failure to address the collective harms caused to Indigenous communities as whole as a result of the IRS policies.

38. This Action originated in a series of conversations between Chief Garry Feschuk of shíshálh Nation and Chief Shane Gottfriedson of Tk'emlúps te Secwépemc regarding the ongoing and unaddressed harms faced by their communities as a result of the IRS policies, including the harmful legacy left by the IRS policies to their Nations as a whole in the form of damage to their language and culture, and damage to their communities' social fabric. During these conversations, they decided that they and their Nations would come together to take legal action both on behalf of Day Scholars who had been excluded from IRSSA, and on behalf of Indigenous nations who had been impacted like their two nations by Canada's IRS policies. Since commencing the lawsuit in August 2012, Chief and Council for Tk'emlúps te Secwépemc and shíshálh Nation have played a key leadership role in this Action. More specifically, representatives of the two Representative Plaintiffs nations traveled to many other Aboriginal communities across Canada to explain the Action and to seek support for the lawsuit against Canada.

B. Commencement and Certification of the Action as a Class Proceeding

39. This Action was commenced by way of a statement of claim filed in Federal Court on August 15, 2012. The statement of claim was amended on June 17, 2013, after certification on June 26, 2015, and again on February 11, 2022, to reflect the Day Scholar Settlement. The current version of the claim is the Second Re-Amended Statement of Claim filed on February 22, 2022, which I have attached as **Exhibit "E"** to this affidavit.

40. After a contested certification hearing, by order of this Court dated June 18, 2015 (and subsequently amended), this Action was certified as a class proceeding for a Class Period of 1920 to 1997 on behalf of three classes: the Survivor Class, sometimes referred to as the Day Scholars, consisting of children who attended an IRS for an educational purpose but did not receive the Common Experience Payment under IRSSA; the Descendant Class, consisting of the children of

members of the Survivor Class (by birth or adoption); and the Band Class. A copy of the June 18, 2015 certification order (with schedules removed) is attached as **Exhibit “F”** to this affidavit.

41. The certification order names Tk’emlúps te Secwépemc Indian Band and Sechelt Indian Band (now known as shíshálh Nation) as Representative Plaintiffs. Chief Gottfriedson and Chief Feschuk have continued to act as representatives for their Nations throughout the litigation.

42. In 2016, the Grand Council of the Crees (Eeyou Istchee), under the leadership of its former Grand Chief, Matthew Coon Come, joined with Tk’emlúps te Secwépemc and shíshálh Nation in providing both leadership and litigation funding for the Class Action. The Grand Council of the Crees is the political body that represents approximately 18,000 Crees of the James Bay region of Northern Quebec.

43. Together, Tk’emlúps te Secwépemc, shíshálh Nation and Grand Council of the Crees (Eeyou Istchee) formed the Day Scholars Executive Committee (“DSEC”) to provide leadership and direction for the litigation of the Action on behalf of the three classes. The DSEC gave direction on the lawsuit and instructed legal counsel. Each nation had at least one representative on the DSEC, and two votes each. The three nations funded the legal proceeding in part.

44. On January 16, 2020, then Case Management Judge Justice Barnes ordered that the common issues trial of the Action regarding the claims of the Day Scholar Survivor, Descendant and Band Classes would take place in Vancouver starting September 7, 2021 for a duration of 74 days.

C. Day Scholar Survivor and Descendant Settlement Agreement

45. On June 4, 2021, after nearly a decade of hard-fought litigation, the parties executed the Day Scholar Settlement Agreement to resolve the claims of the Survivor and Descendant Classes in their entirety.

46. At the request of the parties, on June 10, 2021, the court vacated the common issue trial dates starting on September 7, 2021 so that the parties could concentrate on negotiating, finalizing, seeking court approval of and implementing the Day Scholars Settlement.

47. On September 24, 2021, Justice McDonald approved the Day Scholar Settlement as fair, reasonable, and in the interests of the Survivor and Descendant Classes, and without prejudice to the ongoing litigation of the Band Class.

D. Continued Claims of the Band Class

48. As part of the Day Scholars Settlement, the Parties made considerable efforts to come to agreement on an amended certification order and amended statement of claim, so that these foundational documents would reflect the shape and core issues of the litigation moving forward, after the approval of the Day Scholar Settlement.

49. At the request of the parties, the certification order was amended on September 24, 2021 and again on February 8, 2022 to refocus on the continued claims of the Band Class. A copy of the Court order dated February 8, 2022 (schedules removed) is attached as **Exhibit “G”** to this affidavit. On February 11, 2022, the Representative Plaintiffs filed a Second Re-Amended Statement of Claim (attached as Exhibit “E”), which set out those continued claims.

50. Pursuant to the amended certification order, the Band Class is defined as the Tk’emlúps te Secwépemc Indian Band and the shíshálh Band and any other Indian Band that:

- (i) has or had some members who are or were Survivors, or in whose community a Residential School is or was located; and
- (ii) is specifically added to this claim in relation to one or more specifically identified Residential Schools.

51. Pursuant to the amended certification order, “Indian Band” means any entity that:

- (i) Is either a “band” as defined in s. 2(1) of the *Indian Act*, or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognising or establishing it as a legal entity; and
- (ii) Asserts that it holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

52. The term “Survivors” in the above class definition is defined by the Second Re-Amended Statement of Claim as “all Aboriginal Persons who attended as a student or for educational purposes for any period at a Residential School, during the Class Period”.

53. This Action is about the collective harm suffered by Indigenous communities as a group as a result of Canada’s Indian Residential School policies. The Action claims that the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of children at Residential Schools destroyed the Band Class Members’ language and culture, violated their cultural and linguistic rights, and caused them cultural, linguistic and social damage and irreparable harm to the Band Class Members. The Action seeks declarations and compensation for the collective losses of language and culture and other collective harms caused by the Residential School policies.

54. As set out in the amended certification order, the nature of the claims of the Band 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.

55. The amended certification order sets out the following common issues to be determined with respect to the Band Class:

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

56. Pursuant to Court orders dated August 24, 2020 and August 11, 2022, the common issues trial was bifurcated: common issues (a), (b), and (d) were to be determined in phase one of the common issues trial scheduled to begin in September 2022, while common issues (c) and (e) were to be determined in phase two of the common issues trial after the adjudication and final determination of the common issues to be determined in phase one of the common issues trial.

E. Band Class Membership

57. In his certification order, Justice Harrington directed that the Band Class is an opt-in class. In order to become a class member, a Band was required to opt in by the opt-in deadline, or otherwise be added to the Class by Court order. The certification order dated June 18, 2015 set a six-month opt-in period, with an opt-in deadline of February 29, 2016.

58. A total of 98 Bands opted into this action before the initial deadline, and a further Band was added by an order of this Court dated July 17, 2017. This amounted to 101 class members (including the two Representative Plaintiffs) out of approximately 640 entities in Canada that may have been eligible to become a part of the Band Class.

59. In late 2021 and early 2022, the Day Scholars Settlement and the finding of unmarked graves of children at a number of IRSs had prompted renewed interest in this litigation. During this time, the Representative Plaintiffs and Class Counsel heard from a number of Bands that indicated that they would like to be added as Band Class Members.

60. Additionally, some potential class members advised Class Counsel that they were uncertain about who was eligible to join the Band Class. Upon instructions of the DSEC, Class Counsel negotiated with the Defendant Canada to seek leave to re-open the opt-in period for the Band Class to allow other Indigenous communities the join the proceeding.

61. On February 8, 2022, on the consent of the parties, Justice McDonald ordered the extension of the opt-in period to May 31, 2022 (attached as Exhibit "G"). On June 15, 2022, at the request of the parties, Justice McDonald ordered a further extension of the opt-in deadline to June 30, 2022. These extensions afforded Indigenous communities who had not opted-in initially an additional four months and 3 weeks in order to advise of their interest in participating.

62. During this time, Class Counsel undertook a campaign to disseminate notices in English and French to all Bands in Canada that may have been eligible to join the action. Pursuant to the order, we also contacted every existing Class Member who had not yet specified the basis for their eligibility. This outreach required the hiring of additional staff and re-allocation of existing staff to the task, all undertaken by Class Counsel.

63. Between February and September 2022, Class Counsel responded to many inquiries from existing and potential Class Members as well as interested members of the public and the media about the opt-in process, and about the Action in general.

64. On September 6, 2022, with a further order to add La Nation Huron-Wendat to the Band Class, a total of 325 Bands had opted in to this action.

65. The September 6 class list inadvertently lists one Band Class Member twice. By order of Justice McDonald dated January 21, 2023 the duplicate entry was removed. The final Band Class Member list is attached as Schedule “A” to the order dated January 20, 2023, attached as **Exhibit “H”**.

66. Throughout both the first opt in period in 2015-2016 and the second opt in period in 2022, there was no settlement, and no indication that a settlement might be possible. In fact, during the 2022 opt-in period, both Parties were immersed in trial preparation for a vigorously contested trial scheduled to start in September. In reaching out to potential Band Class Members, we had to be clear that there was no guaranteed outcome to the proceedings. Furthermore, we were clear that no claim was being made in this Action against the churches involved in the operation of Residential Schools (a decision made by the Representative Plaintiffs prior to the certification proceedings to ensure that the action would proceed more quickly to a trial or resolution) and the

claims did not include any claims relating to the recently discovered unmarked graves at Residential Schools.

67. Most importantly, Class Counsel was mindful of the fact that, unlike the Survivor and Descendant Class, Justice Harrington had certified the Band Class claim on an opt-in basis in order to respect the sovereignty of the Indigenous Band governments, and to preserve the litigation choice of those governments. Our approach was to explain the Class Action, including its pros and cons, but we were mindful of the importance of each band's government coming to its own decision about whether or not to join.

68. Those bands who did not opt in are not class members and therefore are not impacted by the Settlement Agreement. Nothing in this Settlement Agreement can impact on their rights.

V. CANADA'S DEFENCE OF THE ACTION

A. Canada's Statement of Defence

69. From the start in 2012 right up until the trial adjournment on September 19, 2023, 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 very little, and put the Representative Plaintiffs to the strict proof of all aspects of their claim. The result was a long and difficult journey for the Representative Plaintiffs. For example, Canada refused to even acknowledge statements of Prime Minister Trudeau or Minister Marc Miller regarding the devastating impact of the Residential Schools system thereby requiring the Representative Plaintiffs to seek to *subpoena* these two Ministers of the Crown.

70. Canada filed a Statement of Defence on September 8, 2015, an Amended Statement of Defence on April 8, 2019, and a Second Amended Statement of Defence on March 14, 2022. I have attached Canada's Second Amended Statement of Defence as **Exhibit "I"** to this affidavit.

71. In Canada's Second Amended Statement of Defence, Canada maintained the following positions, amongst others:

- a. 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;
- b. Canada sought to rely on the releases contained in IRSSA as a bar to the claims of the Classes, including the Band Class;
- c. Canada did not breach any fiduciary, statutory, constitutional or common law duties owed to, or the Aboriginal Rights of, the Class Members in the operation of Residential Schools;
- d. Canada challenged the Band Class Representative Plaintiffs' legal authority to pursue the claim for breach of Aboriginal Rights;
- e. Canada denied that it breached or unjustifiably infringed the Aboriginal or other rights of members of the 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; and
- f. Canada denied that any damages suffered by the Classes were caused by Canada.

B. Canada's positions at trial

72. Until the scheduled start of the trial, Canada continued to take uncompromising and aggressive defences and gave no indication that it intended to engage in any meaningful efforts to resolve the Band Class claim before trial.

73. On September 7, 2022, Canada delivered the Trial Brief of the Defendant, a copy of which is attached as **Exhibit “J”** to this affidavit. The trial brief set out in great detail Canada’s intended arguments at trial. Canada continued its approach of virtual complete denial, thereby requiring the Representative Plaintiffs to prove each and every aspect of their claim at trial:

- a. Canada would deny that there was a “universal policy or common approach related to residential schools as alleged, or at all, that could have violated the rights of all Class Members, given the variations in the schools geographically and over time.”
- b. Canada would argue that the case is inappropriate for class-wide determination: “The Plaintiffs’ claims are based on the conduct of the 23 different federal governments in office throughout the 77 year Class Period from 1920 to 1997, in designing and implementing what they refer to as the ‘Residential Schools Policy’.” Further, “The record will demonstrate that there was no single system implemented universally by Canada for all Indian Residential Schools, in all geographic locations throughout Canada, and for the entire duration of the 77-year Class Period.”
- c. Canada would argue that “the Court should accept no evidence, or should significantly limit and give little weight to evidence, about what happened at residential schools, or at least any other than the two related to the representative Plaintiffs.”
- d. Canada’s trial brief noted that the Court could decertify the case if it determined that the certified common issues could not be answered in common.
- e. On the basis of the Bifurcation Order, Canada would attempt to limit the Plaintiff’s evidence on liability to exclude any evidence of harms, causation or damages.

- f. Canada would vigorously deny that Canada owed a fiduciary duty, or if it did have a fiduciary duty, it did not apply Class-wide, and would maintain that if there was a duty owed, it was owed exclusively to individual children who attended a Residential School. Even if a duty were established, Canada would argue that the record does not support the finding of a breach across the entire Class and Class Period.
- g. Canada would argue that Canada did not owe the Class Members a duty not to take steps to destroy their languages and cultures. It would argue, rather, that “[t]he circumstances, timing and manner in which Canada became involved in the residential schools found in [the Representative Plaintiffs’] communities, and those of the other Class Members, involved, at most, an undertaking (whether or not a duty) to educate their children in colonial languages and ways of life in a manner Canada believed at the time was in their best interests based on the prevalent knowledge of convictions held during the historical period”. In other words, Canada was prepared to argue at trial in 2022 that Canada’s destruction of Indigenous language and culture through Residential Schools was historically justified.
- h. Canada would argue that even if there were a generic Aboriginal right to speak traditional languages and to engage in traditional customs and religious practices, which they denied, the record did not have sufficient evidence that all Class Members had the right, or that each Class Member had standing to advance a claim to the right’s infringement.
- i. Canada would argue that the rights asserted by the Representative Plaintiffs are too general and broad to be sustainable at law. The asserted rights, according to Canada,

are not adequately detailed and not supported by evidence “for any or all Class Members”.

- j. Canada would argue that the Aboriginal rights issues would have to be determined both pre-1982 and post-1982, by virtue of the fact that section 35 of the *Constitution Act, 1982* came into force in 1982 and did not have retroactive effect. Canada would argue further that any common law Aboriginal rights proven by the Representative Plaintiffs were not breached by Canada’s conduct in the period prior to 1982 and that “there is no Crown conduct after 1982 that can give rise to a claim of infringement [of the Representative Plaintiffs’ s. 35 rights]”.
- k. Similarly, with respect to the allegation that Canada breached its commitments under International Instruments, Canada would argue that none of those six instruments were in force prior to 1951, and further that a separate analysis would be required for the time period each of the Instruments was in force. Further, alleged breaches of the Instruments do not form the basis of a cause of action in Canadian law.
- l. Canada indicated that it would object to all of the Representative Plaintiffs’ expert reports as inadmissible or of little weight and probative value, notwithstanding that those experts included, for example, the leading Canadian historian on Residential Schools who had contributed to the Royal Commission on Aboriginal Peoples and been consulted by the TRC, leading linguists in the field of Indigenous languages, and Canada’s foremost expert on genocide.

74. In short, as of the scheduled start of trial, Canada’s legal position was to concede virtually nothing and challenge every aspect of the Plaintiff’s case. The Representative Plaintiffs did not

shirk from what was going to be a very traumatic trial in which they would hear Canada's denials of responsibility over and over again. All of the Representative Plaintiffs' witnesses were ready to testify as to the impacts of Canada's IRS policies on their communities and the experts were prepared to opine on the continuity of the assimilationist policy of attacking Indigenous cultures and languages over the Class Period and the impacts of such a policy, all of which amounted to 'genocide' as that term is properly understood.

VI. COMMON ISSUES TRIAL PREPARATION

75. Trial preparation for a claim of such scope, historical significance and national importance was a prodigious and intensive year-long undertaking, and involved amongst other things, review of hundreds of thousands of historical documents, retaining and instructing expert witnesses, preparing and conducting examinations for discovery, conducting legal research, preparing trial strategy, identifying and preparing witnesses, and crafting opening and closing submissions.

76. By September 2022, Class Counsel and the Representative Plaintiffs were fully trial ready. I have attached as **Exhibit "K"** the Plaintiffs' Trial Brief filed shortly before trial, setting out the Representative Plaintiffs' roadmap for the first phase of the common issues trial.

VII. NEGOTIATIONS

A. First round of negotiations and the development of the Four Pillars Trust Model

77. On May 24, 2016, the Representative Plaintiffs' representatives and Class Counsel met with the Honourable Minister Carolyn Bennett, the Minister of Aboriginal and Northern Affairs at the time, to impress upon her the urgent need to resolve the litigation in light of the advancing age of members of the Day Scholar Survivor Class.

78. On October 20, 2016, Minister 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.

79. Between January and July 2017, the MSR met with Representative Plaintiffs, the DSEC and Class Counsel ten times. The discussions pertained to each of the Classes' claims, though negotiations in respect of each Class were somewhat distinct. In this affidavit, I will focus on the aspect of the exploratory discussions which focussed on resolving the Band Class claim.

80. In preparation for these discussions, the Representative Plaintiffs, together with their legal counsel and the DSEC, developed a detailed framework for resolution of the Band Class claim that became known as the Four Pillars Trust Model. That framework was based on the following central considerations:

- a. first, because of the longstanding and intergenerational effects of Residential Schools, the Representative Plaintiffs considered it essential that the model offer a generational solution to the Band Class;
- b. second, that the model was directed at remedying the central harms caused by Residential Schools to communities, namely loss of language, loss of culture, loss of heritage, and damage to the "social fabric" and well-being of the communities;
- c. third, that the model included a source of long-term funding for programs and initiatives, rather than a one-time payment to Band Class Members;
- d. fourth, that the model empower Band Class Members to set their own priorities and make their own decisions regarding how to remedy harms caused to their communities as a result of the Residential School policies;

- e. fifth, that control over use of the funds lay in the hands of Indigenous people, rather than the Government of Canada.

81. In the past, to the extent that Canada has tried to address issues such as loss of language and culture, it has done so through a top-down approach, with Indigenous Relations and Northern Affairs Canada or its predecessors dictating priorities and determining what funding was available, and how it was to be spent. In the experience of the Representative Plaintiffs and the view of the DSEC, this approach was deeply colonial, and the programs often failed and even if they did not fail, were ultimately short term and not successful. The Plaintiffs' Four Pillars Trust Model was a complete rethink about how best to remediate wrongs by putting control back in the hands of Indigenous peoples.

82. It was therefore of considerable importance that the trust be directed by Indigenous peoples to support initiatives chosen by the Class Members themselves. Indigenous autonomy over the origination and content of language and cultural revitalization programs was essential.

83. In March 2017, the Representative Plaintiffs and the DSEC presented the Four Pillars Trust Model to resolve the Band Class Claims to the MSR. The Four Pillars Trust Model involved the following:

- a. the settlement would be animated by the Four Pillar objectives established by the Representative Plaintiffs, namely:
 - (i) revival and protection of Indigenous languages;
 - (ii) revival and protection of Indigenous cultures;
 - (iii) wellness for Indigenous communities and their members; and
 - (iv) heritage.

- b. settlement funds earmarked for the Band Class would be put into a long-term trust designed to earn income for the benefit of the Class;
- c. annual income from the trust would be used to fund initiatives in furtherance of the Four Pillars for the benefit of the Class members; and
- d. the trust would be Indigenous controlled, and all decisions regarding which initiatives support of the Four Pillars to pursue would be made by the Band Class members themselves.

84. Matthew Coon Come, in meetings between the DSEC and the MSR, explained in extensive detail on behalf of the DSEC the proposed Four Pillars Trust Model on behalf of the Plaintiffs.

85. The MSR took the Representative Plaintiffs' proposal with respect to each of the three Classes to the Government for consideration, but at that time, Canada focussed on settling the Survivor Class and Descendant Class.

86. Owing to the number of deaths of members of the Survivor Class, including Representative Plaintiffs of the Survivor Class, the Representative Plaintiffs proposed to resolve the claims of the Survivor and Descendant Classes first, and to leave the resolution of the claims of the Band Class to another day.

87. Formal settlement negotiations began in February 2018 in Vancouver. Unfortunately, these negotiations were unsuccessful. After the February negotiation session, both parties agreed that mediation by the Court in the form of judicial dispute resolution was necessary.

88. 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.

89. By early 2019, the parties had made no headway and settlement negotiations broke down as several areas of disagreement remained. The Representative Plaintiffs would not accept a settlement of the Survivor Class's claims as a full settlement with no resolution of the Descendant and Band Class Members' claims.

90. The Parties were still very far apart on any possible settlement of the Band Class claim. In early 2019, as a result of the breakdown in negotiations, the parties returned to active litigation. Between early 2019 and February 2021, there were no substantive settlement negotiations.

91. As directed by Justice Barnes, the Plaintiffs and Defendants moved forward to be prepared for trial in September 2021.

B. Second round settlement negotiations and the Day Scholars Settlement Agreement

92. In February 2021, the MSR on behalf of the Minister approached the Representative Plaintiffs to re-open negotiations with respect to the Survivor Class and Descendant Class. I was designated as the Class Counsel who would lead the negotiations under the directions of the Representative Plaintiffs through the DSEC regarding the claims of the Survivor and Descendant classes. The second round of settlement negotiations, which commenced in February 2021, focused entirely on the resolution of the claims of the Survivor and Descendant Classes, while discussion regarding resolution of the claims of the Band Class was deferred. Time was of the essence, given that the Survivor Class was an aging population and Survivor Class Members continued to die. Furthermore, there was a pending trial in September 2021 and the Plaintiffs did not wish to lose that trial date. As part of these negotiations, the Representative Plaintiffs made clear that a resolution of the Survivor and Descendant Classes' claims could not prejudice ongoing claims of the Band Class. I described the key issues and the course of this round of negotiation in

my affidavit sworn in support of approval of the Day Scholar Settlement which has been filed with the Court.

93. The Day Scholar Settlement Agreement was signed on June 3 and 4, 2021, and approved by this Court on September 24, 2021.

94. The Day Scholar Settlement included the necessary provisions and arrangements to allow the settlement to proceed and the Band Class to continue litigating their claims, without prejudicing the rights of either party in the Band Class proceeding. In particular, the releases of liability in the Day Scholar Settlement were specifically and carefully negotiated so that they would 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) were carved out of the Day Scholar Settlement.

C. Continued negotiations and the Band Class settlement

95. While the parties did not have substantive discussions regarding the resolution of the Band Class claims between 2017 and September 2022, I am advised by Mr. Isaac, the MSR, and believe that Canada was reviewing internally the Four Pillars Trust Model proposed by the Representative Plaintiffs to resolve the Band Class claim. The substance of Canada's internal discussions are unknown to me.

96. On September 2, 2022, just over one week before the common issues trial was set to begin on September 12, 2022, I received a call from the MSR, Mr. Isaac. As described above, prior to this call, Class Counsel was operating under the assumption that the trial would proceed. Canada continued to push to trial aggressively and had conceded nothing.

97. At the outset of our September 2 call, the MSR reminded me that he had previously committed not to call me unless he had news regarding a proposed settlement. He advised me that Canada had been working internally on resolving the Band Class action based on the proposal made by the Representative Plaintiffs in 2017, and he wanted to discuss this in more detail with me. He told me that he had been given a mandate and was optimistic that it was meaningful but that would ultimately be a matter for the Representative Plaintiffs to determine. He recommended that we sit down as soon as possible. He advised that he recognized the short time frame and wanted to 'put everything on the table' in the first proposal and Minister Miller agreed with that approach. He advised me that the Honourable Marc Miller, who was named the Minister of Crown-Indigenous Relations on September 19, 2021, and who he represented, wished to resolve the Band Class claim on the basis of the Four Pillars Trust Model. He suggested we meet on September 7, 2022 in person to discuss. He suggested a one week adjournment of the trial but stated that was not a pre-condition to negotiations. We agreed to meet in person on September 7, 2022 at his offices.

98. In preparation for that meeting, I reported to other senior members of the Class Counsel team and to the DSEC to clarify whether a settlement of the Band Class claim on the basis of the Four Pillars Trust Model was still agreeable as I had been asked for clarification on this point. I also advised that Canada was seeking a 'brief adjournment' of the commencement of the trial but that was not a pre-condition for negotiations. I received instructions to communicate to Canada that the Representative Plaintiffs would not agree to an adjournment until after we had the actual offer from Canada to discuss. As a result, all Class Counsel, including myself, and the Representative Plaintiffs and other witnesses, continued our preparations for trial including meeting with the witnesses, preparing opening and closing submissions, and proceeding on the

basis that the trial would start on September 12, 2022. I also finalized the negotiations with Canada's legal counsel regarding the oral history protocol to admit oral history evidence at trial. In short, the Representative Plaintiffs and Class Counsel all continued to work on the basis that the trial would be starting on September 12 as scheduled.

99. Nevertheless, on September 7, 2022, I met with Mr. Isaac, a representative from Mr. Miller's office, and Travis Henderson, a lawyer from the Department of Justice who was not part of Canada's litigation team. As part of this discussion, Mr. Isaac confirmed that he had a "meaningful, material mandate" to resolve the Band Class claims roughly in accordance with the Four Pillars Trust Model that the Representative Plaintiffs and DSEC proposed at the first round of negotiations. Mr. Isaac advised that he could meet "anytime anywhere" to resolve this issue but he wanted a confirmation that the Plaintiffs' maintained the Four Pillars Trust Model as the preferred basis for settlement. It became clear from their ultimate oral and written offer that Canada's settlement proposal was based on the Four Pillars Trust Model which had been advanced by the Plaintiffs in 2017.

100. Both Mr. Isaac and Mr. Henderson asked for agreement to a one or two week adjournment of the trial start date. I pointed out that counsel could not recommend that without the settlement amount and that my clients were waiting to hear the settlement proposal.

101. Canada asked to set a meeting for Sunday, September 11, 2022. After discussion with the Representative Plaintiffs, I informed Mr. Isaac that the Representative Plaintiffs and Class Counsel were available to meet on September 11, 2022 on the understanding that, at that meeting, Canada would present its full settlement offer, including the settlement amount. At that point, there had been no agreement to adjourn the start of the trial scheduled for September 12th.

102. Between September 7th meeting and September 11th, I had a number of discussions with Mr. Isaac who initially proposed a full day and then a half day meeting. I was also in numerous discussions with our clients to determine the best approach to take at the Sunday meeting. At the same time, I and other counsel were meeting with and finalizing preparations for the first witnesses as there remained no agreement to adjourn the trial. With respect to Canada's request to adjourn, I again informed Mr. Isaac that the Representative Plaintiffs would not be able to take a position until after Canada had presented its full offer. Mr. Isaac and I ultimately agreed that one of our clients would summarize the Representative Plaintiffs' position on the Four Pillars at the meeting and that Mr. Isaac would table Canada's offer on Sunday, September 11th and confirm it in writing shortly thereafter.

103. On September 7, 2022, as these discussions were happening, Canada delivered its aggressive trial brief, described above. Upon receipt, which reflected an entrenched position of Canada, the Representative Plaintiffs were very reluctant to agree to any adjournment, no matter what settlement proposal Canada brought forward.

104. On September 11, 2022, Matthew Coon Come, on behalf of the DSEC and the Representative Plaintiffs, reviewed the Four Pillars Trust Model proposal with the MSR and reconfirmed that the Representative Plaintiffs saw this as the best way to resolve the claim.

105. Mr. Isaac orally presented Canada's full offer to the Representative Plaintiffs, the DESC and Class Counsel. Canada confirmed the offer in writing on September 14, 2022. In this offer, Canada offered \$2.8 billion to fund a Trust for the benefit of the Band Class in accordance with the Four Pillars Trust Model. Certain detailed items remained the subject of further negotiations. During this meeting, Mr. Isaac made clear that the amount in the offer was the maximum that

Canada was willing to pay to resolve the lawsuit. The meeting with Canada ended around midday. The Representative Plaintiffs were represented at that meeting by the DSEC representatives.

106. The DSEC and the Representative Plaintiffs then met in person in Vancouver, along with the named Plaintiffs former elected chiefs Garry Feschuk and Shane Gottfriedson, and the then current chiefs of shíshálh Nation and Tk'emlúps te Secwépemc along with other councillors from shíshálh Nation and Tk'emlúps te Secwépemc. We reviewed the offer in detail. Given what had happened in 2017 when the exploratory discussions had led to failure after many months of meetings; given that the trial was to commence the following day with our opening in which we would show how the position taken by Canada in court contradicted the public statements of Prime Minister Trudeau and Minister Miller; given that former chiefs Garry Feschuk and Shane Gottfriedson had been put through punishing discoveries and were now ready to testify in court regarding the impacts on their communities of Canada's Residential School policies; given that former National Chiefs Phil Fontaine and Matthew Coon Come and former BC Regional Chief Wendy Grant John were all ready to testify there was a very strong reluctance to adjourn the trial. The discussion was intense and passionate.

107. The real question for former chiefs Feschuk and Gottfriedson and their nations was whether Canada's proposal was sufficient to start addressing the legacy of Residential Schools for their communities and for the other 323 Band Class members. After a long discussion, it was agreed to consent to a one week adjournment to review the potential benefits of the proposed settlement, to see if Canada was prepared to actually change its approach on how to address the wrongs created by Canada's colonial policies, and to allow the Representative Plaintiffs the necessary time to analyze and respond to the offer.

108. At the joint request of the parties, on September 12, 2022, the Court adjourned the start date of the trial to September 19, 2022 (subsequently changed to September 20, 2022, due to the federal National Day of Mourning for Queen Elizabeth II).

109. In the meantime, the Representative Plaintiffs requested that Minister Miller meet directly with hiwus Warren Paull, Kúkpi7 Rosanne Casimir and Dr. Matthew Coon Come to discuss the terms of Canada's offer. The objective of this meeting was to determine whether the amount proposed by Tom Isaac was, in fact, the total mandate that the Minister had from Cabinet to settle the Band Class proceedings.

110. During the meeting, which took place on September 15, 2022, Minister Miller confirmed that the settlement amount presented on September 11, 2022 was the total of Canada's available offer. At the request of the Representative Plaintiffs, Minister Miller also confirmed that the settlement would not impact other sources of the funding and programs from Canada available to Band Class Members.

111. In the meantime during the one week adjournment, the Plaintiffs retained independent financial advisors to assess how the settlement amount could be invested over various time periods to ensure that the Band Class Members received ongoing funding over a period of time to ensure that they could implement the Four Pillars or those of the Four Pillars that were a priority to each Band. That analysis was sought and reviewed with the independent advisors during the week of September 12. The Plaintiffs went to the same advisors whom they had retained in 2016-2017 to develop models on what was needed to implement the Four Pillars Trust Model. Those advisors had prepared different models for the Plaintiffs which led to the Plaintiffs negotiation proposal in 2017 for what was needed to implement the Four Pillars Trust Model. These advisors were able to

review the settlement offer quickly and advise the Plaintiffs on different investment and disbursement scenarios based on the actual proposed settlement amount.

112. On September 17, 2022, Mr. Isaac sent a letter to the Band Class Representative Plaintiffs and the DSEC containing a revised offer, which repeated the principal terms of the offer made on September 14, 2022.

113. Following receipt of that revised offer, each member of the DSEC went back to their respective councils to review and decide whether the offer should be accepted. I received instructions from each of shíshálh Nation, Tk'emlúps te Secwépemc, and the Grand Council of the Crees late on September 18th and I was instructed to send an acceptance of the offer to Canada, which I did on September 19th.

114. Canada's offer to settle dated September 17, 2022, and my responding letter accepting the offer on behalf of the Representative Plaintiffs are attached, respectively, as **Exhibits "L"** and **"M"** to this affidavit. Although Exhibit "M" is misdated September 10, 2022, it was actually delivered September 19, 2022.

115. On September 20, 2022, the parties advised the Court that settlement discussions had proceeded to such a point that the parties were jointly requesting an adjournment of the common issues trial *sine die* to allow for the negotiation of a full settlement agreement.

116. It bears repeating that Class Counsel and the Representative Plaintiffs fully expected, and were prepared for, the Band Class claim to go to trial on September 12, 2022. In fact, Class Counsel had to figure out how to split the litigation team so that negotiations could proceed even as the trial got underway. The Representative Plaintiffs had been extremely reluctant to adjourn, given that they had fought for this day for over 11 years and given Canada's position in the Defendant's Trial

Brief which reflected a position that had changed little from when Canada was denying any responsibility for damages caused by Residential Schools in the early 1990s.

117. On September 21, 2022, the Ministry of Crown-Indigenous Relations issued a news release that the parties had reached an agreement to resolve the Band Class litigation out of court.

D. Negotiations and finalization of a detailed Settlement Agreement

118. Between September 20, 2022 and January 18, 2023, the parties negotiated the text of the full Settlement Agreement. Key issues that remained to be negotiated included:

- a. the structure and framework of a Trust or similar legal entity;
- b. a mechanism or structure to ensure that the income of the Trust would be non-taxable;
- c. the creation of a disbursement policy for the Trust;
- d. the creation of an investment policy for the Trust;
- e. further detailed description of the Four Pillars principles;
- f. the terms of the release;
- g. mechanism to ensure that the Funds would only be used for the Four Pillars and would not be subject to redirection, execution, or seizure by third parties;
- h. provision for advanced funding necessary to establish the Trust to ensure that the Trust was in a position to receive the settlement funds as soon as possible after the Implementation Date; and
- i. the text of the Settlement Agreement itself.

119. As Class Counsel responsible for the negotiations with Canada, I met with Canada and tabled proposals and pressed for responses on these issues. Meanwhile, all senior Class Counsel worked with our clients to prepare models, and to advise on release language and to consult with

a solicitor on setting up the Not-For-Profit Entity and to review with potential investment advisors on strategies and time frames for the length of the trust. We also worked closely with our clients to draft the Disbursement Policy and the Investment Policy for the trust and to set up a timeline for early disbursement. The Representative Plaintiffs' work with Class Counsel is reflected in the Investment Policy, Disbursement Policy and Four Pillars principles which involved a lot of internal discussion and work.

E. Negotiations regarding Legal Fees and Disbursements

120. Negotiations regarding Legal Fees and Disbursements were separate from negotiations regarding the Settlement Agreement, and did not commence in any form until after all key terms in the Settlement Agreement had been finalized. Canada's offer, which was accepted by the Representative Plaintiffs, stated only that reasonable legal fees and disbursements would be paid, and were subject to negotiation once agreement had been reached on substantive terms of the Settlement Agreement. 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. More information regarding the negotiation of the Fee Agreement is set out in my affidavit sworn in support of the motion to approve the Fee Agreement.

VIII. TERMS OF THE BAND CLASS SETTLEMENT AGREEMENT

121. The Band Class Settlement Agreement, attached as Exhibit "A", was executed on January 18, 2023.

122. The settlement is based on the Four Pillars Trust Model first proposed by the Representative Plaintiffs in negotiations with Canada in 2017. The proposal put forward by the Representative Plaintiffs was unique, visionary and forward thinking. The collective damage

caused by Canada's Residential School policies is deep, complex and intergenerational. Any solution with any chance of success was going to necessarily involve sustained effort by members of the Band Class over many years. The Settlement Agreement is intended to give the Band Class Members the tools and the resources necessary to engage in the difficult and important task of reviving and protecting Indigenous languages and cultures, engaging in community healing, and protecting heritage based upon their own assessment of priorities. The Settlement Agreement also reflects and respects that different Class Members may have different priorities within the four Pillars and different timelines to achieve their goals. None of those differences will prejudice their ability to move forward as they determine what is best for their respective nations.

123. Pursuant to the Settlement Agreement, settlement funds would be placed into a twenty-year Trust in order to generate investment income that in turn would be used to fund initiatives and programming aimed at undoing the collective damages caused to First Nations as a result of the IRS policies. The Trust would be Indigenous-controlled, and decisions regarding how the funds were spent would be made by the Band Class Members themselves. There will not be a 'top down' approach to the use of the funds though each Class member will need to develop a plan and report how the funds will be used to advance one or more of the Four Pillars.

A. The Four Pillars

124. The Four Pillars are a central part of the settlement. The entire Settlement Agreement is animated by the Four Pillars as set out in the Preamble, s. 21.03, and explained more fully in Schedule F to the Settlement Agreement, namely:

- a. revival and protection of Indigenous languages of the Band Class Members;
- b. revival and protection of Indigenous cultures of the Band Class Members;
- c. wellness for Indigenous communities and their members;

- d. protection and promotion of the heritage of the Band Class Members.

125. The Four Pillars are aimed at addressing the damage done to First Nations as collectives by the Canada's IRS policies.

B. The Fund and Distribution of the Fund to Band Class Members

126. The Settlement Agreement, and the included Investment Policy and Disbursement Policy, includes the following key features regarding the \$2.8 billion fund (the "Fund"), and distribution of the Fund:

- a. Canada will make a payment of \$2.8 billion to an Indigenous-controlled Trust.
- b. The Trust is responsible for prudently investing the monies from the Fund for a period of 20 years, and for distributing investment income from the Fund and the Fund itself, in accordance with the Disbursement Policy.
- c. Canada will make best efforts to exempt any income earned by the Trust from federal taxation, including by using measures it has taken in other class action settlements through amendments to paragraph 81(1)(g.3) of the *Income Tax Act*. In other words, income earned by the Trust will be tax-free.
- d. At the outset, each Band Class Member will receive initial Planning Funds of \$200,000 for the purposes of developing a plan to carry out one or more of the objectives and purposes of the Four Pillars. Planning funds for the entire Band Class amounts to \$65 million withdrawn from the initial capital.
- e. \$325 million of the Fund will be earmarked for the purposes of providing Kick-Start Funds to each Band Class Member. Upon receipt and review of a ten year plan, each Band Class Member will receive Initial Kick-Start Funds, which shall be equal to that Band's proportionate share of the \$325 million, with an adjustment

for population, with 40% of the amount distributed being distributed equally to each Band and with the remaining 60% distributed proportional to each Band's population relative to the total population of opted-in Bands. The Board, once fully constituted, will then determine an appropriate adjustment for remoteness for the Initial Kick-Start Funds, with any such funds required to account for remoteness being in addition to the \$325 million and taken from capital.

- a. Funds remaining in Trust after the disbursement of Planning Funds and Kick-Start Funds (the "**Capital**"), which equal \$2.41 billion less any amounts determined by the Board to be necessary to account for remoteness as part of the Kick-Start Funds, will be prudently invested for a period of 20 years.
- b. Each year, as part of the Band's Annual Entitlement, the Trust will disburse investment income earned from the Capital to the Band Class, while maintaining the Capital in Trust. Each Band will receive a share of annual investment income that is available for distribution. That share will be equal to the Band's proportionate share, adjusted for population and remoteness in accordance with the Disbursement Formula to be set by the Board.
- c. Throughout the twenty year life of the Trust, the Capital will be preserved, meaning that at the end of twenty years, the Trust will consist of \$2.41 billion less any amounts determined by the board to be necessary to account for remoteness as part of the Kick-Start Funds, plus any investment income earned over the twenty years that has not been fully disbursed to the Band Class as part of the Annual Entitlement.

- d. At the end of 20 years, the Capital plus any undistributed investment income will be disbursed to Band Class members in an amount equal to the Band's proportionate share, adjusted for population and remoteness in accordance with a Disbursement Formula to be set by the Board subject to a further 10 year or shorter plan provided to ensure that the funds are utilized in furtherance of one or more of the Four Pillars.

C. Responsibilities of the Band Class Members

127. Band Class Members retain complete control over use of the funds to which they are entitled, subject only to the requirement that the funds be used to advance one or more of the Four Pillars and are not utilized for certain purposes as set out below at paragraph 132.

128. Band Class Members are responsible for meeting certain planning and reporting obligations including:

- a. Preparing a 10-year plan prior to receiving the Kick-Start Funds, again after 10 years, and again prior to receipt of the final payout after twenty years. These 10-year plans set out the Band's plan for use of the Kick-Start Funds and Annual Entitlement in a manner that furthers the Four Pillars;
- b. Preparing yearly reports that provide updates regarding use of the funds, and progress towards achieving the objectives set out in the Band's 10-year plan;
- c. At the end of 20 years, preparing a final report setting out the Band's plan for use of its share of the remaining Fund. If it is for an ongoing project, to report on the progress of that project on interim bases up to the completion of the project or ten years, whichever is shorter, in order to ensure that the funds are used for the Four Pillars.

129. Band Class Members have the option of deferred distribution by requesting that the funds to which they are entitled be retained in Trust to accrue interest, and to be disbursed at a later date in accordance with that Band Class Member's plan.

D. Governance Structure

130. The Settlement Agreement requires the creation of a not-for-profit entity (“**Not-For-Profit**”) in order to act as trustee for the Trust. The Not-For-Profit will be governed by nine directors, all of whom must be Indigenous, and cannot be elected officials of any of the Band Class Members. The nine directors will be chosen as follows:

- a. three first directors to be chosen, one each by Tk'emlúps te Secwépemc, shíshálh Nation, and the Grand Council of the Crees (Eeyou Istchee);
- b. five regional directors, with one director from each of the following regions:
 - (i) British Columbia and Yukon;
 - (ii) Alberta and North West Territories;
 - (iii) Saskatchewan;
 - (iv) Manitoba; and
 - (v) Quebec, Ontario and the Atlantic Provinces; and
- c. one director chosen by Canada.

131. In order to ensure that the Not-For-Profit and Trust are established quickly, and are in a position to receive the Fund as soon as possible after the Implementation Date in the event that the settlement is approved, the Settlement Agreement contemplates that the Not-For-Profit be governed by an interim board consisting of the three first directors for a period of no longer than one year, or until the permanent board is constituted, whichever occurs first. The interim board has a restricted mandate focused on ensuring that the Not-For-Profit and Trust are ready to receive the

Fund, prudently investing the Fund in accordance with the Investment Policy so that the Fund begins to earn investment income as soon as possible, and disbursing the Planning Funds so that Class Members can immediately get started on preparing their plans.

E. Restrictions on use of monies from the Fund

132. While Band Class Members have wide discretion regarding use of the monies from the Fund, the Settlement Agreement includes the following restrictions to ensure that the purposes of the settlement are achieved:

- a. the Fund must be used in furtherance of the Four Pillars;
- b. the Fund must be invested and disbursed in accordance with the Investment Policy and Disbursement Policy;
- c. neither the Fund nor income earned from the Fund can be used:
 - (i) to fund individuals;
 - (ii) to fund commercial ventures;
 - (iii) as collateral or to secure loans; or
 - (iv) as a guarantee.

133. In order to ensure that Band Class Members benefit from the Fund in the manner intended, the parties seek a term in the Settlement Approval Order that prohibits monies paid out from the Fund to a Band Class Member from being subject to redirection, execution, or seizure by third parties.

F. The Release

134. The terms of the release were of paramount importance for all parties, and were the subject of extensive and prolonged negotiations. Three central concerns animated negotiations from the perspective of the Band Class.

135. First, the Representative Plaintiffs wanted to ensure that the release was limited in scope to the subject matter of the litigation, and that it did not impact any Aboriginal or Treaty Rights of the Band Class Members or any potential claims related to loss of language and culture that was not related to the IRS policies.

136. Second, the Representative Plaintiffs wanted to ensure that the release did not release any potential legal claims that Band Class Members may have regarding children from their Bands who died or disappeared while attending IRSs.

137. In May 2021, Tk'emlúps te Secwépemc announced the discovery of the remains of 215 children on the grounds of the Kamloops Indian Residential School in May 2021. This announcement had a deep and profound impact on the Band Class Members, and on the Canadian public as a whole. Several more announcements of similar findings at Residential School sites across the country followed.

138. Band Class Members impressed upon Class Counsel the importance of ensuring any release did not impact any potential legal rights that Band Class members may have regarding the deaths and disappearances of children from their Bands at IRSs. I am informed by my co-counsel, Cory Wanless, that Band Class Members have continued to raise this issue as a key concern after the Settlement Agreement was announced.

139. Third, the Representative Plaintiffs wanted to ensure that the release did not cover the religious institutions who participated in the operation of Residential Schools. Class Counsel had received significant feedback from Band Class Members expressing concerns that they did not want to limit their ability in future to bring claims against the Churches that participated in the operation of Residential Schools. I believe that this concern became more significant following recent media coverage of efforts made by the Catholic Church to avoid paying the amounts agreed

to be paid as part of the IRSSA, and a general feeling that religious organizations had not been held responsible for their role in the IRS system.

140. The release was negotiated with these key issues in mind. The result is a general release found at subsection 27.01 with a scope that is closely tailored to the subject-matter of the lawsuit, followed by a number of subsections that provide additional clarification about what the release does not release. Subsection 27.01 states that the release is regarding claims:

... available against Canada that were asserted or could have been asserted in relation to those asserted in the Second Re-Amended Statement of Claim regarding the purpose, creation, planning, establishment, setting up, initiating, funding, operation, supervision, control and maintenance of Residential Schools, the obligatory attendance of Survivors at Residential Schools, the Residential Schools system, and/or any Residential Schools policy or policies.

141. Subsection 27.02 clarifies that the released Claims do not relate to, or include, any claims regarding children who died or disappeared while in attendance at Residential School. Thus any potential claims relating to children who died or disappeared while in attendance at Residential School are unaffected by the Settlement Agreement.

142. Subsection 27.03 clarifies that the Settlement Agreement does not release any claims that any Band Class has regarding Aboriginal or Treaty rights other than claims related to the IRS system.

143. Subsection 27.04 clarifies that the release is provided for the benefit of Canada only, and cannot be relied on by any third party, including any religious organization that was involved in the creation and operation of Residential Schools.

G. Advanced Costs

144. As part of the settlement, the Representative Plaintiffs requested, and Canada agreed to pay, \$500,000 in advanced costs to cover the disbursements associated with the establishing and

operating the Not-For-Profit prior to the Implementation Date so that it is ready to receive the Fund as soon as possible. The Court issued an order approving advanced costs in the amount of \$500,000 on January 21, 2023.

145. These costs are addressed in the Fee Agreement, and are separate from the Fund. However, even if the Fee Agreement is not approved, these funds do not have to be repaid by the Band Class members.

IX. THE SETTLEMENT AGREEMENT IS FAIR, REASONABLE AND IN THE BEST INTEREST OF THE CLASS

A. Class Counsel's experience

146. The Class Counsel team has considerable expertise in litigating Indigenous issues, and considerable experience in class actions litigation.

147. I have set out my background and experience earlier in this affidavit. The legal experience of my co-counsel, John Phillips and Diane Soroka, are set out, respectively in Exhibits "N" and "O" to this my affidavit.

148. Diane Soroka has practiced for over 45 years as a lawyer for various First Nations and Indigenous organizations in Quebec and British Columbia on issues related to the recognition of Aboriginal and Treaty rights. She has represented First Nations individuals as plaintiffs and interveners in litigation related to abuses at Indian Residential Schools since the 1990s and was co-counsel with Peter Grant in *Blackwater v. Plint* from the trial to the Supreme Court of Canada. Ms. Soroka was involved in the negotiations of the IRSSA on behalf of the Grand Council of the Crees. She has acted for the Grand Council of the Crees since 1975, and joined the Class Counsel team when the Grand Council of the Crees began supporting the prosecution of the Action in 2016.

149. John Kingman Phillips, K.C. has been senior Class Counsel in this Action from the very start. He is called to the bar in Alberta, Ontario and Nunavut, and frequently appears in superior courts, Federal Court and courts of appeal across Canada, and has appeared at the Supreme Court of Canada. Mr. Phillips is a trial lawyer with a broad legal practice that includes class actions, corporate/commercial litigation, administrative law, criminal law, professional liability, insurance litigation, labour and employment law, and private international law. Mr. Phillips was counsel to the then National Chief Phil Fontaine and the Assembly of First Nations (“AFN”) in *Fontaine v Canada*, a multi-jurisdictional class action brought on behalf of Indian Residential School survivors. Mr. Phillips was counsel to National Chief Fontaine and the AFN in the negotiations that led to the IRSSA. Benchmark Litigation has recognized Mr. Phillips as one of Canada’s top 50 trial lawyers.

150. Since Mr. Phillips’ firm, Waddell Phillips PC, was founded in 2017, it has been recognized nationally as a leader in plaintiff-side class actions litigation. Benchmark Litigation has recognized the firm as the best plaintiff-side class action firm in Canada in 2021 and 2022, and Chambers recognizes the firm as a Band 4 firm in the nationwide category of “Dispute Resolution: Class Action (Plaintiff)”. W. Cory Wanless – Mr. Phillips’ partner, and a member of the Class Counsel team in this litigation – was recognized by Lexpert as a leading lawyer under 40 in 2021.

B. Class Counsel’s recommendation

151. Class Counsel are confident that the Settlement Agreement constitutes a fair and reasonable resolution of the Band Class claim.

152. The Settlement Agreement was ultimately the result of lengthy, good faith, arms-length, and tough bargaining that took place between 2016 and 2023. It was possible for the parties to complete the final round of negotiations efficiently only because of extensive previous preparatory

work done both by the parties individually, and together as part of previous negotiations that took place starting in 2016. For example, the Four Pillars Trust Model that was ultimately adopted as the framework for the Settlement Agreement, was first developed and presented by the Representative Plaintiffs and the DSEC in 2016-2017.

153. By the time of the most recent round of negotiations, I and other senior members of the Class Counsel team had established a good and forthright relationship with the MSR. We understood and trusted each other. This relationship of trust enabled us to get straight to the heart of the key terms of a settlement, and to conclude those negotiations quickly, given the unique nature of this settlement.

154. It is important to point out that all elements of the proposed structure of the settlement came from the Representative Plaintiffs themselves. The Settlement Agreement fully incorporated the Four Pillars Trust Model that had been developed and proposed by the Representative Plaintiffs and the DSEC in 2017. All terms of the Settlement Agreement that deal with the proposed structure, including the Trust and its length, the Four Pillars, the Disbursement Policy, the Investment Policy, governance of the Not-For-Profit and restrictions on use of the fund were proposed by Class Counsel on instruction from the Representative Plaintiffs, and accepted by Canada.

155. The biggest consideration for Class Counsel and the Representative Plaintiffs was whether the settlement amount contained in Canada's final offer was fair and reasonable given the claim and its attendant litigation risks (described more fully below), and whether that settlement amount would generate sufficient investment income to achieve the goals of the Four Pillars Trust Model. In order to answer the second question, as described above, Class Counsel and the Representative Plaintiffs received professional advice in the form of economic modeling of various scenarios.

156. Class Counsel strongly recommend the Settlement Agreement as being in the best interests of the Band Class based on our expertise and knowledge after litigating this case for more than a decade, as well as our extensive experience in class action litigation and Aboriginal law litigation in general.

157. As discussed above, all three of the lead counsel on the Legal Team (John Phillips, Diane Soroka, and I) were intimately involved with IRSSA, the largest class action settlement in Canadian history that resolved the individual claims of survivors of Residential Schools. We know 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. 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 through litigating this Action over the past 11 years.

158. Class Counsel's recommendation was based on a full appreciation of the litigation and the risks of trial (discussed more fully below). Canada presented its settlement offer quite literally on the eve of trial ("at the top of the courthouse steps"). As a result, by the time that the final round of negotiations commenced, Class Counsel were fully prepared for trial, had a complete picture of the litigation, and had fully considered all available evidence that could be presented by either side.

C. Approval of the Settlement Agreement by the Representative Plaintiffs

159. The Settlement Agreement received support from the Representative Plaintiffs, and the DSEC.

160. Unlike in a typical class action, the Representative Plaintiffs in the ongoing Band Class action were the First Nations themselves. These Representative Plaintiffs were also assisted by the involvement of the Grand Council of the Crees (Eeyou Istchee) through its participation on the

DSEC. Accordingly, the Band Class Representative Plaintiffs brought with them a level of professionalism, institutional knowledge and understanding that is not typical of representative plaintiffs in most class actions.

161. The Representative Plaintiffs and the DSEC actively participated in negotiations from the very start, with strong views regarding what must and must not be included in the ultimate agreement. On September 15, 2022, Chiefs from shíshálh Nation and Tk'emlúps te Secwépemc, hiwus Paull and Kúkpi7 Casimir, and former Grand Chief of the Grand Council of the Crees (Eeyou Istchee), Matthew Coon Come, engaged in direct discussions with Minister Miller in order to clarify the terms of Canada's offer and to test whether the offer from Canada was really its final offer.

162. The Settlement Agreement is signed by former Chief Shane Gottfriedson and acting Kúkpi7 Joshua Gottfriedson on behalf of Tk'emlúps te Secwépemc, and by former Chief Gary Feschuk and hiwus Warren Paull from shíshálh Nation. The Settlement Agreement was signed by the Representative Plaintiffs after full consideration of the Settlement Agreement and the recommendations of Class Counsel, by Chief and Council of both Tk'emlúps te Secwépemc and shíshálh Nation. I have been advised by Matthew Coon Come, representative of the Grand Council of the Crees (Eeyou Istchee) that he and the Grand Council of the Crees (Eeyou Istchee) supports the settlement and believes that it is a fair and reasonable way to resolve the claims of the Band Class.

163. The settlement was announced January 21, 2023 at a joint press conference in Vancouver attended by the Honourable Marc Miller and representative plaintiffs. A copy of the news release at the time of the press conference announcing the settlement is attached as **Exhibit "P"** to this affidavit. As can be seen, both Minister Miller on behalf of Canada and the Plaintiffs as explained

by Shane Gottfriedson and Matthew Coon Come recognized the first steps of this Agreement but, most importantly, that it is a significant first step.

D. Litigation risks

164. While we remained confident in the merits of the Action, the Band Class claims faced a number of significant litigation risks at trial, which helped to inform the ultimate decision to accept Canada's settlement offer.

165. Most notably, the novelty of the claim introduced substantial risk. Although such claims have been previously made, no court in Canada to my knowledge, had ruled on a claim brought against a government for collective loss of language and culture suffered by Indigenous groups, and certainly not as a class proceeding.

166. As discussed further below, this Court was going to have to consider a large number of novel issues never considered by a court before. Those questions included (amongst many others):

- a. Is loss of language and culture a compensable harm?
- b. Is there a generic right to Indigenous language and culture under s. 35 of the Constitution?
- c. Can First Nations and other Indigenous groups claim for loss of language and culture of the collective as a whole?
- d. What entity is the proper rights holder for collective rights like language and culture?
- e. Can a court quantify damages for a claim of collective loss of language and culture?
If so, how?

167. A loss on any one of these key questions could have been catastrophic to the claim.

168. As noted above, Canada filed an aggressive Trial Brief on September 7, 2022, indicating the positions it intended to take at the first phase of the common issues trial. The brief made clear that Canada intended to concede virtually nothing and instead would require the Representative Plaintiffs to prove every aspect of their claim: “[t]he onus of proof remains on the Plaintiffs, in all aspects of their case”.

(i) Challenges to commonality

169. As indicated throughout its statement of defence and Trial Brief, Canada has never waived from its position that there was no policy or pattern of conduct that was applied consistently across all IRSs throughout the entire class period. As stated by Canada in its Trial Brief: “The record will not support the conclusion that there was any approach, formal or informal policy, or pattern of conduct by Canada with respect to the treatment of Indigenous languages and cultures that was applied consistently across all residential schools at any time, let alone across the entire Class Period.”

170. The Representative Plaintiffs successfully established at certification, on the some-basis-in-fact standard, that there were issues of fact and law capable of common determination. At trial, however, we faced the more onerous task of proving, on a balance of probabilities, that Canada’s liability extended to the entire class throughout the 77-year Class Period by leading evidence of systemic or policy-level wrongdoing by Canada (*i.e.*, that a breach was occasioned through Canada’s “purpose, operation, and/or management of the IRS”). Canada intended to argue that the treatment of Indigenous languages and cultures at IRSs varied significantly as between IRSs and over the 77-year class period, such that it was not possible to find class-wide liability.

171. We were prepared to bring novel arguments and adduce a combination of expert, documentary, and lay witness evidence to establish liability on a class-wide basis, but we appreciated that success was never guaranteed.

172. There have been very few common issues trials decided in Canada that could lend guidance on the type of evidence that would persuade a court to rule in the Band Class's favour.

(ii) Justiciability and compensability

173. The novelty of the Band Class claims posed a challenge in terms of justiciability. To my knowledge, there are few Canadian cases in which the loss of language and culture is specifically recognized as grounds for recovery of damages, and there are no precedents in Canada where a Court ordered compensation to an Indigenous government for a collective loss of language and culture. Class Counsel was prepared to make innovative yet principled arguments, but success was not a given.

174. Canada made clear that it would hotly contest whether or not the loss of Indigenous languages and cultures was compensable. Moreover, it intended to argue that damages caused by the IRS have already been significantly compensated under the IRSSA and other IRS class action settlement agreements, and that the individual IRS survivors have released Canada from any further IRS-related liability by being class members in these other settlements.

175. Canada would further argue that any compensation to the Class Members should be reduced to account for the programs established and funded by Canada with the purported goal of supporting Indigenous languages and cultures. These submissions required the Representative Plaintiffs to distinguish the type of damages sought in the Band Class claim from the compensation or program funding that the Band Class Members or their constituent members have previously received.

(iii) **Scope and test for s. 35 Aboriginal rights**

176. The Representative Plaintiffs allege that Canada breached the Class Members' section 35 Aboriginal rights to culture and language through the purpose, operation, and/or management of the IRSs. There is significant uncertainty in how a court would deal with this claim in the context of a class action.

177. Recently, in *Reference re First Nations Children*, the Quebec Court of Appeal affirmed a generic right (a right to self-government) finding the right to be common to all Aboriginal peoples without requiring evidence of activities, practices or customs of a specific group, the test initially established in *Van der Peet*, and later modified in *Delgamuukw* to suit claims to title. Class Counsel intended to argue for an application of the approach adopted by the Quebec Court of Appeal, namely that the Aboriginal rights to language and culture were generic rights that were held in common by all Indigenous peoples without requiring evidence of activities, practices or customs of a specific group. Canada, on the other hand, argued that the correct approach to recognizing Aboriginal rights remained the *Van der Peet* test, which would require the Representative Plaintiffs to lead evidence regarding the languages and cultural practices of each Band Class Member in order to establish the existence of an Aboriginal right.

178. The Representative Plaintiffs position relied significantly on the Quebec Court of Appeal's decision in *Reference re First Nations Children*. The Supreme Court of Canada heard an appeal of that decision in December 2022. The Supreme Court's judgment remains reserved. If the Supreme Court overturns the Quebec Court of Appeal's decision, the Representative Plaintiffs' strategy regarding the commonality of the determination of the Class's s. 35 rights could be undermined.

(iv) Breach of fiduciary duty

The certified common questions require the Representative Plaintiffs to establish that Canada owed a fiduciary duty to the Class Members, which Canada strongly denies, and that Canada breached this duty. Canada argued that if any fiduciary duty was owed in the circumstances, it was owed to the individual children attending the IRSs, not the Bands. Likewise, Canada asserted a band's putative membership in the Class did not, in and of itself, establish any duty or right, and that it intended to deny any claimed duty vigorously.

179. Justice Harrington had refused to certify a common question of whether Canada owed and breached any duty to "protect" Indigenous languages and cultures. Instead, the question was whether Canada owed and breached a fiduciary duty not to destroy, or not to take steps to destroy, Indigenous languages and cultures. Canada intended to argue that, while Residential Schools harmed Indigenous languages and cultures, the Representative Plaintiffs would not be able to prove on a class-wide basis that Canada destroyed or took steps to destroy language and culture. Instead, Canada took the position that any harm to language and culture was an unintended result of education in schools where the primary language was English or French. Again, while we were confident in the strength of our case, the fiduciary duty framed as a duty not to destroy, or take steps to destroy, introduced a level of litigation risk.

(v) Uncertainty regarding damages

180. Perhaps the biggest area of uncertainty and risk, lay in the issue of damages, and how to quantify those damages. The issue of damages would not be determined at the first phase of the common issues trial. Instead, it had been deferred by the bifurcation order to be determined at a later date at the second phase of a common issues trial (if aggregate damages could be assessed)

or at individual damages trials for each of the 325 Band Class Members (if aggregate damages could not be assessed).

181. The first issue is whether the collective loss of language and culture by a Band was a compensable harm.

182. The second issue is how to measure the collective loss of language and culture for purposes of quantifying damages. There are no precedents in Canada that assist, and accordingly the range of potential damages was very large.

183. The third issue was how to deal with the responsibility of the religious entities that participated in the operation of IRSs. To avoid the complications associated with third-party proceedings, the Representative Plaintiffs abandoned claims for damages for any losses “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*, RSBC 1996, c 333, as amended.”

184. Canada intended to argue that any damages award should be apportioned between it, and the religious entities, and that Canada should only be required to pay damages that are proportionate to its fault. This would involve a court having to determine the relative levels of responsibility as between Canada and the religious entities, and to apportion damages appropriately. This potential apportionment could have a very significant impact on damages actually awarded to, and recoverable by the Class as well as extensive delay while apportionment was argued and appealed.

185. The fourth issue is the potential impact of causes of loss of languages and culture other than the IRS system. We expected to contend with arguments that any losses of language and culture suffered by the Class Members were the result of assimilative forces and would have occurred even without Canada's wrongdoing.

186. The Representative Plaintiffs' language and culture experts concluded that the IRS system was a major cause of loss of language and culture; however, they acknowledged that the IRS system was not the only cause of the loss. The Representative Plaintiffs would need to prove that the damages sought were caused by IRSs and not by other factors. Canada intended to argue that damages should be reduced significantly in light of other potential causes of the harms at issue.

187. A further key outstanding issue is whether it was possible for a court to award aggregate damages to the Band Class. We fully expected that Canada would argue that the variation between and unique circumstances of each Band Class Member made it impossible to determine damages in common or in aggregate. We anticipated that Canada would argue that the damages suffered by each Band Class Member as a result of the IRS system had to vary based on the conditions, standards and practices in the IRS in question; how many children from the Band Class Member attended IRSs; the location of the IRS (*i.e.*, in or outside of the community); the size of the Band; and the location of the IRS (*i.e.*, whether it was located remotely, or in proximity to other populations).

188. If a court concluded that it was not possible to determine aggregate damages, then the damages would need to be determined on a Class Member-by-Class Member basis through expensive and protracted individual trials in order to prove the damages specifically suffered by each Band. Even if aggregate damages were awarded, it was possible that the court may determine that there remained individual damages that would need to be assessed on an individual basis.

These individual damages inquiries would necessitate hundreds of individual hearings, on complex historical evidence, thereby further delaying compensation for years if not decades. It would also likely require a staggering amount of court resources to manage.

(vi) Experts

189. Consistent with its adversarial stance leading up to trial, Canada intended to challenge the admissibility of the Representative Plaintiffs' intended expert evidence on a wide range of grounds. Considering the critical role of expert evidence in proving, among other things, the destruction and the harms associated with the destruction of Indigenous languages and cultures and the existence and content of Canada's IRS policies, a disqualification of any one of the plaintiffs' experts could have seriously impacted the Representative Plaintiffs' case.

(vii) Timeline of Settlement vs Timeline of Litigation

190. Upon receiving the settlement offer on September 11, 2022, Class Counsel and the Representative Plaintiffs needed to compare the two timelines associated with their two main options: accepting Canada's offer to settle, or continuing with litigation.

191. Time was and is of the essence for the Band Class Members, who wish to use their share of the compensation to develop effective programs for the protection and revitalization of Indigenous languages and cultures. For some Band Class Members, further delays would mean losing language speakers and knowledge keepers whose knowledge will be key to revitalization efforts.

(a) Settlement timeline

192. Accepting Canada's offer will mean that if the settlement is approved, the \$2.8 billion fund could be transferred as soon as 90 days after the Implementation Date. This would be as soon as Spring 2023. The Fund will start earning investment income on behalf of the Class as soon as it is

transferred. Based on current GIC rates, investment income on \$2.8 billion is in the range of approximately half a million dollars a day. Distribution of the Planning Funds would follow shortly thereafter, allowing the Band Class to start the process of revitalization around the middle of 2023.

(b) Continued litigation timetable

193. If the Representative Plaintiffs rejected the offer and returned to litigation, the first phase of the common issues trial would have concluded in mid November, with written submissions and hearing of closing arguments to follow.

194. Because of the legal, historical, and political significance of the Band Class claim, it is likely that whichever side lost the first phase of the common issues trial would appeal the decision to the Federal Court Appeal, and possibly to the Supreme Court of Canada, adding significant additional costs and possibly three years to the litigation on liability alone.

195. Assuming the Representative Plaintiffs were successful at the first phase of the common issues trial, and successful on appeal, the parties would then have to prepare for and try the second-phase of the common issues regarding aggregate damages. Further documentary and oral discoveries would be required, as would the filing of additional expert reports. Preparation for the second phase of trial would likely take one to two years, after which a lengthy trial would be held.

196. Again, it is likely that the losing side in the second phase of the common issues trial would appeal the decision, again adding one to two years to the litigation.

197. In the event that the court determined at the second phase of the common issues liability trial that it was not possible to award aggregate damages, Band Class Members would be required to prove damages through a series of individual trials, which could take years.

198. All told, it is likely that continuing with litigation would mean that it would be another several years and possibly even another decade before Band Class Members would receive any compensation, even if fully successful.

(viii) Best Alternative to Litigation

199. The Representative Plaintiffs and Class Counsel needed to evaluate Canada's offer in light of all of the above risks. For example, taken together, the range of expected damages was huge, and impossible to rationally predict. Class Counsel and the Representative Plaintiffs needed to evaluate Canada's offer of \$2.8 billion as compared to an entirely uncertain damage award at trial, even assuming that the Representative Plaintiffs prevailed on all issues at both the first and second phases of the common issues trial. The proposed settlement removed these litigation risks, eliminated the possibility of protracted individual damages trials, and importantly ensured that the Band Class Members received compensation immediately.

200. For all of these reasons, it is Class Counsels' considered and strong view that the Settlement Agreement is a fair and reasonable result for the Band Class, in all of the circumstances, and is in the best interests of these Class Members.

201. This affidavit is sworn in support of the Representative Plaintiffs' motion for approval of the Settlement Agreement, and for no other or improper purpose.

SWORN before me at the City of
Toronto, in the Province of Ontario, on
February 20 2023.

Commissioner for Taking Affidavits

PETER R. GRANT

JOHN KINGMAN PHILLIPS
Barrister & Solicitor

This is Exhibit "A" referred to in the affidavit of Peter Grant sworn before me this 20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

“A”

FEDERAL COURT
CLASS PROCEEDING

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE SECWEPEMC
INDIAN BAND and the TK'EMLUPS TE SECWEPEMC INDIAN BAND, and CHIEF
GARRY FESCHUK, on behalf of the SECHELT INDIAN BAND and the SECHELT
INDIAN BAND

PLAINTIFFS

and

HIS MAJESTY THE KING IN RIGHT OF CANADA as represented by THE
ATTORNEY GENERAL OF CANADA

DEFENDANT

BAND CLASS SETTLEMENT AGREEMENT

WHEREAS:

- A. Canada and certain religious organizations operated Indian Residential Schools in which Indigenous children, their families, and communities suffered harms.
- B. Two primary objectives of the Indian Residential Schools system were to remove and isolate Indigenous children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture.
- C. The consequences of the Indian Residential Schools system were profoundly negative, and this system has had a lasting and damaging impact on Indigenous survivors, their families, and communities.
- D. On May 8, 2006, Canada entered into the Indian Residential Schools Settlement Agreement, which provided for compensation and other benefits to individuals in relation to their attendance at Indian Residential Schools.
- E. On August 15, 2012, the Plaintiffs filed a putative class action in the Federal Court bearing Court File No. T-1542-12, *Gottfriedson et al. v. His Majesty the King in Right of Canada*. The

Plaintiffs filed an Amended Statement of Claim on June 11, 2013, and a First Re-Amended Statement of Claim on June 26, 2015.

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

G. On June 4, 2021, the parties entered into the Day Scholars Survivor and Descendant Class Settlement Agreement, which provided compensation and other benefits to the Survivor Class and Descendant Class relating to the attendance of Day Scholars at Indian Residential Schools.

H. On September 24, 2021, pursuant to the terms of the Day Scholars Survivor and Descendant Class Settlement Approval Order, the Federal Court approved the Day Scholars Survivor and Descendant Class Settlement Agreement.

I. Under the terms of the Day Scholars Survivor and Descendant Class Settlement Approval Order, the claims of the Band Class continued notwithstanding the settlement of the claims of the Survivor Class and Descendant Class.

J. At the request of the Parties, the Federal Court amended the June 18, 2015 Certification Order on September 24, 2021 and again on February 8, 2022.

K. On February 11, 2022, the Representative Plaintiffs filed a Second Re-Amended Statement of Claim, which set out the continued claims of the Band Class.

L. The Band Class consists of 325 Bands that either are named as Representative Plaintiffs or have opted into the Action.

M. The Parties intend there to be a fair and comprehensive settlement of the claims of the Band Class that aligns with Canada's desire to ensure funding to support healing, wellness, education, heritage, language, and commemoration activities and which promotes the Four Pillars developed by the Representative Plaintiffs:

- a. Revival and protection of Indigenous languages;
- b. Revival and protection of Indigenous cultures;
- c. Protection and promotion of heritage; and
- d. Wellness for Indigenous communities and their members

N. Subject to the Settlement Approval Order, the claims of the Band Class shall be settled on the terms contained in this Agreement.

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. His Majesty the King in Right of Canada*;

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

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

“Band” or “Indian Band” means any entity that:

- a. Is either a “band” as defined in s. 2(1) of the *Indian Act* or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and
- b. Asserts that it holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

“Band Class” means any Indian Band that has opted in to this **Action** and is listed on Schedule C, which is the list of **Band Class Members** attached to the Order dated September 6, 2022;

“Band Class Member” means a member of the **Band Class** and **“Band Class Members”** means all of them, collectively;

“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 His Majesty the King 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 certifying this **Action** under the *Federal Courts Rules* dated June 18, 2015, as amended by order of the **Court** dated September 24, 2021, and further amended by order of the Court dated February 8, 2022, attached as Schedule B;

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

“**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 Scholars Settlement Approval Order**” means the Order of the **Court** dated September 24, 2021 approving the **Day Scholars Survivor and Descendant Class Settlement Agreement**;

“**Day Scholars Survivor and Descendant Class Settlement Agreement**” means the agreement executed on June 4, 2021 between the Parties and approved by the **Court** resulting in a full and final settlement of the claims of the **Survivor Class** and the **Descendant Class** in this **Action**;

“**Disbursement Policy**” means the Policy for the distribution of the income from the **Fund** and the **Fund** to the members of the **Band Class**, attached as Schedule E;

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

“**Four Pillars**” means the four core principles attached as Schedule F animating this **Agreement** and the management of the **Fund**, namely:

- a. revival and protection of Indigenous languages;
- b. revival and protection of Indigenous cultures;
- c. promotion and protection of heritage; and

d. wellness for Indigenous communities and their members.

“**Fund**” means the two billion eight hundred million dollars (\$2,800,000,000.00) to be paid by Canada into the **Trust** as referred to in Section 24;

“**Investment Policy**” is the Policy for the investment of the **Fund** to the **Band Class Members**, attached as Schedule D;

“**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**;

“**Indigenous**” includes Aboriginal peoples under s. 35 of the *Constitution Act, 1982*;

“**Opt In**” means any **Band** that has been added to the claim and is listed on Schedule “A” of the Order of the **Court** dated September 6, 2022;

“**Parties**” means the signatories to this **Agreement**;

“**Released Claims**” means those causes of action, liabilities, demands, and claims released pursuant to the **Settlement Approval Order**, as set out in Section 27 herein;

“**Releasor**” means each **Band Class Member** that is bound by this **Agreement** following the **Settlement Approval Order**;

“**Representative Plaintiffs**” means Tk'emlúps te Secwépemc Indian Band and Sechelt Indian Band as represented by Shane Gottfriedson and Garry Feschuk respectively;

“**Residential Schools**” means the institutions identified in the list of Indian Residential Schools attached as Schedule “A” to the **Certification Order** and later amended as Schedule “B” of the Order dated September 6, 2022;

“**shíshálh Nation**” means Sechelt Indian Band;

“**Survivor**” means any Indigenous person who attended as a student or for educational purposes for any period at a **Residential School**, during the **Class Period**; and

“**Trust**” means the entity established pursuant to Section 22.01 to receive, hold, invest, manage,

and disburse the **Fund** for the benefit of the **Band Class Members** in accordance with this **Agreement**.

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 Second Re-Amended Statement of Claim.

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 Band 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: Second Re-Amended Statement of Claim, filed February 11, 2022

Schedule B: Certification Order, June 18, 2015

Schedule B.1 September 24, 2021 Order (order only) + Schedule G of the Settlement Agreement

Schedule B.2 February 8, 2022 Order (order only)

Schedule C: List of Opted-In Band Class Members

Schedule D: Investment Policy

Schedule E: Disbursement Policy and Disbursement Formula

Schedule F: The Four Pillars

12. Entire Agreement

12.01 This Agreement constitutes the entire agreement among the Parties with respect to the Band 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.

13. No Effect on Treaties or Existing Agreements

13.01 Nothing in this Agreement shall affect, cancel, or supersede any treaty between Canada and any one or more Band Class Members, or any existing agreement between Canada and any one or more Band Class Members.

14. No Derogation from Constitutional Rights

14.01 This Agreement is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them.

15. Benefit of the Agreement

15.01 This Agreement will enure to the benefit of and be binding upon the Parties, the Band Class Members, and their respective successors.

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 Band Class Member is located and the laws of Canada applicable therein and where there is a conflict, the laws of Canada shall take precedence.

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 A French translation of this Agreement will be prepared as soon as practicable after the execution of this Agreement. Canada will pay for the costs of translation. 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 the Implementation Date on the Parties and all Band Class Members. The Settlement Approval Order of the Court constitutes deemed approval of this Agreement by all of the Band 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.

NOT-FOR-PROFIT ENTITY

21. Establishing the Not-For-Profit Entity

21.01 After the signing of this Agreement, but before the Implementation Date, the Plaintiffs will cause to be incorporated a not-for-profit entity under the *Canada Not-for-profit Corporations Act*, SC 2009, c. 23, or analogous federal legislation or legislation in any of the provinces or territories (the legislation pursuant to which the not-for-profit entity is incorporated, including any amendments thereto or replacements thereof, is herein referred to as the “**Governing Corporate Statute**”) to act as trustee of the Trust.

21.02 The not-for-profit entity will be independent of the Government of Canada.

21.03 The not-for-profit entity will have as its purposes the Four Pillars, which are described in more detail in Schedule F:

- a. Revival and protection of Indigenous languages of the Band Class Members;

- b. Revival and protection of Indigenous cultures of the Band Class Members;
 - c. Wellness for Indigenous communities and their members; and
 - d. Protection and promotion of the heritage of the Band Class Members.
- 21.04 The not-for-profit entity will have three (3) first directors, to be appointed one each by Tk'emlúps te Secwépemc, shíshálh Nation, and the Grand Council of the Crees (Eeyou Istchee) and whose names shall be included on the documentation filed with the government ministry or department with jurisdiction for the issuance of the articles of incorporation for the not-for-profit entity under the Governing Corporate Statute.
- 21.05 The first directors shall form an interim board that will govern the not-for-profit entity for a term of no more than one year after the Implementation Date, or until the permanent board is constituted, whichever occurs first.
- 21.06 The not-for-profit entity shall have a permanent board consisting of nine (9) directors, all of whom must be Indigenous, and cannot be elected officials of any Band Class Members, and who will be elected by the members of the not-for-profit entity in accordance with its by-laws, articles of incorporation and the Governing Corporate Statute. In addition to the qualifications in the immediately preceding sentence (*i.e.*, must be Indigenous and cannot be an elected official of any Band Class Member), the permanent board shall be comprised of the following directors having the following qualifications:
- a. Three directors, one of whom shall be elected from only a candidate or candidates whose nomination for election or appointment to the board is approved in advance by Tk'emlúps te Secwépemc, one of whom shall be elected from only a candidate or candidates whose nomination for election or appointment to the board is approved in advance by shíshálh Nation, and one of whom shall be elected from only a candidate or candidates whose nomination for election or appointment to the board is approved in advance by the Grand Council of the Crees;
 - b. Five regional directors, whose election or appointment to the office of director of the not-for-profit entity (collectively, the **“Regional Directors”** and each a **“Regional Director”**) shall be in accordance with the following:
 - i One Regional Director for British Columbia and Yukon who shall be elected or appointed from among only a candidate or candidates each of whom is a member

of a Band Class Member of British Columbia or Yukon;

- ii One Regional Director for Alberta and Northwest Territories, who shall be elected or appointed from among only a candidate or candidates each of whom is a member of a Band Class Member of Alberta or Northwest Territories;
 - iii One Regional Director for Saskatchewan, who shall be elected or appointed from among only a candidate or candidates each of whom is a member of a Band Class Member of Saskatchewan;
 - iv One Regional Director for Manitoba, who shall be elected or appointed from among only a candidate or candidates each of whom is a member of a Band Class Member of Manitoba; and
 - v One Regional Director for Quebec, Ontario, and the Atlantic Provinces, who shall be elected or appointed from among only a candidate or candidates each of whom is a member of a Band Class Member of Quebec, Ontario, or one of the Atlantic Provinces; and
- c. One director who shall be elected or appointed from among only a candidate or candidates each of whom is approved in advance by Canada (herein referred to as the **“Canada Director”**) and shall be approved by the committee under Section 21.08
- 21.07 The Canada Director shall not hold the office of chair of the board of directors of the not-for-profit entity or the office of vice-chair of the board of directors of the not-for-profit entity, and shall not sit as chair in any meeting of the not-for-profit entity.
- 21.08 The first election of Regional Directors shall be from among only candidates selected by a committee of the board of directors of the not-for-profit entity, and the membership of this committee shall consist of one representative from each of Tk'emlúps te Secwépemc, shíshálh Nation, and the Grand Council of the Crees. The board of directors of the not-for-profit entity shall constitute such committee and appoint its members, one each upon the recommendation of, respectively, Tk'emlúps te Secwépemc, shíshálh Nation, and the Grand Council of the Crees. For certainty, it is understood and agreed that despite any vacancy on the committee, the members of the committee may exercise all the powers of the committee if a majority of the members remain on the committee.
- 21.09 Subsequent elections of Regional Directors shall be from among only candidates selected

by a committee of the board of directors of the not-for-profit entity, and the membership of this committee shall consist of one representative each of Tk'emlúps te Secwépemc, shíshálh Nation, the Grand Council of the Crees, the BC-Yukon region, the Alberta-Northwest Territories region, the Saskatchewan region, the Manitoba region, and the Quebec, Ontario, and Atlantic Provinces region. The board of directors of the not-for-profit entity shall constitute such committee and appoint its members, one each upon the recommendation of, respectively, Tk'emlúps te Secwépemc, shíshálh Nation, the Grand Council of the Crees the BC-Yukon region, the Alberta-Northwest Territories region, the Saskatchewan region, the Manitoba region, and the Quebec, Ontario, and Atlantic Provinces region. For certainty, it is understood and agreed that despite any vacancy on the committee, the members of the committee may exercise all the powers of the committee if a majority of the members remain on the committee.

22. Operation of the Not-For-Profit Entity

- 22.01 The not-for-profit entity will establish a Trust and as trustee under the Trust, the not-for-profit entity will receive, hold, invest, manage, and disburse the Fund for the benefit of the Band Class Members in accordance with this Agreement, the terms of the Trust as set out in a written trust agreement signed by the not-for-profit entity to indicate its acceptance of the Trust and the duties and obligations of trustee, and in accordance with the Investment Policy and Disbursement Policy attached as Schedules D and E.
- 22.02 The not-for-profit entity shall be the sole trustee of the Trust.
- 22.03 The duties and responsibilities of the directors of the not-for-profit entity will be:
- a. to establish the Trust;
 - b. to invest the Fund having regard to the Investment Policy;
 - c. to disburse the Fund to Band Class Members in accordance with the Disbursement Policy;
 - d. to engage the services of professionals to assist in fulfilling the directors' duties;
 - e. to hire an Executive Director to assist the Board of Directors in their duties, including the implementation of the Investment Policy as soon as practicable after the appointment of the first Directors;

- f. to exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances;
- g. to keep such books, records, and accounts as are necessary or appropriate to document the assets held by the not-for-profit entity; and
- h. to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities of the not-for-profit entity, the duties and obligations of the not-for-profit entity as trustee under the Trust, and to carry out the provisions of this Agreement.

22.04 The operational expenses of the not-for-profit entity, including reasonable disbursements incurred for the administration, management and investment of the Trust, will be funded from investment income. If there is no investment income for a year, all operational expenses, together with all reasonable disbursements incurred for the administration, management and investment of the Trust, will be paid out of capital. This payment out of capital will be reimbursed as soon as there is investment income available. The not-for-profit entity will be entitled to be paid its reasonable operational expenses for the 10-year period following the 20th anniversary of the establishment of the Trust, which it may set up as a reserve and set-off against and holdback from the final disbursement from the Fund to the Band Class Members in accordance with the Agreement.

22.05 No person may bring any action or take any proceeding against the not-for-profit entity, including its directors, officers, members, employees, agents, partners, associates, representatives, successors, or assigns of the not-for-profit entity, for any matter in any way relating to the Agreement, the administration of the Agreement, or the implementation of the Agreement, except with leave of this Court on notice to all affected parties.

23. Interim Board

23.01 The mandate of the interim board appointed in accordance with Section 21.04 shall be limited to the following:

- a. Hiring an interim executive director;
- b. Retaining financial and legal advisors;
- c. Establishing the Trust pursuant to Section 22.01

- d. Opening a bank account and taking other necessary steps to facilitate the receipt of the Fund into the Trust;
- e. Investing the Fund in accordance with the Investment Policy;
- f. Disbursing Planning Funds to each Band, pursuant to the Disbursement Policy; and
- g. Approving directors to fill the regional positions.

THE FUND

24.The Fund

- 24.01 Canada agrees to provide the lump sum amount of two billion eight hundred million dollars (\$2,800,000,000.00) to establish the Fund.
- 24.02 Canada shall forthwith, and no later than 30 days after the Implementation Date, settle the Fund upon the Trust established pursuant to Section 22.01.
- 24.03 The Fund will be used in furtherance of the Four Pillars, and will be invested and disbursed to the Band Class Members in accordance with the Investment Policy and Disbursement Policy.
- 24.04 Canada expressly agrees that the payment to establish the Fund is in addition to and not a replacement for any present or future funding or programming available to First Nations or other Indigenous groups (whether members of the Band Class or not), and that Band Class Members will not be denied, or receive reduced, funding or programming as a result of having received payments through the Fund.
- 24.05 Canada shall make best efforts to exempt any income earned by the Trust from federal taxation, and Canada shall have regard to the measures that it took in similar circumstances for the class action settlements addressed in paragraph 81(1)(g.3) of the *Income Tax Act*.
- 24.06 Neither the Fund nor the income earned from the Fund can be used:
- a. to fund individuals;
 - b. to fund commercial ventures;
 - c. as collateral or to secure loans; or

d. as a guarantee.

24.07 The Parties agree that no monies paid out from the Fund to a Band Class Member are subject to redirection, execution, or seizure by third parties and shall seek a term to this effect in the Settlement Approval Order.

IMPLEMENTATION OF THIS AGREEMENT

25. Notice Plans

25.01 The Parties agree that the Plaintiffs will seek an Order from the Court, on consent, approving a Settlement Agreement Notice Plan, whereby Band 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.

25.02 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 Band Class Members with notice of the Approval Order, information regarding the operation of the not-for-profit entity, and how Band Class Members receive funding from the Fund.

26. Settlement Approval Order

26.01 The Parties agree that a Settlement Approval Order concerning 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 Band Class Members; and
- c. ordering and declaring that the Band Class claims set out in the Second Re-Amended Statement of Claim, filed February 11, 2022, are dismissed, and giving effect to the releases and related clauses set out in Section 27 herein to ensure the conclusion of all Band Class claims.

27. Conclusion of Band Class Claims

27.01 Each Band Class Member ("Releasor") fully, finally and forever releases His Majesty the King in Right of Canada, its servants, agents, officers and employees, from any and all

actions, causes of action, common law, international law, Quebec civil law, and statutory liabilities, contracts, claims, and demands of every nature or kind and in any forum (“Claims”) available against Canada that were asserted or could have been asserted in relation to those asserted in the Second Re-Amended Statement of Claim regarding the purpose, creation, planning, establishment, setting up, initiating, funding, operation, supervision, control and maintenance of Residential Schools, the obligatory attendance of Survivors at Residential Schools, the Residential Schools system, and/or any Residential Schools policy or policies (the “Release”) and all such claims set out herein are dismissed on consent of the Parties as if determined on their merits.

- 27.02 For greater clarity, and without limiting the forgoing, the Claims do not relate to, or include any claims regarding, children who died or disappeared while in attendance at Residential School.
- 27.03 For greater clarity and without limiting the foregoing, the Release does not settle, compromise, release or limit in any way whatsoever any claims by the Releasors, in any other action, claim, lawsuit, or complaint regarding a declaration of Aboriginal or Treaty rights, a breach of Aboriginal rights, a breach of Treaty rights, a breach of fiduciary duty, or the constitutionality of any provision of the *Indian Act*, its predecessors or Regulations, other than claims related to the purpose, creation, planning, establishment, setting up, initiating, funding, operation, supervision, control and maintenance of Residential Schools, the obligatory attendance of Survivors at Residential Schools, the Residential School system, and/or any Residential Schools policy or policies as set out in Section 27.01.
- 27.04 Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasors against any person other than Canada. For greater clarity, and without limiting the foregoing, the Release cannot be relied upon by any Third Party, including any religious organization that was involved in the creation and operation of Residential Schools.
- 27.05 If any Releasor makes any claim or demand or takes any actions or proceedings, or continues such claims, actions, or proceedings against other person(s) or entities in relation to the allegations, matters or the losses or injuries at issue in the Action, including any claim against Provinces, Territories, other legal entities, or groups, including but not limited to religious or other institutions that were in any way involved with Residential Schools, the Releasor will expressly limit their claims so as to exclude any portion of loss for which

Canada may be found at fault or legally responsible for, or that Canada otherwise would have been liable to pay but for this Release.

27.06 Canada may rely on this Release as a defence to any lawsuit by the Releasers that purports to seek compensation from Canada for anything released through this Agreement.

27.07 Each Releaser is deemed to have agreed, warranted, and represented that it is the holder of the collective rights to whom the duties are owed on behalf of their respective communities as asserted in the Second Re-Amended Statement of Claim.

27.08 Canada may rely on this Agreement as a defence in the event that any other individual, group, or entity ("Third Party") pursues any action, claim, or demand for the claims or losses released by this Agreement and asserts that it, and not any Releaser, is the proper holder of the collective or community rights, is the community entity to whom the asserted duties were owed, or holds the authority to advance and release such claims, either because it is a sub-group within the Releaser entity or a larger entity to which the Releaser belongs, or is otherwise related, connected or derived.

27.09 If a court or tribunal determines that a Third Party, and not the Releaser, is the appropriate rights holder or otherwise owed the duties at issue, Canada may seek a set-off of the amounts paid to the Releaser through operation of this agreement.

27.10 The release provisions contained herein, revised as required for formatting only, will be included as terms of the Court Order approving the Settlement Agreement.

28. Deemed Consideration by Canada

28.01 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 Releasers 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

29. Class Counsel Fees and Disbursements

- 29.01 Any legal fees and disbursements of Class Counsel and proposed honoraria are the subject of the Fee Agreement, which is subject to review and approval by the Court.
- 29.02 Disbursements shall include costs associated with establishing the not-for-profit entity or Trust prior to the Implementation Date such that the not-for-profit entity or Trust is in a position to receive and invest the Fund.
- 29.03 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.

TERMINATION AND OTHER CONDITIONS

30. Termination of Agreement

- 30.01 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.
- 30.02 This Agreement will be rendered null and void and no longer binding on the Parties in the event that the Court does not grant its approval at the settlement approval hearing.

31. Amendments

- 31.01 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.

CONFIDENTIALITY

32. Confidentiality of Negotiations

- 32.01 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, continues in force.

CO-OPERATION**33. Co-operation**

33.01 Upon execution of this Agreement, the Parties will co-operate and make best efforts to obtain Court approval of this Agreement and make reasonable efforts to obtain the support and participation of the Band Class Members in all aspects of this Agreement. If this Agreement is not approved by the Court, the Parties shall negotiate in good faith to cure any defects identified by the Court.

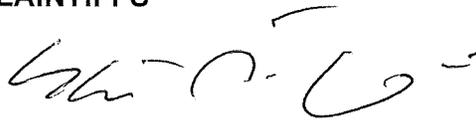
34. Public Announcements

34.01 Shortly after all parties have signed this Agreement, the Parties shall release a joint public statement announcing the settlement in a form to be agreed by the Parties, and at a mutually agreed time, will make public announcements in support of this Agreement. The Parties will continue to speak publicly in favour of the Agreement as reasonably requested by any Party.

[The remainder of this page is left intentionally blank. Signature pages follow]

IN WITNESS WHEREOF the Parties have executed this Agreement as of this 18th day of January, 2023.

FOR THE REPRESENTATIVE PLAINTIFFS



Tk'emlúps te Secwépemc, per
Shane Gottfriedson
Former Chief



Tk'emlúps te Secwépemc, per
~~Kúkpi7 Rosanne Casimir~~ Acting Kúkpi7 (Chief), Joshua Gottfriedson

shíshalh Nation, per
Garry Feschuk
Former Chief

shíshalh Nation, per
hiwus

**FOR THE DEFENDANT HIS MAJESTY THE KING
IN RIGHT OF CANADA**

Darlene Bess
Chief, Finances, Results and Delivery Officer
Crown-Indigenous Relations and Northern
Affairs Canada

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Former Chief

Tk'emlúps te Secwépemc, per
Kukpi7 Rosanne Casimir



shíshalh Nation, per
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shíshalh Nation, per
Garry Feschuk
Former Chief

shíshalh Nation, per
hiwus

**FOR THE DEFENDANT HIS MAJESTY THE KING
IN RIGHT OF CANADA**

Bess, Darlene  Digitally signed by Bess, Darlene
Date: 2023.01.18 18:37:41 -05'00'

Darlene Bess
Chief, Finances, Results and Delivery Officer
Crown-Indigenous Relations and Northern
Affairs Canada

FOR CLASS COUNSEL



Waddell Phillips Professional Corporation, per
John K. Phillips, K.C.

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

Diane Soroka Avocate Inc., per
Diane H. Soroka

FOR CLASS COUNSEL

Waddell Phillips Professional Corporation, per
John K. Phillips, K.C.



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



Diane Soroka Avocate Inc., per
Diane H. Soroka



SCHEDULE A

CLASS PROCEEDING**FORM 171A - Rule 171****FEDERAL COURT****Court File No. T-1542-12**

e-document ID 795

F I L E D	COUR FÉDÉRALE	D É P O S É
	11-FEB-2022	
Natasha Brant		
Ottawa, ONT	doc	323

BETWEEN:

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

CHIEF GARRY FESCHUK, on behalf of the SECHELT INDIAN BAND and 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: 90 Sparks Street Ottawa, ON K1A 0H9

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 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 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 Indian Bands in the Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Indian 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)”, “Aboriginal People(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) “Indian Band” means any entity that:
 - (i) Is either a "band" as defined in s.2(1) of the *Indian Act* or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and
 - (ii) Asserts that it holds rights recognized and affirmed by section 35 of the *Constitution Act*, 1982.
- (g) “Class” means the Tk’emlúps te Secwépemc Indian Band and the shíshálh band and any other Indian Band(s) that:
 - (i) has or had some members who are or were Survivors, or in whose community a Residential School is or was located; and

- (ii) is specifically added to this claim in relation to one or more specifically identified Residential Schools.
- (h) “Canada” means the Defendant, Her Majesty the Queen in right of Canada as represented by the Attorney General of Canada;
- (i) “Class Period” means 1920 to 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) “Identified Residential School(s)” means one or more of the KIRS or the SIRS or any other Residential School specifically identified by a member of the Class;
- (l) “KIRS” means the Kamloops Indian Residential School;
- (m) “Residential Schools” means all Indian Residential Schools recognized under the Agreement;
- (n) “Residential Schools Policy” means the policy of Canada with respect to the implementation of Indian Residential Schools;
- (o) “SIRS” means the Sechelt Indian Residential School;
- (p) “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.

THE PARTIES

The Plaintiffs

3. The Tk’emlúps te Secwépemc Indian Band and the shíshálh band are 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 Residential Schools, including 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 individuals who *resided at* Canada's Residential Schools by way of the Agreement implemented in 2007, and subsequently, the settlement of the claims of those individuals who attended at Canada's Residential Schools in this and other proceedings.

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 Class members.

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 Class members to whom Canada owed fiduciary and constitutionally-mandated duties. The Residential Schools Policy was intended to eradicate Aboriginal identity, culture, language, and spiritual practices. This assimilation would result in a reduction in the number of individuals identifying as Aboriginal, and with that would be a reduction in Canada's obligations to Aboriginal individuals and Indian Bands, as Aboriginal individuals who no longer identify as Aboriginal would be unlikely 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'emlúpsmc, '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 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 shíshálh 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. The Class members have all been affected by Cultural, Linguistic and Social Damage which has impaired the ability of Class members to govern their peoples and their lands.

Canada's Duties

35. 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.

36. 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, Article 8, 2(d), which commits to the provision of effective mechanisms for redress for forced assimilation, and the additional following provisions: Preamble, Articles 1-15, 17-28, 31, 33-46.

37. 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

38. Canada has constitutional obligations to, and a fiduciary relationship with, Aboriginal People and Indian Bands in Canada. Canada assumed the responsibility for educating Aboriginal children, and prevented Aboriginal Persons and Class members from doing so, by adopting and implementing the Residential Schools Policy, which included creating, planning, establishing, setting up, initiating, operating, financing, supervising, controlling and regulating a program of assimilation through the Residential Schools. Through the assumption of this role, and/or 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.

39. 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.

40. 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 and Indian Bands,

including the Class members, included the obligation to respect their Aboriginal Rights and not to deliberately seek to assimilate them, reduce their numbers, undermine, harm or impair them.

41. Canada breached the fiduciary and constitutional duties owed by Canada to the Class by targeting for destruction the collective identity and way of life established and enjoyed by the Class members.

42. Canada acted in its own self-interest and contrary to the interests of the Class members, not only by being disloyal to, but by actually betraying these communities which it had a duty to protect. Canada wrongfully exercised its discretion and power over Aboriginal Peoples, 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 and communities, 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.

43. In further 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

44. 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 Indian Bands have sustained their individual members, communities and distinctive cultures by speaking their languages and practicing their customs and traditions.

45. 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 Indian Bands, some particulars of which include, but are not limited to:

- (a) shísháhlh, Tk'emlúps and other Indian Bands' 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 shísháhlh, Tk'emlúps and other Aboriginal languages have been lost or impaired;
- (d) traditional shísháhlh, Tk'emlúps and Aboriginal parenting skills have been lost or impaired;
- (e) shísháhlh, Tk'emlúps and other Aboriginal skills for gathering, harvesting, hunting and preparing traditional foods have been lost or impaired; and,
- (f) shísháhlh, Tk'emlúps and Aboriginal spiritual beliefs have been lost or impaired.

46. Canada had at all material times and continues to have a duty to respect, honour and 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. Canada breached the Class members' Aboriginal Rights and caused the Class members Cultural, Linguistic and Social Harm.

Vicarious Liability

47. Canada is vicariously liable for the negligent performance of the fiduciary, constitutionally-mandated, statutory and common law duties of its Agents.

48. 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

49. 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 members have 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

50. 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

51. The Class members are Indian Bands, being collectives of Aboriginal Peoples who recognize their shared cultural and linguistic identities.

52. 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.

53. 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 Peoples and communities. Canada breached those duties, causing harm.

54. 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.

Application of the Quebec Charter

55. Where the aforementioned acts of Canada and its agents took place in the province of Quebec, they constitute breaches of article 1457 of the *Civil Code of Quebec*, CQLR c CCQ-1991, and the *Charter of Human Rights and Freedoms*, CQLR c C-12.

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, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, ss. 7, 15, 25, 35(1);

The Canadian Bill of Rights, S.C., 1960, c.44, Preamble, ss. 1 and 2;

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

Indigenous Languages Act S.C. 2019, c.23, Preamble, ss.2-10, 23-24;

Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24, s.2-4, and Schedule (Articles 6-7);

United Nations Declaration on the Rights of Indigenous Peoples Act, s.c. 2021, c. 14, Preamble, s.2, ss. 4-6, Schedule;

Civil Code of Quebec, CQLR c CCQ-1991, Article 1457;

Charter of Human Rights and Freedoms, CQLR c C-12, ss. 1, 4, 5, 39, 41, 43.

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, preamble and Articles 1-5;

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, preamble and Principles 1-10;

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), Preamble, Articles 1-9, 11-20, 24-25, 27-32, 34, 36-37, 39;

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, Preamble, Articles 1-3, 5-9, 12, 16-19, 21-27;

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), Preamble, Articles 1-3, 6, 8, 12, 13, 15, 22;

United Nations Resolution A/RES/60/147, December 16, 2005, Preamble, ss.1-3, and Annex; 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, Article 8, 2(d), Preamble, and Articles 1-15, 17-28, 31, 33-46.

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

Amended January 13, 2022

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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 SEHEL T INDIAN
BAND AND THE SEHEL T 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 (Cowessess, 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 Igloodik/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

Date: 20210924

Docket: T-1542-12

Citation: 2021 FC 988

Vancouver, British Columbia, September 24, 2021

PRESENT: The Honourable Madam Justice McDonald**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 IN T-1542-12

THIS COURT ORDERS that:

1. The Settlement Agreement dated June 4, 2021 and attached as Schedule “A” 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 Courts Rules*, SOR/98-106, and shall be implemented in accordance with its terms;
2. The Settlement Agreement, is binding on all 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;
3. 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;

8. 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. 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. 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. Prior to the Implementation Date, the Parties will identify and propose an Independent Reviewer or Independent Reviewers for Court appointment.
12. 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.
13. The Certification Order of Justice Harrington, dated June 18, 2015, will be amended as requested.

14. The Plaintiffs are granted leave to amend the First Re-Amended Statement of Claim in the form attached hereto.

15. There will be no costs of this motion.

“Ann Marie McDonald”

Judge

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.

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- 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;

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- 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:

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- 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;

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- 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;

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- 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

Federal Court



Cour fédérale

Date: 20220208

Docket: T-1542-12

Ottawa, Ontario, February 8, 2022

PRESENT: Madam Justice McDonald**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****ORDER****(Representative Plaintiffs' Motion to Extend the Band Class Opt-In Period)**

UPON MOTION by the Representative Plaintiffs for an Order varying the Certification Order dated June 18, 2015 (the "Certification Order"), an Order that the opt-in period for Indian Bands to be added as Class members be extended to May 31, 2022, an Order approving a Notice to potential Class members in the form attached as Schedule "A", an Order directing the

Representative Plaintiffs to distribute the Notice to potential Class members in accordance with the Representative Plaintiffs' plan of notice, as set out in the affidavit of Peter R. Grant, and an Order granting leave to amend the First Re-Amended Statement of Claim in the form attached hereto as Schedule "B";

AND UPON ON READING the Affidavit of Peter R. Grant, sworn January 12, 2022, filed, and upon reviewing the Certification Order and the pleadings and proceedings herein;

AND UPON NOTING the consent of the Defendant to the relief sought on this motion;

AND CONSIDERING that the relief sought herein is in the best interests of the Class as a whole;

THIS COURT ORDERS that:

1. Pursuant to Rule 334.19 of the *Federal Courts Rules*, the definition of "Band Class" set out at paragraph 1(a) of the Certification Order, as previously amended to "Class" by paragraph 13 and Schedule G of the Order dated September 24, 2021, is hereby struck and amended with the definition of "Class" below, and the definition of "Indian Band" is added as paragraph 1 (f) m. of the Certification Order, as follows:

1 (a) "Class" means the Tk'emlúps te Secwépemc Indian Band and the shíshálh band and any other Indian Band that:

- (i) has or had some members who are or were Survivors, or in whose community a Residential School is or was located; and
- (ii) is specifically added to this claim in relation to one or more specifically identified Residential Schools.

1 (f) m. "Indian Band" means any entity that:

- (i) Is either a "band" as defined in s.2(1) of the *Indian Act* or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and
 - (ii) Asserts that it holds rights recognized and affirmed by section 35 of the Constitution Act, 1982.
2. All Indian Bands, as defined in paragraph 1 of this Order that otherwise meet the eligibility requirements set out in paragraph 1(a) of this Order for being a Class member but have not already opted into and therefore been added to the claim shall have from the date of this Order until May 31, 2022 at 11:59 pm PST (the "Additional Opt-in Period") to opt into this action;
3. Pursuant to Rule 334.32(5) of the *Federal Courts Rules*, the form of notice of the Additional Opt-in Period, and opt in form included in the notice, set out at Schedule "A" to this Order (the "Notice") is approved for dissemination to Indian Bands not already Class members by this Court;
4. Pursuant to Rule 334.32(4) of the *Federal Courts Rules*, that the Representative Plaintiffs shall provide notice of the Additional Opt-in Period to all Indian Bands not already Class members as soon as reasonably practicable, by:
 - (a) Posting the Notice on this class proceeding's websites at www.justicefordayscholars.ca and www.bandreparations.ca.
 - (b) Posting the Notice (or links to the notice) on the website of Class Counsel;
 - (c) Direct mailing and emailing the Notice to all Indian Bands known to Class Counsel, or made known to Class Counsel by the Defendant that are not already Class members;

5. Class Counsel, within 7 days of this Order, shall produce to the Defendant a list of all Indian Bands known to Class Counsel to whom Class Counsel intends to disseminate the Notice in accordance with paragraph 4(c) (the “List of Bands”);
6. The Defendant shall produce to Class Counsel a list of, and contact information for, any other Indian Band it believes may be eligible to opt-into this action that is not on the List of Bands, Class Counsel shall thereafter promptly disseminate the Notice to that/those Indian Band(s);
7. Within 14 days of the expiry of the Additional Opt-in Period, Class Counsel shall provide to the Court a list of Indian Bands that have opted into this action during the Additional Opt-in Period;
8. Within 14 days of the expiry of the Additional Opt-in Period, Class Counsel shall provide to the Defendant a list of Indian Bands that have opted into this action during the Additional Opt-in Period, together with the bases identified by each Indian Band of its eligibility to opt into the Class, including the Indian Residential School(s) at issue and the years at issue (“Opt-in Information”);
9. By March 1, 2022, Class Counsel shall provide the Defendant with Opt-in Information relating to each Indian Band that is a Class Member as of the date of this Order;
10. Within 60 days of expiry of the Additional Opt-in Period, the Defendant may examine the Representative Plaintiffs for discovery for up to two hours each, unless extended by further Order, solely for the purpose of addressing any issues arising from the addition of new Class members;

11. A case management conference shall be arranged with the Court prior to August 5, 2022 to address any outstanding issues related to pre-trial deadlines or issues raised by newly opted in Class members;
12. The style of cause is amended, with immediate effect, as proposed by the Representative Plaintiffs in Schedule “B”, and the Representative Plaintiffs are granted leave to amend the First Re-Amended Statement of Claim in the form attached hereto as Schedule “B”; and
13. There shall be no costs of this motion.

"Ann Marie McDonald"

Judge

SCHEDULE C
SCHEDULE "A"

List of Class Members

September 2, 2022

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
1	NT	Deh Gah Got'ie Council	Fort Providence (Sacred Heart)	IRS Located in Community
2	NT	Deline First Nation dissolved Sept 1, 2016 and became Deline Got'ine Government	Federal Hostel at Fort Franklin; Inuvik (Grollier Hall)	IRS Located in Community; IRS Attended by Member(s)
3	NT	Deninu K'ue FN	Fort Resolution (St. Joseph's)	IRS Located in Community
4	NT	Ka'a'gee Tu FN	Fort Smith (Breynat Hall); Fort Simpson (Lapointe Hall)	IRS Attended by Member(s)
5	NT	Katlodeeche FN	Fort Smith - Grandin College	IRS Located in Community
6	NT	Liidlil Kue FN	Fort Simpson (Lapointe Hall)	IRS Located in Community
7	NT	Lutsel K'e Dene FN	Fort Resolution (St. Joseph's)	IRS Attended by Member(s)
8	NT	Nahanni Butte Dene Band	Fort Simpson (LaPointe Hall)	IRS Attended by Member(s)
9	NT	Smith's Landing First Nation	Holy Angels (Fort Chipewyan, École des Saint-Ange's); Fort Simpson (Bompas Hall); Fort Smith (Breynat Hall); Fort Smith - Grandin College	IRS Located in Community; IRS Attended by Member(s)
10	NT	West Point FN	Fort Providence (Sacred Heart)	IRS Attended by Member(s)
11	BC	Adams Lake IB	Kamloops	IRS Attended by Member(s)
12	BC	Ahousaht	Christie (Clayoquot; Kakawis); Ahousaht	IRS Located in Community
13	BC	Ashcroft Indian Band	St. George's (Lytton)	IRS Located in Community
14	BC	?aq'am	Cranbrook (St. Eugene's, Kootenay)	IRS Located in Community
15	BC	Bonaparte IB	Kamloops	IRS Attended by Member(s)
16	BC	Boothroyd IB	St. George's (Lytton)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
17	BC	Beecher Bay FN	Alberni	IRS Attended by Member(s)
18	BC	590 Bridge River IB	Kamloops; St. Mary's (Mission)	IRS Attended by Member(s)
19	BC	Canim Lake Band	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
20	BC	Cayoose Creek IB	Cariboo (St. Joseph's, William's Lake); Kamloops; St George's (Lytton); St. Mary's (Mission)	IRS Attended by Member(s)
21	BC	Chawathil FN	St. Mary's (Mission)	IRS Attended by Member(s)
22	BC	Cheslatta Carrier Nation	Lejac (Fraser Lake)	IRS Attended by Member(s)
23	BC	Cheam First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
24	BC	Coldwater IB	Kamloops	IRS Located in Community
25	BC	Cook's Ferry IB	St. George's (Lytton)	IRS Attended by Member(s)
26	BC	Cowichan Tribes	Kuper Island; St. Mary's (Mission)	IRS Located in Community; IRS Attended by Member(s)
27	BC	Da'naxda'xw/Awaetlala Nation	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Located in Community
28	BC	Douglas First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
29	BC	Esdilagh First Nations	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
30	BC	Ehattesaht Chinehkint	Christie (Clayoquot, Kakawis)	IRS Located in Community; IRS Attended by Member(s)
31	BC	Esk'eteme	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
32	BC	Fort Nelson First Nation	Kamloops	IRS Attended by Member(s)
33	BC	Gitanmaax	Lejac (Fraser Lake); Alberni; Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
34	BC	Gitanyow Huwilp Society	Alberni	IRS Attended by Member(s)
35	BC	Gitga'at	Edmonton (Poundmaker, replaced Red Deer Industrial); Alberni	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
36	BC	Gitsegukla IB	Edmonton (Poundmaker, replaced Red Deer Industrial); Alberni	IRS Attended by Member(s)
37	BC	Gitxaala Nation	Coqualeetza from 1924 to 1940; Alberni; St. George's (Lytton); Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
38	BC	Hagwilget Village Council	Lejac (Fraser Lake)	IRS Attended by Member(s)
39	BC	Haisla FN	Kitimaat	IRS Located in Community
40	BC	Halalt FN	Kuper Island	IRS Attended by Member(s)
41	BC	Heiltsuk Nation	Alberni	IRS Attended by Member(s)
42	BC	High Bar First Nation	Kamloops	IRS Attended by Member(s)
43	BC	Homalco IB	Kamloops; Sechelt; St. Mary's (Mission)	IRS Attended by Member(s)
44	BC	Hupačasath FN	Alberni	IRS Attended by Member(s)
45	BC	Huu-ay-aht FNs	Alberni	IRS Attended by Member(s)
46	BC	Kanaka Bar IB	St. George's (Lytton)	IRS Located in Community; IRS Attended by Member(s)
47	BC	Kitasoo Xai'xais Nation	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home); Alberni	IRS Attended by Member(s)
48	BC	Kispiox Band #532	Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
49	BC	Kitselas FN	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
50	BC	Klahoose First Nation	Sechelt	IRS Attended by Member(s)
51	BC	K'ómoks First Nation	Kuper Island; Sechelt	IRS Located in Community
52	BC	Kwantlen FN	Kuper Island; St. Mary's (Mission)	IRS Attended by Member(s)
53	BC	Kwikwetlem First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
54	BC	Leq'amel FN	St. Mary's (Mission)	IRS Attended by Member(s)
55	BC	Lheidli Tienneh	Lejac (Fraser Lake)	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
56	BC	Lhoosk'uz Dené Nation	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
57	BC	Lil'wat Nation	St. Mary's (Mission)	IRS Attended by Member(s)
58	BC	Little Shuswap Lake Band	Kamloops	IRS Located in Community; IRS Attended by Member(s)
59	BC	Lower Kootenay IB	Cranbrook (St. Eugene's, Kootenay)	IRS Located in Community
60	BC	Lower Nicola IB	Kamloops; St. George's (Lytton); Lejac (Fraser Lake); Coqualeetza from 1924 to 1940; St. Mary's (Mission); Cranbrook (St. Eugene's, Kootenay); Sechelt; Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
61	BC	Lower Similkameen IB	Kamloops; Cranbrook (St. Eugene's, Kootenay)	IRS Attended by Member(s)
62	BC	Lyackson First Nation	Kuper Island	IRS Attended by Member(s)
63	BC	Lytton First Nation	St. George's (Lytton)	IRS Located in Community
64	BC	Malahat Nation	Kuper Island	IRS Attended by Member(s)
65	BC	McLeod Lake IB	Lejac (Fraser Lake)	IRS Attended by Member(s)
66	BC	Musqueam IB	St. Paul's (Squamish, North Vancouver)	IRS Attended by Member(s)
67	BC	Nadleh Whut'en	Lejac (Fraser Lake)	IRS Attended by Member(s)
68	BC	Namgis FN	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Located in Community
69	BC	Nanoose FN	Alberni	IRS Attended by Member(s)
70	BC	Nakazdli Whut'en	Lejac (Fraser Lake); Cariboo (St. Joseph's, William's Lake); Kamloops	IRS Attended by Member(s)
71	BC	Nazko FN	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community; IRS Attended by Member(s)
72	BC	Nee Tahi Buhn IB	Lejac (Fraser Lake)	IRS Attended by Member(s)
73	BC	Neskonlith FN	Kamloops	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
74	BC	Nisga'a Village of Gitlaxt'aamiks formerly New Aiyansh	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
75	BC	Nooaitch IB	Kamloops	IRS Attended by Member(s)
76	BC	Nuxalk FN	Alberni; Cariboo (St. Joseph's, William's Lake); Coqualeetza from 1924 to 1940; St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
77	BC	Okanagan IB	Kamloops	IRS Attended by Member(s)
78	BC	Old Masset Village Council	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
79	BC	Oregon Jack Creek	Kamloops	IRS Attended by Member(s)
80	BC	Osoyoos IB	Kamloops; Cranbrook (St. Eugene's, Kootenay)	IRS Located in Community
81	BC	Peters FN	Kamloops	IRS Located in Community
82	BC	Penelakut Tribe	Kuper Island	IRS Located in Community
83	BC	Penticton IB	Kamloops; Coqualeetza from 1924 to 1940; Cranbrook (St. Eugene's, Kootenay)	IRS Located in Community
84	BC	Prophet River FN	Lejac (Fraser Lake); Lower Post	IRS Attended by Member(s)
85	BC	Red Bluff IB (Lhtako Dene Nation)	Lejac (Fraser Lake); St. Mary's (Mission); Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
86	BC	Saulteau First Nations	Grouard to December 1957; Edmonton (Poundmaker, replaced Red Deer Industrial).	IRS Attended by Member(s)
87	BC	Seabird Island Band	St. Mary's (Mission); Coqualeetza from 1924 to 1940; Kamloops	IRS Located in Community; IRS Attended by Member(s)
88	BC	Sechelt FN	Sechelt	IRS Located in Community
89	BC	Shackan IB	Kamloops	IRS Located in Community
90	BC	Shuswap Band	Cranbrook (St. Eugene's, Kootenay); Kamloops	IRS Located in Community
91	BC	Simpchw FN	Kamloops	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
92	BC	Skatin	St. Mary's (Mission); Coqualeetza from 1924 to 1940	IRS Located in Community
93	BC	Skawahlook FN	Kuper Island	IRS Attended by Member(s)
94	BC	Skeetchestn IB	Kamloops	IRS Attended by Member(s)
95	BC	Songhees Nation	Kuper Island	IRS Attended by Member(s)
96	BC	Spuzzum First Nation	St. Mary's (Mission); St. George's (Lytton); Kamloops	IRS Attended by Member(s)
97	BC	Stellat'en FN	Lejac (Fraser Lake)	IRS Attended by Member(s)
98	BC	Sts'ailes	St. Mary's (Mission)	IRS Attended by Member(s)
99	BC	Stswecem'c Xgat'tem First Nation	Kamloops; Coqualeetza from 1924 to 1940; Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
100	BC	Sliammon FN (Tla'amin Nation)	Sechelt	IRS Attended by Member(s)
101	BC	Soowahlie IB	Coqualeetza from 1924 to 1940	IRS Attended by Member(s)
102	BC	Squamish Nation	St. Paul's (Squamish, North Vancouver)	IRS Located in Community
103	BC	Shxwhay Village	St. Mary's (Mission)	IRS Attended by Member(s)
104	BC	Siska Indian Band	St. George's (Lytton)	IRS Located in Community
105	BC	Skidegate FN	Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
106	BC	Skwah First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
107	BC	Splatsin	Cranbrook (St. Eugene's, Kootenay); Kamloops	IRS Attended by Member(s)
108	BC	Sumas FN	St. Mary's (Mission)	IRS Located in Community
109	BC	Tahltan Band	Lower Post	IRS Attended by Member(s)
110	BC	Taku River Tlingit FN	Lower Post	IRS Attended by Member(s)
111	BC	T'it'q'et	St. Mary's (Mission)	IRS Attended by Member(s)
112	BC	Tk'emlups te Secwepemc	Kamloops	IRS Located in Community
113	BC	Tla-o-qui-aht FN	Christie (Clayoquot, Kakawis); Ahousaht	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
114	BC	Tl'etinqox Government	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
115	BC	Toosey IB	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
116	BC	Tsartlip FN	Kuper Island	IRS Attended by Member(s)
117	BC	Tsawwassen FN	St. Mary's (Mission)	IRS Attended by Member(s)
118	BC	Tsawout First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
119	BC	Tsal'alh (Seton Lake IB)	Kamloops	IRS Attended by Member(s)
120	BC	Tsashaht FN	Alberni	IRS Located in Community
121	BC	Tsleil-Waututh Nation	St. Paul's (Squamish, North Vancouver)	IRS Located in Community
122	BC	Tsideldel FN	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
123	BC	Ts'kw'aylaxw First Nation	Kamloops	IRS Located in Community
124	BC	T'Sou-ke FN	Kuper Island	IRS Attended by Member(s)
125	BC	Tzeachten FN	St. Mary's (Mission); Coqualeetza from 1924 to 1940	IRS Located in Community; IRS Attended by Member(s)
126	BC	Uchucklesaht Tribe Government	Alberni	IRS Located in Community
127	BC	Ulkatcho IB	Anahim Lake Dormitory (September 1968 to June 1977)	IRS Located in Community
128	BC	Upper Nicola Band	Kamloops	IRS Attended by Member(s)
129	BC	Westbank FN	Cranbrook (St. Eugene's, Kootenay); Kamloops	IRS Attended by Member(s)
130	BC	West Moberly First Nations	Grouard to December 1957	IRS Attended by Member(s)
131	BC	Wet'suwet'en First Nation	Lejac (Fraser Lake); Kamloops; St. Mary's (Mission)	IRS Located in Community; IRS Attended by Member(s)
132	BC	We Wai Kai Nation	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home); Alberni	IRS Attended by Member(s)
133	BC	We Wai Kum FN	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
134	BC	Williams Lake IB	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
135	BC	Whispering Pines Clinton Indian Band	Kamloops; Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
136	BC	Witset FN	Lejac (Fraser Lake)	IRS Attended by Member(s)
137	BC	Xatsull FN (Soda Creek)	Cariboo (St. Joseph's, William's Lake); Coqualeetza from 1924 to 1940; Kamloops; Lejac (Fraser Lake)	IRS Located in Community
138	BC	Xeni Gwet'in First Nations Government	Kamloops; Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
139	BC	Yekooche FN	Lejac (Fraser Lake)	IRS Attended by Member(s)
140	BC	Yunesit'in Government	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
141	YT	Kwanlin Dün First Nation	Yukon Hall (Whitehorse/Protestant Hostel); Coudert Hall (Whitehorse Hostel/Student Residence - replaced by Yukon Hall); Whitehorse Baptist Mission	IRS Located in Community
142	YT	Tr'ondëk Hwëch'in	St. Paul's Hostel from September 1920 to June 1943	IRS Located in Community
143	YT	First Nation of Na-Cho Nyäk Dun	Carcross (Chooulta)	IRS Located in Community; IRS Attended by Member(s)
144	YT	White River First Nation	Lower Post	IRS Located in Community
145	AB	Alexis Nakota Sioux Nation	Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
146	AB	Athabasca Chipewyan FN	Holy Angles (Fort Chipewyan, École des Saint-Anges)	IRS Located in Community
147	AB	Bearspaw FN	Morley (Stony/Stoney, replaced McDougall Orphanage)	IRS Located in Community
148	AB	Beaver Lake Cree Nation	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Located in Community
149	AB	Blood Tribe	St. Mary's (Blood, Immaculate Conception); St. Paul's (Blood)	IRS Located in Community
150	AB	Cold Lake FNs	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Attended by Member(s)
151	AB	Dene Tha' First Nation	Assumption (Hay Lake)	IRS Located in Community
152	AB	Driftpile Cree Nation	Joussard (St. Bruno's) Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)	IRS Located in Community; IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
153	AB	Duncan's First Nation	Grouard to December 1957	IRS Attended by Member(s)
154	AB	Ermineskin Tribe	Ermineskin (Hobbema)	IRS Located in Community
155	AB	Enoch Cree Nation	Edmonton, Ermineskin (Hobbema)	IRS Attended by Member(s)
156	AB	Fort McKay FN	Holy Angels (Fort Chipewyan, École des Saint-Ange)	IRS Attended by Member(s)
157	AB	Frog Lake FN	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Attended by Member(s)
158	AB	Horse Lake FN	Sturgeon Lake (Calais, St. Francis Xavier)	IRS Attended by Member(s)
159	AB	Kapawe'no First Nation	Grouard to December 1957	IRS Located in Community
160	AB	Kehewin Cree Nation	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart); Onion Lake Anglican (see Prince Albert)	IRS Located in Community; IRS Attended by Member(s)
161	AB	Little Red River Cree Nation	Fort Vermilion (St. Henry's)	IRS Attended by Member(s)
162	AB	Louis Bull Tribe	Ermineskin (Hobbema)	IRS Attended by Member(s)
163	AB	Lubicon Lake Band #453	Joussard (St. Bruno's)	IRS Attended by Member(s)
164	AB	Mikisew Cree First Nation	Holy Angels (Fort Chipewyan, École des Saint-Ange)	IRS Located in Community
165	AB	Montana FN	Ermineskin (Hobbema)	IRS Attended by Member(s)
166	AB	Paul First Nation	St. Albert (Youville); Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Located in Community
167	AB	Piikani Nation	Sacred Heart (Peigan, Brocket); St. Cyprian (Queen Victoria's Jubilee Home, Peigan)	IRS Located in Community
168	AB	Saddle Lake Cree Nation	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Located in Community
169	AB	Samson Cree Nation	Ermineskin (Hobbema)	IRS Located in Community
170	AB	Sawridge FN	Grouard to December 1957	IRS Attended by Member(s)
171	AB	Siksika Nation	Crowfoot (Blackfoot, St. Joseph's, Ste. Trinite)	IRS Attended by Member(s)
172	AB	Stoney FN	Morley (Stony/Stoney, replaced McDougall Orphanage)	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
173	AB	Sturgeon Lake Cree Nation	Sturgeon Lake (Calais, St. Francis Xavier)	IRS Located in Community
174	AB	Sucker Creek FN	Joussard (St. Bruno's)	IRS Located in Community
175	AB	Sunchild First Nation	Ermineskin (Hobbema)	IRS Attended by Member(s)
176	AB	Tallcree Tribal Government	Fort Vermilion (St. Henry's)	IRS Attended by Member(s)
177	AB	Tsuut'ina Nation	Sarcee (St. Barnabas)	IRS Located in Community
178	AB	Whitefish Lake IB	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Attended by Member(s)
179	AB	Woodland Cree FN	Joussard (St. Bruno's)	IRS Attended by Member(s)
180	SK	Ahtakakoop Cree Nation	Kamloops	IRS Attended by Member(s)
181	SK	Beardy's & Okemasis First Nation	St. Michael's (Duck Lake)	IRS Attended by Member(s)
182	SK	Big Island Lake Cree Nation	Beauval (Lac la Plonge)	IRS Attended by Member(s)
183	SK	Buffalo River Dene Nation	Beauval (Lac la Plonge)	IRS Located in Community; IRS Attended by Member(s)
184	SK	Canoe Lake Cree First Nation	Beauval (Lac la Plonge)	IRS Attended by Member(s)
185	SK	Carry the Kettle FN	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
186	SK	Clearwater River Dene Nation	Beauval (Lac la Plonge)	IRS Located in Community
187	SK	Cote FN	Cote Improved Federal Day School (September 1928 to June 1940)	IRS Located in Community
188	SK	Cowessess FN #73	Marieval (Cowessess, Crooked Lake)	IRS Located in Community
189	SK	English River FN	Beauval (Lac la Plonge)	IRS Located in Community
190	SK	Fishing Lake FN	Muscowequan (Lestock, Touchwood)	IRS Located in Community
191	SK	George Gordon FN	Gordon's	IRS Located in Community
192	SK	Kahkewistahaw FN	Marieval (Cowessess, Crooked Lake)	IRS Attended by Member(s)
193	SK	Keeseekoose FN	St. Philip's	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
194	SK	Key FN	St. Philip's	IRS Attended by Member(s)
195	SK	Lac La Ronge IB	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	IRS Located in Community
196	SK	Little Black Bear Band	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
197	SK	Little Pine First Nation	Thunderchild (Delmas, St. Henri); Onion Lake Anglican (see Prince Albert)	IRS Attended by Member(s)
198	SK	Montreal Lake Cree Nation	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	IRS Located in Community
199	SK	Muskoday First Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
200	SK	Muskowekwan First Nation	Muscowequan (Lestock, Touchwood)	IRS Located in Community
201	SK	Nekaneet First Nation	Gordon's	IRS Attended by Member(s)
202	SK	Ocean Man First Nation #69	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
203	SK	Ochapowace Nation	Round Lake	IRS Located in Community
204	SK	Okanese FN	File Hills	IRS Located in Community
205	SK	Onion Lake	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge) ; St. Anthony's (Onion Lake, Sacred Heart)	IRS Located in Community
206	SK	Pasqua First Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Located in Community
207	SK	Piapot First Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Located in Community
208	SK	Pheasant Rump Nakota FN #68	Marieval (Cowessess, Crooked Lake); Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Located in Community; IRS Attended by Member(s)
209	SK	Red Earth First Nation	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	IRS Located in Community
210	SK	Star Blanket Cree Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Located in Community
211	SK	Sweetgrass First Nation	St. Anthony's (Onion Lake, Sacred Heart)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
212	SK	Thunderchild First Nation	Onion Lake Anglican(see Prince Albert); Thunderchild (Delmas, St. Henri)	IRS Located in Community; IRS Attended by Member(s)
213	SK	Wahpeton Dakota Nation	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	IRS Attended by Member(s)
214	SK	White Bear First Nations	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
215	SK	Zagime Anishinabek (Formerly Sakimay FNs)	Marieval (Cowessess, Crooked Lake)	IRS Located in Community
216	SK	Waterhen Lake FN	Beauval (Lac la Plonge)	IRS Attended by Member(s)
217	MB	Berens River FN	Portage la Prairie; Brandon	IRS Attended by Member(s)
218	MB	Bunibonibee Cree Nation	Birtle; Brandon; Portage la Prairie	IRS Attended by Member(s)
219	MB	Bloodvein River FN	Assiniboia (Winnipeg)	IRS Attended by Member(s)
220	MB	Little Black River FN	Dauphin (replace McKay)	IRS Attended by Member(s)
221	MB	Ebb and Flow First Nation	Sandy Bay	IRS Attended by Member(s)
222	MB	Fisher River Cree Nation	Birtle	IRS Attended by Member(s)
223	MB	Gambler First Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
224	MB	Lake Manitoba First Nation	Assiniboia (Winnipeg)	IRS Attended by Member(s)
225	MB	Sagkeeng FN	Fort Alexander (Pine Falls)	IRS Located in Community; IRS Attended by Member(s)
226	MB	Long Plain FN	Brandon; Portage la Prairie	IRS Located in Community; IRS Attended by Member(s)
227	MB	Mathias Colomb Cree Nation	Sturgeon Landing (replaced by Guy Hill, MB); Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	IRS Attended by Member(s)
228	MB	Misipawistik Cree Nation	Brandon	IRS Attended by Member(s)
229	MB	Nisichawayasihk Cree Nation	McKay (The Pas, replaced by Dauphin)	IRS Attended by Member(s)
230	MB	Norway House Cree Nation	Notre Dame Hostel (Norway House Catholic, Jack River	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
			Hostel, replaced Jack River Annex at Cross Lake); Norway House	
231	MB	O-Pipon-Na-Piwin Cree Nation	Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	IRS Attended by Member(s)
232	MB	Pinaymootang First Nation	Birtle	IRS Attended by Member(s)
233	MB	Poplar River FN	Norway House, Cross Lake (St. Joseph's, Norway House); Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	IRS Attended by Member(s)
234	MB	Pine Creek FN	Pine Creek (Campeville)	IRS Located in Community
235	MB	Roseau River Anishinabe FN	Fort Alexander (Pine Falls); Birtle; Portage la Prairie; Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
236	MB	Sandy Bay Ojibway FN	Portage la Prairie; Sandy Bay	IRS Located in Community; IRS Attended by Member(s)
237	MB	Sioux Valley Dakota Nation	Brandon	IRS Attended by Member(s)
238	MB	St. Theresa Point FN	Assiniboia (Winnipeg)	IRS Attended by Member(s)
239	MB	Swan Lake FN	Portage la Prairie	IRS Attended by Member(s)
240	MB	Tataskweyak Cree Nation	Dauphin (replaced McKay)	IRS Attended by Member(s)
241	MB	Tootinaowaziibeeng Treaty Reserve #292	Pine Creek (Campeville)	IRS Attended by Member(s)
242	MB	Waywayseecappo FN	Birtle	IRS Located in Community
243	MB	York Factory FN	Dauphin (replaced McKay)	IRS Attended by Member(s)
244	ON	Algonquins of Pikwakanagan First Nation	Mohawk Institute; Spanish Boys' School (Charles Garnier, St. Joseph's)	IRS Attended by Member(s)
245	ON	Aamjiwnaang FN-Chippewas of Sarnia	Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	IRS Attended by Member(s)
246	ON	Alderville FN	Mount Elgin (Muncey, St. Thomas)	IRS Attended by Member(s)
247	ON	Animakee Wa Zhing #37	Cecilia Jeffrey (Kenora, Shoal Lake)	IRS Located in Community; IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
248	ON	Aroland FN	McIntosh (Kenora)	IRS Attended by Member(s)
249	ON	Big Grassy River First Nation	Cecilia Jeffrey (Kenora, Shoal Lake)	IRS Attended by Member(s)
250	ON	Caldwell First Nation	Mount Elgin (Muncey, St. Thomas)	IRS Attended by Member(s)
251	ON	Cat Lake FN	Pelican Lake (Pelican Falls)	IRS Attended by Member(s)
252	ON	Chapleau Cree FN	Chapleau (St. John's); Shingwauk	IRS Located in Community; IRS Attended by Member(s)
253	ON	Chippewas of the Thames FN	Mount Elgin (Muncey, St. Thomas)	IRS Located in Community
254	ON	Chippewas of Kettle and Stony Point First Nation (formerly Kettle Point First Nation and Stony Point First Nation)	Mount Elgin (Muncey, St. Thomas); Mohawk Institute	IRS Attended by Member(s)
255	ON	Chippewas of Rama First Nation	Mohawk Institute	IRS Attended by Member(s)
256	ON	Constance Lake First Nation	St. Anne's (Fort Albany)	IRS Attended by Member(s)
257	ON	Couchiching FN	Fort Frances (St. Margaret's)	IRS Located in Community; IRS Attended by Member(s)
258	ON	Curve Lake FN	Mohawk Institute	IRS Attended by Member(s)
259	ON	Delaware Nation (Moravian of the Thames)	Mohawk Institute; Mount. Elgin (Muncey, St. Thomas); Shingwauk	IRS Attended by Member(s)
260	ON	Fort Albany FN	St. Anne's (Fort Albany)	IRS Located in Community
261	ON	Fort William FN	St. Joseph's/Fort William	IRS Located in Community
262	ON	Fort Severn FN	Pelican Lake (Pelican Falls)	IRS Attended by Member(s)
263	ON	Ginoogaming FN	St. Joseph's/Fort William	IRS Attended by Member(s)
264	ON	Grassy Narrows FN	McIntosh (Kenora)	IRS Attended by Member(s)
265	ON	Kashechewan FN	St. Anne's (Fort Albany)	IRS Attended by Member(s)
266	ON	Kitchenuhmaykoosib Inninuwug	Pelican Lake (Pelican Falls); Cecilia Jeffrey (Kenora, Shoal Lake); Poplar Hill	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
267	ON	Lac Seul First Nation	Cecilia Jeffrey (Kenora, Shoal Lake); Pelican Lake (Pelican Falls)	IRS Attended by Member(s)
268	ON	M'Chigeeng FN	Spanish Boys' School (Charles Garnier, St. Joseph's)	IRS Attended by Member(s)
269	ON	Mississauga First Nation	Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	IRS Attended by Member(s)
270	ON	Mississaugas of the Credit First Nation	Mohawk Institute	IRS Attended by Member(s)
271	ON	Mississaugas of Scugog Island First Nation	Mohawk Institute	IRS Attended by Member(s)
272	ON	MoCreebec Eeyoud Council of the Cree	Bishop Horden Hall (Moose Fort, Moose Factory)	IRS Located in Community
273	ON	Moose Cree FN	Bishop Horden Hall (Moose Fort, Moose Factory)	IRS Located in Community
274	ON	Mohawks of the Bay of Quinte	Mohawk Institute	IRS Attended by Member(s)
275	ON	Munsee-Delaware Nation	Mount Elgin (Muncey, St. Thomas)	IRS Attended by Member(s)
276	ON	Naicatchewenin FN	Fort Frances (St. Margaret's)	IRS Attended by Member(s)
277	ON	Naotkamegwanning FN	Cecilia Jeffrey (Kenora, Shoal Lake); Fort Frances (St. Margaret's); McIntosh (Kenora); St. Mary's (Kenora, St. Anthony's)	IRS Attended by Member(s)
278	ON	Nipissing First Nation	Spanish Boys' School (Charles Garnier, St. Joseph's)	IRS Attended by Member(s)
279	ON	Nigigoonsiminikaaning First Nation	Fort Frances (St. Margaret's)	IRS Attended by Member(s)
280	ON	Ojibways of Onigaming	St. Mary's (Kenora, St. Anthony's); Fort Frances (St. Margaret's)	IRS Attended by Member(s)
281	ON	Oneida Nation the Thames	Mount Elgin (Muncey, St. Thomas)	IRS Located in Community
282	ON	Pikangikum FN	Poplar Hill	IRS Attended by Member(s)
283	ON	Sachigo Lake FN	Poplar Hill	IRS Attended by Member(s)
284	ON	Sheguiandah FN	Shingwauk; Spanish Boys' School (Charles Garnier, St. Joseph's); Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
285	ON	Taykwa Tagamou Nation	St. Anne's (Fort Albany)	IRS Attended by Member(s)
286	ON	Temagami FN	Shingwauk	IRS Attended by Member(s)
287	ON	Wabigoon Lake Ojibway Nation	St. Mary's (Kenora, St. Anthony's)	IRS Attended by Member(s)
288	ON	Wahgoshig First Nation	Mohawk Institute	IRS Located in Community; IRS Attended by Member(s)
289	ON	Wauzhushk Onigum Nation (Rat Portage) #153	St. Mary's (Kenora, St. Anthony's)	IRS Located in Community
290	ON	Wiikwemkoong Unceded Territory	Spanish Boys' School (Charles Garnier, St. Joseph's); Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's);	IRS Located in Community
291	ON	Weenusk First Nation	St. Anne's (Fort Albany)	IRS Located in Community
292	ON	Whitefish River First Nation	Spanish Boys' School (Charles Garnier, St. Joseph's)	IRS Attended by Member(s)
293	ON	Whitesand First Nation	Fort Frances (St. Margaret's)	IRS Attended by Member(s)
294	QC	Abénakis de Wôlinak	Sept-Îles	IRS Attended by Member(s)
295	QC	Communaute Ancinapek de Kitcisakik	Amos	IRS Attended by Member(s)
296	QC	Les Innu De Ekuanitshit	Sept-Îles	IRS Attended by Member(s)
297	QC	Cree Nation of Chisasibi	Fort George (Anglican); Fort George (Roman Catholic)	IRS Located in Community
298	QC	Cree Nation of Mistissini	La Tuque; Mistassini Hostels (September 1, 1971 to June 30, 1978)	IRS Located in Community; IRS Attended by Member(s)
299	QC	Cree Nation of Nemaska	Bishop Horden Hall (Moose Fort, Moose Factory); Shingwauk; La Tuque	IRS Attended by Member(s)
300	QC	Cree Nation of Waswanipi	Mohawk Institute; La Tuque	IRS Attended by Member(s)
301	QC	Cree Nation of Wemindji	Fort George (Anglican)	IRS Attended by Member(s)
302	QC	Nation Huronne-Wendat	La Tuque	IRS Attended by Member(s)
303	QC	Innus de Ekuanitshit	Sept-Îles	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
304	QC	Innu Takuaikan Uashatmak Mani Utenam	Sept-Îles	IRS Located in Community; IRS Attended by Member(s)
305	QC	Listuguj Mi'gmaq Government	Shubenacadie	IRS Attended by Member(s)
306	QC	Kanesatake Mohawk	Shingwauk	IRS Located in Community; IRS Attended by Member(s)
307	QC	Kebaowek First Nation	Spanish Boys' School (Charles Garnier, St. Joseph's); Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	IRS Attended by Member(s)
308	QC	Long Point FN	Amos	IRS Attended by Member(s)
309	QC	Naskapi Nation of Kawawachikamach	La Tuque	IRS Located in Community
310	QC	Nation anishnabe du Lac Simon	Amos	IRS Located in Community; IRS Attended by Member(s)
311	QC	Odanak	Shingwauk	IRS Attended by Member(s)
312	QC	Oujé-Bougoumou Cree Nation	La Tuque	IRS Attended by Member(s)
313	QC	Pekuakamiulnuatsh Takuhikan	Pointe Bleue	IRS Located in Community
314	QC	Whapmagoostui FN	Federal Hostels at Great Whale River	IRS Located in Community
315	QC	The Crees of Waskaganish FN	Bishop Horden Hall (Moose Fort, Moose Factory)	IRS Attended by Member(s)
316	NB	Elsipogtog First Nation, formerly Big Cove Band, formerly Richibucto Tribe of Indians (#003)	Shubenacadie	IRS Attended by Member(s)
317	NB	Eel Ground First Nation	Shubenacadie	IRS Attended by Member(s)
318	NB	Eel River Bar First Nation	Shubenacadie	IRS Attended by Member(s)
319	NB	Fort Folly	Shubenacadie	IRS Attended by Member(s)
320	NB	Indian Island	Shubenacadie	IRS Attended by Member(s)
321	NB	Kingsclear First Nation	Shubenacadie	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
322	NB	Oromocto	Shubenacadie	IRS Attended by Member(s)
323	NB	Tobique First Nation	Shubenacadie	IRS Attended by Member(s)
324	NS	Sipekne'katik Band	Shubenacadie	IRS Located in Community
325	PE	Abegweit FN	Shubenacadie	IRS Attended by Member(s)
326	PE	Lennox Island Band	Shubenacadie	IRS Located in Community; IRS Attended by Member(s)

SCHEDULE “B”**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)

Lesser Slave Lake (St. Peter's)

Morley (Stony/Stoney, replaced McDougall Orphanage)

Old Sun (Blackfoot)

Sacred Heart (Peigan, Brocket)

St. Albert (Youville)

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 (Cowessess, 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)

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)

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)

Hay River (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 D
INVESTMENT POLICY**

1. The Board, or the Interim Board, as the case may be, shall at all times manage the money of the Trust/not-for-profit entity in a prudent manner.
2. Upon receipt of the funding, the Trust shall deposit the funds required to make the initial payment to the Bands, as well as to pay for the operation of the Trust/not-for-profit entity for the first year, in a bank account in the name of the Trust/not-for-profit entity.
3. The remainder of the funds shall be invested in accordance with professional investment advice for a period of one year, or until the full Board is constituted.
4. Once the full Board is constituted, it shall engage the services of one or more professional investment advisors or firms to assist it in the long-term planning and investment required to ensure, to the extent possible, the availability of funds for initiatives undertaken by the Band Class Members to fulfill the objectives of the Four Pillars.
5. The money will be invested in accordance with professional advice in a manner which will maintain the capital for 20 years.
6. Subject to Section 22.04 of the Agreement, after 20 years, the Trust shall disburse the remaining funds to the Band Class in accordance with the Disbursement Formula, with adjustments for remoteness, upon receipt of a further plan for use of the funds in accordance with the Four Pillars.
7. Any investment income earned on the capital shall be disbursed to the Band Class in accordance with the Disbursement Policy.

SCHEDULE E
DISBURSEMENT POLICY
AND DISBURSEMENT FORMULA

It is acknowledged that the sole purpose of the Fund is to assist Band Class Members in repairing the harms done to them by the Residential Schools as set out in the Statement of Claim (as amended) in accordance with the Four Pillars which guide the Agreement.

The Board, once constituted, will create a Disbursement Policy. This Disbursement Policy shall include the following:

1. **Band Entitlement** – each Band Class Member shall be entitled to the following disbursements:
 - a. **Planning Funds:** Upon receipt of the money provided for in this Agreement, the Trust will disburse an initial amount of \$200,000 to each Band for the purposes of developing a plan to carry out one or more of the objectives and purposes of the Four Pillars;
 - b. **Initial Kick-Start Funds:** Upon receipt and review of a plan from a Band, the Trust shall disburse the Initial Kick-Start Funds, which shall be equal to the Band's proportionate share of \$325,000,000, with 40% attributable for base rate, with the remaining 60% to be used to adjust for population. The base rate is an equal amount payable to each Band. The Board will determine an appropriate adjustment for remoteness for the Initial Kick-Start Funds, with any such funds required to account for remoteness being in addition to the \$325,000,000, and taken from capital.
 - c. **Annual Entitlement:** Each Band will receive a share of annual investment income that is available for distribution. Each Band's Annual Entitlement will be based on the Disbursement Formula. The Trust may, at its discretion, choose not to disburse all the income in any given year in order to ensure sufficient funding for years in which there is less income due to market conditions.
2. **Furtherance of the Four Pillars** – For both the Initial Kick-Start Funds and the Annual Entitlement, each Band must spend the funds in accordance with their plans, and on initiatives that further the Four Pillars.
3. **Disbursement Formula** – The Board will establish a Disbursement Formula which provides a base rate to each Band, a per capita adjustment based on the relative population of the Band and an amount for additional costs in case of remoteness. This Disbursement Formula will be used to calculate the amount of each Band's entitlement for the Annual Funds. The Disbursement Formula set by the Board must include a 40% attributable for base rate, with the remaining 60% to be used to adjust for population and for remoteness. Within the 60%,

the Board will consider and determine an appropriate population adjustment and remoteness adjustment.

4. **Reporting** - Each Band shall establish an initial efficient and simplified 10 year plan as well as yearly update reporting which will assist the Board in ensuring that the funding is being used for the Four Pillars. Following the initial 10 years each Band will be required to provide an additional 10 year plan and followed by yearly reporting. After 20 years, each Band will submit a further plan for use of the Band's share of the disbursement of the remaining funds pursuant to s. 6 of the Investment Policy, followed by periodic reporting for 10 years or until the funds are expended, whichever occurs first.
5. **Deferred distribution** – Each Band can elect to leave any of the funds to which it is entitled in the Fund to accrue income and to be drawn down later based upon their plan. In the event that a Band does not submit a plan to the Board, the distribution to that Band will be automatically deferred until they have provided a plan to carry out the objectives and purposes of the Four Pillars.
6. **Restrictions on use** – The Disbursement Policy will make clear of the following restrictions on use:
 - a. Funding will be for the objectives and purposes of one or more of the Four Pillars;
 - b. No funding will be given for initiatives which duplicate government programs or for which government funding is available. However, if the government funding only covers certain elements of an initiative (e.g., salaries), but does not cover a different element of the initiative (e.g., capital expenditures), funding may be given for the elements not covered by government funding;
 - c. No funding will be given to individuals for individual purposes;
 - d. No funding will be given for commercial ventures;
 - e. No funding can be used as collateral or to secure loans or used as any other form of guarantee; and
 - f. Funding is not subject to redirection, execution, or seizure by third parties, including third party managers; funding must only be used for the support of the Four Pillars by the Band recipient.

Schedule F The Four Pillars

PILLAR 1: REVIVAL AND PROTECTION OF INDIGENOUS LANGUAGE

Indigenous languages are sacred. Our languages are the keystone of our connection to each other and to the land. As expressed by the Assembly of First Nations, our languages were given to us by the Creator as an integral part of life and to allow us to interact with each other and the natural world. Embodied in our languages is our unique relationship to the Creator, our attitudes, beliefs, values and the fundamental notion of what is truth. Language is the principal means by which culture is accumulated, shared and transmitted from generation to generation. The key to identity and retention of culture is the revival and protection of our languages.

It is recognized and acknowledged that the traditional languages of our peoples are diverse. Language varies from community to community, sometimes operating like dialects. Each Band Class Member has the right to define for itself what constitutes an Indigenous language within its own nation.

The first pillar is the **revival and protection of our languages**, and may include initiatives with one or more of the following goals:

- Protecting and reviving the languages of our people.
- Encouraging our elders to pass on their knowledge of traditional languages to younger generations. Our elders will teach that our languages are not only about spoken and written words but are about our values, beliefs, rituals, songs, dances, spirituality, and social behaviours.
- Strengthening the bonds between language and the land.
- Teaching spoken and written languages to speakers of all levels, with a goal of having fluent speakers of our traditional languages.
- Enhancing the dignity, self-worth and sense of belonging of our peoples through the use of their own languages.
- Advancing individuals' language education.

PILLAR 2: REVIVAL AND PROTECTION OF INDIGENOUS CULTURE

Culture is how we express ourselves as nations. Culture helps maintain, and is a product of, ongoing relationships within our nations, our ancestors and the land. Protecting our culture means preserving the relationships through which our culture is both sustained and adapted. Our cultures are dynamic. Culture is a complex whole that includes knowledge, practices, customs, art, norms, beliefs, and any other capabilities and habits that offer a sense of meaning as peoples.

It is recognized and acknowledged that each Band Class Member has its own culture, beliefs,

traditions, worldviews and customs. Each has a unique experience on the land and with each other, but are all connected.

The second pillar is the **revival and protection of our cultures**, and may include initiatives with one or more of the following goals:

- Preserving and strengthening knowledge of our cultures and traditions.
- Reviving traditional cultural skills and practices.
- Passing knowledge of our traditional cultures, values, goals and practices to future generations.
- Forging bonds with the land and its resources through acknowledgment and use of cultural practises.
- Sharing traditional knowledge from older generations to younger generations.

PILLER 3: PROTECTION AND PROMOTION OF HERITAGE

Heritage consists of the traditions and way of life passed down through generations and inherited by our peoples today. Heritage is closely connected to, but distinct, from culture. Heritage is about maintaining a connection to the past, through the present and into the future. It is about stewardship and maintenance of traditions and practices, as well as stewardship of our lands and waters.

It is recognized and acknowledged that each Band Class Member has its own heritage that is unique.

The third pillar is the **protection and promotion of heritage** and may include initiatives with one or more of the following goals:

- Preserving and strengthening knowledge of our shared inheritance.
- Passing knowledge of heritage to future generations.
- Preserving knowledge of the creation and maintenance of our material cultures.
- Fostering connection to and protection of lands and waters.
- Sustaining our resources in our lands.
- Fostering multiculturalism from nation to nation.

PILLER 4: WELLNESS FOR INDIGENOUS COMMUNITIES AND PEOPLE

Wellness consists of emotional, physical, spiritual and mental health and wellbeing. Wellness involves healthy relationships, wisdom, respect and responsibility.

It is recognized and acknowledged that wellness is connected to our cultures, traditions, and knowledge, and that wellness of our communities and peoples is best achieved through practicing

our cultures and traditions, and through connection to the land.

Residential Schools have caused intergenerational harms that have had and continue to have a devastating impact on the wellness of our peoples. The fourth pillar is the promotion of **wellness for our communities and our people** to address these harms and may include initiatives with one or more of the following goals:

- Promoting holistic and traditional modes of wellness.
- Creating strong and healthy families in our communities.
- Raising our children and youth in a positive and healthy environment.
- Creating individual empowerment.
- Promoting the physical well-being of our people.
- Protecting and reviving healthful eating with traditional foods.
- Fostering relationships with the land.
- Promoting the practice of traditional values such as self-respect, respect toward others, humility, love, caring, sharing, honesty, and discipline.
- Addressing social harms that are the result of intergenerational trauma, including lateral violence, suicide, and drug and alcohol addiction and abuse.

Note: The goals listed under each Pillar are examples and not meant to exhaust the initiatives that may be undertaken under any of the Pillars but rather to show the types of initiatives that may be covered under the Four Pillars.

This is Exhibit "B" referred to in the affidavit of Peter Grant sworn before me this 20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

"B"

*Gottfriedson et al v. HMTQ***Federal Court of Canada Action No. T-1542-12**

Final report of Dr. John Milloy for the Federal Court of Canada

Dated: December 7, 2020

Specialist Field: Historian

On behalf of the Plaintiffs: *Gottfriedson et al v. HMTQ*

On the instructions of: Peter R. Grant, counsel for the Plaintiffs

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INTRODUCTION

I. Statement of Instructions

I have received a request for my expert opinion by letter dated April 30, 2020, from Peter Grant, legal counsel for the Plaintiffs, on questions specifically set out at the end of this report. A copy of the letter of instructions is appended to my affidavit to which this report is attached.

In this report I will address the history of the Indian Residential Schools and Canada's objectives in the establishment and continued operation of those schools to provide the historic basis for the answers to the questions.

In Section IV below, I have summarized the questions into one question and have provided a Summary of my Opinion. I have also included opinions within the Report as well as in the answers to the questions in the Conclusion.

II. Qualifications

I am a Full Professor of History in the Canadian Studies Department at Trent University in Peterborough, Ontario.

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 1815-1960".

I have published several papers on the relationship between Imperial Canada and the aboriginal populations, which are listed in my *Curriculum Vitae* which is appended to my affidavit to which this Report is appended. I have also made several presentations on Native peoples, the *Constitution* and Church missions.

I provided litigation research or expert testimony on several cases which are also listed in my *Curriculum Vitae*.

With respect to the work I have done regarding this Opinion Report, I was the Historical Researcher for the Royal Commission on Aboriginal Peoples (RCAP) responsible for the research on the Indian Residential Schools during the course of the RCAP work between 1991 and 1996. In that capacity I wrote a major paper for the Royal Commission, called *Suffer the*

Little Children which was based on my extensive research of both public and non-public documents held by Canada and the Churches involved in the Residential Schools.

I later wrote *National Crime* which I published and which was based on the research I completed for the Royal Commission. Although I have been engaged since my work with the Royal Commission on many research issues, I have been asked to provide advice and opinions regarding the Residential schools on many occasions since the Final Report of the Royal Commission. I was the Historical Research Director for the Truth and Reconciliation Commission and responsible for directing the research papers on the History of the Indian Residential Schools.

I have given opinion evidence in several cases including an opinion report for the Plaintiffs in this case when they were seeking certification of this proceeding.

My opinions and conclusions are based on the historical record and evidence that I have reviewed and I rely on the historical research I have done since I first researched the historical record of the Indian Residential Schools in the early 1990s.

I have also provided opinion evidence to Plaintiffs and the Crown in different proceedings relating to Aboriginal land rights and other historic claims. These are set out in my *Curriculum Vitae*.

III. Terminology in Report

In this report, I refer to Canada and those Ministries, Departments, Branches or sub-Departments of Canada which were responsible for Indian Education and had different names and titles over the years as either “Canada” or “the Department”. At some points in time these entities were not full ‘Departments’. However, for ease of reference, I have utilized the single term, ‘Department’. When I refer to “schools” or “IRS” in this report, I am referring to the Indian Residential Schools which were the subject matter of the Indian Residential School Settlement Agreement and are the Residential Schools at issue in this case and listed in Schedule A.

With respect to the term, “policy”, 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 in this Report as Canada's 'policy' with respect to Indian Residential Schools.

IV. Summary of Opinions based on the Historical Record

It is my understanding that the overarching question I have been asked may be stated as follows:

Through the purpose, operation and management of the Residential Schools including during the Class Period (1920-1997) did Canada take steps to destroy or contribute to the destruction of Indigenous languages and cultures of the Survivor, Descendant and Band Classes? If so, what were these steps?

Having reviewed the extensive record of the Indian Residential Schools in my opinion the historical record shows:

- Canada assumed and, indeed insisted upon, its responsibility for the children in the Indian Residential Schools;
- Conditions in the schools were horrendous;
- Canada knew about those horrendous conditions;
- Canada did little or nothing to fix those conditions.
- The purpose of the residential schools (the "policy") was to eradicate aboriginal cultures and languages, whether under the guise of "civilization" or under the guise of "assimilation";
- This was clearly enunciated in the late 19th century;
- This purpose never changed although the severity of its implementation within the schools may have varied somewhat at various times;
- Canada failed to properly oversee the implementation of this policy by the personnel in the schools and failed to eradicate their violent repression of the children's languages and cultures;
- Canada was aware that this caused harm to the children;
- There is nothing in the historical record to indicate that Day Scholars were treated any differently from students in residence.

EXPERT OPINION REPORT

I. Introduction

As detailed below, the Canadian government developed, from Confederation forward, an Indian policy directed to assimilation, a policy which became increasingly aggressive and was based, consciously, on the perceived need to destroy Indigenous culture and language and the assumed ability to do so. While the policy was often characterized as a humanitarian campaign for the amelioration of savage people through the re-socialization of children in Indian Department schools, a major dynamic of that policy was self-interest – that is, it evolved and was modified over time, in the context of the challenges Canada faced in establishing a stable transcontinental nation and was meant to serve that goal. However, even when any real threat to national security from Indigenous communities was a thing of the distant past, perhaps from about 1920 forward, the Federal government persisted in assimilation, insisted that for Indigenous people to become Canadians like all others, they had to be liberated from the old ways. The inherent purpose, and method of education of all Departmental schools, day and residential, reflected that purpose – and that purpose, cutting the cultural tie between children and the culture of their parents, grandparents and Indigenous communities, was harmful, indeed violent, in thought and deed.

While this intent, and the method underlying the process of assimilating the country's Indigenous communities, residential schools, may be history to some, to Indigenous Canadians, who bear daily the burden of that history, it is not a phenomenon stuck in the past. It lives on in the lives of many individuals and communities, it continues to travel across the generations.

For many non-Aboriginal Canadians now searching for reconciliation, the schools too are also not just creatures of the past. They are the root of guilt, of remorse, and, most significantly, of a conundrum begging an explanation. How could we, how could our Canada, have done this? - done this not only to children who were full time residents but to day scholars, and too often their children, and even to communities, in general, in which children, alienated from culture, language and spirituality, would live. The answer, the path to understanding, lies in the historical record, in retracing the story from its beginning, where the roots of what made the Class Period what it was are to be found – back to the ideology, ontology, cultural assumptions, and political decisions that were the foundations of Indian policy - of Canada's colonizing record.

Ironically, both Indigenous and non-Indigenous communities, are searching our combined history; both are exploring an historical terrain in order to capture the rudiments of who we were as Indigenous nations or thought we should have been, or could be in the future, as colonizers. For Indigenous communities that exploration focusses, importantly, on resuscitating culture, language and spirituality. And for non-Indigenous Canadians it is about setting themselves free from a past to a better reconciled future. For both communities, historical understanding is a critical national project.

That historic policy, while the administrative arrangements for its achievement changed over time, was still operational and being implemented in the “Class Period” - though by the late 1960s, there was a growing questioning of its efficacy and a progressive understanding of the harm done to children and Indigenous communities.

II. Residential Schools: the Canadian State Creation and Implementation of Indigenous Language Policy

Indian policy was a creature of colonizing practice and while the administrative arrangements for its achievement changed over time, it persisted; it was still operational throughout the “Class Period” - though by the late 1960s, there was a growing questioning of its efficacy and a progressive understanding of the harm done to children and Indigenous communities. It was there in the bones of Confederation.

Section 91(24) of the *British North America Act* assigned legislative authority for “Indians and Lands reserved for the Indians” to the Federal Parliament. That authority was the basis upon which the Federal government undertook its obligations and it implemented those obligations through regulations set out in the Indian Act , 1869, and the many subsequent Indian Acts, amendments, Orders-in-Council and agreements with Provincial governments and private agencies.

In carrying out such obligations, the Federal government received assistance, in such areas as education and social initiatives, from others – Provincial and Territorial governments and Churches – Protestant and Catholic. The assistance provided by the Churches, made the residential school system, in the opinion of Prime Minister, S. Harper, a “joint venture.”¹

¹ Harper Apology, 2008.

However, such associations do not erase the fact that in Indian Affairs generally, the Department of Indian Affairs acknowledged its ultimate authority and responsibility. Thus in 1921, Duncan Campbell Scott, who was then the Deputy Superintendent General of Indian Affairs, (a position he held from 1913 to 1933) responding to an incident of child abuse at the Catholic Crowfoot IRS, declared that - “Treatment that might be considered pitiless or jail-like in character will not be permitted. The Indian children are wards of this Department and we exercise our right to ensure proper treatment whether they are resident in our schools or not.”²

Some six decades later, a Departmental publication, *Indian Affairs: A. Survey*, set out in considerable detail what was the legacy for Indigenous people and Canada of that wardship. It was a scathing and frank review of then current conditions. Perhaps because the Minister was then the rather rough-hewn, “tell it like it is,” John Munro, the Survey did just that - it told it as it was; and as it was was not good. The text documented the “changes in Indian social, economic and political conditions during the last ten to twenty years.” In doing so, it detailed a profound transition; it measured a devastating decline and, with that, the ever-increasing distance between Indian lives and those of other Canadians; and it pointed a finger of blame - directly at Canada.

In every measurable category, First Nations communities, the Survey noted, lagged behind national standards. They bore the heavy burden of a mushrooming population mired in poverty, unemployment and welfare dependency; their vitality was further weakened by higher levels of disease and negative social pathologies; and there was no sign that conditions would soon change for the better even if the government adopted extraordinary measures immediately.

Munro’s report left little doubt that First Nations people inhabited an isolated 3rd world within Canada. They were no longer “partners in fur” or in any other undertaking of economic significance. Indeed, the post-World War Two period saw the transformation of a productive Indian workforce into major consumers of public assistance. The Survey’s welfare statistics by themselves were enough to chart an arc of rapid marginalization. In 1960, 30% of First Nations people received public welfare funds compared to only 4% of the national population. That disparity grew. In 1964, it was 36% of First Nations people and 3.5% of non-Aboriginals; 1974 was 50% compared to 6%; and, in 1978, the First Nations’ figure reached as high as 70%. In only four decades, First Nations people had been swept to the sidelines of national economic

² NAC, RG 10, Vol. 6348 File 752-1 MR C 8705, D.C. Scott to Rev. J. Rioui O.M.I., 16 December 1921.

activity. The causes for this lay buried in a complex of inter-related factors: the development of a highly industrial urban and rural economy, post-war immigration, the persistent failure of Indian education policies, the psychological impact of residential schools, disease, discrimination and the failure of the federal government to foster Indian economic development or even to initiate training to enable Indian workers to meet the needs of skill-hungry work places.³

A little over two decades later, on the 11th of June 2008, Canada officially recognized this reality, its culpability, when Prime Minister Stephen. Harper delivered in Parliament, a “full apology from the government of Canada,”⁴ which recognized, amongst other tragic realities, that “the treatment of children in Indian residential schools is a sad chapter in our history.” Central to that “sad” history, he admitted, was a nearly century and a half attack on Indigenous families and communities through an “Indian policy” designed to destroy the vast array of Indigenous cultures and to do so through the education of Indigenous children in residential schools. He admitted that

Two primary objectives of the residential school 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.

And more specifically, that

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 Metis languages and cultural practices were prohibited in these schools.

Tragically, some of these children died while attending residential schools and others never returned home.

³ Indian Affairs – A Survey, Department of Indian Affairs, 1980.

⁴ Harper Apology, 2008.

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

While some former students have spoken positively about their experiences at residential schools these stories are far overshadowed by tragic accounts of the emotional, physical and sexual abuse and neglect of helpless children and their separation from powerless families and communities.

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.

That “sad chapter in our history,” is reconstructed, in part, below directed towards providing an understanding of the evolution of Canada’s aggressive assimilationist approach to Indigenous communities, its focus on families, the separation of children from their parents, and its in-school attack on culture - spirituality and language - as inherent elements of schools that having been “inadequately controlled” by the Federal government became the foundation for the harm done, for Canada’s “failure to protect you.”⁵

A. *Policy 1: Pre-Confederation Policy: “Reclaiming them from a state of barbarism”*

Canada’s policy Inheritance – an incremental Persistence.

Canada was launched on its national voyage in sole control of Indian affairs. There was no explicit British mandate attached to Section 91(24). And there is no evidence that future “Indian policy” was discussed by the “Fathers” at any of the inter-colonial conferences that led up to Confederation. There was, however, a combined ideological and real-politique Imperial inheritance - a foundation from which Canada would evolve, and maintain, its particular approach to Indigenous people and communities. What appears to be a free Federal hand in 1867 was not quite so; what was possible, as far as future “Indian policy” was concerned, was

⁵ Harper Apology, 2008.

influenced by responses to military and political challenges Britain had faced as the Mother of its North American colonies and which persisted, if modified by time and place, as Canada fashioned its own internal nation-wide empire. Thus, for example, the “Treaty” with tribal nations in areas where a military option was not possible or desirable, became, generally, a part of the “Canada system” to enable national expansion across North America, a goal; of Imperial Britain as well as the new Dominion of Canada.

Additionally, and of central importance, what Canada would do was influenced by an equally deterministic, spirit-of-the-age attitude to Indigenous communities throughout the British Settlement Empire.

Thus, Canada’s approach to the Indian fact in the post-confederation period was not entirely unique; it was not a wholly homemade construct; it had deep roots in the 18th century expansion of the British empire, the industrial revolution and, most importantly, a revolution directed to the moral character of the British and thereafter Canadian nation, known as the evangelical-humanitarian revolution. Unlike other revolutions of the late 18th century, it was staunchly conservative - calling upon those who “count,” the governing class, to lead the nation onto a strict moral path. It had no time for then contemporary continental and North American revolutions that aimed at overturning the existing social and political order in favour of democratic formulations. Not at home at least.

Abroad was a different matter, however. A powerful wing of the British humanitarian movement, seen in the flourishing in the late 18th century of missionary societies, had a particular Christian understanding of recent history – that Britain and the empire had been spared the ravages of political revolution, and of the Napoleonic wars, by God who, thereafter, laid upon Britain’s leadership a moral imperative that the nation must bring the blessings of British civilization to Indigenous people. Failure to do so imperiled Britain’s protected, chosen nation status. In such an understanding, missionaries were to be the aggressive agents of the disruption and reformulation of Indigenous cultures by connecting Indigenous communities to the compelling sweep of progress that replicated Britain’s own history – moving communities from hunting and fishing, to agriculture, to commercial activity, and finally, to industrial modalities. The belief in the universality of such cultural evolution, and in Britain, protestant and

industrialized, as representing the pinnacle of possible development, exerted a significant influence in many parts of the empire.

Canada, too, was heir to those sentiments which took hold in the early 19th century alongside the persistent real politic of Imperial and colonial management.⁶

Generally, prior to the movement to Confederation, to 1860, when the responsibility for Indian affairs was passed to Canada in the guise of the United Canadas, the responsibility for management was carried by the British government, through the agency of the Colonial Office, a local imperial Indian Department and British military forces, conducting relations with self-governing Indian Nations with an eye, quite exclusively, to military considerations. In the late 18th and early 19th centuries those nations, their loyalty and military capacity, especially that of the Six Nations, were key factors from the American Revolution to the War of 1812 and even later in the face of boundary controversies.

Church activity amongst First Nations could not be forbidden of course, but it was to have, primarily, a supportive strategic purpose. In 1767, for example, in answer to a suggestion that the government sponsor education and conversion efforts amongst its Indian allies, the Northern Superintendent of the Indian Department, W. Johnson, favoured the idea for strategic reasons, to the extent that that “instruction in religion and learning would create such a change in their manners and sentiments” ... as to ... “promote the safety, extend the settlements and increase the commerce of this country.”⁷

B. Policy 2: Civilization becomes Assimilation. 1830 – 1858

Significant change, rooted in economic considerations, came to Indian affairs after 1812-14 - at which point the British government sought relief from the heavy financial burdens carried through colonial commitments and the recent European war. The result was, in the Canadian case, the introduction of a policy of civilization which was expected to have an important benefit not only for tribal communities, in what would become Quebec and Ontario, but for the

⁶ For an excellent discussion of mission society ideology see J. Friesen (Usher) Chapter 1, The Forming of a Victorian Missionary ,especially pps 33-88, in William Duncan of Metlakatla- A Victorian Missionary in British Columbia, Doctoral Thesis UBC 1969.

⁷ As quoted in J.S. Milloy, The Era of Civilization – British Policy for the Indians of Canada, 1830-1860, unpublished DPhil thesis, University of Oxford, 1978.

Government. In 1830, George Murray, the Secretary of State for the Colonies, commenting on past policy, announced a new direction. Traditional policy, he noted, had been directed

... to the advantage which might be derived from their [the tribes'] friendship in times of War rather than any settled purpose of **gradually reclaiming them from a state of barbarism and gradually introducing amongst them the industrious and peaceful habits of civilized life.** (emphasis added)

Despite his long career as a senior British military officer, Murray decided that that policy “ought not to be persisted in the future” and should be replaced by “a more enlightened course” - a “settled purpose”: ameliorating the condition of Aboriginal communities “by encouraging in every possible manner the progress of religious knowledge and education generally amongst the Indian Tribes.” Indian agents were to encourage village settlement, agriculture and education.⁸

As laudable as such sentiments may have been, there was still at work a clear Imperial self-interest in terms of projected financial gains and state security. Murray’s logic, supported by local governors, was clear enough. For Indian communities, challenged by rising non-Indigenous settlement and, consequently, a diminishing fur trade, the adoption of agriculture and education, with the assistance of Indian Department agents and missionaries, would enable communities to regain a state of self-sufficiency, their loyalty cemented by this economic security and their new found faith in a British god and, thus, funding by the government could be reduced to the point at which the Indian Department would be disbanded. In tandem, [see Macdonald below] the pacification of First Nations would facilitate a program of land purchases and peaceful settlement.

Thus, a central dynamic of general colonial policy persisted in this civilizing era: First Nations were yet a significant factor in British policy. They could not be summarily abandoned or ignored by the Imperial government or by the Federal government in the early post-Confederation period. And thus, in the West, the crisis and instability resulting from the disappearance of the buffalo, was met by a combination of the old and new. Treaties were formed by way of the “the Queen’s kindness” - promises of education and assistance in the creation of a new economic base. A speech made by Alexander Morris, the chief Federal negotiator at six of the seven western treaties, demonstrates the continuity of thinking about the strategic utility of civilizing policy from pre- to the post confederation days - specifically about

⁸ C.O. 42/27 To J. Kempt from G. Murray (No, 95), 25 January 1830.

its ability to rescue communities from economic disaster and in so doing, to make “the white man and the red man ... friends forever.”⁹

1. Assimilation until “there is not a single Indian in Canada that has not been absorbed into the body politic”

There had been, however, and critically so, a radical alteration in the policy Canada inherited. Murray’s civilizing policy had been replaced in the 1850s by the addition of what remained the central dynamic of Federal policy – assimilation. Civilization’s apparent guarantee in the 1830s that Indigenous communities would have an Indigenous future was abandoned and in its place came a determination, as expressed by Prime Minister John .A. Macdonald in the House of Commons, “to do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the Dominion, as speedily as they are fit to change.”¹⁰

As was the case with humanitarian rhetoric generally, Canada, too, believed it had a “the sacred trust with which Providence has invested the country in the charge of and care for the aborigines committed to it.”¹¹ Alexander Morris looked back upon those western treaty negotiations and forward praying: “Let us have Christianity and civilization among the Indian tribes; let us have a wise and paternal Government ... doing its utmost to help and elevate the Indian population ... and Canada will be enabled to feel, that in a truly patriotic spirit our country has done its duty to the red man.”¹²

National dedication to this purpose, at the level of rhetoric at least, ran down the decades. In 1908, Frank Oliver, the Minister of Indian Affairs, declared that government policy “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.”¹³

On June 15, 1920, Duncan Campbell Scott, told a House Committee that it should have no doubts as to the continuing appropriateness of the assimilative policy. For his part he had no “intention of changing the well-established policy of dealing with Indians and Indian Affairs in

⁹ J. Milloy, “Tipahanatoowin or Treaty 4?” In *Native Studies Review* 18 no.1 2009 p. 100

¹⁰ As quoted in M. Montgomery “The Six Nations and the Macdonald Franchise” *Ontario History* 57 (March 1965) p. 13

¹¹ *Annual Report of the Department of Indian Affairs* 1891, p. x

¹² A. Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (Toronto: Belfords, Clarke and Co., 1880) p. 278.]

¹³ NAC, RG10 Vol. 6039, File160-1 MR C8152. Frank Oliver to Joint Church Delegation

this country.” Indeed, “I want to get rid of the Indian problem,” therefore “our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question and no Indian Department.”¹⁴ In the new nation, First Nations existed in a wholly new context with the immigrant state. There were to be no boundaries between Indigenous and non-Indigenous people – all would be “absorbed into the body politic,” all members of the Canadian state. Here was the determination to end the separate existence of Indigenous nations. And to that end, there can be little doubt that the 1969 White Paper was one of the most aggressive expressions of the quest for assimilation.

2. Path from “Civilizing” Indians to “Assimilation”

It is useful to replicate, if even briefly, the path travelled from the civilizing to the assimilative intention of official policy for that reconstruction lays bare the basic assumptions, motivation and analysis that policy makers brought to their mission and that thereafter informed the working out of Canadian policy which ultimately impacted children in the residential schools, whether resident or day scholars..

That path began as the “civilizers,” the Indian Department, with the cooperation of local bands, moved the civilizing program forward with what some considered a high degree of success. Sir John Colborne, Governor of Upper Canada, reported, on giving up his post in 1836, that at least a dozen communities were involved and one of his senior Indian Department officials asserted that some had acquired “sufficient knowledge of the arts of Civilized Life to avail himself of [its] advantages.”¹⁵

That optimistic assessment was, however, overturned by two commissions of inquiry that reviewed reserve conditions: the Bagot Commission of (1844) and the Head Commission (1856). The former concluded that the communities were yet only in a “half-civilized state”; the latter, that “any hope of raising the Indians as a body to the social and political level of their white neighbours, is yet but a glimmering and distant spark.”¹⁶

¹⁴ E.B. Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada*, (Vancouver, UBC Press (Vancouver) 1986). p. 50.

¹⁵ NAC C.O. 42/429, T.G. Anderson to J. Colborne, 24 September 1835.

¹⁶ NAC RG 10, Vol. Report on the Affairs of the Indians of Canada, Journals of the Legislative Assembly of the Province of Canada November 1844-March 1845 appendix EEE section 2 and Report of the Special Commissioners appointed to investigate Indian Affairs in Canada, February-June, 1858, appendix no.21, part 3.

The Commission reports brought forward more than general conclusions; there was analysis of the “Indian problem” and on that basis recommendations for the reformulation of the civilizing process, especially in the fields of education and landholding. The civilizing policy was a rather naïve, nearly a-cultural, focus on making communities self-sufficient. The analysis of the 1840s and 50s, was importantly different; it was based on cultural assumptions rooted in a resolute belief in the superiority of white culture and its inevitability. Inevitable as well, therefore, would be recommendations inherently hostile to fundamental elements of Indigenous cultures and societies.

And there would be persistence as well; similar ideas and policies would appear in Canadian policy from the first decade of Confederation and continue as fundamental elements of it, thereafter. It is useful to note, in that regard, that the famous Davin report, 1879, [see below] recommending the adoption of residential schools, repeated much of the logic of Bagot and Head – most importantly, the need to rescue children from parental influence by placing them in the circle of civilized conditions – the confines of residential schools.

Certainly, the Bagot Commission’s refashioning of the education system was a precursor of later policy. Schooling was to imbue children with the primary characteristics of true civilization - industry and knowledge. Reserve-based day school education might continue, but for “the future elevation of the Indian race” Commissioners looked to the opening of “manual labour or Industrial schools.” In such schools, under the supervision of non-Indigenous teachers, and critically, isolated from “the influence of their parents” they would “imperceptibly acquire the manners, habits and customs of civilized life”¹⁷ Recommending severing the ties between parents and children, and thereby disrupting the normal process by which culture, language and spirituality flowed from one generation to the next, was only the first serious intervention in traditional community norms. The second threatened a community’s relationship to their land and, thereby, to traditional social and economic relationships amongst community members.

The root of the recommendation lay in the Victorian belief in the importance of private property ownership which produced, the Commission asserted, an essential pre-requisite for progressive development - industry. Only if the knowledge that children acquired in residential schools was harnessed to industriousness would communities and individuals move forward. And thus, the

¹⁷ The Bagot Commission, section 2.

traditional custom of holding land in common had to be abandoned “because no man will exert himself to improve his lands and procure their comforts of life unless his right to enjoy them is exclusive and secure.” Such certainty could be provided if reserves were sub-divided into 100-acre allotments and individuals provided a title deed “protecting him in possession in the event of the surrender.”¹⁸

Unfortunately, for the Department, reserve councils did not agree; sub-division was rejected without exception.

Greater success met the education recommendation. By 1850, reserve leadership, one after another, committed funds to opening schools. The schools received government grants towards the maintenance of the children while the churches provided teachers and the necessary education equipment.

That success was of little comfort for, as the developmental logic had it, industry and education were an indispensable conjunction. Having one and not the other meant, not surprisingly, that the Head Commissioners concluded “with great reluctance ... that this benevolent experiment has been to a great extent a failure.” The proof was there in the behaviour of the graduates who, though supposedly re-socialized as white, became, on returning to their community, cultural backsliders, showing no signs of industry. It is “true that improvement is perceptible in their own personal appearance but the amelioration goes no farther. The same apathy and indolence stamp all their action as is apparent in the rest of the Indians.” The so-called graduates “are content as before to live in the same slovenly manner.”¹⁹

The proponents of civilizing policy knew what they wanted, what they believed was needed. It was imperative that graduates receive individual allotments which would be “greatly promotive of their good” and would, moreover, “complete the plan which originally led to this enterprise.”²⁰ As it was, movement forward was stalled, educational efforts were, in the main wasted, and little progress achieved.

Head, however, with the cooperation of the legislature of the United Canada’s, found a way out of the impasse. In doing so, he completed “the plan” and took the final step from civilization to

¹⁸ The Bagot Commission, section 2.

¹⁹ Head Commission Report.

²⁰ NAC RG 10, Vol.209 Enoch Wood to Col.Bruce 22 April 1854.

assimilation. They did so by opening the doors of reserves so that graduates, and other qualified individuals, could volunteer for enfranchisement - thereby leaving behind their status as an Indigenous person. Overnight, as it were, a policy whose goal had been to promote on-reserve self-sufficient communities, changed radically to one which envisioned the reduction of communities, individual by individual, through enfranchisement, through the creation of individuals fit to emigrate, to travel from their reserve into full citizenship in Canada.

The enabling technology was *An Act to Encourage the Gradual Civilization of the Indian Tribes in the Province*. It provided that any male judged to be “sufficiently advanced in the elementary branches of education,” to be of good character and free from debt, could on application, be awarded 50 acres of freehold land “and the “rights accompanying it.” He would relinquish any claim to band resources and “would cease to have a voice in the proceeding thereof.” He would be, thereafter, a full member of colonial society.²¹

The Gradual Civilization Act was the core of Canada’s Indian policy heritage. Future acts, while increasing more complex, were unrelentingly devoted, as Macdonald told Parliament, to doing “away with the tribal system” ... and assimilating the “Indian people in all respects with the inhabitants of the Dominion ...”²²

But there was more to it than that; in terms of Canada’s policy, there are important aspects to note here. There was a price to be paid by Indigenous communities and individuals – particularly by children in Departmental schools. An inherent part of fulfilling that national duty would be the effort by the Federal government and churches to destroy families as conduits of traditional culture, language and spirituality. In essence, Canada went to war against Indigenous Canadians in what some, like Senator Murray Sinclair, have characterized as a campaign of cultural genocide.

Again, this aspect of policy became apparent with the *Gradual Civilization Act* which drove a wedge between the “civilizers.” Resistance to sub division was a hint that tribal leaders too had a cultural agenda - were working towards a modernized Indigenous culture. Not surprisingly then they rejected the legislation. It was, one leader charged correctly, an attempt “to break them to pieces;” it “did not meet their views” and thus communities took various steps to scuttle it:

²¹ The Statutes of Canada.1857, Vic., c.26 10 June 1857.

²² As quoted in M. Montgomery “The Six Nations and the Macdonald Franchise” Ontario History 57 (March 1965) p. 13.

petitioning for its repeal, removing their children from schools and refusing to allow the census to be taken and encouraging individuals not to volunteer for enfranchisement - the latter striking at the heart of the assimilative process.²³

C. Policy 3. The coercive force of law - legislation for assimilation.

This fissure only got wider and more consequential; the Department was unsympathetic. R.J. Pennefather, the Governor's Civil Secretary, and thus the head of Indian Affairs, dismissed, out of hand, reserve complaints and petitions, stating "... the *Civilization Act* is no grievance to you."²⁴

The Department saw in this resistance cause to demand the end of tribal government and proof of the incompetence of Indigenous leaders. "Petty Chieftainships" should be abolished and a "Governor and sufficient number of magistrates and officers" put in charge.²⁵ In the Department's opinion self-government and meaningful development were incompatible.

Macdonald agreed; the lobbying by the Department was successful. And thus, subsequent *Indian Acts* of the early Confederation period [1876, 1880 and 1884] brought forward new and important additions to the *Gradual Civilization Act* of 1857 in service to the assimilation project. These additions would go forward not, as heretofore, on the basis of a cooperative relationship with reserve leadership, but by the aggressive insertion of overwhelming government power in the lives of communities, families and individuals.

Macdonald signaled this change in approach in his characterization of First Nations leadership. Section 91(24), he claimed, laid upon his government "the onerous duty of their [the Indians] guardianship as of persons underage, incapable of the management of their own affairs" and, therefore, the government had to assume that "onerous duty."²⁶ And thus, in *An Act for the Gradual Enfranchisement of Indians, the Better Management of Indian Affairs*, Canadian officials were put in charge and traditional forms of government were replaced by the benefits of municipal government elected by a reserve franchise. Councillors served at the pleasure of the

²³ NAC, RG 10, Vol.245 part 1, D. Thorburn to R. Pennefather, 13 October, 1858. For fuller discussion of this see J.S. Milloy "The Early Indian Acts Developmental Strategy and Constitutional Change" in *As Long as the Sun Lasts and Water Flows*, edited by I. Getty and A. Lussier (Vancouver: University of British Columbia Press, 1983)

²⁴ N.A.C. RG 10 Vol. 519, To Rev. A. Sickles from R.J. Pennefather, 11 November, 1858.

²⁵ NAC RG10, Part 1, Rev. T. Hurlburt to R.J. Pennefather, 22 December, 1857.

²⁶ House of Commons Debates from Sixth Day of November, 1867, to the Twenty-Second Day of May, 1868, p.200.

Crown, and the jurisdictional subjects assigned to their council left them with only the merest shadow of their former untrammelled internal self-government.²⁷ Clearly, the problematic independence of First Nations leaders was to be ended and the Department given the power to mould, unilaterally, every aspect of life on the reserve and to create whatever infrastructure was deemed necessary to achieve the desired end - assimilation. And to that end, the enfranchisement provisions remained. Beyond that, in subsequent legislation, specific, obnoxious aspects of Indigenous cultural practices would be targeted and outlawed including the Potlach, the Sun or Thirst Dance and the wearing of traditional “costumes.”²⁸

While nearly all of those measures can be seen to have had roots in the policy reforms of the 1830 – 1860 period, other governmental initiatives arose from considerations of time and place and were derivatives of the difficult challenges Canada faced in establishing control over the vast patrimony once ruled over by the H.B.C. that it received in the Rupert’s Land Order in Council. Those challenges were, indeed, difficult. When Canada took control in 1870, its “control” was in name only. Its vast western colony was far away and difficult to get to and the negotiation of treaties gave evidence to Canada’s military weakness. As well, the territory bordered a U.S. west then embroiled in “Indian Wars” which might, it was feared, spill over into Canada. That seemed a near certainty when Sitting Bull’s followers crossed the border after the battle of the Little Big Horn. And for nearly the next two decades, within the region, a sustained crisis threatened the viability of Macdonald’s national project. Metis took to arms twice to protest Ottawa’s takeover and failure to deal with their rights. And amongst the much more numerous and powerful Indigenous tribes, smallpox was devastating communities and there were traces of the next plague – the white plague, tuberculosis. More immediately critical was the rapid disappearance of the buffalo, then compounded by Ottawa’s “starvation policy” - work for rations - in an attempt to force people onto the reserves to begin farming.²⁹

Western reports were increasingly unsettling. The North West Mounted Police charted the fraying of civil order and the eventual rupture of relations with some First Nations. In 1880, the Assistant Commissioner of the force, A.G. Irvine, warned the government that though the

²⁷ Statutes of Canada, 32-33, Vict. C 6, 22 June 1869.

²⁸ F. LaViolette, *The Struggle for Survival: Indian Cultures and the Protestant Ethic in British Columbia*, Toronto: University of Toronto Press, 1973 and K. Pettipas, *Severing the Ties that Bind*, University of Manitoba Press, Winnipeg, 1994.

²⁹ See, J. Daschuk, *Clearing the Plains*, University of Regina Press, 2013.

police's "satisfactory relations in the past is most certainly a matter of the utmost congratulations" still "...it must not be lost sight of, that all the intricacies and dangers of the Indian question are not over." In a number of incidents Canada's authority was tested: threats were made, a government storehouse was broken into and then a few months later a Mounted Police constable was killed.³⁰ And for the tribes worse was to come. One of the most influential leaders, Poundmaker, predicted on New Year's Day in 1882, "Next summer or at the latest next fall the railway will be close to us, the whites will fill the country and they will dictate to us as they please. It is useless to dream that we can frighten them; that time has passed."³¹

He was correct; as the railroad, in 1883, entered the territory of the Blackfoot Confederacy – with a military force much greater than the police. Macdonald's national policy was then on a precipice.

Much of the public business in Ottawa was bent to attaining regional control and stability in the west. And that purpose permeated policy; everything including the role of education, of the churches, and more to the point, the creation of a set of residential schools and their mode of operation - all would be discussed and influenced in the context of that colonizing drive. That Canadian residential school system was not essentially the fulfilment of a missionary duty – though there would always be such rhetoric – but another silver spike in completing the railroad and the nation.

III. Education, Residential Schools and State formation.

Without the west, Macdonald's trans-continental dream would vanish. The final stage was, as had been promised to the colony of British Columbia, a railroad connection to Canada. Opposition, especially from international financiers, and what became known as the Pacific Scandal, delayed progress and then, in 1883, Indigenous people posed a real threat. British Columbia would not wait forever; Macdonald was aware of growing annexation sentiment in the Colony.³² And Macdonald, perhaps indicating the importance of getting Canada's western

³⁰ Annual reports of the North West Mounted Police of 1879, p.21 and 1881, p.25. In W.L. Higgitt, *Opening up the West: Being the official reports to Parliament of the activities of the Royal North-West Mounted Police Force from 1874-1881*, Toronto: Coles Pub. Co., c1973 and; *Settlers and rebels: Being the official reports to Parliament of the activities of the Royal North-West Mounted Police Force from 1882-1885*, Toronto: Coles Pub. Co., 1973.

³¹ H. Dempsey, "The Fearsome Fire Wagon" in H. Dempsey, Ed. *The CPR West: the iron road and the making of a nation*, Vancouver: Douglas & McIntyre, 1984. Page 57.

³² See a curious reference to moves towards succession and annexation to the United States in E. Dewdney to J.A. Mara, M.P. 3 April, 1879, MG26A, Vol. 80, C-1515.

expansion right, placed himself at the apex of affairs, the instruments of control in his hands. He was not only Prime Minister with an ambitious economic vision, but also the Minister of the Interior and as such the Superintendent General of Indian Affairs. Additionally, his Interior Ministry officials managed the North West Mounted Police.

The idea of a western residential school system grew out of the contentious western situation and was meant, with a number of other initiatives, to be useful in dealing with it. The churches had backed tribal negotiators' demand for schooling. But Macdonald was moved not by clerical lobbying but by the Mounted police.

The year after the negotiation of the last of the seven western treaties J. Macleod, the North West Mounted Police Commissioner, advised that the treaties were only a preface to achieving regional stability; they were "very good as far as they go but fall far short of what is required." What was "required," was further determined action to achieve First Nations' pacification. Without such initiatives directed specifically to the "settling down of the Indians to agricultural and pastoral pursuits" pacification would be long delayed. In order "to accelerate the process" making "the treaty stipulations of service to the Indian [and] the Government" the "appointment of practical farmers as teachers to the different bands" was "absolutely necessary." Time was of the essence. "The best authorities on the North-West are of opinion that the buffalo as a means of support ... will not last for more than three years." And, sharpening the point - "Hungry men are dangerous whether they be Indians or Whites."³³

Macleod brought forward one final recommendation, another absolute prerequisite and one which came from his general view of the necessities for western stability.

I would recommend most strongly the establishment of Industrial Schools at different points for both Indians and Half-Breeds. In dealing with this question the Half-Breed element must not be overlooked. He is as much dependent on the supply of buffalo as is the Indian and he has claims that have already been brought under the consideration of the Government by the North-West Council.³⁴

This struck a familiar chord – that education was an inherent and indispensable part of the process of pacification and thereby assimilation; a chord that had been heard in the Bagot and

³³ Annual Report of the North West Mounted Police, 1878, in *Opening Up the West*, Appendix D, page 22, 23.

³⁴ Annual Report of the North West Mounted Police, 1878, in *Opening Up the West*, Appendix D, page 22, 23.

Head reports. And for Canada, at this important juncture, with resistance apparently growing, it was a critical element of the formation and long-term stability of the nation.

A. The Davin Report 1879 and its Implementation: Indian Education: A tool for control

Such was the case with N.F Davin, commissioned by Macdonald in 1879 to research the possible utility of residential schools. He warned Macdonald that “There is now barely time to inaugurate a system of education,” such a “large statesmanlike policy with bearing on immediate and remote issues cannot be entered on too earnestly or too soon.”³⁵ The education of Indigenous children would bring substantial rewards. The residential school system was not only a most useful imperial technique of pacification but, thereafter, a continuing guarantee of regional stability - a tool of social control. In 1900, J.A. Macrae, the Department’s senior education officer in his report “Re Education in Treaty No. 8,” made such an argument and claimed that its supporters were many.

All persons in the north with whom the matter of Indian education has been discussed agree as to its importance not only as an economical measure to be demanded for the welfare of the country and the Indians, themselves, but in order that crime may not spring up and peaceful conditions be disturbed, as that element which is the forerunner and companion of civilization penetrates the country and comes into close contact with the natives. That benefit will accrue to both the industrial occupants of the country covered by treaty and to the Indians by weaning a number from the chase and inclining them to industrial pursuits is patent to those who see that a growing need of intelligent labour must occur as development takes place.³⁶

Certainly, Duncan Campbell Scott, (he held a number of positions in the Department – accountant and head of the education section - before he was elevated to the senior civil service position, Deputy Superintendent General, in 1913) subscribed to such sentiments. When he was Superintendent of Indian Education, he commented in the Annual Report of 1911 that “without education and with neglect the Indians would produce often dangerous element in society.”³⁷

But perhaps the most compelling evidence of the intention of the education system, and specifically of residential schools, came from Clifford Sifton, the Minister of Indian Affairs, adjudicating a debate in the Department as to whether Metis children could be admitted to

³⁵ N.A. MG 26A - Sir John A. Macdonald Papers. Vol. 91, “Report on Industrial Schools for Indians and Half-Breeds” [The Davin Report]. 14 March, 1879. pages 35428-45.

³⁶ NAC, 3RG10, Vol 3902 File 134858, J.A. Macrae to Superintendent General of Indian Affairs. 7 December 1900.

³⁷ Department of Indian Affairs Annual Report 1911, p. 273.

residential schools or was entrance limited to children of treaty status Indigenous people. In a memo of 1899, he asserted that strategic considerations, were both the cause of the initiation of the schools by Macdonald's government in 1883 and remained thereafter their primary *raison d'être*. "It must be remembered that boarding and industrial schools were not established for the purpose of carrying out the terms of the treaty or complying with any provision of the law, but were instituted in the public interest, so that there should not grow up upon reserves an uneducated and barbarous class." Thus, he concluded, while "I do not consider that the children of the halfbreeds proper ... should be admitted into Indian schools, I am decidedly of the opinion that all children, even those of mixed blood, whether legitimate or not, who live upon an Indian reserve, even if they are not annuitants, should be eligible for admission to the schools."³⁸

Sifton's declaration became a Departmental mantra. Indeed, in memoranda written by the Department's educational expert, Martin Benson, and by Duncan Campbell Scott, then the Departmental Accountant, Sifton's characterization of the schools was quoted verbatim.³⁹

While Davin, and others, had advised Macdonald in 1879 that Aboriginal distress would be neutralized as the tribes would be "prepared to meet the necessities of the not too distant future; to welcome and facilitate ... the settlement of the country; and to render its government easy and not expensive,"⁴⁰, Macdonald did not act until the spring of 1883. Then he put before Parliament a three-part plan to deal with the impending crisis that might well erupt as the railway entered Blackfoot territory. Two of the initiatives were directed to bolstering the ability of the North West Mounted Police to deal with violent resistance and damping down tribal hostility by providing more funds for rations. And all, including the third, were to be implemented in the region of most concern – the railway track westward from Regina.

The third initiative set aside funds for the opening of three residential schools: Battleford, Qu'Appelle and High River. The rationale offered to the House by Hector Langevin, who introduced the initiative, harked back, through the Davin report, to the fundamental logic, and the indispensable technique first brought forward in the Bagot/Head Reports - preventing the

³⁸ The discussion of this issue by senior Church and Departmental officials including correspondence of Sifton, Benson and Scott is contained in Indian Affairs School Files, RG 10 Vol. 6031, File 150-9, part 1.

³⁹ Indian Affairs School Files, RG 10 Vol. 6031, File 150-9, part 1.

⁴⁰ MG 26A - Sir John A. Macdonald Papers. Vol. 91, "Report on Industrial Schools for Indians and Half-Breeds" [The Davin Report]. 14 March, 1879. pages 35428-45.

continual “influence of the tepee”⁴¹ If, he told the House, you leave them [children] in the family “they may know how to read and write, but they still remain savages ... Some people may say that this is hard, but if we want to civilize them, we must do that.”⁴² Here clearly was a re-statement of the humanitarian belief in the British need to fulfill a God-given imperative.

Given how long it would take to build schools and re-socialize children who had been liberated from their communities and “prepared ... to welcome and facilitate” rather than oppose “the settlement of the country; and to render its government easy and not expensive,⁴³ there was another more immediate benefit to opening the schools revealed when the crisis – in the form of the Second Riel Rebellion - had subsided. School Inspector Macrae in 1886, writing to the Indian Commissioner, asserted “It is unlikely that any Tribe or tribes would give trouble of a serious nature to the Government whose members had children completely under Government control.”⁴⁴

Even more significant, perhaps, was a petition of the Presbyterian church in 1885 for a school that would be built in the vicinity of Regina. The Church boasted about the strategic utility of their mission work, of “... the service rendered by these missions last spring in preventing the Indians from committing breaches of the peace or joining the rebels. Your Honor[sic] is aware that all the Indians connected with our missions were loyal and that several of them offered their services to the Government to suppress the rebellion.” The Church was now “anxious from Christian and patriotic motives to extend its work among the Indians of the North-West [and] to enable it to prosecute the work vigorously and to equip and train Indians to assist in this work an Industrial School is necessary. That school would have an additional benefit: “Scholars can be drawn from [those reserves] and their presence will be a [great?] security for peace in the district. The Indians would regard them as hostages given to the whites and would hesitate to commit any hostile acts that might endanger their children’s well-being.”⁴⁵

⁴¹ MG 26A - Sir John A. Macdonald Papers. Vol. 91, “Report on Industrial Schools for Indians and Half-Breeds” [The Davin Report]. 14 March, 1879. pages 35428-45.

⁴² Debates of the House of Commons, 22 May 1883, pages 1376-1377.

⁴³ MG 26A - Sir John A. Macdonald Papers. Vol. 91, “Report on Industrial Schools for Indians and Half-Breeds” [The Davin Report]. 14 March, 1879. pages 35428-45.

⁴⁴ RG 10, Vol. 3674, File 8128, C 10113, J.A. Macrae to Indian Commissioner, Regina, 18 December 1886.

⁴⁵ The petition, the planning for the location of the school, and perhaps the “hostage” claim, were supported by the two most influential Conservatives in Regina, E. Dewdney and N.F. Davin - who might have ghosted the petition. RG 10, Vol. 3926, File 116,836-1, C 10162, E. Dewdney to Superintendent General of Indian Affairs, 14 December

Macdonald, himself, approved funding for the school in January 1886.⁴⁶

And there were others in the west and in Ottawa who applauded Macdonald for doing so. W.E. O'Brien, the Tory member for Muskoka and Parry Sound, argued for the extension of residential schools as "I think they are the only hope we have of obtaining in the future anything like a grasp and a hold upon the Indian population." Therefore, he concluded, "I hope the Indian Department will endeavour to encourage and develop these institutions..."⁴⁷

O'Brien's sentiment - the need to have a firmer "grasp and a hold" was, in the immediate post-rebellion period, shared by a number of officials, and, as such, was the motive for an even further increase in the aggressive and intrusive nature of Indian policy. The historian of the North West Mounted Police, John Jennings, asserted, with respect to the police, that "the early emphasis on understanding began to be replaced by one of coercion."⁴⁸

Perhaps nothing illustrates this better than the felt need to strengthen Canada's control and, subsequently, the addition of a major coercive element, than a memorandum, written in 1885 by the Catholic missionary and first principal of High River, A. Lacombe. Now, he advised, is the time to act; "if we do not take energetic means, the Indians will become more and more an embarrassment to the Government and an obstruction to immigration." The government should "disarm all Indians ... discontinue selling them ammunition" and "purchase Indians' horses so as to diminish their roaming"; their movements should be strictly limited. They should not be able "to camp in the vicinity of towns" where they would inevitably come into contact with "mischievous whites ... renegades of Christian civilization" resulting, as evidenced by the Indians "trading their daughters and their wives," in "disgraceful demoralization, shameful to behold." They should be allowed, "to solely come and buy but never sleeping away from their habitation." Better yet, stores should be opened on the reserves obviating contact with the towns and the government should then "Prohibit all Indians removing away from their reserve without a written permission from their agents." Isolation, and thereafter surveillance and discipline by

1885. See attached petition from Rev. James Robertson, Superintendent of Presbyterian Missions, 11 December 1885.

⁴⁶ See Superintendent General of Indian Affairs from L Vankoughnet, 29 December 1885. Note the marginal comment with Macdonald's initials dated 29 January 1886.]

⁴⁷ House of Commons Debates, 7 May 1886, page 1166

⁴⁸ John Jennings, *The North West Mounted Police and Indian Policy, 1874- 1896*, Unpublished Phd. Thesis University of Toronto, 1979 page 273.

the Department, enforcing “with vigour the different regulations ... so as to make them work on their farms,” was a necessary prescription as it must be understood, he asserted: the Indians “in all and everywhere at least for many years [are] real minors. Consequently, they are not at liberty” and are “under the tutelage of the Government.”⁴⁹

Much of this thinking was not unique to Lacombe. Indeed, the issues of “liberty” and “tutelage” were ones around which a consensus grew into the most draconian addition to the Department’s continuing attempts to bring about settlement. The idea of mandatory “written permission” to leave their reserves, had been placed before Macdonald as early as 1883 by the Deputy Superintendent General of Indian Affairs, L. Vankoughnet. There were legal and practical considerations but after the troubles, Macdonald, ever the pragmatist, approved the proposal, in August 1885, having been convinced that now “the pass system could be generally introduced safely.” It was, purposively, a denial of “liberty” in the service of “tutelage,” and a violation of treaty promises and as such illegal.⁵⁰

B. Development of Legal Coercion in Indian Schools To Implement Assimilation Policy

Not surprisingly, as Macdonald’s residential schools were a part of his colonizing strategy, that here too a harder edge was found in the discourse around residential schools and the administration of the young school system. Immediately after the fighting in 1885 subsided, there was a reaffirmation of the strategic importance of such schools, a conviction in official circles, as the historian of education, B. Titley, has asserted, that “An intensive course in civilization for all young Indians would prevent the recurrence of the rebellious spirit.”⁵¹ Both Macrae’s reference to “children under government control” and the Presbyterian petition were illustrations of the harder edge. And Lacombe, who had been unable, at High River, to crack the resilient shell of culture the children brought from their homes, looked to a harsh change in school administration to increase the efficiency of his and other residential schools. What was needed, Lacombe advised, were aggressive measures. “It is a great mistake to have no kind of

⁴⁹ E. Dewdney to Sir John A Macdonald, 21 September 1885 with attached memorandum written by Rev. A. Lacombe. MG 26A, Vol.107, C-1524

⁵⁰ The history of the introduction of the Pass System here follows the lead of Prof John Jennings. See his *The North West Mounted Police and Indian Policy, 1874- 1896* pps 287 to 292. It was Jennings who first discovered Macdonald’s direct involvement noting his initials in the margins of one of the central documents.

⁵¹ B Titley. “Indian Industrial Schools in Western Canada” in *Schools in the West Essays in Educational History*, Detselig, Calgary, 1986, page 138.

punishment in the Institution ... It is absurd to imagine that such an institution in any country could work properly without some form of coercion to enforce order and obedience.”⁵²

Here was the apology for the long history of abuse children suffered so that the “institution ... could work properly.” In a residential school curriculum, discipline, as well as industry, was a matter to be learned and punishment was pedagogy. In the post 1885 years, not only was a belief in the strategic utility of these schools maintained, but, additionally, owing to concerns that the operation of the schools had been wanting as at High River, further action was taken to increase the schools’ efficiency. To that end, and here again the theme was “grasp and hold,” the schools, the children and parents were brought within laws supervised by the Department of Indian Affairs through local Indian agents, police and judicial officials. Government authority and power would, as had been the case with the nature of Indian band government, supplant the authority of parents over the community’s children. This marginalization of parents would be long lasting, to and through the Class Period, and consequential with respect to culture, language and spirituality.

The significance of one of the earliest of these initiatives was considerable as it introduced, perhaps for the first time in Canada, the principle of “in loco parentis” – the assertion of the overriding authority of the state against that of parents to ensure “the best interest” of the child. An ordinance of the NWT council (1886), dictated that Indian parental “rights, powers and authority” were suspended while their children were in school.⁵³ Collectively, subsequent legislation by Parliament gave the Governor in Council the authority to frame regulations “to secure the compulsory attendance of children at school,” including at Industrial schools, wherever established in the country, and “such regulations may provide for the punishment ... of parents and guardians ... who fail, refuse or neglect to cause such children to attend school.”⁵⁴

Additionally, the Department with respect to western schools took action of its own, directing that no child in the NWT “shall be admitted to or taken from or allowed to leave any of the institutions without your [the Indian Commissioner’s] express authority having been obtained.”⁵⁵

⁵² NAC RG10, Vol. 3674, File 11422-4, MR C 10118, Father A. Lacombe to Indian Commissioner 2 June 1885.

⁵³ John Jennings, *The North West Mounted Police and Indian Policy*, page 282

⁵⁴ See, for example, Section 137 and 138 of An Act to amend the Indian Act. S.C. 1894, c.32 (57-58 Vict. and Sections 9 -11 of Indian Act R.S.C. 1906, c.81 and the most fulsome expression in Sections 1-10 in An Act to amend the Indian Act S.C. 1919-20 c.50 (10-11 Geo V.)

⁵⁵ NAC RG10 To Hayter Reed, from L. Vankoughnet, 13 June 1891. RG 10 Vol. 3674, File 11422-4, C-10118

And in 1894, an Order in Council - *Regulations relating to the Education of Indian Children* – reinforced the declaration of overriding federal authority in that a Justice of the Peace, satisfied that the child was not being cared for or educated, was authorized to issue a warrant to search for and place the child in an industrial or boarding school.⁵⁶ Parents could appeal, but that proviso was not carried over into the amendment of the *Indian Act* in 1920 which declared that “Any parent, guardian, or person with whom an Indian child is residing who fails to cause such child ... to attend school as required . . . after having received three days’ notice so to do by a truant officer shall ... be liable on summary conviction before a justice of the peace or Indian agent to a fine of not more than two dollars and costs, or imprisonment for a period not exceeding ten days or both, and such child may be arrested without a warrant and conveyed to school”⁵⁷

Notably, the “form of coercion” developed by Canada encompassed not only the children in “the Institution” but adults outside it. A regime of discipline and punishment was enforced directed to the physical, psychological and cultural separation of children from their parents - the prerequisite of education-for-assimilation strategy - and the separation of the parents from their children - a key strategic reason for the creation of the schools. The Superintendent General of Indian Affairs in 1891 summed it up: “Our policy is to keep pupils in these institutions until trained to make their own way in the world. Taking children in for short terms and letting them go again is regarded perhaps as worse than useless.”⁵⁸

And children, subjected to prohibitions against speaking their mother tongue, with punishments if they did so, and to the purposeful shaming of their parents, their beliefs and behaviours, experienced, moreover, an alienating curriculum rooted in a revolutionary ontology – geography, history and religion. [See for example the Programme of Studies for Indian schools, 1896 with its 6 standard’s course in ethics directed to imbuing the pupils with the values of white Canadian society.⁵⁹

Additionally, the Department took steps to discipline reluctant or disruptive parents. As in the campaign to induce reserve settlement, food was a point of leverage: rations could be denied to

⁵⁶ N.A.C. RG 10 Vol. 6032, File 150-40A, MR C 8149, Regulations Relating to the Education of Indian Children, 1894.

⁵⁷ Statutes of Canada, 1919-20, c. 50. (10-11 Geo. V.).

⁵⁸ NAC RG10, Vol. 3674, File 11422-4 MR C 1018,

⁵⁹ Department of Indian Affairs Annual Report, 1896, pps 398-399.

parents who did not want to send their children to school. It became Departmental practice to give passes to parents going to visit children at school only if they promised not to attempt to bring their child home⁶⁰. Added to this were restricted and supervised visiting, censored mail and punishments, often severe, for running away.

The pass system, the 1886 NWT ordinance, the even more pervasive Order in Council of 1894 and, of long term significance, the Department's power, under Indian Acts, to make regulations "which shall have the force of law" instituted, on the ground, a network of officials involved in the administration of the school system: local Justices, police constables, and Indian agents – a network which continued throughout the life of the system and, indeed, persisted long after any chance of a general rising that could actually challenge the state had passed. The regulations of 1894 were clearly directed to bolstering the effectiveness of such a network bringing the school, and children within the compass of the law and its agents. Thus

It shall be competent for any employee of the Indian Department, or any constable to arrest without a warrant any child found in the act of escaping from any industrial or boarding school, and to convey such child to the school from which it escaped.

Furthermore:

Any person authorized by warrant under these regulations to search for and take any child to an industrial or boarding school may enter (if need be by force) any house, building or other place specified in the warrant and may remove the child therefrom.

These warrants could be "addressed to any policeman or constable or to any truant officer appointed under these regulations, or to the Principal of any Industrial or boarding school, or to any employee of the Department of Indian Affairs."⁶¹ Similarly, children placed in residential schools as day students, as an administrative, financial convenience for the Department, even though it seemed to undercut one of the foundational principles underlying assimilation- the separation of children from their families and culture, were subject to attendance discipline and an alienating curriculum. That fact would prove to have negative consequences for the culture, language and spirituality of children –whether boarders or day scholars.

⁶⁰ J. Jennings *The North West Mounted Police and Indian Policy, 1874-1896*, p281.

⁶¹ *Regulations Relating to the Education of Indian Children, Order in Council, 1894, RG10, Vol. Order in Council, 1894, RG10, Vol. 6032 File 150-40A, C-8149.*

The central geo-political importance of the schools continued well past the 1880's as Canada opened new frontiers of settlement expanding from the Ontario border northwestward to the Arctic ocean. Departmental officials, Macrae and Scott, for example, [as noted above] repeated much of MacDonald's 1883 imperial wisdom, concerning the political role of education in the Treaty 8 (1899).

It is inconceivable to suggest that a central element of the colonizing process – residential schools - fell under the control of any entity except the federal government. Even after Canada had secured its boundaries – from sea to sea to sea and throughout the Class Period - the Department insisted that Indigenous children were wards of the government and that it would determine the relationship with churches when it came to the organization and management of the residential school system. Its authority then carried a responsibility to its wards and thus at the end of the Class Period, it would have to answer for its failures to care for them, for, the harms done, to children who were full-time residents and, equally, to day students who were placed in a residential school by the Department.

IV. Canada's Control of residential schools: "The children are wards of this Department".

*"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."*⁶²

Quite correctly, Prime Minister Harper's apology recognized the direct relationship between the Government's and Department's lack of effective control of the operation of the schools, leading to the schools' record of "abuse" and "neglect" and, from that, the Government's need to "apologize for failing to protect you."

While there were many actors involved in the network of surveillance and discipline none, perhaps, were more central than the Churches - their administrators, missionaries and teachers. In an era in which Christianity was by far the major Canadian faith, Churches had considerable influence in the secular world. Dealing with them - being it in the Minister's office or in the field - was a considerable challenge for the Department. Inter-church rivalry which played itself out even on reserves added further complications to Departmental work.

⁶² Harper Apology, 2008.

A. Canada's control over funding and Contract

As the school system grew after 1883, questions arose as to how it was to be funded and what would be the particulars of which party, church or state, controlled what aspects of school administration. While in this sector of policy, the determining dynamics included some aspects of state security, especially with regard to compulsory education, the more fundamental issues related to the power and position accorded to the Churches in the context of Canada's responsibility for Section 91(24) individuals and communities. Again, as Scott asserted, "The children are wards of this Department and we exercise our right to ensure proper treatment whether they are resident in our schools or not."⁶³

Church enthusiasm for Christian education and for residential schools was strong and persistent, beginning from the treaty signings; and, particularly after Macdonald's decision in 1883, it became overwhelming.⁶⁴ And the Churches did not hesitate using their political presence in Ottawa; petitions arrived in the Ministers' office so that by 1907, the government had approved 77 schools and there was no sign of the flood abating. And as the number of schools increased so too did the cost to the federal treasury. Martin Benson, a member of the Department's education unit, proclaimed, with evident exasperation, "The clergy seem to be going wild on the subject of Indian education and it was time some limit should be fixed as to their demands."⁶⁵ In his opinion, the Minister should not be allowing "priest or parson" to "dictate" to the Department. And Scott, equally insistent, put the matter before the Minister asserting that educational policy and the "right to establish or discontinue schools must reside with the Department." As it was, too often, Benson noted, "the hand of the Department has been forced by ecclesiastical authorities."⁶⁶

There were essentially two inter-related aspects to the management challenge: aspects of finance, that is the nature and extent of government subsidies to cooperating Churches for the operation of the schools and, secondly, the division of authority over aspects of school administration.

⁶³ NAC, RG 10, Vol. 6348 File 752-1 MR C 8705, D.C. Scott to Rev. J. Rioui O.M.I., 16 December 1921.

⁶⁴ See, for example, Catholic and Protestant lobbying efforts in [NAC RG 10, Vol 3674, File 11422 MR C 10118 and Archbishop of Quebec to Sir John A Macdonald, February 1833 and NAC RG 10, Vol.3674, File 11422 MR C 10118, J. McDougall to Superintendent General, 38 October, 1883.

⁶⁵ NAC RG 10, Vol. 6436, File 878—1 (1-3), MR C8762 M. Benson to Deputy Superintendent General of Indian Affairs, 23 October, 1907.

⁶⁶ NAC RG 10, Vol. 887-1(1-2) , MR C 8779, M. Benson to Superintendent General, 28 March 1904 and D.C. Scott to Superintendent General, 10 May, 1904.

In 1892, by an Order in Council, L Vankoughnet, Macdonald's long-time Deputy Superintendent of Indian Affairs, extended to all schools a cost sharing per capita system calculated to ensure fiscal responsibility,⁶⁷ in light of the fact that after not quite one decade since the three schools had been opened, the financial record of the system was dire - marked by constant over-spending by principals, funding short falls, and Government bail-outs. A second Order in Council, *Regulations Governing the Per Capita Grant to Industrial Schools* set out a division of responsibility for the physical plant of the school and ancillary services.⁶⁸ The per capita system would remain the norm until 1958 when a controlled cost system was introduced. It would receive criticism of its own based largely on how one could realistically determine, if at all, the needs of different schools in different regions and for different ages of school children.

Clearly through the 1892-94 Orders, the Department, beyond attempting to rein in expenditures, was also determined to establish its authority over the schools and over the Churches who accepted Departmental grants. Churches were expected to "conform to the rules of the Indian Department as laid down" and the Department maintained the right to amend and supplement those rules from "time to time."⁶⁹ Principals, thereafter, received a constant flow of directives - most importantly, perhaps, detailing how attendance registers were to be kept and attendance calculated to determine, with the certification of the local agent, the size of the quarterly payment of the grant earned by each school. Included was supposedly a handy accounting technique, that "A number should be assigned to each pupil when entered on the books of the Institution, numbering from 1 upwards in the case of the boys and 01 in the case of the girls - such numbers to be used on all occasions when a pupil is referred to as well as the pupils name, and a number once given to a pupil should not be changed or used for another pupil."⁷⁰

With regard to its central purpose, Vankoughnet's plan, especially with respect to that "correct principle," - careful budgetary management - did not work; the red ink continued to flow and in 1904, the Department was pressured by the Auditor General to conduct a "rigid inspection of

⁶⁷ INAC File 600-1, Vol. 2 Report of the Honorable the Privy Council, approved by the Governor General in Council, on 22 October 1892.

⁶⁸ See for example, NAC RG 10 Vol. 3922, File 118820 -1, MR C 10162, H. Reed to Archdeacon J.A. Mackay, 1 March, 1895. Reed had earlier consulted with some church officials.

⁶⁹ INAC File 600-1, Vol. 2., Report of the Committee of the Honourable the Privy Council ... 22nd October, 1892.

⁷⁰ N.A.C. RG 10 Vol. 6210, File 46901 (1-3), MR C 7941, To J. Lawlor from Deputy Superintendent General of Indian Affairs, 8 November, 1894.

financial affairs of each school at least once a year.”⁷¹ For Scott, the root cause lay in another direction. The existing relations with the cooperating Churches were untenable; the fault for that was that the arrangement laid out in the two Orders was “loose and indeterminant.” And, the Churches, while they had been persuaded to accept the per capita grants that “acceptance was merely tentative and they refused to be bound by any terms of contract whatever.” In fact, he concluded, “no contract was implied in the arrangement.” And this, he continued “has been the position of the religious bodies.” In Scott’s estimation, Church motives were clear and unacceptable. “The procedure” over the years since the introduction of per capitas, “has been to pay deficits, to increase the per capita grants, to extend more favourable terms and, in effect, to accept full responsibility for the conduct of these institutions,”⁷². In other words, Canada accepted the financial burden of the Residential Schools just as much as it accepted that it was the ‘ward’ of the children. This acceptance of responsibility did not change at any time during the Residential schools’ operations.

While Scott’s assessment was accurate, if not perhaps his charge characterizing Church motivation, there were legitimate deficits suffered by the Churches. They were, in the main, the result of an inherent problem with the mechanism for the per capita system - the fact that a school’s funding was tied to enrolment, to Churches’ ability to recruit students, an effort which was too often undercut by the reluctance of parents to cooperate. As well, a second root cause was underfunding by the government; underfunding that was, and would be, persistent, in both residential schooling, and Indian Affairs in general, and a considerable factor in understanding the injury done to children – their education and care, and the condition of their communities.

Finally, in the above context, three reports triggered negotiations between Church and government, resulting in what Scott had looked for - a seemingly serious commitment - a “contract” between the two, setting out the rules by which the funding and operation of the system would proceed. The reports: Dr. P. Bryce’s of 1907, a second in 1908 written F. H. Paget, a Departmental accountant, and a report, dated 1907, from the Honourable S.H. Blake, a lawyer reviewing Anglican mission work who would be influential in the negotiations. Each from a different perspective condemned conditions in the schools, particularly the impact of badly

⁷¹ NAC RG 10 Vol. 6039, File 160-1 MR C 8152, Auditor General to Deputy Superintendent General of Indian Affairs, 19 March, 1904

⁷² NAC RG 10. Vol. 3927, File 116836-1A MR C 10163, Memorandum for the Deputy Superintendent General of Indian Affairs 29, April 1904.

constructed schools made worse over time by inadequately funded maintenance programs, the lack of medical services and the effect on children of the alien routines of sit down, indoor education which added to the children's stress and their susceptibility to disease, especially to tuberculosis.

But it was Blake, in his correspondence with the Minister, Frank Oliver, whose comments may, perhaps, have had the most affect. His characterization of the schools, of the performance of Church and Departmental officials, was blunt. "The appalling number of deaths among the younger children appeals loudly to the guardians of our Indians. In doing nothing to obviate the preventable causes of death, brings the Department within unpleasant nearness to a charge of manslaughter."⁷³

As early as the spring of 1904, however, before any of the reports were submitted, Scott, had come to the same opinion, writing, with apparent frustration, to the Deputy Superintendent: "The time has come to look the facts boldly in the face, and reconstruct the whole school system."⁷⁴ It was the Churches, however, who took the first step submitting a framework for discussions, the Winnipeg Resolutions⁷⁵: negotiations followed in 1908 -1910 and contracts were finalized and signed in 1911.

For the Departmental Secretary, J.D. Mclean, the contracts signified that a bright new day had dawned, that the government, having looked "the facts boldly in the face," had taken the school system in hand. And it had to the extent that the distinction between boarding and industrial schools was ended in favour of less expensive residential schools. Beyond that, the agreements, he claimed, had ushered in "improved relations" between Churches and the Department which, in turn, would result, surely, "in benefit to the physical condition and the intellectual advancement of the Indian children."⁷⁶

⁷³ Anglican Archives, M.S.C.C., Series 2-14, Special Indian Committee, 1905-1910, To the Honourable Frank Oliver, Minister of the Interior, from S.H. Blake, Sunday Morning, 27 January, 1907 printed in To the Members of the Board of Management of the Missionary Society of the Church of England in Canada, by The Hon. S.H. Blake, K.C., page 21.

⁷⁴ NAC RG 10, Vol. 3927, File 116836-1A, MR C101631, D.C Scott to Deputy Superintendent General of Indian Affairs, 29 April, 1904

⁷⁵ 139. N.A.C. RG 10 Vol. 6039, File 160-1, MR C 8152, To Deputy Superintendent General of Indian Affairs from A.E. Armstrong, 1 February, 1907.

⁷⁶ NAC RG 10, Vol.6039, , File 160-1, J.D. McLean to Sirs (Church representatives), 25 November 25, 1910 It covers a copy of the contract to be signed

The Minister, then responsible for Indian Affairs, Frank Oliver, was of the same opinion. He explained to Church delegates, on 8 November, 1910, in what was the final meeting of negotiators, that the contracts were meant to deal with “the whole conduct and management of these schools.” To that end, the “responsibilities of each toward the other” were “definitely fixed,” and the financial straits the Churches were in, “would in a measure be relieved by the Government.”⁷⁷

Financial relief, it was agreed, would be provided, as before, through a per capita system and for each school, with a designated allowance - that is a determination of the allowable maximum enrolment - with due regard to the fact that overcrowding of schools had been an expediter of tuberculosis infections. - and thereby of the deplorable death rates in the schools.

And this was followed by those “responsibilities of each toward the other.” Churches were required to enrol children, between seven and eighteen, approved by the Department and having received a certificate of good health from a physician: to operate the school according to Department set regulations; to teach the children according to the curriculum set out; to provide training in the moral and civic codes of civilized life; to manage the schools at staffing levels set by the Department; and to hire only teachers approved by the Department who had approved training and to dismiss those staff or teachers found unsatisfactory by the Department; to supply food, clothing, lodging and equipment according to standards set by the Department; to keep the buildings in a sanitary condition and the children “clean and free from vermin both in their clothes and person”; to maintain the school in good repair, if owned by the Church, and to hold the school ready for inspection by any agent appointed by the Department.

On its part, the Government was to supply medicine, school books, stationery and school appliances, and to maintain in good repair and sanitary conditions schools it owned. And, of course, the government reserved the right to cancel a contract for any school not being operated by a Church according to the terms of the contract.⁷⁸

The overall primacy of government over Church authority, in the management of the system was played out in a persistent dispute between the Department and the Churches over the issue of

⁷⁷ NAC, RG10, Vol.6039, File 160-1, MR C 8152, Memorandum on Conference in the Minister’s Office with the Churches, 8 Nov. 1910.

⁷⁸ NAC RG 10 Vol. 6039, File 160-1, J.D. Maclean to Sirs [Church representatives] 25 November 25, 1910 ... it covers a copy of the contract to be signed.

compulsory education. The dispute demonstrated, as well, the persistent determination of the Churches to challenge the Department's authority, a determination that was turned aside by an equally determined Department.

B. Canada's Imposition of Compulsory Attendance at Residential Schools

As persistent as were Church demands for the initiation of compulsory attendance, so too, was the Department's resistance to it. For Vankoughnet, it was an issue of safety. He held that communities in the Northwest Territories were not "sufficiently advanced in civilization to render such drastic measures advisable"⁷⁹ - another indication that the Department always kept one eye on the question of state security. And Hayter Reed (who like Scott had a long Indian Department career leading to his appointment as Deputy Superintendent General in 1893) agreed; "great caution" was necessary. One only had to remember "how recently compulsory education had been introduced among people of the old civilization and the hostility so frequently exhibited by them to the measure [and] it becomes apparent that it cannot be rashly attempted with our Indians."⁸⁰ Certainly, the 1894 regulations did not advance the Churches' campaign. Justices of the Peace could place only a neglected child in a school and the parents of the child were given the right of appeal. Minister Frank Oliver maintained that position claiming, in 1908, that the government had gone "as far as was deemed advisable."⁸¹

This hardly satisfied the Churches and their continued lobbying was finally successful in 1920 when an amendment to the *Indian Act*, supported even by Scott, mandated, in Section 10, school attendance of all children between the ages of seven and fifteen.⁸² Thereafter, however, the application by the Department remained cautious – the Department's reed had bent, but it did not break. Scott replied to Church demands for rigorous enforcement of the law with a restatement of what continued to be Departmental practice. "I may say that from, time to time, as the Indian communities in different provinces are ready for such action, Section 10 of the Indian Act will be

⁷⁹ NAC career RG 10, Vol.3947, File 123764 MR C 10166, L Vankoughnet to E. Dewdney, 13 April, 1892.

⁸⁰ NAC RG 10, Vol. 3818, File 57799, MR C 10143, H. Reed to Superintendent General of Indian Affairs, 14 May, 1889.

⁸¹ NAC RG 10, Vol. 6039, , File 160-1, MR C F. Oliver to Reverend and Dear Sirs, 21 March 1908.

⁸² Statutes of Canada, 1919-1920, c. 50. 10-11 Geo V. 7 July 1919.

enforced.”⁸³ It was only after Scott’s retirement that serious steps were taken to bring agents, principals and the police to cooperate in an aggressive enforcement of the law.⁸⁴

Unfortunately, the hopeful sentiments of the Minister and the Departmental Secretary and the contract details, financial and regulatory, were not the substance of effective reform. And the bad old days of underfunding, quickly returned. Here was persistence yet again. “Indian policy,” had never been free of the influence of outside determinants; it had been, regularly, the handmaiden of other, often strategic, considerations. This did not change with the signing of the contracts. School funding took second place to the demands of the two world wars, the Korean War and the Depression. And was a result, probably, of the rapid downgrading of the importance of an Indigenous fact in national affairs in the early 20th century. Almost immediately, by 1917, none of the Churches could live within the limits of their grants.⁸⁵ Thereafter, recourse would be made to juggling the allowances/per capita --’robbing Peter to pay Paul’ – as was the case with the 1917 per capita increase - the funds for that increase were taken from an account set aside by the Department for building upgrades.⁸⁶

Certainly, Indigenous communities were no longer a threat to public order. Though they had not left the political scene, their energies had turned, in general, to political organizing on a Brotherhood model – a moderate cooperative approach to a yet long hoped for, more inclusive, federalism. Their participation in the Joint Committee in 1946-48 was a high point, perhaps. They flooded the hearing with submissions with detailed recommendations for change. But the fact that the resultant *Indian Act* was, on the whole, more of the same is an indication of their disappointing lack of success. Not surprisingly, Indian Affairs in the 1940s had little weight and that showed in the more of the same character of funding. In the residential school sector, capita increases were rare, were often minimal and could not address adequately the back log of needed expenditures.

Not only was the system quickly back to square one in terms of persistent funding short falls, but the Minister’s assertion that the “responsibilities of each toward the other” would be “definitely

⁸³ NAC RG 10 Vol.6041, File 160-5, , Part 1, MR C 8153 D.C. Scott to Rev. J Guy, 17 April 1926.

⁸⁴ See, for example, NAC RG 10, Vol. 6475, File 918,-1 M R C 8791, R. Hoey to Dr.J. Riopel, 3 November 1941.

⁸⁵ NAC RG10, Vol. 6730, File 160-2 (1-3,) MR C 8092. D.C. Scott to the Minister, Dr. Roche, 27 June 1917 and Vol, 6039, File 160-1, MR C 8152, J.T Ross to Rev C. Bouillet , O.M.I. 27 June 1917.

⁸⁶ NAC, RG10, Vol. 6039 , File 160-1, MR C 8152, M. Benson to D.C Scott, 25 June 1917, and D.C. Scott to Dr Roche, 27 June, 1917.

fixed” was equally illusionary. The contracts were to be reviewed and renewed at the end of 5 years, in 1916; they were not. The attention of parties may well have been focused on wartime issues. But even with the coming of peace, there was no movement to review and renovate them. And thus, as Scott had complained in 1904, the strict management arrangements soon had no basis in any enforceable agreement and thus the two parties would likely return to a “unbusinesslike” lack of arrangement.⁸⁷ Departmental authority was declarative, as it had been on the basis of the 1892 and 1894 Orders, rather than contractual. Departmental insistence on Church compliance was sporadic, irregular, and the failure to do so on the part of Churches, was, in the main, painless for them. There was no cancellation of grants to a school that failed to live up to mandated standards.

C. Canada maintains Control of terms of funding Agreements

In 1961, the Churches and the Department returned to the negotiating table. The resultant contracts established, yet again, the Department’s commanding position. In all sectors of administration, “the management shall be responsible to the Minister.” They, the Churches, agreed to manage their schools “in accordance with such rules, regulations, directives and instructions that may be made or issued by the Minister.” On its part, the Department took full financial responsibility and held the right, it always had, to “enter and inspect the school” and to cause the books of account to be audited.”⁸⁸

The long period after the failure of the 1911 contracts, is critical. While the Department did exercise its right to develop regulations directed, as Harper acknowledged in his Apology, to our duty to “protect you,” ... “we now recognize that, far too often, these institutions gave rise to abuse or neglect and were “inadequately controlled.”⁸⁹ The “failing” was rooted in the Department itself, in its inadequate management of the residential school system. There are a series of examples of this; that is, of the failure of the Department to exercise consistent oversight of its own regulations and its claimed authority over the system, over Church administrators and even its own employees. There is sufficient evidence of this in key areas of the system: disease control, nutrition, language training and abuse. And all children in the

⁸⁷ NAC, RG 10, Vol. 6039, File 160-1 MR C 8152, J.D McLean to Sirs (Church representatives) 25 November, 1910.

⁸⁸ INAC File 501/25-13—065, Vol. 2, Memorandum of Agreement ... 22 June 1962.

⁸⁹ Harper Apology,

schools, boarding and day scholars, would suffer the consequences of the Department's lax administration of the schools as Harper asserted in his apology.

D. Disease - "dying like flies."

This first, of these failures, in order of the tragic consequences for many children, related to disease – critically tuberculosis. While Blake and Bryce were, perhaps, the most effective in moving the Department to action, the Department, in fact, had been made aware for many years of the relationship of the schools and the growth of the contagion. Field staff, and even head office officials, had proposed various improvements. Benson completed a review of the system complete with recommendations focusing on the fact that "it is scarcely any wonder that our Indian pupils who have an hereditary tendency to phthisis, should develop alarming symptoms of this disease after a short residence in some of our schools brought on by exposure to drafts in school rooms and sleeping in over-crowded, over-heated and unventilated dormitories." This, he added, would call for necessarily expensive upgrading.⁹⁰

When Bryce's 1907 report became public knowledge, reactions of horror were published in a number of papers. The journal, *Saturday Night*, opined that it would "startle the country" and "compel the attention of Parliament "as boys and girls are "dying like flies..." "Even war seldom shows as large a percentage of fatalities as does the educational system we have imposed on our Indian wards."⁹¹

Additionally, the Department was aware that despite regulations issued in 1894, (children, to be admitted to a school, had to have a certificate of good health signed by a doctor⁹²) that there was no guarantee schools were being inspected nor doctors consulted. In 1909, the Department sent out new admission and certificate of-health forms "sufficiently stringent to guard against tubercular children being taken into school." How "stringent" they were is questionable. In 1911, a child was accepted by the Department though the Doctor had noted on the admission form, in

⁹⁰ [NAC RG10, File 6039, , File, 160-1 MR C 8152 M. Benson, to J McLean, 15 July, 1897]

⁹¹ NAC RG 10, Vol. 4037, File 317021, MR C10177, *Saturday Night*, 23 November, 1907. The file also contains extracts from the *Citizen* and *Montreal Star*.

⁹² See NAC RG 10, Vol. 6210, , File 469-1 (1-3) , MR C 7941, Deputy Superintendent of Indian Affairs to J. Lawlor, 8 November, 1894.

answer to the question if the child had any evidence of T.B. “Glands on right neck slightly enlarged.”⁹³

That young student was not an exception. When Scott and other senior Department officials reviewed the situation in 1925, early in the Class Period, they discovered that the admission of children without first passing a medical examination continued and thus there had to be a more rigorous management of the admissions process.⁹⁴

The Department’s record in handling the Spanish Flu [1918-19] had been equally ineffectual and was rooted, as was the case with tuberculosis, in the failure to improve living conditions in Indigenous communities. An estimated 30,000 Canadians lost their lives, 4000 of whom were Indigenous people – a mortality rate that was higher than in non-Indigenous communities. Maureen Lux, who has studied issues of Indigenous health, rejects a common assumption that the ill health of Indigenous individuals, and the disproportionate impact of the disease, was the result of a so-called biological invasion of non-immune people, but of “poor living conditions, poor nutrition and lack of access to medical care.”⁹⁵

In addition, there is contemporary evidence, recognized by the Department, that the process of schooling was an expeditor of tuberculosis with tragic results for the children. A study undertaken jointly by the prestigious Bureau of American Ethnology and the Office of Indian Affairs, of Tuberculosis Among Certain Indian Tribes of the United States, published in 1909, asserted that the cause of the disease among children in non- reservation schools

is the depressing effect on the newly arrived child, of a radically different environment. A child taken from a reservation where it has become accustomed to almost unrestricted freedom of will and motion, is subjected to discipline for at least four-fifths of its waking hours. In addition, there are the exertion of studying in a strange language, the change of associations, the homesickness, the lack of sufficient diversified exercise out of doors, and (to it) unusual food. All these

⁹³ NAC, RG 10 Vol. 1543 .. no file number, MR C 14839, J.D. McLean to R. Wilson 2 October, 1909 and D. Laird to R. Wilson, 7 March 1911, ...Application for Admission attached.

⁹⁴ NAC RG 10, Vol. 6001, File 1-1-1 (1), MR C 8134, D.C Scott. Memorandum on Indian Education for A. Meighen n.d. January 1918 and Vol, 6015 File 1-1-13 C 8141, D.C. Scott to W. Graham, 16 February, 1925. Some of this problem could be put down to the pressure on Principals had to earn their maximum per capita by maximizing enrolments linked to the fact that in isolated schools there might well be no access to a doctor.

⁹⁵ M. Lux, “Prairie Indians and the Influenza Epidemic” Native Studies Review 8 no.1, 1992. ..see also for a general outline of the epidemic D. Herring, “There were Young People and Old People and Babies Dying Every Week: The 1918-1919 Influenza at Norway House Ethnohistory 41, no.1 (winter, 1993)

influences can not but have a depressing and physically exhausting effect, which makes the pupil an easier prey to consumption.⁹⁶

Some Catholic schools in Canada certainly substantiated that observation. The Inspector of Indian Agencies in British Columbia, in 1920, W. Ditchburn, asserted in his report on Catholic schools, that the mode of conducting the school was an equally important factor in the children's health. He had witnessed "apparently robust children weaken shortly after admission and eventually become so sick that they have to be sent home on sick leave." This could "be accounted for by any of the following reasons and possibly all of them."

(A) Lack of proper rest occasioned by early rising to attend religious services. (B) Manual labour performed by the students too severe for them. (C) Lack of nourishing food containing the necessary fats to build up the body. Remedy: In Catholic schools children should be allowed to remain in bed until at least 6:30 A.M. in the summer months and 7:00 A.M. in the winter and the hours for early religious service and study should be advanced. As regards food I am of the opinion that a dietary (sic) should be determined upon by the Department after consultation with authorities on this subject and all residential schools should be forced to provide the same.⁹⁷

Scott, having been the Department's lead accountant, pointed out that a persistent factor in the death of children was the issue of funding. When in 1918, he briefed A. Meighen, the Superintendent General of Indian Affairs, he admitted that "inadequate" buildings, which "were unsanitary and were undoubtedly chargeable with a very high death rate among the pupils." He claimed that for a few years after 1911, "until the outbreak of the war," the Department had been able to do its share." Then "as the war continued all new projects were abandoned."⁹⁸

The differential effect of both tuberculosis and the flu and differential funding, both medical and general, were, as well, a reflection of the irrelevance of Indigenous people and the carelessness of successive governments - thereby raising the level of culpability for the failure to protect to include, beyond the Department, successive Federal governments.

⁹⁶ [M. Lux, "Prairie Indians and the Influenza Epidemic" Native Studies Review 8 no.1, 1992. ...see also for a general outline of the epidemic D. Herring, "There were Young People and Old People and Babies Dying Every Week: The 1918-1919 Influenza at Norway House Ethnohistory 41, no.1 (winter, 1993)

⁹⁷ N.A.C. RG 10 Vol. 7182, File 1/25-1-1-1, MR C 9695, To Sir from W. Ditchburn, 12 October, 1920.

⁹⁸ NAC RG 10, Vol. 6001, File 1-1-1 (1), MR C 8134, D.C Scott. Memorandum on Indian Education for A. Meighen n.d. January 1918 and Vol, 6015 File 1-1-13 C 8141, D.C. Scott to W. Graham, 16 February, 1925.

During the Laurier era, with C. Sifton as Minister of Indian Affairs, “the national budget more than doubled, the Department of the Interior budget nearly quintupled, but that of Indian affairs increased by less than 30 per cent.” The fact was, as historian D.J. Hall concluded based on his reading of Auditor Generals’ Reports, that “the government - and, indeed, Parliament - had an unvaryingly parsimonious attitude toward the Indians.”⁹⁹

In his *Story of a National Crime*, Bryce provided more focused and telling examples of the relationship between spending and TB rates. Throughout the First World War, Departmental expenditures on medical services fell to about \$10,000 a year for some 105,000 people spread across the country in 300 bands, while for Ottawa alone, which had a similar population, the Province allocated 3 times as much. And he provided comparative figures for the rate of tuberculosis which he estimated was one in seven; and the death rates in several large bands was 81.8, 81.2 and 86.1 per thousand. In Hamilton, on the other hand, the “ordinary death rate for 115,000 in the city” was 10.6 in 1921.¹⁰⁰

Additionally, it is useful to note that underfunding did not preclude the possibility of positive Departmental action based on its authoritative position and control of the distribution of per capita funding. The Department knew the condition of schools and their terrible impact on children. It had only to refer to reports in head office – Bryce, Paget and local doctors and even senior Departmental officials. It could have insisted that its officials carry out closer inspections, that Churches follow regulations (health services, dietary, recruitment and so forth), suspended per capita or fired principals. That it did not, in the vast majority of cases, was a most egregious failure – as it was a moral failure even more so, perhaps, than a financial or administrative one. Those responsible for the management of the school system failed to act decisively in the face of the suffering and death of so many children – and continued to do so. After the tumult of the Bryce reports, [1907 and 1922], the system went back to “normal” – more schools were built, over-crowding continued, as did its dreadful consequences, more children died, with even less notice taken of that tragic fact, and no more energy or funding put into remediation.

⁹⁹ D.J. Hall “Clifford Sifton and Canadian Indian Administration 1896-1905” in I. Getty and A. Lussier eds., *As Long as the Sun Shines and Water Flows* (Vancouver, University of British Columbia Press, 1983), page 121.

¹⁰⁰ P. Bryce *The Story of a National Crime*. For further evidence of the disproportionate impact of the disease, see Wheritt, *The Miracle of Empty Beds*, 110, which details Indigenous TB deaths by province.

As well, there were sporadic reports indicating that the past was still present in the 1950s. Dr. R. F. Yule, writing to the Director of Indian Health Services in the fall of 1950, asserted that overcrowding was yet the greatest “danger to the health of the children,” which forced children to sleep “breathing in each others [sic] faces.” The likelihood of infection was even higher as, despite existing regulations, many children joined the student body without the required “entrance medical examination” and thus they remained in the school to become ill and infect others.¹⁰¹

Yule’s assertions point to a significant all-encompassing reality; diseases, such as T.B., were not unique to residential schools; rather they were, as Lux noted, also the product of “poor living conditions, poor nutrition and lack of access to medical care” in communities. Communities and schools existed in the same disease topography; that connection was, as it were, a two-way street. Thus, children need not sleep in the school to become infected, indeed they may well have brought the infection with them, often undetected, if they had not undergone the required “entrance medical exam.” Day students of a residential school may have had an unfortunate role in disease transmission; in essence, they were two-way carriers and targets of the disease.

That the situation with respect to infection and death in mid-20th century, well into the Class Period, was unchanged was signalled best, perhaps, by the blunt reaction of Neil Walker, Superintendent of the Fort Vermilion area, to the news, in 1948, that another school was to be opened. “[If] I was appointed by the Dominion Government for the express purpose of spreading tuberculosis, there is nothing finer in existence than the average Indian Residential School.” Despite his opposition, a school was opened; Walker resigned, warning that it would be, like so many others, “a breeding spot for this dread disease.” And, echoing Bryce, he charged that the school system was “a very sad story and I think the only solution is to get public opinion aroused throughout Canada so that this great injustice will be discontinued.”¹⁰²

¹⁰¹ INAC File 501/25-1- 008., Vol 1 Robt. F. Yule, M.D. to Director Indian Health Services 4 September, 1950; and E. Jones to J. Ostrander 3 January 1952. See also NAC RG 10, , Vol 8596, , File 1/1-13, MR C 14226, Inspection Report on St Mary’s School 15 November 1948.

¹⁰² INAC File 7725/-1-005, Vol.1, Neil Walker to P. Phelan, 20 June 1949.

E. Nutrition - “No surprise to us [as] this complaint is longstanding.”¹⁰³

A second issue of considerable consequence - another “great injustice” and again related to the health of the children - was that of feeding the children. The relevance of nutrition for all students, including day scholars, is that the day scholars would have had school lunches and, no matter the food that they were provided at home, would have seen the hunger and, in many cases, the suffering of the full time students.

Department regulations demanded that the schools, to qualify for per capita funding, follow the Department’s scale of food, including amounts to be provided weekly to the students.¹⁰⁴ As with questions of funding in general, the dietaries, too, were a place of disagreement with Churches charging that the scales were unrealistic - see for example, Principal Hugonard of the Qu’Appelle school who admitted that often his students “at the end of a meal come to complain that they had not enough to eat and upon enquiry I have found that it is not without good reason.”¹⁰⁵

There was no resolution to such disagreements – no guarantee that the diet was adequate. Nor given the persistence of underfunding, no guarantee that per capitas could change the reality of what and how much appeared on a student’s plate. Indeed, there was recognized a relationship among a number of common school realities – overcrowding, poor sanitation and poor diet and tubercular infection. In 1915, Dr. Norquay of Norway House hospital informed the Inspector of Indian Agencies, who passed the information on to Scott, that the students he was seeing from the nearby residential school who had tuberculosis were also malnourished owing to lack of meat, fish and vegetables.¹⁰⁶

Continuously, similar reports reached headquarters from early days on through to the Second World War.¹⁰⁷ Ironically the war, which usually meant reduced school funding, as it did in this

¹⁰³ N.A.C. RG 10 Vol. 7194, File 511/25-1-015, MR C 9700, To R.S. Davis from R.F. Davey, 18 September, 1953 and To R.F. Davey from R.S. Davis, 23 September, 1953.

¹⁰⁴ NAC RG 10, Vol. 3922, File 116659 -1 MR C 10162. Secretary to Archdeacon J.A. Mackay, 1 March 1895. This was reaffirmed in 1892, 1894, and in the contracts

¹⁰⁵ NAC. RG 10, Vol. 3674, File 11422 MR C 10118, Rev. J. Hugonard to E. Dewdney 5 May 1891.

¹⁰⁶ NAC RG 10, Vol. 6268 File 581-1 (1- 2) MR C 8657, J.R. Bunns to D.C. Scott, 24 September 1915

¹⁰⁷ See for example: INAC File 961/23-5, Vol. 1, To Major D.M. MacKay from G.H. Barry, 27 March, 1938.

N.A.C. RG 10 Vol. 6262, File 578-1 (4-5), MR C 8653, To R. Hoey from D.J. Allan, 4 March, 1944.

N.A.C. RG 10 Vol. 6039, File 160-1, MR C 8152, To J.D. McLean from M. Benson, 15 July, 1897.

N.A.C. RG 10 Vol. 3918, File 116659-1, MR C 10161, To Secretary from Rev. Carion, 27 June, 1910, Vol. 8754, File 651/25-1, MR C 9701, To Indian Affairs Branch from R. Davis, n.d. 1943, Vol. 6268, File 581-1 (1-2), MR C

instance, had an unforeseen benefit. Owing to a high rate of failure of prospective recruits to pass the required medical, the issue of national vitality and diet received considerable notice. Such concern and the increasing availability/popularity of nutrition professionals washed over into Indian Affairs. Dr P.E. Moore, Director of the Department's Medical services contracted with the Nutritional Service section of the Red Cross to evaluate the diet at three residential schools. The result of the review, carried out in 1940-1945, involving both site visits and laboratory analysis of food, was, "Simply appalling."¹⁰⁸

One 1944 report gave both a sense of how appalling the situation was and an indication of the thoroughness of science come to the kitchen. At St. John's Chapleau, "everything ... was dirty" and there was a "lack ... of sanitary care in the handling of the food. Flies!" "It was not uncommon to see the food particularly black with them."¹⁰⁹ One day about forty or fifty flies were counted on one slice of bread - bread served to both Day and Residential scholars - and thus all students were impacted by those conditions.

Subsequent surveys of other residential schools revealed similarly "appalling" conditions. Miss A. McCready, who conducted the study and found variable conditions school to school, concluded that on the whole, however, in all schools poor menu planning in which the "nutritional value of certain foods was not fully appreciated", equipment that was "unfit,"

8657, To D.C. Scott from J.R. Bunns, 24 September, 1915, Vol. 6451, File 883-1 (1-2), MR c 8773, Memorandum to File, 27 April, 1926, by R. Ferrier. N.A.C. RG 10 Vol. 8754, File 651/25-1, MR C 9701, To Sir from R.S. Davis, 15 July, 1942.

N.A.C. RG 10 Vol. 6451, File 883-1 (1-2), MR C 8773, To Secretary from I. Foughner, 15 June, 1922.

N.A.C. RG 10 Vol. 8754, File 651/25-1, MR C 9701, To Sir from R.S. Davis, 15 July, 1942.

N.A.C. RG 10 Vol. 6455, File 885-1 (1-2), MR C 8775, Extract from Report by Inspector Cairns, 9 November, 1922.

N.A.C. RG 10 Vol. 6426, File 875-1-2-3-5, MR C 8756, To Secretary from W. Halliday, 11 June, 1926.

N.A.C. RG 10 Vol. 6262, File 578-1 (4-5), MR C 8653, To Dr. H. McGill from A.B. Simes M.D., 19 October, 1944.

N.A.C. RG 10 Vol. 3924, File 116823, MR C 10162, To Superintendent General of Indian Affairs from E.

Dewdney, 17 July, 1888. N.A.C. RG 10 Vol. 6451, 883-1 (1-2) MR C 8773, To Secretary from I. Foughner, 15 June, 1922.

N.A.C. RG 10 Vol. 6451, File 883-1 (1-2) MR C 8773, Memorandum to File from R. Ferrier, 27 April, 1926.

N.A.C. RG 10 Vol. 6451, File 883-1 (1-2), MR C 8773, Extract from an Inspection Report by Inspector Cairns, 19 April, 1926.

N.A.C. RG 10 Vol. 6262, File 578-1 (4-5), MR C 8653, To R. Hoey from D.J. Allan, 4 March, 1944. N.A.C. RG 10 Vol. 8449, File 511/23-5-014, MR C 13800, Inspection Report, Birtle School, by A.G. Hamilton, 4 December, 1936.

¹⁰⁸ N.A.C. RG 10 Vol. 6033, File 150-44 (2), MR C 8149, To Mrs. A. Stevenson from R. Hoey, 15 September, 1945 and To R. Hoey from Mrs. A. Stevenson, 8 March, 1946.

¹⁰⁹ NAC RG 10, Vol. 6033 File 150-44 (2) MR C 8149 Mrs S. Stevensen, Red Cross Survey, St John's Chapleau, October 1944.

“antiquated cooking facilities” and bad cooking practices contributed to the “nutritional inadequacy of the children’s diet” which lacked sufficient amounts of vitamins A, B and C. The children, moreover, received too little of nearly everything - not enough green vegetables, whole grains, fruit, juices, milk, iodized salt and eggs.”¹¹⁰ Despite the seriousness of the situation revealed by the Red Cross and by McCready’s report, and despite Dr Moore’s and Dr Lett’s (they were now colleagues in the Department of Health and Welfare – where Indian health services had been moved) indication of their continuing willingness to cooperate, to construct a permanent working relationship with Indian Affairs, there was no reciprocal energy coming from the Department. Lett’s hope of working out standards for nutritious and affordable meals and a regular system of inspections came to naught.¹¹¹ As of old, the Department continued in its pattern of hesitancy - allowing even egregious situations, to drag on unresolved for years.

The lack of adequate diets was a common place throughout the system. However, one set of events at the Brandon School in the late 1940s and 1950s best illustrates Departmental failures to act in the interest of the health of the students. It certainly stands as the symbol of the continuation of this pre-war system-wide characteristic: of children too often left by the Department in the insensitive care of school staff under questionable leadership who in turn tried to manage schools that were not properly maintained or funded. The Brandon episode, moreover, provides a glimpse inside the often fraught relationship between the Churches and the Department.

Information that there were severe problems with the care of children at Brandon IRS came to the Department from a surprising source. In December 1946, the Minister, J. A. Glen, received a letter from T.C. Douglas, the premier of Saskatchewan. Douglas was concerned that children from Moose Mountain reserve, near Carlyle, Saskatchewan, who had run off from the school complaining of the food and of mistreatment, might, if they ran off again, injure themselves. In fact, on Douglas’s behalf, the RCMP visited the school. Not unexpectedly, perhaps, both the Department and the church lined up behind the school. When the premier’s letter was passed on to the Rev. G. Dorey of the United Church’s Board of Home Missions, it got far from a sympathetic reception.

¹¹⁰ NAC RG 10, Vol. 60333, , File 150-44 (2) MR C A. McCready, Health Aspects in Relation to Food Service , Indian Residential Schools , November 1946, 1-3.

¹¹¹ NAC RG 10, Vol. 6033, , File 150-44 (2) , L.B. Lett to M.D. to Dr. Moore, 1 March, 1946 and L.B. Lett M.D. to Dr. Moore, n.d. 1946.

If Mr. Douglas accepts the statements of the Carlyle Indians at their face value, without further investigation, all I can say is that he will have plenty to do looking after the Indians of Saskatchewan without being able to give much time to his duties as Premier.

The minister's response was more polite but none the less supportive. Inspection reports, he assured Douglas, proved that the school was well-managed and provided the children a good diet.¹¹² As the Department would soon discover, the school was not "well managed" and the diet was less than adequate. Over the next ten years the school was inspected multiple times by Departmental officials; twice, in that period, the school was inspected by professional dietitians.

In 1951, G.H. Marcoux, the Regional Inspector of Indian Schools, inspected the school. He did not find it an easy task. The Principal refused to allow him to interview the staff in private and would only let him talk in private to one boy and one girl - hand-picked by the Principal, himself. Nevertheless, Marcoux concluded that the children were not well-treated, they were expected to do too much work, had not enough opportunity to play, their clothing was "much too scanty at times" and the attitude of staff and Principal to the children was not at all positive - in short "drastic changes will have to be made" to solve the runaway problem.

In the fall, he accompanied Mrs. Anna Swaile, the nursing supervisor for the district, to the school. While focused on the food provided to the children, she also remarked that "the overall picture of the institution is pretty grim." She went through the menus and calculated that the children received only 1,500 calories a day and most of that was from potatoes and bread. The cook was untrained "knows little or nothing about balanced meals and has not the provisions to prepare them even if she did." Except for the cockroaches, the kitchen was clean.¹¹³ The following spring, Marcoux inspected the school for a second time. Nothing had really improved and no corrective action was taken by the Department.¹¹⁴

In 1953, on the basis, of what the Department termed a "report from a reliable source," the investigative process began again. In the fall, Marcoux, along with a "Miss [Nan] Chapman, the Dietitian of the Sanatorium Board of Manitoba," were sent back to the school - a third

¹¹² 45 [N.A.C. RG 10 Vol. 6258, File 576-10, MR C 8650, To J.A. Glen from T.C. Douglas, 11 December, 1946, To J. Ostrander from A. Hamilton [?], 24 December, 1946 see attached note on police visit to the school by W. Kerley, To B. Neary from Rev. G. Dorey, 27 December, 1946 and To T.C. Douglas from J.A. Glen [Draft], 2 January, 1947.

¹¹³ N.A.C. RG 10 Vol. 7194, File 511/25-1-015, MR C 9700, To R.S. Davis from Mrs. A. Swaile, 6 October, 1951.

¹¹⁴ N.A.C. RG 10 Vol. 7194, File 511/25-1-015, MR C 9700, To P. Phelan from G. Marcoux, 2 May, 1952 and To the Principal] from P. Phelan, 10 June, 1952.

inspection. For the Department this was “no surprise to us” as “this complaint is longstanding.”¹¹⁵

The Chapman report was a replay of Swaile’s. The nutritional picture was, she concluded, “far from being a happy one.” After recording general observations: that the staff was fed much better than the children, that the food was cold, no seconds were allowed and so forth, she got down to science. In this instance, the assessment of the diet came not in the form of calories but cents. She calculated that the Principal was spending “the startling figure” of 14.8 cents a day per child on food rather than what was a more reasonable figure of 34 cents. She ended her report with recommendations for a system of centralized food purchasing to lower the cost of food for schools and for a menu reporting system that would allow the close monitoring of meal quality.¹¹⁶ A centralized food purchasing system was not organized nor was a menu reporting system.

In his report Marcoux stressed the negative effect the school’s reputation was having on educational progress in the region. Parents had heard stories of mistreatment and balked - they would not contemplate education for their children “the minute Brandon Residential school is mentioned.”¹¹⁷ He laid all the blame at the Principal’s feet.

Chapman’s report got into the hands of Dr. Moore in Ottawa who let the Department head, Col. Jones, know that he and the Sanatorium Board were “gravely concerned over these findings.” If, he added pointedly, “if this deplorable condition is true it will, undoubtedly, be reflected in the health and well being of the children.” Jones seemed to agree assuring Moore that the Department was “taking steps to correct this very disturbing situation.”¹¹⁸ But the step Jones took was to turn the matter over to the Church suggesting that it might contemplate removing or transferring the Principal because he was damaging the school’s reputation and that in turn was making the Department’s integration scheme [for details of that see below] more difficult to execute. But the Church defended the Principal, claiming that the Principal had not been given the opportunity to defend himself against charges which were very likely suspect. The result - the

¹¹⁵ N.A.C. RG 10 Vol. 7194, File 511/25-1-015, MR C 9700, To R.S. Davis from R.F. Davey, 18 September, 1953 and To R.F. Davey from R.S. Davis, 23 September, 1953.

¹¹⁶ N.A.C. RG 10 Vol. 7194, File 511/25-1-015, MR C 9700, N. Chapman Report, 8 October, 1953.

¹¹⁷ N.A.C. RG 10 Vol. 7194, File 511/25-1-015, MR C 9700, To R.S. Davis from G. Marcoux, 5 November, 1953.

¹¹⁸ N.A.C. RG 10 Vol. 7194, File 511/25-1-015, MR C 9700, To Col. Jones from Dr. P. Moore, 22 October, 1953 and To Dr. Moore from H.M. Jones, 29 October, 1953.

Principal remained at the school until the fall of 1955 when he left - not fired, but transferred to another school. Five years later the Department was admonishing him over the poor diet the children were receiving at his new school.¹¹⁹

There were then two more inspections to come. In the fall of 1956, Davey on a trip out from Ottawa, visited the school and found that still the food was not adequate. He lectured the new Principal, who had claimed he had not the financial resources to care for the children, that the “welfare of the children should be the primary consideration rather than the financial status of the school.” A month later, R. Ragan, the new Regional Supervisor of Indian Agencies, reported that the Principal had not listened, the food had not been increased. “The whole premises as well as the inmates were horribly dirty and certainly something must be done.”¹²⁰

From Douglas in 1946 to Ragan in 1956, the issue of greatest import was simply that the children of the Brandon school had not received a scale of nourishment approved by the Department and professional dietitians. In service to the interests of the students, the Department had not exercised its authority to right the situation. There was here (and certainly with regard with to the feeding of children, throughout the system) an abundance of blame to be shared. As to the suffering brought on by malnutrition, the children shared that with no one.

The Ragan commentary was not the end of the nutrition narrative. In 1956-57 the Department and Churches developed a substantially new system. It brought an end to the per capita system and placed the schools on a “controlled cost basis” geared to achieving “greater efficiency in their operation” as well as assuring proper “standards of food, clothing and supervision at all schools.” The government was prepared to “reimburse each school for actual expenditures within certain limitations.” Those “limitations” were translated into allowances - maximum rates set for salaries, transportation, extra-curricular activities, rental costs, building repairs and maintenance, and capital costs.

In terms of standards of care, the Department appeared to make the budgeting process more sensitive to the children’s needs and regional cost differentials. In particular, with regards to food

¹¹⁹ United Church Archives, Board of Home Missions Fonds, General Files, [Section II] Box 110, File 17, To [the Principal] from R. Davey, 27 January, 1960, Box 112, File 17, To Joblin from Powell, 25, November, 1960 and N.A.C. RG 10 Vol. 7194, File 511/25-1-015, MR C 9700, To Director from R. F. Davey, 12 December, 1956 and INAC File 1/25-1-4-1, Vol. 2, To Dr. L.B. Lett [sic] from R.F. Davey, 7 January, 1954.

¹²⁰ N.A.C. RG 10 Vol. 7194, File 511/25-1-015, MR C 9700, To P. Dezeil from R.F. Davey, 15 November, 1956 and To R.F. Davey from R. Ragan, 6 December, 1956.

and clothing, it attempted “to make special provision for the requirements of older children.” Thus in calculating the allowances for food and clothes, the children were divided into two groups, those in or below grade six and those in or above grade seven, with appropriate rates assigned to each.¹²¹

In addition, the Department began to issue directives to the schools on issues of care and more detailed monthly and quarterly reporting procedures were developed for Principals to assist them “in keeping track of the finances.” And there was an expansion of Departmental staff to administer and more closely monitor the residential system.¹²² As well, as if to cement the new system, a new set of Church/Government contracts were signed in 1961 - contracts which asserted, as in the past, the superior authority of the government.

F. Continued Underfunding of Residential Schools Post 1960

There were then, however, only a few more years for the administrative association to run. 1969 was a momentous year; the integration policy was thrown off course by the outcry over the White Paper. And the government was in effect forced to take exclusive control of the schools because of a decision of the Canadian Labour Relations Board of 7 September, 1966 that “the domestic employees of the Fort Frances Residential School in Fort Frances, Ontario were employees of Her Majesty in Right of Canada.” In line with that finding, the Treasury Board determined that “the employees of the Student Residences were to be brought under the Public Service Employment Act.” This necessitated their joining the Public Service Alliance of Canada, an employees’ union which gave them collective bargaining rights with the Government of Canada. Thereafter, if the Churches wished, they could continue in an advisory role in the hiring of administrators of residences and could provide pastoral service in schools.¹²³

For its part, the Department could finally manage the system without the cooperation or interference of the Churches. And it seemed capable of doing so. It had a new, scientific method to determine realistic funding. The controlled cost system was a complex plan that based each school’s total food purchases on assumptions about the nutritional requirements of children in

¹²¹ INAC File 116/25-13, Operation of Government-Owned Residential Schools on a Controlled Cost Basis, April, 1958 and INAC File 1/1-18, Vol. 1, To The Secretary from Fortier, 25 November, 1958.]

¹²² INAC File 600-1 -6, Meeting with Church Representatives re Operation of Government Owned Residential Schools., 11 May 1959, and File 87/23-5 Vol. 1, L Fortier to J.L. Page’, 29 April 1957.

¹²³ INAC File 6-15-3 Vol. 2 Vol. 1 J. Chretien to 24 February, 1969] and INAC File 501, 25-13 -083 , Vol.1 R. Connelly to ... 19 November 1969.]

several age divisions, and the regional and environmental determinants (to the extent of employing isotherm charts) that underlay food, clothing and transportation costs. In line with the Department's post-war turn to nutrition experts, the experience of on-site school administrators was supplemented by consultations with officials of National Health and Welfare and the Dominion Bureau of Statistics who could, respectively, set standards and monitor conditions and help cost them realistically. It had a new scientific plan and supportive expert advice.

However, as in the past, dominating the history of every sector of the residential system, it did not have adequate financial resources. And thus, nothing in the post 1961 school narrative prevented a continuation of the problems that were endemic in the system. The post-1957 record of the controlled cost system fell short of its promise; the new financial system did not achieve a significant improvement over the previous decades. A submission from the National Association of Principals and Administrators of Student Residences ("Association"), in 1968, constituted a broadside critique of the system. The Principals listed, in yet another decade of underfunding, a lengthy system-wide catalogue of deferred maintenance, hazardous fire conditions, inadequate wiring, heating and plumbing and much needed capital construction to replace structures that were badly in need of attention.¹²⁴

The Association found very little disagreement with its views in the Department. In a memo Davey forwarded to Assistant Deputy Minister R.F. Battle along with the Association's brief, he concluded that

Although I can take exception to some of the examples given in the brief, the fact remains that we are not meeting requirements as we should nor have we provided the facilities which are required for the appropriate functioning of a residential school system.

It was impossible, he continued, to do so for there were simply "too many of these units" and the Department was too heavily committed in other areas of higher priority - integration, "the development of the physical aspects of Indian communities" and "giving welfare assistance at provincial rates." Nor did he think it was wise to devote effort to achieving increased

¹²⁴ INAC File 6-21-1, Vol. 4, The National Association of Principals and Administrators of Indian Residences, Brief Presented to the Department of Indian Affairs ..., 1968.

appropriations and thus with “the best interests of the Indian children in mind,” it was more sensible to close the system down.¹²⁵

After the introduction of the controlled cost system, the Principals and the Department could do little more than tinkering - fine tuning, and occasional increases, generally preceded by church lobbying and followed by complaints that “the sums allowed are insufficient,” That discourse became a permanent feature of the 1957 system as it had been in the per capita era.¹²⁶

Indian Affairs always seemed to be playing catch-up. The funds it was provided continually lagged behind increases in cost or were not effectively tailored to local circumstances. Even when Indian Affairs assured the Churches of their concern it could not always act for it would find itself hemmed in by the same short budgeting that affected capital expenditures, repairs and maintenance. And, certainly, that reality impacted the children directly.

The Department’s “financial position” was a perpetual site of discord between the government and the churches. The discussions generated by the Association’s submission created a blizzard of shifting figures, appropriations, estimates, forecasts, cuts, reductions, shortfalls. But there was one immutable and continuing reality; it was always the children, the Association asserted who were “the first to feel the pinch of departmental economy.”¹²⁷ That “pinch” described by an official of the Anglican Church as “undernutrition, malnutrition and monotony of diet ... “ was he reported “prevalent in some of our schools.”¹²⁸ Indeed, throughout the system poor nutrition had and continued to be a part of the suffering of generations of children.

¹²⁵ INAC File 6-21-1, Vol. 4, Memorandum on the Brief - National Association of Principals, R.F. Davey, 11 January, 1968

¹²⁶ INAC File 1/25-13, Vol. 12 Treasury INAC File Board Submission, Food and Clothing Allowances, 25 July, 1966 and 1/25-1-4-1, Vol. 2, To R.F. Battle from H.A. Proctor, M.D., 5 May, 1969. N.A.C. RG 10 Vol. 8576, File 1/1-2-2-23, MR C 14215, To R. Davey from Canon H. Cook, 27 August, 1958. See also: Vol. 8799, File 511/25-13-017, MR C 9718, To R. Davey from E. Joblin, 20 September, 1962 and INAC File 600-1-6, Vol. 1, Meeting with Church Representatives Re Operation of Government Owned Residential Schools May 11, 1959.

¹²⁷ 95 [INAC File 6-21-1, Vol. 4, The National Association of Principals and Administrators of Indian Residences, Brief Presented to the Department of Indian Affairs ..., 1968.

¹²⁸ Anglican Church Archives, M.S.C.C., Series 2-15, Superintendent’s Report to the Executive Committee, 20 November, 1951. And see also for a discussion of the long-term detrimental consequences of the nutritional “pinch” see I. Mosby and T. Galloway “ The abiding condition was hunger’: Assessing the long-term biological and health effects of malnutrition and hunger in Canada’s residential schools” August 2017, British Journal of Canadian Studies 30(2):147-162.--

The Brandon experience, coupled with other aspects of neglect, insensitivity and abuse, physical and sexual, as well as the system's failure to educate children was, as Harper recognized, the fabric of the common experience of school survivors - full time residents and day scholars. Many, he admitted, were inadequately fed, – some even died subject to the pervasive spread of disease in the schools and the communities from which the student came and to which they returned. There were, however, two more issues of equal, or in some respects, even greater consequence, than nutrition and health in determining the experience of children taken into the schools: language and abuse. And as were nutrition and health, these two were often conjoined.

G. Abuse - "It is a generally approved practice for teachers to abstain from physical contacts with pupils either in anger or affection."

The sad fact that abuse – punishments that went beyond Canadian norms of the day (much less sexual norms, then and now) – was an all too pervasive experience of many children who came into the schools and reveals, as had the other issues dealt with above, the common characteristics of the system: knowledge of the problem, directives, regulations, to deal with it, persistence and, at the end, the recognition of the connection between lax administration and harm done. Again, Prime Minister Harper's apology singled out that phenomenon. "We now recognize that, far too often, these institutions gave rise to abuse or neglect and were inadequately controlled..." The experience of abusive punishment and discipline in the schools was experienced or observed equally by residential students and day scholars.

The Department did issue punishment regulations. In 1889 and again in 1895 directives stipulated "Obedience to rules and good behaviour should be enforced, but corporal punishment should only be resorted to in extreme cases. In ordinary cases the penalty might be solitary confinement for such time as the offence may warrant, or deprivation of certain articles of food allowed to other pupils."

Instructions should be given, if not already sent to the Principals of the various schools, that children are not to be whipped by anyone save the Principal, and even when such a course is necessary, great discretion should be used and they should not be struck on the head, , or punished severely that bodily harm might ensue. The practice of corporal punishment is considered unnecessary as a general

measure of discipline and should only be resorted to for very grave offenses and as a deterrent example.¹²⁹

Thereafter occasional advice on specific cases were given to principals. Additionally, in 1947, Indian Affairs circulated relatively robust directives on punishment following an incident at Morley school in which charges were made that “capital punishment was meted out,” including beating “pupils on the head.” One official, on searching Departmental files for guidance, gave evidence of the faulty corporate memory of the system. He was able to find “no instance of similar regulations having been prepared but from personal experience I feel that in such instances . . . the situation can best be clarified by clearly instructing the principal in this matter.”¹³⁰

These 1947 instructions, similar to those which guided staff in public schools across the country, were the basis for subsequent directives in 1953 and 1962:

1. That corporal punishment will be used only where all other methods of disciplining a pupil have failed.
2. That corporal punishment will be administered only on the hands with a proper school strap. (regulation 15” rubber)
3. That the maximum number of strokes on each hand in no instance exceed four in number for male pupils of over fourteen years of age and in proportion for boys under that age.
4. That all such corporal punishment be administered in the presence of the principal or by the principal.
5. That a Corporal Punishment Register be maintained at the school containing the following headings:
 - a) Date
 - b) Reason for Punishment
 - c) By whom administered
 - d) Witness
 - e) Signature of pupil punished
6. That this register be made available for inspection by all Indian Affairs Branch officials visiting the above.

¹²⁹ N.A.C. RG 10 Vol. 884-1 (1-3), MR C 8773-8774, To Bishop of Westminster from L. Vankoughnet, 17 October, 1889 and N.A.C. RG 10 Vol. 3921, File 116818, MR C 10161, To Assistant Commissioner from Deputy Superintendent General of Indian Affairs, 28 June 1895.

¹³⁰ N.A.C. RG 10 Vol. 6355, File 757-1, MR C 8711, To Indian Affairs Branch from G. H. Gooderham, 29 January, 1947 and To R. Hoey from B. Neary, 5 February, 1947 with attached To G.H. Gooderham from B. Neary, 5 February, 1947.

If a regulation strap was not available, information was provided on which school supplier stocked them.¹³¹

Local officials and school staff had to put interpretive meat on those regulatory bones. As one Principal was told when he was sent the above regulations, “it is almost impossible to lay down rigid rules concerning the administration of corporal punishment as so much depends on the personality of the pupil and the teacher concerned,”¹³²

In 1953, the Department expanded its 1947 directive identifying a wide range of unacceptable disciplinary practices:

Any form of punishment tending to humiliate a pupil is to be avoided. This policy applies alike to the use of sarcasm or to the employment of practices calculated to produce distinctive changes in appearance or dress. It is a generally approved practice for teachers to abstain from physical contacts with pupils either in anger or affection. Children’s reports of such contacts have sometimes been so exaggerated as to make the teacher’s position untenable. In any event there is to be no corporal punishment of a pupil who is suspected to be suffering from any physical or mental ailment which corporal punishment may aggravate. Before resorting to the use of corporal punishment, the principal or teacher in charge must be convinced that no other approved form of punishment will have the necessary punitive and corrective effects.¹³³

Unfortunately the hope, as one official expressed it, of maintaining discipline in the manner of a “judicious parent,” of avoiding “corporal punishment in all cases where good order can be preserved by milder measures”¹³⁴ has to be set against a too often contradictory reality, one of abuse - of confinement, deprivation of food, head shaving, group public beatings and even other more cruel and bizarre punishments. These many recurring incidents demonstrate that, consistent with other areas of care, Departmental regulations were not nearly enough to ensure the humane treatment of the children. Departmental files and the oral testimony of survivors collected by the Royal Commission, 1996 and the Truth and Reconciliation Commission are replete with testimonies of abuse including those specifically proscribed by the Department.

¹³¹ INAC File 501/25-1-067, Vol. 1, To ... from A. Hamilton, n.d., 1949 and Manual of Instructions for Use in Government-Owned and Operated Student Residences, 1 January, 1962.

¹³² N.A.C. RG 10, Vol. 8757, File 673/25-1-010, MR C 9701, B. Neary to J. Card, 7 February 1950.

¹³³ N.A.C. RG 10 Vol. 6355, File 757-1, MR C 8711, To Indian Affairs Branch from G. H. Gooderham, 29 January, 1947 and To R. Hoey from B. Neary, 5 February, 1947 with attached To G.H. Gooderham from B. Neary, 5 February, 1947. See also: INAC File 501/25-1-067, Vol. 1, To ... from A. Hamilton, n.d., 1949 and Manual of Instructions for Use in Government-Owned and Operated Student Residences, 1 January, 1962.

¹³⁴ N.A.C. RG 85 Vol. 1881, File 630/119-2 (Vol.2), To Mr. Meikle from J. Mckinnon, 4 December, 1948 and To Mr. Meikle from R. Gibson, 22 December, 1922.

And in the document collection, a repeated telltale sign – the runaway - was often seen as a red flag. Running away was one of the most reliable indicators of abuse. Over the life of the system hundreds of children fled because, as the Assistant Deputy of the Department explained in 1917, of “frequent punishments” and “too much hard work and travelled through all sorts of hardships to reach their distant homes.” Many, however, did not make it home to their communities and when the trail was followed back to the school from where searchers found an injured or dead child, it led, almost inevitably, to conditions of neglect, mistreatment and abuse. It was commonplace within the system that, in the words of one local agent, “there is certainly something wrong as children are running away most of the time.” Subsequent investigations would discover, not surprisingly, that “conditions at the school are not what they should be.”¹³⁵ A series of tragic events best illustrates how the Department dealt and did not deal with the issue. On New Year’s Day, 1937, at the Lejac School, in British Columbia, four boys, Allen Willie, Andrew Paul, Maurice Justin and Johnny Michael, ran away and were found frozen to death on the lake within half a mile of their village. When Harry Paul saw his son on the ice he was wearing summer clothes, “no hat and one rubber missing and his foot bare.” Another found his boy “lying face down with his coat under him.... He was the only one with a cap on. He had running shoes on with no rubbers.” The boys, “only little tots” was how Police Constable Jennings described them, had set out for home in 30 below weather. They had gone some eight miles, “straight to the light that was at the Village,” before they perished.

Evidence given to Department investigator, D. Mackay, detailed excessive strapping and bad food at Lejac IRS. MacKay did not have to rely on the testimony of the students as the Principal admitted that there had been a regime of severe punishment at the school but that he would in future bring the school in line with community norms, operate it, in regards to punishment, “along the lines of the provincial public schools.”¹³⁶

¹³⁵ N.A.C. RG 10 Vol. 6187, File 461-1 (1-2), MR C 7922, To J. Edmison from J. D. McLean, 4 August, 1917.

See, for example, N.A.C. RG 85 Vol. 1-A, File 630/119-2, To R. Hoey from G. Castledon, 19 February, 1941 and N.A.C. RG 10 Vol. 7194, File 511/25-1-015, MR C 9700, To P. Phelan from R.S. Davis, 1 November, 1951 and To Phelan from R.S. Davis, 25 October, 1951.

¹³⁶ N.A.C. RG 10 Vol. 6443, File 881-1 (1-3) MR C 8767, See transcripts of interviews, 2 and 3 March, 1937. and N.A.C. RG 10 Vol. 6436, 878-1 (1-3), MR C 8762, To Secretary from A. Vowell, 17 March, 1902 and attached sworn testimony and N.A.C. RG 10 Vol. 6443, File 881-1 (1-3) MR C 8767, See transcripts of interviews, 2 and 3 March, 1937 and N.A.C. RG 10 Vol. 6443, File 881-1 (1-3) MR C 8767, Confidential To Dr. H. McGill from D. MacKay, 25 March, 1937.

MacKay's central recommendation to Dr. McGill, then the Director of the Indian Affairs Branch, was appropriate not only to the Lejac case but to the whole school system. "My investigation leads me to the conclusion that the Department should take steps to strengthen its administrative control of our Indian Residential Schools through the full use of the privilege which it reserves of approving the more important appointments of these schools."¹³⁷ In 1937, this was a long overdue suggestion. The system was out of control; despite Scott's stern pronouncement in 1921 that the Department was responsible for the treatment of its wards it had not protected the children. It was, as MacKay implied, a problem the Department had not dealt with.

There was more to this Departmental irresponsibility than simply a failure to ensure that appropriate staff were hired. Indeed, even though the Department was to approve the hiring of specific teachers, there is no evidence that it did so. As well, there was a pronounced and persistent reluctance on the part of the Department to deal forcefully with the incidents of abuse, to dismiss, as was its right, or lay charges against, school staff who abused the children. Part of the pattern was an abrogation of responsibility, the abandonment of the children who were wards of the Department, to the churches who in their turn failed to defend them from the action of members of their own organizations.

Lejac was far from an isolated incident of abuse by staff and dereliction of duty by the Department. A series of cases in western Canada, brought to the attention of the Department by W. Graham, beginning with an incident at the Crowstand school in 1907, further illustrate this pattern, the dynamics of the mismanagement of the issue of abuse within the system. Graham, then an Inspector of Indian agencies, reported that Principal McWhinney had, when retrieving a number of runaway boys, "tied ropes about their arms and made them run behind the buggy from their houses to the school." The Department Secretary, J.D. McLean, when he referred the matter to a senior member of the Presbyterian church, suggested that the Principal be dismissed as his conduct had been "to put it mildly, most indiscreet."

The Church refused as its investigation had found that the Principal's action could not be faulted for he had, it was claimed, only tied the boys to the wagon because there was no room inside, the distance had only been some eight miles and the boys did not have to run the whole way as "the

¹³⁷ N.A.C. RG 10 Vol. 6443, File 881-1 (1-3) MR C 8767, Confidential to Dr. H. McGill from D. MacKay, 25 March, 1937.

horses trotted slowly when they did trot and they walked a considerable part of the way.” Even when the horses trotted the boys “could and did help themselves along by clinging to the buggy.” The Department greeted the church’s explanation with the cynicism it deserved. Benson saw these “lame arguments” as an attempt to “whitewash McWhinney.” The church, however, held firm though privately it extracted a promise from McWhinney that “he will not in the future again adopt methods of discipline to which fair exception might be taken by either the Government or the Indians.” McWhinney was kept on despite a continuing record of ill-treatment of the children, including his failure to act when the farm instructor in 1914 took two girls into a room where he had “sexual intercourse with them”. Scott, newly appointed as Deputy Superintendent General, did no more than suggest that McWhinney be transferred and let the matter drop.¹³⁸

Left unattended by the Department, the situation did not improve. Indeed, Benson soon informed Scott “Things seem to be going from bad to worse ... and it does not seem fair that the Presbyterian church should wish to saddle the Department with Mr. McWhinney.” The Department’s Medical Inspector, O. Grain, added his opinion. The school, he told Scott, is “the worst residential school I have had to visit.” The buildings were dilapidated, the washrooms unsanitary, the dorms were not up to standard and the rooms were full of flies as there were no screens on the windows. The children looked uncared for. “I would like to suggest that the whole boarding school be entirely done away with.”¹³⁹ The school remained open and McWhinney carried on.

While such a failure to respond forcefully to incidents of abuse and neglect would be standard behaviour for Scott during his term as Deputy Superintendent General, he was just following what was already an established Departmental habit - so ingrained as to have become unofficial procedure. Indeed, two years earlier he had experienced how immutable that “procedure” was. In

¹³⁸ N.A.C. RG 10 Vol. 6027, File 117-1-1, MR C 8147, Extract from a Report on Crowstand school, W. Graham, 4 July, 1907 and N.A.C. RG 10 Vol. 6027, File 117-1-1, MR C 8147, To Rev. R. McKay from J.D. McLean, 15 July, 1907 and N.A.C. RG 10 Vol. 6027, File 117-1-1, MR C 8147, See church investigation report dated, 9 August, 1907 and N.A.C. RG 10 Vol. 6027, File 117-1-1, MR C 8147, To Deputy Superintendent General of Indian Affairs from M.Benson, 27 August, 1907 and Presbyterian Church Archives, 1988-1003-2-1, 1906-1908, Foreign Mission Committee Reports, Vol. XX, 17 September, 1907 and N.A.C. RG 10 Vol. 6027, File 117-1-1, MR C 8147, To Secretary from Agent Blewitt, 21 July, 1914, To A. Grant from D.C. Scott, 19 September, 1914.

¹³⁹ N.A.C. RG 10 Vol. 6027, File 117-1-1, MR C 8147, To D.C. Scott from M. Benson, 21 November, 1914 and To D.C. Scott from O. Grain M.D., 5 November, 1914.

November, 1912, Graham had reported the drowning of a seven-year-old boy, Archie Feather, at the File Hills school. He and other boys had been left unsupervised playing beside a lake on which the ice was just forming. Graham was adamant that the school staff were at fault but so too was the church, for not hiring enough staff to care properly for the children. Scott, then the Departmental accountant, agreed. It is, he wrote, “pretty clear that negligence has resulted in the loss of life. Referring to the newly signed 1911 contracts, he advised the Deputy Superintendent General to use this incident to establish fully Departmental authority: “I think we should let them [the churches] see that the Department is determined to have the management comply with the terms of the contract, and I would, therefore, advise that the Presbyterian Authorities be told that the we cannot continue to pay the grant for the File Hills Boarding School until there is proper staff and necessary supervision.”

After discussions with the church, the Deputy decided not to follow Scott’s lead. “For the moment the question of withholding the grant may stand.”¹⁴⁰ That “moment” was to encompass the future as well, for neither Scott, when he assumed the mantle of Departmental leadership, nor any of his successors, used the power of the purse to ensure that the churches maintained adequate levels of care or to punish school management for abusing the children.

But of course, there was always more. In 1919, Graham alerted Departmental headquarters to reports forwarded from a local agent and a police constable that detailed the case set of George Baptiste who had run away from the Anglican Old Sun’s school. On being brought back, the boy was shackled to a bed, had his hands tied, was stripped and was “most brutally and unmercifully beaten with a horse quirt until his back was bleeding.” The accused, P.H. Gentleman, in the course of his explanation, admitted using a whip and shackles and that the boy “might have been marked.” Graham advised that “Gentleman should be relieved of his duties at once.” Scott, however, turned to the church for its “advice.”¹⁴¹ Canon S. Gould, the general secretary of the

¹⁴⁰ N.A.C. RG 10 Vol. 6307, File 653-1, MR C 8683, To Secretary from W. Graham, 4 November, 1912. and N.A.C. RG 10 Vol. 6307, File 653-1, MR C 8683, To Deputy Superintendent General of Indian Affairs from D.C. Scott, 11 November, 1912 and N.A.C. RG 10 Vol. 6307, File 653-1, MR C 8683, To Accounts Branch from Deputy Superintendent General of Indian Affairs, 14 November, 1912.

¹⁴¹ N.A.C. RG 10 Vol. 6358, File 758 (1-2), MR C 8713, To D.C. Scott from W. Graham, 25 December, 1919 and attached correspondence: To W. Graham from T. Graham, 1 December, 1919 which forwards the police report. and N.A.C. RG 10 Vol. 6358, File 758 (1-2), MR C 8713, To Canon S. Gould from P. Gentleman, 12 January, 1920. and N.A.C. RG 10 Vol. 6358, File 758 (1-2), MR C 8713, To D.C. Scott from W. Graham, 25 December, 1919. and N.A.C. RG 10 Vol. 6358, File 758 (1-2), MR C 8713, To Canon S. Gould from D.C. Scott, 5 January, 1920.

Missionary Society, mounted a most curious defense - such a beating was the norm, “more or less, in every boarding school in the country.” Scott accepted this and Gentleman remained at the school.¹⁴²

Graham’s frustrations would only increase as he dealt with more cases and failed each time to bring the Department to initiate corrective measures. Often the Department simply turned over investigations to churches, with the result according to Graham, that “Chances are, he wrote, it will end like all the other cases with no action being taken against the Principal and thus will undermine the vigilance of the local Departmental staff.

I think the Department ought to look at it from their own officer’s side of the question. No officer likes to write a report and feel that nothing will result from it, and you can understand why they hesitate to report on inefficient members of staff, under the circumstances. The Inspectors feel that where the churches are concerned there is practically no use in sending in an adverse report, as the Department will listen to excuses from incompetent Principals of the school more readily than to a report from our inspectors based on acts as they find them.”¹⁴³

In these and in dozens of other cases, not only in the west and British Columbia but throughout the system, “no further action” was ever taken and thus, at many schools abusive situations remained unresolved. In 1931, Graham was still writing to Scott about conditions. About the MacKay school, he wrote, “I have not had good reports on this school for the past ten years, and it seems that there is no improvement. I think the Department should have the whole matter cleared up.” Departmental inactivity continued even after Scott’s retirement. A. Hamilton, referring to conditions at Elkhorn school warned, in 1944, that so long as the Department did not intervene aggressively in the “present management” of the school “the children will continue to

¹⁴² N.A.C. RG 10 Vol. 6358, File 758 (1-2), MR C 8713, To D.C. Scott from W. Graham, 25 December, 1919 and attached correspondence: To W. Graham from T. Graham, 1 December, 1919 which forwards the police report. and N.A.C. RG 10 Vol. 6358, File 758 (1-2), MR C 8713, To Canon S. Gould from P. Gentleman, 12 January, 1920. and N.A.C. RG 10 Vol. 6358, File 758 (1-2), MR C 8713, To D.C. Scott from W. Graham, 25 December, 1919. and N.A.C. RG 10 Vol. 6358, File 758 (1-2), MR C 8713, To Canon S. Gould from D.C. Scott, 5 January, 1920 and N.A.C. RG 10 Vol. 6267, File 580-1 (1-3), MR C 8656, To W. Graham from P. Constant, 1 October, 1925 and To W. Graham from J. Waddy, 5 October, 1925.

¹⁴³ N.A.C. RG 10 Vol. 6318, File 657-1, MR C 8692, To D.C. Scott from Cortland Starnes and attached report dated 25 July, 1924 and N.A.C. RG 10 Vol. 6318, File 657-1, MR C 8692, To D.C. Scott from W. Graham, 13 August, 1924 and N.A.C. RG 10 Vol. 6267, File 580-1 (1-3), MR C 8656, To W. Graham from J. Waddy, 1 September, 1924. and N.A.C. RG 10 Vol. 6267, File 580-1 (1-3), MR C 8656, see Graham’s comment attached to To Dr. T. Westgate from J. D. McLean, 16 September, 1924.

run away [and] someone will be frozen to death or killed riding trains.”¹⁴⁴ Certainly, this was the worry that brought Premier Douglas to write to the Department ... And true to form, Douglas was dismissed by the Church and subsequent Departmental investigations came to naught.

And children did, in the post war decades, continue to succumb to acts of violence and neglect. But there was yet even more horror to come when what was hidden in Departmental files was revealed - the wide spread sexual abuse of children which was a cause of even more terror for children who grew to be parents and grandparents compelled to send their children to the Residential schools

V. Indigenous Language Policy: “So long as he keeps his native tongue, so long will he remain a community apart”

In *Things Fall Apart*, volume one of his ground breaking three volume narrative of the history of colonization in Nigeria, Chinua Achebe insightfully observed “He has put a knife on the things that held us together and we have fallen apart.”¹⁴⁵ One of those “things” was language. In an interview some years later, he asserted that an English language, of a certain sort, would not have been, necessarily, a serious disruptive intervention in his culture. “I feel that the English language will be able to carry the weight of my African experience. But it will have to be a new English, still in full communion with its ancestral home but altered to suit its new African surroundings.”¹⁴⁶ This was a forlorn hope, not only in Nigeria, but throughout the English language empire; Imperial civilizers were not so flexible; they were not interested, until forced to be, in compromising on any cultural front. Canada was no exception. Achebe understood that language and culture were intimately connected. And so did Hayter Reed and Scott as they implemented their assimilation policies in the Residential Schools.

From the outset of Canadian control of Indian Affairs, and continuing through the Class Period, converting children to the use, exclusively, of one of the two languages of civilization, English or French where appropriate, was the most critical pre-condition for the attainment of the Department’s assimilation mission. As the word, the many Indigenous languages, bore the burden of culture from one generation to the next, it was, perhaps the most elemental of those

¹⁴⁴ N.A.C. RG 10 Vol. 6267, File 580-1 (1-3), MR C 8656, To D.C. Scott from W. Graham, 30 November, 1931. Graham’s relationship with Scott deteriorated badly over the years; they became bitter rivals - see for a full discussion of this: E.B. Titley, *A Narrow Vision*, Chapter 10, *The Ambitions of Commissioner Graham*.

¹⁴⁵ Chinua Achebe, *Things Fall Apart*.

¹⁴⁶ “Chinua Achebe: “A life in writing” by Nicholas Wroe, www.theguardian.com. December 13, 2010.

ties “that held us together;” and, without a doubt, the Department understood that the challenge it faced in acculturation, of overturning a traditional Indigenous, foundational ontology and, simultaneously, imposing an imported Euro-Canadian one, was rooted in the issue of language use. And, as the schools, residential and even day schools, were to be the context of such a cultural/ontological transformation, the most significant task of educators was language training, and in so doing to, as, Davin stressed, cut the intergenerational connection – the influence of the wigwam. Civilization demanded this; progress depended on it. Principal Rev. Wilson in the Fourth Annual Report of the Shingwauk school informed the Department “We make a great point on insisting on the boys talking English, as, for their advancement in civilization, this is, of all things, the most necessary.”¹⁴⁷ The Department was in complete agreement. The Programme of Studies of 1896 directed that “Every effort must be made to induce pupils to speak English and to teach them to understand it; unless they do, the whole work of the teacher is likely to be wasted.”¹⁴⁸ Without English, the Department announced in its Annual Report of 1895, the Aboriginal person is “permanently disabled” beyond the pale of assimilation for “So long as he keeps his native tongue, so long will he remain a community apart”¹⁴⁹ and “apart” meant, of course, the failure of the primary goal of the school system, as Macdonald had told Parliament “to do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the Dominion, as speedily as they are fit to change.”¹⁵⁰

While this goal of assimilation was clear, as was the method - the suppression of Indigenous languages in school, often by violent means - the results did not often carry the children to desirable levels of acculturation; they were not transformed. Rather according to experts and the testimony of “graduates” of the system, children were left “ hanging in the middle of the two cultures and he is not a white man and he is not an Indian.”¹⁵¹ The consequences of that double alienation for children in their after-school life was tragic.

That the road to acculturation within the school and the assimilation of the graduate, thereafter, was through the English or French language where appropriate, was accepted as commonsense, not only to members of the Department but generally to many Canadians as it was an inherent

¹⁴⁷ D.A. Nock, *A Victorian Missionary and Canadian Indian Policy*, page 78.

¹⁴⁸ Annual Report 1896, page 398-399.

¹⁴⁹ Annual Report 1895, page xxii-xxiii.

¹⁵⁰ As quoted in M. Montgomery “The Six Nations and the Macdonald Franchise” *Ontario History* 57 (March 1965) p. 13

¹⁵¹ J. Sluman and N. Goodwill *Biography of a Cree Leader* Golden Dog Press, 1982.

part of the discourse of European superiority over ‘savage’ cultures. The languages of civilization alone, and not Aboriginal languages, as the Deputy Superintendent General, James Smart, explained in 1900, 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.”¹⁵² Those “ideas” were the core concepts of European culture - its ontology, theology and values.

Indigenous languages, their “native tongue,” as it were, froze the children in their savagery; their liberation necessitated stamping out Aboriginal languages within the schools and in the children - often by violent means, by “rigorously” excluding their use. Senior staff in the Department had no doubt that, as Hayter Reed advised, it would “be found best to rigorously exclude the use of Indian dialects.”¹⁵³ The Deputy Superintendent General was certainly of the same mind - replying emphatically that “the use of English in preference to the Indian dialect must be insisted upon.”¹⁵⁴ This language strategy, however, did not get to the desired point – that the much hoped for transformation/assimilation would be achieved. Indeed, from commentaries provided by students and analysis by experts, whether students lost their ability to speak their mother tongue, “graduates” were caught in the middle between their birth cultures and Canadian norms; little real acculturative change having been achieved.

Beyond the intention to “rigorously exclude the use of Indian dialects,” the common factors of the Department’s management of the system, as laid out above (the fact that the schools and the churches were “inadequately controlled”) and beyond that, that the intention was wildly naïve, with fundamental, and likely insurmountable pedagogical challenges were the roots not only of the failure of the language program but much of the harm done to the children.

In terms of the implementation of the language program, principals were to shoulder that critical task, including developing a pedagogy of prevention, rewards or punishments, to suppress the children’s Indigenous language and to make English/French “in and about all schools as far as

¹⁵² Annual Report 1900, page xxix.

¹⁵³ N.A.C. RG 10 Vol. 3818, File 57799, MR C 10143, To Superintendent General of Indian Affairs from H. Reed, 14 May 1889.

¹⁵⁴ N.A.C. RG 10 Vol. 3674, File 11422-5, MR C 10118, To H. Reed from Deputy Superintendent General of Indian Affairs, 24 August 1890.

possible the only allowed means of communication.”¹⁵⁵ The range of ideas showed some imagination. The Principal of Qu’Appelle in 1884 considered the idea of admitting a “few English boys” to be divided among the Indian children at recreation periods to encourage the use of English. They would “also be a great means for helping Indian boys lose their Indian habits.”¹⁵⁶ Wilson, at Shingwauk, considered the same technique but also developed a reward system - the infamous button system – the reward for the student, who most closely followed the no traditional language dicta, being a bag of nuts.¹⁵⁷

And school staff, teachers and others as well, were involved in preventing pupils speaking an Indigenous language. There was for them, – dorm, playground, kitchen and work supervisors - an additional motive, perhaps. Students speaking their home language could, in a real sense, disappear from their surveillance; and staff may well have been frustrated by their inability to penetrate the wall of language surrounding the children.

However, despite even Wilson’s imaginative approach to the language challenge, routinely transgressions were met with punishment. Wilson, himself, admitted that he chastised “heavily any old pupil who presumes to break a rule”¹⁵⁸ governing the use of Indian languages. Over the life of the school system, many Principals could have made the same admission. Certainly, students spoke out about their treatment. At Lejac, in 1937 a former student Mrs. S. Patrick, recalled “Even when we just smiled at one of the boys they gave us that much,” 30 strokes with the strap on each hand, and when they spoke their own language, the Sister “made us take down our drawers and she strapped us on the backside with a big strap.”¹⁵⁹

¹⁵⁵ N.A.C. RG 10 Vol. 3647, File 8128, MR C 10113, To Indian Commissioner, Regina, from J. A. Macrae, 18 December, 1886.

¹⁵⁶ N.A.C. RG 10 Vol. 3674, File 11422-1, MR C 10118, To Lieutenant Governor from Rev. J. Hugonard, 18 October, 1884.

¹⁵⁷ D.A. Nock, *A Victorian Missionary and Canadian Indian Policy*, page 78 “Each Saturday a certain number of buttons were given out to every boy, the amount depending on the length of time spent at Shingwauk, with new boys getting the most buttons. If a boy was caught talking “Indian,” his companion was to demand a button from the culprit. At the end of the week, an accounting was made with the boys who had returned the most buttons receiving a prize of nuts.

¹⁵⁸ D.A. Nock, *A Victorian Missionary and Canadian Indian Policy*, page 78. See also: N.A.C. RG 10 Vol. 6443, File 881 (1-3), MR C 8767, To H. McGill from D. MacKay, 25 March, 1937.

¹⁵⁹ N.A.C. RG 10 Vol. 6443, File 881-1 (1-3) MR C 8767, See transcripts of interviews, 2 and 3 March, 1937. And N.A.C. RG 10 Vol. 6443, File 881-1 (1-3) MR C 8767, Confidential To Dr. H. McGill from D. MacKay, 25 March, 1937. Further examples include such as: N.A.C. RG 10 Vol. 6355, File 757-1, MR C 8711, To Indian Affairs Branch from G. H. Gooderham, 29 January, 1947 and To R. Hoey from B. Neary, 5 February, 1947 with attached To G.H. Gooderham from B. Neary, 5 February, 1947. See also: INAC File 501/25-1-067, Vol. 1, To ... from A. Hamilton, n.d., 1949 and Manual of Instructions for Use in Government-Owned and Operated Student

Josephine Johnson, addressing the Canim Lake, Royal Commission Public Inquiry, described her early days in residential school in the Class Period:

The best thing I had to do first was to find somebody that I knew that was there already that I could talk with because when I got there I mostly just didn't know English at all. I only know mostly Shuswap. I just said yes and no, and it was not even a proper yes, it was yeah; it wasn't no, it was naw. That's all I knew when I got there and I had a tough time there for quite a while because I was forever getting punished. I was always yakking away in Shuswap and I didn't know, nobody told me first time when I got there that you weren't supposed to speak Shuswap and there I was always getting in there and the ones I ran into first they were just as bad as I was. They were just having problems with their language too and I was having the same thing.¹⁶⁰

A few school administrators asserted that the task was actually accomplished even without punishment. In 1894, the Principal of the Cranbrook school, Father Coccola O.M.I. claimed "English alone is spoken among the pupils." And Sister Amy, the Principal of the Squamish school, reported in 1905 "The Indian language has been eradicated and English is spoken by all the children in the school" Both Principals agreed, furthermore, "Punishments are a rare occurrence" This certainly was not the general understanding of the Department. Few, in general, were, pleased with the results. Comments by W. Graham, a senior western agent, sent on to D.C. Scott in 1923, were particularly cogent and devastating. He asserted that the failure to move students to English language proficiency, and, indeed, to educate them generally had, to that point, frustrated any real acculturative progress.

Particularly during the last two years I have been repeatedly told that ex-pupils are more careless of their property and less able to manage their affairs and work than those Indians who have not attended school. In most instances where the graduates make good on their farms it is as a result of careful and helpful supervision and instruction by the Farm Instructors and Agents and not because of the training they have received at school.... In very many cases the comments of the Public School Inspectors would lead one to believe that we are neglecting the

Residences, 1 January, 1962 and INAC File 1/25-20-1, Vol. 1, To Miss ... 16 February, 1966 and attached correspondence. The student opinions were circulated at the Conference in an unpublished pamphlet Indian Viewpoints Submitted for the Consideration of the Principals' Workshop, Elliot Lake, Ontario and section - The Environment of Fear throughout the Generations: Ever-Present Risk of Sexual Abuse with no Protection - for examples of sexual abuse.

¹⁶⁰ See the testimony in R.C.A.P. transcripts of Josephine Johnson at the Canim Lake [British Columbia] Royal Commission Inquiry, Tuesday March 9, 1993, page 155.

children; wasting time and spending large sums of money and getting no results. Many times I have complained that our graduates on leaving school can hardly speak English, certainly many of them could not be employed as interpreters because of this lack of knowledge.¹⁶¹

Graham's remarks were far from original. Scott had heard them from every quarter, not only from "Public School Inspectors" and Departmental employees, but from parents who objected to the fact that their children were receiving an inadequate education. Even the churches and their school staff, normally so sensitive to criticism, were critical of the state of education. Within six months of Graham's letter, the Rev. J. Edmison, the President of the Presbyterian Board of Home Missions, forwarded to Scott a copy of an address that had been given by Principal R. B. Heron to the Regina Presbytery. Heron began where Graham had left off - with the central issue of language.

The ex-pupils of our Indian schools have such faulty education that very few of them are capable of interpreting Cree into English, or vice versa. A story is told of a clergyman who attempted to preach to an Indian congregation through an interpreter, from the text (Math. 14-27) "It is I be not afraid." When this came to the ears of the congregation in their own language, it was; "Hit him in the eyes, don't be afraid." One has only to attempt a conversation with these ex-pupils to find how very meagre is their English vocabulary, and how painfully limited is their knowledge. This is further emphasized by the fact that very few of them subscribe for a newspaper or magazine of any kind. Any system that leaves young men and women without a desire to read, is open to criticism.¹⁶²

There were broader perspectives beyond just comments on language proficiency. A teacher, Miss Eden Corbett, on resigning her position at the Anglican Aklavik school in 1944, detailed the stultifying impact of the school experience on the students. She confessed a feeling of deep frustration; she was "grieved to think that I must leave these children in the same condition I found them in." Her grief was not about the children's lack of educational progress but her powerlessness in the face of what she felt was the single most negative determinant of the school experience - the children's separation from their parents, their culture and language. How, she wondered, "is a child, after a four to ten year period in school, supposed to adapt itself to the environment of its parents, when the language, habits and arts have been severed." The result of

¹⁶¹ N.A.C. RG 10 Vol. 6039, File 160-1, MR C 8152, To D.C. Scott from W. Graham, 23 March, 1923.

¹⁶² N.A.C. RG 10 Vol. 6040, File 160-4 Part 1, MR C 8153, To D.C. Scott from J. Edmison, 17 October, 1923.

that separation, followed by the action of the school on the body, mind and spirit of the child, she concluded, was that the child was made “an alien and the situation is pitiful.”¹⁶³

Alienation, being “unfitted,” was increasingly a common understanding of the condition of ex-students divorced not only from their birth culture but non-Aboriginal culture, as well [see below, for example, Caldwell, Tootoosis and others]. On returning to their communities, they were, perhaps, in the same sense as were members of the school staff, locked out on the wrong side of the language/ritual barrier and, as a consequence, not any longer familiar with community norms or spiritual practises or marginalized by their own deviant behaviour.

As with the issues of health and nutrition, the question of language teaching, the very heart of the assimilative strategy, played out according to what had become the predictable narrative of a church/state association that was, so often, dysfunctional. There was blame to share and in this case it related significantly to the fact that both parties, while they recognized the problem, failed, despite Departmental regulations, to provide the system with a cadre of teachers who were capable of bringing about the transformation of children that would put them, theoretically at least, on the road to civilization.

The Department did recognize the difficulty it faced. J. A. Macrae, the first trained Departmental school inspector, explained what was for him the unique difficulty involved in Indian education, that “the English that is necessary to a proper understanding of what is being studied has to be taught concurrently with other subjects that instruction is being given in”¹⁶⁴ While this might be said of unilingual immigrant schools, those children were probably encouraged by their families and communities. Indigenous children, according to those responsible for language training, were described differently. For example, Rev. T. Clarke of Battleford Industrial School reported in 1887, that “In common with other schools of a similar nature, we have experienced a great difficulty in inducing the boys and girls to speak English amongst themselves in everyday life.” They had a stubborn “preference ...[for] their own language in daily intercourse.” That

¹⁶³ N.A.C. RG 10 Vol. 6476, File 919-1, MR C 8792, To Hon. I. MacKenzie from Miss E. Corbett, 18 March, 1944.

¹⁶⁴ N.A.C. RG 10 Vol. 3647, File 8128, MR C 10113, To Indian Commissioner from J.A. Macrae, 18 December, 1886.

preference was, Clarke felt, and other Principals and teachers no doubt agreed, “the greatest difficulty against which I have to contend.”¹⁶⁵

But, certainly, more to the point, the greater challenge of cross-cultural teaching in Indian schools laid upon the Department the need to ensure that teachers up to the challenge were employed. The Orders in Council 1892/94 and the contracts signed in 1911 laid out the relationship between church and state with reference to the government’s overarching management of the system and included teachers. Churches were to hire only teachers approved by the Department who had approved training and to dismiss those staff or teachers found unsatisfactory by the Department. Furthermore, the Department could establish regulations, review school operations and take whatever remedial steps thought necessary.¹⁶⁶

A. Inadequately Qualified Teachers

Unfortunately, from early in the system, quality teaching and effective oversight were not the norm though school inspectors, agents and even churchmen called for reform. J. A. Macrae, declared, in his very first report on western schools in 1886, that many of the teachers were not only untrained but were “illiterate persons, ignorant of the first elements of teaching and powerless to impart any ideas that they may have possessed regarding the most simple subjects.”¹⁶⁷ They were “not as a rule well fitted to the work” Benson charged¹⁶⁸ Improvement could come, Paget advised in 1908, only by the Department paying “the teachers, over and above the grant” giving, therefore, some assurance of “qualified ones being employed.”¹⁶⁹ Inspector Ditchburn in British Columbia, encouraged Scott to set “a standard for teachers” throughout the system and to no longer tolerate the churches’ practice of “sending persons to teach Indians just because they want a position.”¹⁷⁰ And a decade later, on the eve of Scott’s departure from the Department, R.T. Ferrier, the Department’s Superintendent of Education, charged that the churches still exhibited “a proneness ... to assign to Indian work reverend gentlemen and instructors who have not been too successful in other fields of activity” and too often gave in to

¹⁶⁵ See Annual Report 1888, page 102 and N.A.C. RG 10 Vol. 3674, File 11422-2, MR C 10118, To Indian Commissioners from T. Clarke, 31 July, 1884.

¹⁶⁶ NAC RG 10, Vol.6039, File 160-1, J.D. McLean to Sirs (Church representatives), 25 November 25, 1910 It covers a copy of the contract to be signed.

¹⁶⁷ N.A.C. RG 10 Vol. 3647, File 8128, MR C 10113, To Indian Commissioner from J.A. Macrae, 18 December, 1886.

¹⁶⁸ N.A.C. RG 10 Vol. 6039, File 160-1, MR C 8152, Memorandum for the Minister from M. Benson, 3 July, 1897.

¹⁶⁹ N.A.C. RG 10 Vol. 4041, File 334503, MR C 10178, To F. Pedley from F.H. Paget, 25 November, 1908.

¹⁷⁰ N.A.C. RG 10 Vol. 7182, File 1/25-1-1-1, MR C 9695, To Sir from W. Ditchburn, 12 October, 1920.

the “temptation to emphasize religious zeal and business efficiency when selecting principals and instructors.”¹⁷¹ But, surely the most amazing example was that in some of the western Catholic schools conducted in English by French priests and nuns, classroom work was “greatly handicapped by the fact that the teachers do not speak the English language proficiently and also by their not having had adequate professional training.”¹⁷² And in many of their schools proper practical training could not be carried out, a senior Oblate priest admitted in 1939, because “the staff is either insufficient or not qualified for this purpose.”¹⁷³

In that regard, School Inspector L. Hutchinson in 1922, submitted a scathing report on schools in Alberta.

These Indian schools are the biggest farce to be called schools I have ever seen. They appear to be all pretty much the same. Teachers who are about the poorest of their class are in charge, and the waste of time is painful to witness, what crime have these children committed that they should be imprisoned from nine o’clock until four with little else to do but suck their thumbs the major portion of the time. Any good teacher should teach these children as much in half an hour as under present conditions they are taught all day. With eight years’ experience in the normal school in helping to fashion teachers out of every possible variation in the raw material that came to us there, I have seen some very crude teaching; but I think I can safely say that I have never before seen in the finished product anything put forward as teaching that touched quite a low level as that which is to be seen in these Indian schools.¹⁷⁴

W. Graham, a persistent critique of the system, made the blanket charge that not “some” but “the majority of teachers in western schools were not qualified and would not in fact be able to find employment in the provincial school systems.” He called as evidence the testimony of provincial school inspectors who “invariably stress the necessity for employing as teachers . . . only men and women who have received Normal [school] training.”¹⁷⁵

At the end of his 1923 critique, Graham claimed that he was confident that the question of teacher qualifications “will receive earnest consideration from the Department.”¹⁷⁶ If that was

¹⁷¹ N.A.C. RG 10 Vol. 7185, File 1/25-1-7-1, To C.E. Silcox from R.T. Ferrier, 7 April, 1932.

¹⁷² N.A.C. RG 10 Vol. 8452, File 773/23-5-003, MR C 14234, To Rev. R. Rioux from R.T. Ferrier, 5 November, 1923.

¹⁷³ N.A.C. RG 10 Vol. 6041, File 160-5 Part 1, MR C 8153, To R. Hoey from Rev. J. Plourde, O.M.I., 30 May, 1939.

¹⁷⁴ N.A.C. RG 10 Vol. 8452, File 773/23-5-003, MR C 14234, Inspection Report, St. Mary’s school by L. Hutchinson, 5 October, 1922.

¹⁷⁵ N.A.C. RG 10 Vol. 6348, File 752-1, MR C 8705, Extract of a Report by W. Graham, 16 April, 1923.

¹⁷⁶ N.A.C. RG 10 Vol. 6348, File 752-1, MR C 8705, Extract of a Report by W. Graham, 16 April, 1923.

not simply sarcasm, it certainly was naive given the Department's record on reform of any kind. Therefore, not surprisingly, the period came to an end without any improvement in sight and School Inspector McArthur's comment on teaching in his 1943 St. George's report stands as its hallmark: "Missionary zeal in a teacher is important, but it is not enough. It should be reinforced by other desirable personality qualifications, and by knowledge and skill. It is knowledge and skill that these teachers appear to lack."¹⁷⁷ As a result, as a general characterization of the system "the work in English is still not as good as it should be;" the children did not "at play on the playground" or "at meals" speak English, that it was imperative that "more effort be put forth to induce the pupils to express themselves in English and that practice be given in following written and oral instruction in English."¹⁷⁸

B. Canada's Expressed Language Policy

Without determined Departmental leadership holding schools to the original policy, some Principals and teachers, frustrated by their lack of success, perhaps, gave up the struggle altogether or, at least, were accused of having done so. At Qu'Appelle, in 1890, Reed noted "a marked lack of endeavour on the part of the officials to see that they [the children] used English in preference to the vernacular."¹⁷⁹ In other cases, however, this was part of a constructive teaching strategy. Teachers, trying to make a connection with the children that might be the beginning of their journey into Canadian culture, were found using the vernacular to give "orders and explanations of the subjects of instruction" and some clerics routinely conducted religious services in Indian dialects emphasizing perhaps the importance of religious training over more secular subjects.¹⁸⁰ In the light of that Reed, in 1890, compiled a set of regulations for the operation of the schools, including a directive on language. "The vernacular is not to be taught in

¹⁷⁷ INAC File 956/23-5, Vol. 1, General Report, St. George's Indian Residential, by H. McArthur, 12 February, 1943. Unless the correspondence between the churches and the Department concerning requests for approval of proposed hirings, this requirement was neglected.

¹⁷⁸ See a collection of similar comments: INAC File 501/23-5-076, Vol. 1, To Rev. O. Chagnon, O.M.I, from P. Phelan, 6 June, 1938, To Rev. O. Chagnon O.M.I. from J.D. Sutherland, 13 May, 1936, To Rev. O. Chagnon O.M.I, from J.D. Sutherland, 30 May, 1934 and To Rev. O. Chagnon O.M.I, from R.T. Ferrier, 23 May, 1929.

¹⁷⁹ N.A.C. RG 10 Vol. 3674, File 11422-5, MR C 10118, To Deputy Superintendent General of Indian Affairs from H. Reed, 4 August, 1890.

¹⁸⁰ Lascelles, page 31.

any schools. At most the native language is only to be used as a vehicle for teaching and should be discontinued as soon as possible.”¹⁸¹

Significantly, two statements, both made by Reed - it would “be found best to rigorously exclude the use of Indian dialects”¹⁸² and “The vernacular is not to be taught in any schools. At most the native language is only to be used as a vehicle for teaching and should be discontinued as soon as possible.”¹⁸³ – constituted Department language policy. The first was directed to students and the second to teachers. Following those twinned pronouncements, there was little direct mention of a language policy. Even the 1911 contract, in which the churches pledged “to support, maintain and educate” the children “in a manner satisfactory to the Superintendent General” was silent on the issue of language.¹⁸⁴ The language policy enunciated by Reed was never replaced by a different language policy.

In summary then, as with many other issues in the school system, which touched on how the children were supported, maintained and educated, there was, with respect to language training, no concerted, consistent oversight and management by the Department’s senior staff and thus the normative language practice and the implementation of Canada’s language policy, was set in the field, by individual school administrators themselves. As a result, a system-wide picture of language instruction is a patchwork of differing approaches shifting decade by decade, Principal by Principal. Within that shifting pattern there was, however, at least one arresting constant. Whatever method was adopted in a school, constructive permissiveness, neglect or, as was all too often the case, violent repression, (and that was not consistently monitored) the result was the same - a level of language proficiency that was far below the desired standard. This had disastrous consequences for the whole assimilative undertaking. The fact that many in the Department felt that the use of English and French remained at best nor more than “a classroom

¹⁸¹ N.A.C. RG 10 Vol. 3818, File 57799, MR C 10143, To Superintendent General of Indian Affairs from H. Reed, 14 May, 1889 and see, for example: N.A.C. RG 10 Vol. 6348, File 752-1, MR C 8705, Extract of Agent G.H. Graham’s Report, August, 1923 and N.A.C. RG 10 Vol. 3836, File 68557, MR C 10146, Suggestions for the Government of Indian Schools, H. Reed, 27 January, 1890.

¹⁸² N.A.C. RG 10 Vol. 3818, File 57799, MR C 10143, To Superintendent General of Indian Affairs from H. Reed, 14 May 1889.

¹⁸³ N.A.C. RG 10 Vol. 3818, File 57799, MR C 10143, To Superintendent General of Indian Affairs from H. Reed, 14 May, 1889 and see, for example: N.A.C. RG 10 Vol. 6348, File 752-1, MR C 8705, Extract of Agent G.H. Graham’s Report, August, 1923 and N.A.C. RG 10 Vol. 3836, File 68557, MR C 10146, Suggestions for the Government of Indian Schools, H. Reed, 27 January, 1890.

¹⁸⁴ NAC RG 10, Vol.6039, , File 160-1, J.D. McLean to Sirs (Church representatives), 25 November 25, 1910 It covers a copy of the contract to be signed]

exercise, and quite unnatural to them”¹⁸⁵ was the most profound critique that was made of the educational performance of the system for it revealed that with respect to what was after all the most critical part of the strategy of cultural transformation, the element that was to erase and replace the children’s “savage” cosmology, the schools, and the Department fell far short of their goal.

There was, finally, a renewed urgency with respect to language training when, after the war, the Department took direct control of teacher hiring, evaluation and remuneration and the move to integration revealed the need to prepare students for unilingual provincial classrooms. Once in control, the Department would find how difficult it was to get qualified teachers who would remain in the residential system. But by then the emphasis was on closing the residential system; and Departmental energy and attention were directed to provincial arrangements – to integration to achieve its assimilative goal.¹⁸⁶

It would become increasingly apparent, that before and throughout the Class Period, the Department’s general failure to reach its primary goal through what was its primary methodology - making English or French the first language of Indigenous students in the school system - was only, as it were, one side of a full language narrative. For though a failure in reaching its transformative design, that educational intention did have tragic consequences for children (see below in the section The Residential School Report Card) and again the issue of language played a key role.

VI. Integration: evolving to closure, 1946-1986.

The mid 1940s was a significant period in the history of residential schools, for in those years the Government and Indian Department were moving to radically recast Indian education strategy. In what was to be a new system, critical aspects remained; assimilation was yet the ostensible goal – though doubts were growing in the face of mounting evidence of harm having been, and continuing to be done, to individuals and communities. Noticeably, new voices were heard, and,

¹⁸⁵ INAC File 501/23-5-076, Vol. 1, To ... from J.D. Sutherland, 13 May, 1936.

¹⁸⁶ INAC File 6-37-1 Vol. 2, Notes on the Highlights of Indian Affairs Operations from 1957 to Date, 6. And NAC RG 10, Vol. 8596, File 1/1-13 MR C 14226, B. Neary to Deputy Minister, 13 June, 1950] Once in control, the Department would find, how difficult it was to get qualified teachers who would remain in the residential system. [see below]

indeed, listened to - those of ex-students and from an increasingly respectable source – social scientists.

And importantly, the character of the system changed. In a process which envisioned the complete closing of the system, many residential institutions were, as it were, re-purposed – some became residences for children who in the day attended provincial schools, others changed from educational to social welfare institutions and a wholly new program, a boarding home program was launched, often with white, urban “foster parents.” This was a popular initiative in the Department, on the basis of cost and the general integration strategy being followed. Using existing provincial high school places obviated the need to meet the growing demand for high school education by creating Department high schools, which would have tied the government to the continuation of a residential system. That popularity was born out by the numbers. By 1969 when there were 7,704 children in residential schools, there were an additional 4,000 students in the boarding program.¹⁸⁷ And in the end, the Federal government did find its way out of the residential school system.

Unfortunately, the same cannot be said of survivors. For many, they could not escape the schools’ stubborn embrace. The school was not only their childhood, it was who they became. It was, as one ex-student of the Mohawk Institute realized, a profoundly totalizing experience. “Everything that intertwines in my life, the main fibre is the residential school, where I can go back to find the source. But it’s always the residential school. I had no other experience. That’s it. I never had no experience except the residential school in my forming years.”¹⁸⁸

In this period, education, unlike many other elements of Indian policy, child welfare being the exception, was a matter of radical change. At the heart of reform was an agreement amongst policy makers in the Department and Parliament supporting a central recommendation of the Joint Committee of the House of Commons and Senate on Indian Affairs [1946-1948] - “that wherever and whenever possible Indian children should be educated in association with other [non Indigenous] children.”¹⁸⁹ Thereafter, Departmental efforts and resources were redirected

¹⁸⁷ INAC File 1/25-1, Vol. 22, To Mr. Bergevin from R.F. Davey, 15 September, 1969.

¹⁸⁸ E. Graham, *The Mush Hole. Life at Two Residential Schools*, Hefle Publishing Waterloo, 1997, page 379

¹⁸⁹ NAC, RG10, Vol. 8233, File 1/6-1 (1)], MR C 14160, B. Neary, Memorandum to the Director, 29 November, 1949.

from the residential system to integration, that is “transferring Indian children to provincial schools and federal schools to provincial administrative school units.”¹⁹⁰

The Department had been in support of this idea for some time. In 1942, H. McGill, the Director of the Indian Affairs Branch, informed the Deputy Superintendent General, that “I hold, and have long held the opinion that the educational requirements of the great majority of the Indians could be met by day schools.” He went on to reveal one of the key reasons for his support. The conversion to day schools, he assured his superior, would be “to the decided benefit of the Indians and to the financial benefit of the taxpayer.”¹⁹¹

As usual, then current financial considerations were key, but, additionally, the future of Indian education was an increasingly difficult challenge. As the post-war population began a period of remarkable growth, there were, nationally, an additional 300 school age children each year necessitating, it was calculated, five new day schools and one residential school. Given these realities, the rising demand for places and the state of disrepair of so many of the schools and, in a post-war climate of “economy and retrenchment,” integration seemed the only sensible way forward. And to that end, a succession of Ministers took the position that the federal government could discharge its “responsibilities toward the Indian people with respect to education ... only with the full cooperation of the provinces.”¹⁹²

Integration, for the Department, proved to be a prolonged and complex task. There were, in 1948, seventy-two residential schools with an enrollment of 9,368. The process of moving children from a residential school to a provincial day school required, beyond negotiating an agreement with the provincial Department of Education or local school board, the building of an enabling infrastructure – school buses and on-reserve roads, at the very least, and even “village-ization” in some places.

However, the process of student transfer to provincial classrooms and the resultant closure of a residential school was, in many cases, much more involved. Some reserve communities adjacent to non-Indigenous communities were relatively straight forward – Six Nations/Brantford, for

¹⁹⁰ INAC File 1/25-1, Vol. 35, Educational Services for Indians, 24 March, 1969, p1.

¹⁹¹ N.A.C. RG 10 Vol. 6479, File 940-1 (1-2), MR C 8794, To Deputy Minister from H. McGill, 25 November, 1942.

¹⁹² NAC RG 10, , Vol.6479, File 940-1 (1-2), MNR C 8794, R. Hoey to Dr. McGill, 16 November, 1942] and [NAC RG 10, Vol. 6205 , File 468-1, MR C 7937 R Hoey to Dr. Dorey 29 May 1944 and INAC File]601/25-2, Vol.2, R.F Davey, Residential Schools – Past and Future, 8 March, 1968.

example. However, there were a myriad number of community circumstances that complicated matters. Some far northern communities, such as the Cree in northern Quebec, were not “communities” in the southern sense. Families-being-on-the-land was not an unfamiliar norm, requiring first a program of settlement and thereafter, at the point at which there was a stable “urbanized” population, the building of a day school. In the meantime, as the Six Nations school was emptied by integrating children into Brantford day schools, its existence was prolonged as Cree children were transported to the “Mush Hole” (Shingwauk IRS), which continued to operate until 1969.

Depending on various factors, each region had features imposed by geography, human relations and the economy of the region, and thus a snap shot of the system as a whole, at different points in time, would show a differing combination of old residential schools, and some schools that combined residential and day schools with a preponderance of day students and hostels for students brought in from distant communities. Significantly, some schools “combined hostel, residential and day school”¹⁹³

The governance of the system changed, as well. Initially, the Department had dealt directly with local school boards, but, beginning in the early 1960s, moves were made for “the creation of an overall agreement respecting the education of Indian children in public schools”¹⁹⁴ which would allow the provinces to accept responsibility for the integration program in exchange for certain financial guarantees from the federal government. That proposed relationship, accepted in principle in 1965, led to a series of negotiations with individual provinces. The Saskatchewan agreement can stand as a general outline of the others. At the heart of the agreement, the province was given what Churches never had – total control of the schools in which Indigenous children were students, the employment and supervision of the teaching staff, and “all matters relating to the curriculum.”¹⁹⁵ The Saskatchewan agreement was signed in 1969 – the year of the White Paper. In light of that general strategy, a confidential Departmental memorandum declared bluntly, the agreements would allow “the Department to relinquish the responsibility of actively providing educational services to Indians.”¹⁹⁶

¹⁹³ INAC File 601,25-2 Vol. 2, R.F Davey, Residential Schools – Past and Future, 8 March, 1968

¹⁹⁴ INAC File 6-21-7, Vol.1 H. Jones, Memorandum to the Minister, 7 May 1963.

¹⁹⁵ INAC File 601/1 Vol. 4, Memorandum of Agreement, 15 December 1969.

¹⁹⁶ INAC, File 1/25-1 Vol. 35, Educational Services for Indians, 24 March, 1969]

There was one additional important directive. In an address to the Council of Ministers of Education, John Chretien, the Minister of Indian Affairs in 1972, told Provincial Ministers assuming educational responsibility “was not a simple case of opening the school door to a particular group of children , assigning X number of seats, closing the door and carrying on as before.” Rather it was expected that provincial departments of education could “establish guidelines and policies which will provide the framework in which your educators can develop adequate and appropriate education programs” – in short a curriculum of “social and cultural relevance”¹⁹⁷

Realistically, such a development on the part of provinces was a considerable pedagogical challenge and that process is still not complete. Children so integrated would find themselves in classrooms which for many years would isolate them from language and culture.

From 1948 forward, the Department pursued cost reductions by changing the mode of delivering education. This was, as McGill had declared in 1942 one of the aims of integration. There was, however, a second half to his benefit promise - that integration would be “to the decided benefit of the Indians ...”¹⁹⁸ What the benefit was to be was simple enough. Integrated education, it was held, was a superior assimilative vehicle. The “best hope of giving the Indian an equal chance with other Canadian citizens to improve their lot and become fully self- respecting is to educate their children in the same schools with other Canadian citizens.”¹⁹⁹ That educational context would “quicken and give meaning to the acculturative process through which they are passing.” What had once been the expectation attached to residential schools, was now, in the Department’s view, the justification for integration.

There were here at least two contradictions in view of the initial assimilation process. First, even though integration envisioned children living at home, the baleful influence of “savage” parents was largely ignored and secondly, as the Indian Act still maintained the enfranchisement provision, suggesting that the proper road for the educated individual was not back to but away

¹⁹⁷ A Venture in Indian Education, Minister’s Address... June 23, 1972 DIAND File E4700-1 (ENCLOSURE), Vol.1 Crown 120.00144A See, at footnote 200 Chretien’s quite negative view of the Departments education program which led to this directive.

¹⁹⁸ NAC, RG10, Vol. 6479, File 940-1 (1-2), MR C 8794, H. McGill to Deputy Minister, 25 November, 1942.

¹⁹⁹ NAC, RG 10, Vol 7185, File. 1/25-1-7-1, J Pickersgill to Rev. R Reed, , 5 July 1956.

from the reserve - his or her acquired skills would likely be applied, not on the reserve, but in the non-Indigenous economy.²⁰⁰

There would be dissenters - those who doubted McGill's promise. One in particular, Jean Chretien, the Minister of Indian Affairs, appearing before the Council of Ministers of Education, in 1972, declared that integrated education was more of the same; it was, a student informed him, "a white-wash ... a process to equip [students] with values, goals, language, skills needed to succeed in the dominant society." There, Chretien declared, was still "very little recognition of the importance of cultural heritage in the learning process." And therefore, "children nevertheless had to endure a cookie cutter education from well-intentioned teachers, who were determined to turn out functional and identical Canadians." As such, education, "of the white wash variety [could] serve no purpose in a child's world ... Rather it alienates him from his own people."²⁰¹

As part of its integration apparatus, the Department made a gesture to parental involvement. Beginning in 1956, school committees, made up of community members, were set up "to stimulate parental and community interest, and to provide experience for the further involvement of Indians in the management of education." They were "advisory boards" able to make recommendations to the Department on an array of subjects – from school lunches to the annual operating budget. But while the number of these committees grew, (there were 184 by 1971) over time, there was no augmentation of their authority; particularly, they were given no involvement in the most critical matter, what had always been the engine of the drive to assimilation – the curriculum. And thus, as Chretien commented at the same Council meeting, parents "remained on the fringe powerless to influence policy ... helpless witnesses to the failure of their children."²⁰²

As statements like Chretien's suggest, there was, in the post-White Paper era, a growing gap between the dedication to integrated education, and its assimilationist assumptions, and more

²⁰⁰ "INAC File 6-2-21, Vol.3, Statement Presented by R.F. Davey, on Behalf of the Indian Affairs Branch To the Standing Committee of Ministers of Education, 25 September 1963 and NAC RG 10. Vol. Vol. 8576, File 1/1-2-21, MR C 14215, Regional School Inspectors Conference, 1956, remarks by H. Jones.

²⁰¹ NAC RG 10. Vol. Vol. 8576, File 1/1-2-21, MR C 14215, Regional School Inspectors Conference, 1956, remarks by H. Jones. INAC, File501/25-1, Vol. 9 , Minister Address to the Council of Ministers of Education, 23 June 1972, p. 16.

²⁰² INAC File 4745-1 Vol.1, Indian Education Program under the authority of Jean Chretien Minister of Indian Affairs ... Ottawa 1972, p. 16.

culturally supportive ideas. Such statements pointed to the fact that the discourse on Indigenous education, and, indeed, the future of Indigenous communities as permanent entities in the Canadian mosaic, was a part of the growing conversation amongst First Nations leaders and non-Indigenous people desirous of leaving in the past old, racist assumptions and colonial structures. In the early 1960s there was an indication that even in the Department the idea that citizenship and aboriginality were not mutually exclusive began to appear. In 1963, the Director of the Education Branch, R.F. Davey, continuing that theme, predicted it would be “Indians as individuals and communities” that became “members of the Canadian Federation.”²⁰³

The number and variety of individuals and organizations taking a culturally supportive position after 1969, working to define new principles and structures that would enable the creation of a permanent place for Indigenous people in the Canadian mosaic, not as creatures of the Indian Act but as respected treaty people, increased rapidly. A new, determined alliance grew combining Indigenous leaders, survivors, academics, lawyers, sympathetic politicians, social scientists and even residential school churches. This was in large part rooted in a realization in the 1970s and 80s of the harm done to students, the harm they carried back to their communities and, thereafter, the inter-generational harm that fell upon children who had never seen the inside of a residential school.

Chretien certainly played a role in this awakening and in terms of education he was as good as his word. In 1972, he accepted the National Indian Brotherhood’s position paper Indian Control of Indian Education, which according to Irwin Goodleaf, a Special Assistant to Chretien, would enable “the transfer in whole or part, of the administration of education programs ... to band councils or their delegated educational authorities”.²⁰⁴

On the ground, as it were, there was movement towards change. Some school inspectors and, indeed some of the Protestant education authorities, lobbied the Department for the development of a special Indian curriculum. The Department undertook a survey to identify texts that were objectionable to Indigenous people and steps were taken to remove them from schools and research was commissioned to address “the absence from the school curriculum of an Indian

²⁰³ NAC RG 10 Vol. 8576., File 1/1-2-2-21, MR C 14215, Regional School Inspectors Conference 21-23 November 1956 - see Remarks by H. Jones] and INAC File 6-2-21, Vol.3, Statement Presented by Mr. R.F. Davey on behalf of the Indian Affairs Branch to the Standing Committee of the Ministers of Education, 25 September, 1963, p2.

²⁰⁴ INAC File 1/256-1-0, I Goodleaf to ... 27 February, 1974.

cultural component.” However, these were small, hesitant steps and, significantly, no special curriculum was created that would have facilitated the movement of Indigenous people as Indigenous people from wardship to citizenship. And there was no doubt that children would not receive such in an integrated provincial school.²⁰⁵

In fact, there was a hardening of at least one critical aspect of the old curriculum in service to the integration process - language training. Of course, learning a language of civilization was a key part of the original vision of the acculturative process, the template upon which the curriculum and pedagogy had been cut. Integration reinforced that requirement as the Department realized that “the most formidable handicap that faced the Indian child entering [a provincial] school.” was the requirement to be able to function in English or French. And to that end, the Department emphasized a “language arts” program and employed regional language supervisors who would help “children overcome any language difficulties” in the belief that “much of the progress in Indian education” was to be realized by “improved methods of language instruction.” A circular distributed to teachers instructed them to devote an extra half-hour each day to language training “in order to prepare Indian pupils for transfer to non-Indian or provincial schools”²⁰⁶

Throughout, the post war period, the Department worked to redirect the flow of school applicants away from residential schools to provincial classrooms. But it also worked at the other end of the problem – reducing the number of applicants to existing residential schools. That effort, combined with levels of poverty in the 1960-1980 period that Munro’s Survey had documented, exacerbated by a “staggering birth rate,” resulted in the growth in the number of parents unable to “assume responsibility for the care of their children” owing, the Department claimed, to “such things as alcoholism in the home, lack of supervision [and] serious immaturity.” To stem a growing wave of applications, new regulations for residential school admission [1954, 1956 and 1969] closed entrance to all but “students from a family where a serious problem leading to the

²⁰⁵ INAC File 6-21- 1, Vol.1, L. Fortier, Memorandum for Major MacKay, 26 January 1951 with attached Memorandum for Presentation to the Minister of Citizenship and Immigration., 23 January, 1951 and INAC File 4745-1 Vol. 1, Indian Education Program ,1972, p.12.

²⁰⁶ INAC File 1/25-1, Vol.22, R.F. Davey, Memorandum on Education, 15, September 1969 and NAC RG 10, Vol. 7180, File1/25-1 (9), A.R. Jolicoeur to Quebec Regional Office, 26 February, 1962; and NAC RG 10, Vol.7182, File 1/25-1 (13) . R. Davey to E. Walter , 19 February, 1964.

neglect of children exists.” As a result, some residential schools took on a social service function; they became catchments for “neglected” children.²⁰⁷

There was no systematic tracking of this phenomenon. There was one survey completed in 1953 that disclosed that 4,313 of the 10,112 children then in residential schools were either orphans or came from broken homes. In subsequent surveys of the composition of the residential school population, similar information was not collected. But some disparate figures do exist in Departmental files that give a sense of the magnitude of the development. An “*Analysis of Residential Schools - British Columbia*” in 1961 calculated that fully 50 per cent of the children were enrolled “because home conditions have been judged inadequate.” It further suggested that that figure was “likely a reasonable guide to the situation in other regions.”

Five years later when there were 9,778 children enrolled in residential schools a confidential report estimated that throughout the system 75 per cent of the children were “from homes which by reasons of overcrowding and parental neglect or indifference are considered unfit for school children.” Another Departmental official’s belief that “neglect” was a growing problem in his region, was supported by estimates from Gordon’s school. In 1960 some 50 per cent of the children were from “broken homes ... [and] immoral conditions.” By 1974, the number had risen to 83 per cent. The Department’s Maritime Regional Director, F.B. McKinnon, reported in 1967 that “practically all the children now in residence have been placed there mainly for reasons other than to facilitate school attendance.” Indeed, the Minister, Ellen Fairclough, in 1962, went so far as to inform one of her Parliamentary colleagues that the schools were increasingly “operated essentially [for] orphans, children from broken homes and for children remote from day schools.”²⁰⁸

For those children who found themselves in provincial classrooms there was another difficult reality. Integration was a continuation of the Department’s assimilative policy; integrated

²⁰⁷ [INAC, File 675/35-1-0189 , Vol. 2 . N. J. McLeod to R. Davey, 8 December, 1960] INAC File 501/1, Vol. 5 29 April 1971.] [INAC, File501/25-2 -065 See: The Application for Admission to Residential School forms]

²⁰⁸ N.A.C. RG 10 Vol. 8758, File 772/25-1, MR C 9702, To E. Wooliams M.P. from E. Fairclough, 12 March, 1962. And INAC File 211/6-1-010, Vol. 6, To All Superintendents from F.B. McKinnon, 30 January, 1967 and 10 March 1967 and INAC File 6-21-1, Vol. 2, 13 December, 1956. INAC File 901/29-4, Analysis of Residential Schools - British Columbia, 8 December, 1961 and INAC File 40-2-185, Vol. 1, Relationships Between Church and State in Indian Education, 26 September, 1966. See also: File 671/25-2, Vol. 3, 24 January, 1974 and File 675/25-13, Vol. 2, 16 June, 1975 and from R. Martin 24 March, 1975.

INAC File 675/25-1-018, Vol. 2, To Chief Education Division from N.J. McLeod, 8 December, 1960 and File 675/25- 13, Vol. 1, 18 January.

children found themselves in a daily context perhaps as foreign and threatening to their culture, language and self-esteem as has been residential schools.

For the Department, in 1970, the residential school road had a little short of three decades to run, though a decreasing number of residential schools continued to operate. Two tracks had been followed; one led to closure through the integration of children into provincial schools or the placement of children on reserve-based day schools (be they day schools proper or former residential schools) and the other led to local control of a small number of residential schools. Twenty-three such school transfers to First Nations authorities were contemplated but only five were carried through.

More accurately, the next stage of the history of Canada's Indian education project began; that being the sad retrospective evaluation of the legacy of the Department's educational system - of what had been accomplished, how that was to be explained. Two issues are fundamental to such an analysis: alienation and language loss.

VII. The Residential School Report Card: "like a disease ripping through our communities."

A. The Residential Schools were a Failed Educational Enterprise

The Government of Canada in its own review of the schools; students of the schools themselves and social scientists all concluded that the Residential Schools were a dismal failure.

In December 1992, Grand Chief Edward John of the First Nations Task Force Group forwarded to the Minister of Justice, Kim Campbell, "a statement prepared and approved by B.C. First Nations Chiefs and Leaders." In it they pointed out that

The federal government established the system of Indian residential schools which was operated by various church denominations. Therefore, both the federal government and churches must be held accountable for the pain inflicted upon our people. We are hurt, devastated and outraged. The effect of the Indian residential school system is like a disease ripping through our communities.

The Chief's conclusion was not a rhetorical flourish; it was literally true. By the mid-1980s, it was widely and publicly recognized that the residential school experience in the north and in the south, like tuberculosis and measles in earlier decades, had and continued to decimate communities. The schools were, with the agents of economic and political marginalization, part

of the contagion of colonization. In their direct attack on language, beliefs and spirituality, the schools had been a particularly virulent strain of that imperial epidemic sapping the children's bodies and beings. In their life after school, many adult survivors, the families and communities in which they lived, all manifest a range of symptoms emblematic of "the silent tortures" that continue in our communities."²⁰⁹

A Chief of the Albany First Nation told the Minister, Tom Siddon, in 1990 that

Social maladjustment, abuse of self and others and family breakdown are some of the symptoms prevalent among First Nation babyboomers. The "Graduates" of the "St. Anne's Residential School" era are now trying and often failing to come to grips with life as adults after being raised as children in an atmosphere of fear, loneliness and loathing. Fear of caretakers. Loneliness, knowing that elders and family were far away. Loathing from learning to hate oneself, because of repeated physical, verbal or sexual abuse suffered at the hands of various adult caretakers. This is only a small part of the story.²¹⁰

Such statements by Indigenous leaders, who had themselves experienced the residential schools, were consistent with the assertions of the Munro Survey, and evidence from the Department's hidden transcript - the private flow of paper by which the system was administered - reveals that the condition of the actual graduates too often confounded the optimistic predictions upon which the system had persistently rested. In fact, many of the children, as they moved on from the schools whether to their reserve homes or into provincial society, were judged, to have fallen far short of the desired mark. Whether measured by the Department on grounds of education or morality, as children, adults or parents, they could not be Canadians like all others. Rather many were yet, as their grandparents were characterized in the early days of the school system, "unfitted". In the Department's estimation they rarely exhibited the pre-requisites for assimilation: "individual acting and thinking," "individuality and self-control" and as such they were not "prepared to take their place in our democratic way of life."²¹¹

²⁰⁹ INAC File E6575-18-2, Vol. 01 (Protected), To the Honourable K. Campbell from Grand Chief Edward John, 18 December, 1992 and the attached First Nations Leaders in B.C. Call for Specific Actions Following the Bishop O'Connor Case.

²¹⁰ INAC File E6575-18-2, Vol. 4, To the Honourable Tom Siddon from [a chief], 15 November, 1990.

²¹¹ N.A.C. RG 10 Vol. 3647, File 8128, MR C 10113, To Indian Commissioner, Regina, from J.A. Macrae, 18 December, 1886. N.A.C. RG 10 Vol. 6205, File 468-1 (1-3), MR C 7937, To A. Moore from A. Mackenzie, 9 January, 1934 and INAC File 777/23-5-007, Vol. 1, To ... from P. Phelan, 24 April, 1945.

The cause did not lie in Indigenous character, culture or language. Rather, it was the school system, itself, its internal operations,²¹² acting upon defenseless children, that caused the harm. The evidence for this conclusion rests in official Departmental correspondence and in the analyses of the schools in the post-World World Two period conducted by experts supported and supplemented by the witnessing of ex-students themselves.

In short, the residential school system was a failed educational enterprise. There was little in the way of a transformational record either in providing children with knowledge and skills or in re-socializing them to become Canadian - whatever that might mean. Rather, the legacy of the schools was one of harm done to children who in many cases would live out their lives marked by dysfunction and deviance – from both Canadian and Indigenous norms.

By its own measurement, the Department was quite clear about its educational failure. R.F. Davey's education report in 1968, *Residential Schools - Past and Future*, noted that in 1945 when the system had 9,149 students there were only "slightly over 100 students enrolled in grades above 8 ... and there was no record of students beyond the grade 9 level. An even more critical study, published in 1968 by three academics, J. Barman, Y. Hebert and D. McCaskill, reviewed the period 1890 to 1950 and estimated that at least 60 percent and in some decades 80 percent of students failed to move past grade 3; they acquired no more than "basic literacy." And, the authors continued, the "... formal education being offered young Indians was not only separate but unequal to that provided to their non-Indian contemporaries." Any child receiving a residential school education whether a day or boarding student would have experienced that "unequal" formal education.²¹³

²¹² For a description and analysis of the schools - their internal dynamics: the nature of the curriculum, practical training and the half-day system, funding, pedagogy, language training, general child care and discipline - see Chapters 6,7,8 10 and 12 of *A National Crime* ...

²¹³ INAC File 601/25-2 Vol. 2 R.F. Davey *Residential Schools - Past and Future* 8 March 1968 and J. Barman, Y. Hebert and D. McCaskill. Eds , *Indian Education in Canada*, Vol. 1, *The Legacy* Vancouver, University of British Columbia Press, 1986, 9 After the Second World War there were "some improvements in our school system, "which, the Department claimed, was the reason why more students were "reaching the upper grades" - particularly high school students - see NAC RG 10, 8233, File 1/6-1 (1) MR C 14160, B. Neary Memorandum to the Director, 29 November 1949. By 1959, the number of children in grades 9 to 13 increased from none in 1945 to 2,144, and to 6834 in the next decade.²¹³ INAC File 1/25-1, Vol. 22, R.F. Davey, *Memorandum on Education*, 15 September 1969. The increase in numbers may well have been the result of the Department's policy of continuous promotion.

B. Residential Schools – a moral failure.

The educational record was not only one of academic failure but of persistent “moral” failure; it produced deviance. Agent R. Blewett, commenting, in 1913, on the record of children who had come home from Crowstand school, asserted flatly - “far too many girls graduates [were] turning out prostitutes, and boys becoming drunken loafers.”

An agent at the Blood Reserve was equally pessimistic but his comments went beyond questions of morality. Returned ex-students were, he claimed, “useless” unable to get on with life on the reserve and fell afoul of the law. It would be, he thought, “far better that they never [went] to school than turn out as the ex-pupils ... have done.” His was not the only such observation. Another agent, whose comment was forwarded to Ottawa by Martin Benson, charged: “Any lad who has never left the reserve, is at the age of 18, far better off than a lad who has been at school for years, and what is more is very much more self-reliant and able to make his living as easy again as any of these school lads.”²¹⁴

Of course, Indigenous people did not need Blewitt, or others like him, to represent the continuing realities of their children’s lives. In his 1946 brief to the Joint Senate and House of Commons Committee, Chief Jimmy J. Antoine to the Joint Senate and House of described residential school leavers who

when they quit school ... do not want to live with their parents, because their parents are poor and ignorant. So they go out to the city and town. And what next. They simply go crazy, and maybe drunkards, and make fools of themselves. And when they find out that they have not enough education through difficulty of securing a job, ... they go home to their poor parents, and bring back with them only disgrace, including bedbugs, venereal disease, and sometimes paleface babies.”²¹⁵

Such commentaries were, however, observational not analytic. That analysis came in the mid-1960s when the Department turned to professionals, social scientists, and to survivors themselves. Interestingly, the two lines of commentary were seemingly inter-woven; the conclusions of social science analysis and the often painfully frank ex-student memories were

²¹⁴ NAC RG10 Vol. 6027 File 117-1-1 MR C8147 R. Blewett to Secretary 21 May, 1913 and NAC RG 10 Vol. 3933 File 1176576-1 MR C 10164 the Agent, Blood Reserve, to Assistant Deputy Superintendent General, 18 July 1918 and NAC, RG10, Vol.3919, File 116751-1A , M. Benson to Deputy Superintendent General, of Indian Affairs , 23 June 1903. Another opinion he forwarded came from a senior Departmental official – David Laird.

²¹⁵ Carrier nation brief Special Joint Committee on Indian Affairs, Minutes and Proceedings of Evidence, 1948

mutually supportive. Together, this powerful testimony undermined the official certitudes of benefit that had been such a part of the Department's historic justification for its assimilative policy. What was left were narratives of horror – of neglect, cruelty, mismanagement, inappropriate child caring practises and widespread sexual abuse – and the resulting consequences.

First came ex-students. In 1965, the Department contacted a select group of survivors - five men and one woman of impeccable authority and character, according to the Department, having had successful careers in education, public service, broadcasting and the church. Taken together, their school terms spanned the immediate pre and post-war periods. None had much to say that was positive about the experience that they and “hundreds of others had to endure as children;” it was, in short, “an insult to human dignity.” They wrote in graphic detail of the treatment of the children: of “cruel disciplinary measures,” of children being “tied to a flag pole,” being “literally beaten and slapped by staff,” of seeing “children having their faces rubbed in human excrement” and of others being forced to run a gauntlet of students when they would be struck “with anything that was at hand.” One had “seen boys crying in the most abject misery and pain with not a soul to care – the dignity of man.” Collectively, they charged, and this got to the heart of the schools' impact on the children, that residential schooling was “really detrimental to the development of the human being” This was a profoundly disturbing critique and the fact that the Department solicited the commentaries and subsequently published and distributed them²¹⁶ established its knowledge of the evils of the system and how, ironically, the Department used such testimony to advance its own interest – the closure of the school system.

Of the comments of the ex-students, perhaps the most troubling were those detailing the consequences of the schools' general manner of parenting for the character development of the children, specifically the psychological scars students carried with them into their after-school life. These observations came, in the main, from the female ex-student, a guidance counsellor and later a leader in Aboriginal education. She argued that the size of the schools which necessitated rigid, authoritarian management led to “the most detrimental aspect of a residential school program” - the fact that the children were not “given the opportunity to make choices.”

²¹⁶ INAC File 1/25-20-1, Vol. 1, To Miss ... 16 February, 1966 and attached correspondence. The student opinions were circulated at the Conference in an unpublished pamphlet Indian Viewpoints Submitted for the Consideration of the Principals' Workshop, Elliot Lake, Ontario.

Springing from that single source was a range of problems. “Responsibility for self-discipline and decision making [was] not exercised by students ... They do not learn to take care of clothing,” and thus they “take little pride in personal belongings” and “tend to feel nothing is really theirs ... Everything is done in mass, therefore it is difficult for any student to exercise individualism.” As a result, the schools were “inclined to make robots of their students” who were quite incapable of facing a “world almost unknown to them.”²¹⁷ They were, rather than being integrated in that world, alienated.

As if it needed to add weight to her school experience and professional expertise, the Department commissioned a study by the Canadian Welfare Council of the nine residential schools in Saskatchewan then operating. In that report submitted, by George Caldwell, in 1967, inappropriate institutional parenting, leading to alienation, was again at the heart of the analysis:

The residential school system is geared to the academic training of the child and fails to meet the total needs of the child because it fails to individualize; rather it treats him en-masse in every significant activity of his daily life. His sleeping, eating, recreation, academic training, spiritual training and discipline are all handled in such a regimented way as to force conformity to the institutional pattern. The absence of emphasis on the development of the individual child as a unique person is the most disturbing result of the whole system. The schools are providing a custodial care service rather than a child development service. The physical environment of the daily living aspects of the residential school is overcrowded, poorly designed, highly regimented and forces a mass approach to children. The residential school reflects a pattern of child care which was dominant in the early decades of the 20th century, a combined shelter and education at the least public expense.

In his view, the Department should now concern itself “primarily with the education of Indian children and remove itself from the operation of children’s institutions such as the present residential schools.”

C. Residential Schools’ Destructive Impact on children’s Indigenous Identity “..left hanging in the middle.”.

While the preponderance of the report dealt with the failure of the school system to achieve its transformative re-socializing goal, Caldwell devoted space to the consequences of that failure for the children. He found what he characterized as a “most disturbing result;” children on leaving

²¹⁷ INAC File 1/25-20-1, Vol. 1, To Miss ... 16 February, 1966 and attached correspondence. Copies of this exist in Church Archives.

school were ill-prepared for work and life in Canadian society and, he added, ill-prepared for the unique reality that faced a former student. Students, the product of both worlds, that of their parents and of their school, were caught in “the conflicting pulls between the two cultures” – the “white culture of the residential school” and subsequently “the need to readapt and readjust to the Indian culture.” Central to the “resolution of the impact of the cultural clash for the ... child is an integration of these major forces in his life.” Unfortunately, “few children are equipped to handle this struggle on their own,” though they were left to do just that – to deal with the trauma of their school experience, their alienation both from their culture and that of the white world around them.²¹⁸

Caldwell’s findings, especially the phenomenon of children caught in the middle, echoed the observation of the Cree leader, John Tootoosis, who had spent four years at Delmas residential school in Saskatchewan.

... when an Indian comes out of those places, it is like being put between two walls in a room and left hanging in the middle. On the one side are all the things he learned from his people and their way of life that was being wiped out, and on the other side are the white man’s ways which he could never fully understand since he never had the right amount of education and could not be part of it. There he is, hanging in the middle of the two cultures and he is not a white man and he is not an Indian.²¹⁹

Other ex-students added sorrowful details of their experience of alienation. In his autobiography, Arthur Bear Chief gives a sense of his isolation, even from his own family, and his feeling of overwhelming, deep personal failure – highlighted by alcoholism and failed relationships. His after-school life, despite a successful career as a public servant, was a “... Lifetime of Hell.

I am sitting here tonight – three days before Christmas in 2010 – alone in my basement. Nobody wants to have anything to do with me because I have been drinking ... So once again I am left by myself because I am not wanted. I have messed up so badly in my life that I cannot even be a father or a husband to anyone.²²⁰

Caldwell did not say, and the Department did not ask, how the condition of “hanging in the middle” had played itself out, how successive generations of school leavers had fared and what

²¹⁸ INAC File E4974-1 Vol. 1, The Caldwell Report, 31 January, 1967 and INAC File 1/25-13-2, Vol. 1, To ... from G. Caldwell, 18 July, 1967.

²¹⁹ J. Sluman and N. Goodwill Biography of a Cree Leader Golden Dog Press, 1982.

²²⁰ A. Bear Chief, My Decade at Old Sun, My Lifetime of Hell, Athabaska University Press, Edmonton, 2016, p 5.

had been the effects of that condition not only on their lives but also upon their families and the children they raised. Subsequently, as outlined below, other experts, and other ex-students provided additional insight into that reality. Caldwell concluded that his Saskatchewan findings could be replicated in schools across the system.²²¹

Parallel to the Caldwell study, the Department adopted an on-going study²²² focussing on the north and again on the issue of alienation and deviance. The pattern of mutually supportive conclusions drawn by experts and students, seen in the south, was repeated and together they provided an increasingly focused and sophisticated understanding of what happened to many children within the confines of the school, the burdens they carried on leaving, and subsequently, if they did return home, the burdens that would be carried by families and community members. And, finally, it became apparent, on the basis of academic and survivor testimony, that much of the weight of those burdens was a product of physical mistreatment, the neglect of the children's emotional needs, rigid regimental parenting, and the common school experience flowing from the schools' attack on the children's language and culture, as well as the widespread sexual abuse of many students.

The study authored by Charles Hobart was based upon psychological surveys of students in the Mackenzie district of the NWT. Of the 818 children Hobart observed, 353 attended residential schools and were subject to physiological, psychological, cultural and moral disruption - the most pronounced and negative being registered amongst children from less acculturated backgrounds, with parents still on the land, for example. Their school experience was both "disorienting and diseducative." For these children, Hobart concluded, the "potential benefits from academic training ... are vitiated by the conflict they experience between the life for which school prepares them and the life their parents lead and anticipate for the children." As Caldwell had noted in his Saskatchewan study and Tootosis in his memoir, the northern children Hobart tested, could not fuse the two conflicting cultural influences in any positive way. The Inuit ex-students were, metaphorically, Hobart wrote, "unable to integrate English words with a previously known Eskimo melody." And thus, and of greater consequence when it came to issues of child welfare particularly, to the perspectives that social workers would form, there was "a

²²¹ INAC File E4974-1 Vol. 1, The Caldwell Report, 31 January, 1967 and INAC File 1/25-13-2, Vol. 1, To ... from G. Caldwell, 18 July, 1967.

²²² The initiating Department was the Department of Northern Affairs Natural Resources (which became Indian Affairs and Northern Development in 1966) its Northern Co-ordination and Research Centre.

minimum of carry-over from one life to the other.” Thus, Hobart claimed, “girl graduates from the home economics training at Yellowknife very often keep their homes with the same disorderly, dirty and unhygienic abandon as those who have not had such training. Their school training relates to a white world which they experienced as part of a completely different way of life, unrelated to their own homes.” They were alone and helpless in that dilemma and the result. Hobart concluded “It is from this group that many of the frustrated, hostile and deviant people ... are recruited” and live out dysfunctional lives increasingly evident in urban centres.

D. Alienation from Parents and Culture.

Hobart, however, went further than generalized descriptions of student alienation. His analysis probed the roots of dysfunction and deviance which he found in what had been, since Davin’s analysis, the key element in Departmental educational policy - separation, in attitudes “we would expect to find in children deprived, at the early age of six or seven, of their mother’s love and care.” The resultant flowering of a post-school, “coherent” pattern of behaviour was “a picture of an unhappy, dissatisfied, unadjusted child.” That picture, “reported by two thirds or more of the parents,” included “Disobedience and disrespectfulness” to elders, the consequence in part, Hobart concluded, of a wholly white school curriculum which implied that Aboriginal knowledge was unimportant. “When the children ...discover that their parents are almost completely unversed in these white learnings, which they themselves know by the age of nine or ten, a major loss of respect for parents seems almost inevitable.” Fighting with other children was another worrisome element of the generalized pattern – a sign that, for Hobart, reflected “the breakdown of the traditional internalized controls against aggressive behaviour in the school situation where the children are encouraged to be competitive.” The longer the child was in school, “the more problem behaviour he tended to exhibit” and the further the child drifted from community norms. Some of this behaviour tended to die out over time, but “disrespectfulness, uncooperativeness, and disobedience tended to increase with age.”

Hobart noted another worrisome marker of the school experience - a raucous signifier of the apparently deviant character and behaviour of the young, adult ex-student. There was in their manner what was assumed to be a tendency towards juvenile delinquency evidenced by their adoption of the “adolescent sub culture found in provincial Canada: clothing, food and musical tastes, dance steps; interest in sports, motion pictures, movie stars, rock bands and ‘comic

books.’ Their “black leather jacket style,” that would, of course, attract the attention of welfare and police officials, set them apart from the life and values of their caribou-clothed parents as well as those middle class values that the school tried to inculcate. Hobart noted the emergence of what in larger urban centres throughout North America was a common post-war phenomenon – a teenage sub-culture, the gang. Gangs in Aklavik were “native gangs of mixed ancestry” Indian and Inuit, where the “mutual respect for toughness, drinking ability and games such as pool, help bind the ... members together.” Finally, police, court officials and child welfare authorities would also take note of school induced “changes in morality,” some of which violated Aboriginal and non-Aboriginal norms, again making the children deviants from both cultures. These, Hobart noted, included “sneakiness, lying, stealing, smoking, drinking and premarital pregnancy.”²²³

The testimony of ex-students paralleled the findings of those experts. They, too, spoke of alienation, of losing one’s place in ones’ own culture and not having one in the other. In his autobiography, published in the same year as Hobart’s study, the political activist, George Manuel, the first president of the National Indian Brotherhood, included memories of his residential school passage. He remembered the violent parenting that separated him and other children from their families, and the disrespect they felt for their grandparents and their traditional knowledge. On leaving school

Our values were as confused and warped as our skills. The priest taught us to respect them by whipping us until we did what we were told. Now we would not move unless we were threatened with a whip. We came home to relatives who had never struck a child in their lives. These people, our mothers and fathers, aunts and uncles and grandparents, failed to represent themselves as a threat when that was the only thing we had been taught to understand. Worse than that, they spoke an uncivilized and savage language and were filled with superstitions. After ... learning to see and hear only what the priests and brothers wanted us to see and hear, even the people we loved came to look ugly.²²⁴

²²³ Charles Hobart “Some Consequences of Residential Schooling” in *American Indian Education* eds R. Merwin et al. Arizona State University. Tempe, 1974.

²²⁴ G. Manuel and M. Posluns, *The Fourth World* (Don Mills, Collier-Macmillan Canada Ltd., 1974), page 63-67 and see the memoir of Mary Carpenter below.

E. The Environment of Fear throughout the Generations: Ever-Present Risk of Sexual Abuse with no Protection

Neither Caldwell nor Hobart investigated the question of sexual deviance; Hobart came the closest when referring to “premarital pregnancy.” By and large the Department, itself, was silent on this issue and it was not the Department that brought this into the light, claiming, as did a senior official when that truth was revealed fully, that the “sad thing is that we did not know it was occurring. Students were too reticent to come forward. And it now appears that the school staff likely did not know, and if they did, the morality of the day dictated that they, too, remain silent”. Departmental staff, it was claimed, “have no record or recollection of reports – either verbal or written.”²²⁵

However, while there is little mention of sexual abuse in the files, that is not necessarily an indication the Department “did not know.”²²⁶ There were cover ups. For example, in 1912, at the Kuper Island school two young girls had been sexually “polluted.” Inspector W. Ditchburn commented that the incident “it has been kept from the public, and I trust” “in the interest of the Department’s educational system, that it will remain so.”²²⁷ And what was “kept from the public” at times included both Ottawa and even church headquarters. Miss L. Affleck, a teacher at the Round Lake school was fired by her Principal for disloyalty in that she had written to the church headquarters revealing the actual conditions in the school. Subsequently, she charged that deception was conscious and well organized – “To almost everything at Round Lake there are two sides, the side that goes in the report and that inspectors see, and the side that exists from day to day.”²²⁸ Departmental hesitancy to reveal the whole truth, which continued past the closing of the system, was not matched by school survivors. Many were not in the end “too reticent to come forward” as “hundreds of individuals,” (including Chief Phil Fontaine) from 16

²²⁵ INAC File E6575-18, Vol. 10, To J. Fleury, Jr. from J. Tupper, 19 June, 1990.

²²⁶ There are a few occasional comments, often vague, in Departmental records relating to the immoral treatment of children. N.A.C. RG 10 Vol. 3920, File 116818, MR C 10161, 4 June, 1896, Vol. 3922, File 116820-1, MR C 10162, 25 February, 1905, Vol. 6251, File 575-1 (1-3) and MR C 8645, 1 February, 1915, Vol. 6318, File 657-1, MR C 8692, Crime Report, 25 July, 1924 and Vol. 6309, File 654-1 (3), Police report and affidavits, 6 February, 1947.

²²⁷ 217 N.A.C. RG 10 Vol. 6455, File 885-1 (1-2), MR C 8777, To Secretary from W. Ditchburn, 31 October, 1912.

²²⁸ 217 N.A.C. RG 10 Vol. 6455, File 885-1 (1-2), MR C 8777, To Secretary from W. Ditchburn, 31 October, 1912 and N.A.C. RG 10 Vol. 6332, File 661-1 (1-2), MR C 9809, To W. Graham from L. Affleck, 15 November, 1929.

different schools, responding to the abusive conditions in their lives and communities, came forward with accounts of abuse.”²²⁹

Janice Acoose, who attended Cowessess school in the late 1950s, recalled being “terrified of hearing the footsteps that regularly crept up the fire escape to our dorm” and then, in the dark, “listening to the little girls frantic whisperings, muffled screams, and desperate cries.”

Art Collison, an Edmonton Indian Residential School student, told of “swimming in the river and the preacher [who] wouldn’t let anyone play in the water with their shorts on ... everyone had to play in the water naked.” Soon, “a couple of Native boys went back to their hometown because they were feeling sick. It was found that their rectums were infected and that the preacher had been molesting some of the boys. ... I was very fortunate that the preacher didn’t touch me.”²³⁰

The supporting voices of experts intertwined with this painfully recalled testimony – experts working not just for government but for Aboriginal organizations - confirming the connections made by Aboriginal people between their school experience and the dysfunction in their lives, families and communities. In this instance, the professional observations and analysis, charting the scope and pathology of abuse, put the reality of that connection, especially as it was a product of sexual trauma, beyond any doubt or dispute. Rix Rogers, the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse, laid out a remarkable baseline of abuse. He informed the Canadian Psychological Association that a “closer scrutiny of past treatment of native children at Indian residential schools would show 100% of children at some schools were sexually abused.”²³¹

Tragically sexual abuse was not bracketed by the opening and final closing of the residential system. It was not simply the fate of scores of individual children in school classrooms and dorms; it re-emerged in communities so that even after the schools were closed it echoed in the lives of subsequent generations of children who had no residential school experience. A 1989 study sponsored by the Native Women’s Association of the Northwest Territories witnessed how widespread this abusive post-school pathology was. It found that in that region eight out of ten

²²⁹ INAC File E6575-18, Vol. 13, House Response, 24 April, 1992. This was a Departmental estimate.

²³⁰ L. Jaine ed. *Residential Schools: The Stolen Years*. Saskatoon: University Extension Press, 1993. p 6 and 37

²³¹ “Reports of sexual abuse may be low, expert says”, *Globe and Mail*, 1 June, 1990.

girls under the age of eight were victims of sexual abuse and fifty percent of boys the same age had been sexually molested.²³²

The cause was no mystery to social scientists. Researchers with the Child Advocacy Project of the Winnipeg Children's Hospital, who investigated sexual abuse on the Sandy Bay Reserve and other reserves in Manitoba, concluded that, while the "roots of the problem [were] complex," it was "apparent that the destruction of traditional Indian culture has contributed greatly to the incidence of child sexual abuse and other deviant behaviour."²³³

Consultants working for the Assembly of First Nations detailed the "social pathologies" that marked that "deviant behaviour."

The survivors of the Indian residential school system have, in many cases, continued to have their lives shaped by the experiences in these schools. Persons who attended these schools continue to struggle with their identity after years of being taught to hate themselves and their culture ... In residential schools, they learned that adults often exert power and control through abuse. The lessons learned in childhood are often repeated in adulthood with the result that many survivors of the residential school system often inflict abuse on their own children. These children in turn use the same tools on their own children.²³⁴

Ironically, the AFN report was submitted to Phil Fontaine. Certainly, it resonated with his experience – his own transformation.

What often happens when people are abused is that they become abusers.... I have been an abusive person when it comes to women. I've had great difficulty in relating to women with any sense of decency and in treating them as human beings. I thought of women as objects that you possess, that you treat with no respect, that you tried to conquer ... There is little love, or respect, or honor in that kind of thing. I have lived like that for a long time.²³⁵

²³² The report is noted in INAC File E6575-18, Vol. 10, Communications Strategy, Child Sexual Abuse in Residential Schools n.d.

²³³ INAC File E6757-18, Vol. 13, A New Justice for Indian Children, Child Advocacy Project, Children's Hospital, Winnipeg, 1987, pa

²³⁴ INAC File E6757-18, Vol. 13, Memorandum for the Deputy Minister, 6 June, 1992 and the attached First Nations Health Commission - May 1992 - Proposal Indian Residential School Study Draft No. 4. For a further discussion of the effects, see also: L. Bull, "Indian Residential Schooling: The Native Perspective", in the Canadian Journal of Native Education, Vol. 18 Supplement (Alberta, University of Alberta Press, 1991) and N.R. Ing, "The Effects of Residential Schools on Native Child Rearing Practices", in the Canadian Journal of Education, Vol. 18 Supplement.

²³⁵ L. Jaine ed. *Residential Schools: The Stolen Years*. Saskatoon: University Extension Press, 1993. P. 64

His post-school story, though one of struggle, was also one of success. The lives lived by so many other survivors were tragically different.

Elsie Charland gave evidence of the extent to which her treatment within the walls of the two schools she attended - Onion Lake and Blue Quills - and the near insurmountable challenges of life afterwards, poisoned many aspects of life - driving her and her husband to alcohol, to abuse—and moving them on to poison, in turn, the lives of their children.

I did a terrible job as a parent ... My children were growing up with my abusive behaviour of slapping, whipping and screaming at them for everything they did. I loved them in a very sick way. Hit them, then kiss them. It was worse when my husband and I drank ... By then I had five children. My oldest child was mother and father to the rest of the children. I became more violent to everyone around me. I was that ugly person I had been told I was since a child. My anger and rage were killing me and killing my children's spirit. Many times, I tried to commit suicide in an attempt to stop all the pain and hurt in my life. I didn't teach my children any values, beliefs, culture, or language. I didn't have anything to give except my rage.

At the end of her rage was despair. She pleaded with a social worker – “Please take my children away. I'm no good. I want to die ... My children are still suffering today.”²³⁶

F. Language Loss: “...when a language dies.”

Elsie Charland's suffering, and that of so many others who became subjects of the evaluations of social scientists, emanated from her school experience and the common consequences of that for thousands of survivors, in its cross generational passage; it encompassed not only her, her husband and children but “all her relations.”

Clearly, her behaviour indicated that on leaving her residential schools that her connection with traditional culture norms was in no way intact. She, and the other survivors who fell under the evaluations of social scientists, were deviant. But more precisely, as Hobart and Caldwell observed, it was a double-sided alienation. Survivors were “hanging in the middle”. A product of both worlds, that of their parents and of their school, they were, Caldwell asserted, caught in “the conflicting pulls between the two cultures” – the “white culture of the residential school” and subsequently “the need to readapt and readjust to the Indian culture.”²³⁷

²³⁶ L. Jaine ed. *Residential Schools: The Stolen Years*. Saskatoon: University Extension Press, 1993. P. 32.

²³⁷ INAC File E4974-1 Vol. 1, The Caldwell Report, 31 January, 1967 and INAC File 1/25-13-2, Vol. 1, To ... from G. Caldwell, 18 July, 1967.

While Caldwell and Hobart said nothing directly about the relationship between language and cultural loss as another key root cause of alienation, survivors certainly were not silent about the critical connection between language, culture and personal identity. Rather, they spoke, especially near the end of the Class Period when the Royal Commission conducted public hearings across the country, giving communities the time and space to discuss the consequences of colonization and their hopes and plans for better futures. In that context, cultural recuperation through language revitalization were frequent topics.

During the RCAP public hearing at Whapeton Indian Reserve, Saskatchewan, in the spring of 1992, Counsellor Beverly Waditka summed up the situation there. “On the reserve there is presently only about five speakers who are fluent in the Dakota language. It has been a struggle for us to keep up with our identity as Dakota people. Wahpeton education has a goal to retain and recover the Dakota language and culture for our people.” And Chief C. McArthur of the Pheasant Rump community added the role of residential schools to the language narrative. “When they are sent to boarding schools English was the language that was to be spoken, not your own tongue. As a result of that, many of our people lost the language and the culture. By losing language and culture we lost many of the values in life.”²³⁸

Further west, in November 1992, another RCAP hearing was held in Merritt. B.C. Mandy Na’zinek Jimmie, representing the Nicola Valley Tribal Council Language Advisory Group, laid before the Commissioners a series of statements made at the recent Scw’exmxcin [language] Conference. Again, the critical links between language and culture and the formation of identity were made.

“When I practice my tradition and culture, it has more meaning in my own language, my own tongue is more meaningful than English.”

“Our languages provide a healthy, gentle nurturing way of life that would make me stronger.”

“Language instills pride, esteem, control, unity within the family and the community, respect, values, beliefs, identity, self-esteem, history, family tree, and so on.

²³⁸ Councilor Beverly Waditka, WAHPETON COMMUNIPLEX WAHPETON INDIAN RESERVE WAHPETON, SASKATCHEWAN DATE: TUESDAY, MAY 26, 1992, page 62, RCAP transcripts; Ibid, Chief \C. McArthur, page 210.

“Language identifies you and gives us direction. Language is the more important part of culture.

“Language is our survival.”²³⁹

These straightforward assertions ring with the confidence of knowing the way forward – that the path to cultural norms lay through language training. They do, however, lack a sense of the profound tragedy of losing the language.

For a sense of the emotional dynamics of that tragedy, recourse can be made to Mary Carpenter, an Inuit woman who published her memoir in the magazine *Inuktitut*, in 1974. There she remembered the violence and graphically caught the searing psychological trauma, the de-spiritualization, the alienation of being “unfitted,” and, most critically, *the cultural loss, rooted in the loss of language*, which divided her, and many children across the nation from their heritage. She recalled her time in both Catholic and Anglican residential schools.

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, and having a stinging paste rubbed on my face, which they did to stop us from expressing our Eskimo custom of raising our eyebrows for “yes” and wrinkling our noses for “no,” I soon lost my ability to speak my mother tongue. When a language dies, the world it was generated from breaks down too.²⁴⁰

A question of considerable interest is how was that “ability” lost - the world shattered, the bridge to culture broken? Of course, that was intentional; the Department’s plan was that languages would be eliminated by an in-school prohibition and thus the student’s transfer to English/French language use would occur. And according to some, such a process did, indeed, take place though the question of how is not addressed. In the earliest days of the Residential Schools, Sister Amy and Father Coccola, above, asserted that in their schools the traditional language had been “eradicated,” and that “English alone” was spoken by the children. How that was accomplished is not specified by them except that they implied that punishment was not the reason; it was, in fact, “a rare occurrence.”²⁴¹

²³⁹ Mandy Na’zinek Jimmie, Nicola Valley Tribal Council, Language Advisory Committee, MERRITT, BRITISH COLUMBIA MERRITT CIVIC CENTRE DATE: THURSDAY, NOVEMBER 5, 1992 RCAP transcripts, pages 81-83.

²⁴⁰ Mary Carpenter, “Recollections and Comments: No More Denials Please”, *Inuktitut* (74: 56-61, 1991).

²⁴¹ Lascelles page 31.

There is much in the historical record, some of which has been referred to above, which suggests that Amy and Coccola were likely exaggerating – universal transfer did not occur, though it is clear that a number, unknowable at this point, became English speakers and lost the use of their birth language, and, consequently, “lost many of the values in life.”²⁴² Indeed, Father E.C. Bellot, Principal of the Squamish school, some three decades after Amy was principal, provided, while triumphalist, a perhaps more accurate picture of the situation in the school “Only a generation has elapsed and from an ignorant and wild tribe, we find one educated and speaking English better than they speak their own language.”²⁴³

However, clearly suspect was the claim that punishment was unusual. Again, referring to the historical record, punishments for transgressing the language prohibition were the norm throughout the school system; and the punishments were often beyond disciplinary norms. For example, after the Department’s inquiry into the deaths of boys found frozen on Fraser Lake in 1937, having run away from the Lejac school, the Principal admitted that there had been a regime of severe punishment at the school but that he would now conduct the school with respect to discipline “along the lines of the provincial public schools.”²⁴⁴ Such tragic examples are seemingly unending.²⁴⁵ But that record of disciplining children and its profound significance, for a whole series of issues, including language loss, was certainly much more than a catalogue of punishments.

That significance is, indeed, rooted in the bones of the very idea of residential school education. The foundational vision of the school system was that children taken into the “circle of civilized conditions” – the schools - would, Davin’s predicted, receive “the care of a mother.” But a review of that care - food, education, health and treatment– reveals that at the heart of the vision lay a dark contradiction. From the outset, the circle of civilized conditions did not live up to its name. It did not because it could not. Departmental correspondence and reports of this formative

²⁴² Councilor Beverly Waditka, WAHPETON COMMUNIPLEX WAHPETON INDIAN RESERVE WAHPETON, SASKATCHEWAN DATE: TUESDAY, MAY 26, 1992, page 62, RCAP transcripts; *Ibid*, Chief \C. McArthur, page 210.

²⁴³ See the testimony in R.C.A.P. transcripts of Chief Wendy Grant at the Canim Lake [British Columbia] Royal Commission Inquiry, Tuesday March 9, 1993, page 155.

²⁴⁴ N.A.C. RG 10 Vol. 6443, File 881-1 (1-3) MR C 8767, Confidential To Dr. H. McGill from D. MacKay, 25 March, 1937. It is interesting that in this instance, and in many others, that the Department was cautious to keep the Principal’s admission under wraps ... ie note the memo to Ottawa is marked Confidential.

²⁴⁵ For a discussion of discipline as a constant in the schools, see Chapters 7 and 12 in Milloy, *A National Crime*.

period attest to the fact that there was, as an inherent element of “savagery” in the mechanics of civilizing the children.

The Department’s stated intention was that the schools should be homes, sanctuaries where the children would be given, in Davin’s description “the care of a mother.” However, despite Davin’s prediction, the schools could not be homelike as the basic premise of resocialization was violent. So as to “To kill the Indian” in the child, the Department aimed at severing the artery of culture that ran between Aboriginal generations. In the end “all the Indian there is in the race should be dead.”²⁴⁶ This was more than a rhetorical flourish or figurative act as it took on a sharp and traumatic reality in the life of each child - separated from parents and community, often at the tender age of six, and isolated in a threatening world hostile to identity, traditional ritual and language.

The system of transformation, the mechanics of the civilizing process and its goal of cultural genocide reflected that elemental savagery – a Departmental intent that became often violent deeds. Hayter Reed in a perfectly homelike tone counselled that teachers “while exercising firmness, shall endeavour to influence them [the pupils] by appealing to their reasons and affections, rather than to their fears.” Yet, he described the purpose of the schools, the goal of those teachers, in very different terms “... every effort should be directed against anything calculated to keep fresh in the memories of children habits and associations which it is one of the main objects of industrial institutions to obliterate”²⁴⁷ This certainly could not be characterized as mothering ones children in a parental home. Indeed, with respect to that persistent fiction, there can be no better summary of the character of the schools than an explanation of the runaway problem in an Anglican school in Ontario. In 1960, the Bishop reported

The ... [school] has over the past years suffered a somewhat unhappy household atmosphere. Too rigid regimentation, a lack of homelike surroundings and the failure to regard the children as persons capable of responding to love, have contributed at time to that condition. Children unhappy at their treatment were continually running away.²⁴⁸

²⁴⁶ D.A. Nock, *A Victorian Missionary and Canadian Indian Policy*, page 4.

²⁴⁷ N.A.C. RG 10 Vol. 3818, File 57799, MR C 10143, To Superintendent General of Indian Affairs from H. Reed, 14 May, 1889 .

²⁴⁸ N.A.C. RG 10 Vol.6859, File 494/25-2-014, MR C 13727, To F. Foss from [Bishop], 31 October, 1960.

“Unhappy” might be one explanation for the feeling of children caught up in a school ringed about by police, ministers, Indian agents with the legal authority to remove you forcefully, if need be, from your community and charge your real parents if they did not cooperate, if, for example, as much oral history purports, they hid you in the woods until the agent left. And “unhappy” because inside that closed circle they were without any defense from ill-treatment in its many forms. In that context, they were beyond unhappy, they were frightened, as no doubt were the thousands of children who were sexually abused or were, as was Janice Acoose, a witness to its regularity. She remembered being “terrified of hearing the footsteps that regularly crept up the fire escape to our dorm” and then, in the dark, “listening to the little girls frantic whisperings, muffled screams, and desperate cries.”²⁴⁹

The runaway was a persistent indicator of abuse. In 1941, a boy who fled Gordon’s school because of his “deathly fear” of the Principal died of exposure. It was, Agent Castledon concluded, a “glaring case of neglect.”²⁵⁰ And tragically, some children took an even more drastic escape route. In 1920, Agent A. O’Daunt was sent to Williams Lake school to investigate the aftermath of a reported episode of severe beating – the suicide of one boy from eating “poison hemlock” and the attempted suicide of eight others. And in another incident of attempted suicide sixty years later in 1981, at Muscowequan Residential School, “five or six girls between the ages of 8 and 10 years had tied socks and towels together and tried to hang themselves.” Earlier that year, a 15 year old at the school had been successful in her attempt.²⁵¹

The fear engendered by the mistreatment of the children was not contained within the school by those who surrounded it, ensured its secrets, blocked the interference of parents and invaded communities to apprehend children. It affected those outside the schools as well.

On the 10th of February, 1902, just as it was getting dark, Johnny Sticks viewed the body of his eight-year- old son, Duncan, dead from exposure having fled from the William’s Lake Industrial School. He lay, Mr. Sticks recalled for the coroner, “75 yards off the road in the snow - he was quite dead but not frozen.” Duncan’s blood-stained hat was lying about one yard away, and “he

²⁴⁹ L. Jaine ed. *Residential Schools: The Stolen Years*. Saskatoon: University Extension Press, 1993. P. 64

²⁵⁰ N.A.C. RG 85 Vol. 1-A, File 630/119-2, To R. Hoey from G. Castledon, 19 February, 1941 and associated documents in the file.

²⁵¹ N.A.C. RG 10 Vol. 6436, File 878-1 (1-3) MR C 8762, To Assistant Secretary and Deputy from A. O’Daunt, 1 August, 1920 and 16 August, 1920 and for another example see INAC File E4974-2018, Vol. 1, To G. Sinclair from H. Lammer, 22 June, 1981.

had marks of blood on his nose and forehead - the left side of his face had been partially eaten by some animal.” Sticks took his son home in a sleigh regretting all the while that the school had not notified him immediately that his son had run off for “I should have gone at once and looked for him - he ran away from the Mission about one o’clock on Saturday and must have been dead for nearly two days when found.”²⁵²

Another parent, Charlie Johnson, told the coroner in charge of the Stick’s inquest that his son, too, had run away several times complaining of the bad food and beatings but that each time he had taken him back: “I did not complain to the Fathers about my boy’s treatment because I was scared.”²⁵³

The school system’s record of substandard care and abuse of children did not diminish over the life of the system. That was not the case for parents however; their circumstances worsened as, in the post-war period, communities underwent increased surveillance and discipline and the danger to families and their children was heightened.

This was, in the first instance, all about integration which meant much more than provinces assuming the task of providing education services to First Nations children. The government also contracted for the provision of health services and, critically, child welfare services. This meant that First Nations communities became subject to relevant provincial legislation and regulations.²⁵⁴ To the historic list of those who did “Indian business” - Indian agents, police, churchmen and women - was added social workers, doctors and family court judges. In the area of child welfare, in the context of ever-worsening economic conditions in communities, as chronicled in the Munro Survey,²⁵⁵ as well as the consequences of widespread sexual abuse in communities – alcoholism for example, thousands of families across the country were judged to be unable to care for their children in a fashion deemed acceptable and therefore thousands of children were, and continue to be, “apprehended.”

²⁵² N.A.C. RG 10 Vol. 6436, 878-1 (1-3), MR C 8762, To Secretary from A. Vowell, 17 March, 1902 and attached sworn testimony. The “marks of blood on his nose and forehead” may well be evidence that he had run off after being beaten.

²⁵³ N.A.C. RG 10 Vol. 6436, File 878-1 (1-3), MR C 8762, To Secretary from A. Vowell, 17 March, 1902, see attached testimony, and, for another example, see: Vol. 6262, File 578- 1 (4-5), MR C 8653, To R. Hoey from D.J. Allan, 4 March, 1944.

²⁵⁴ See section 88 of the Indian Act of 1951.

²⁵⁵ See R Wuerschler, Problems with the Legislative Base for Native Child Welfare Services. Department of Indian and Northern Affairs, December, 1979, It was republished in 1984 under the authority of John Munro.

The impact of this – known as the Scoop²⁵⁶ - was devastating. Across Canada, children were removed from their families and placed, more often than not, in non-Indian foster or adoption homes. In British Columbia, for example, provincial Ministry figures, published in 1979, detailed the extent of such removals. On 31 December 1980, 2980 Indian children were in care amounting to 39.3% of all children in care in the province and some 70% of those children were in non-Aboriginal homes.²⁵⁷

Parents were unable to defend their children against the intervention of provincial social workers, the assessment of their parenting according to non-Aboriginal norms and the decisions of family courts which would determine the future of the child, which, if was to be foster care or adoption, or placement in a residential school, would isolate the child from its community, language and culture. Even what looked like steps forward – the beginning of Aboriginal Child Welfare Service organizations, inspired by the Spallamchen episode in British Columbia and the Kimelman Inquiry in Ontario - did not set aside the rule of provincial welfare legislation.²⁵⁸

The scope of parental control was narrowed further by Departmental administration of the Family Allowance - a significant income supplement, particularly in the post war period of economic decline in communities. Receipt of the allowance was tied to various conditions, principally parental compliance with provincial education requirements. The Department was quick to appreciate its potential for “encouraging Indian parents to send their children to school regularly.” It, in fact, recognized and exploited the family’s vulnerability. Local staff were reminded, in 1947, that a child’s failure to attend meant that the Department could suspend the allowance. If the parents subsequently cooperated, the Agents were directed to “recommend reinstatement of Allowances IMMEDIATELY ... as a recognition of satisfactory school attendance.” There was a fair deal of play in the hands of local officials; it was thought the best approach was “to explain to the parents the importance of regular attendance.” But officials should resort to actual suspension of the Allowance only “in particularly stubborn cases.” Some

²⁵⁶ See, Patrick Johnston, *Native Child Welfare System*, James Lorimer & Company, Toronto, 1983.

²⁵⁷ See, John A. MacDonald “The Spallamchen Band By-Law and its Potential Native Child Welfare Policy in British Columbia”, *Canadian Journal of Family Law*, 1, 1983.

²⁵⁸ *No Quiet Place: Final Report of the Review Committee on Indian and Metis Adoptions and Placements* Associate Chief Justice Edwin C. Kimelman, Manitoba Community Services. 19895,

agents certainly used it as a threat to force reluctant parents to send children to a residential school. And many parents did have their Allowance discontinued.²⁵⁹

Ironically, a degree, perhaps, of parental influence continued with respect to the residential school attendance and the experience of their children. Of course, that reality, attendance, could not be avoided in the face of a family court order, the needs of a child welfare department encountering a chronic national shortage of foster homes for interim placements or the “shoe-horning” of children whose impoverished parents, desperate to hold on to at least part of the allowance, offered up one child. But something could be done, if at a dreadful cost. And that cost was, for the children and community, the loss of language and the culture.

Loss, for those who experienced it, was a foreseeable consequence for full time boarders of long term separation from family and community and a strict application by the staff of the one language rule. But that did not mean that day scholars escaped the disciplinary regime of punishment meted out to all children, no matter their status – day or residential - for speaking one’s language in the school.

Survivors, who had lost their language, before entering school, understood that their school experience differed from children who came with their home language intact. Charlene Belleau, one of the organizers of the Canim Lake RCAP hearing, told the Commissioner

I had already lost my language and ceremonies and songs when I went to residential school, so I didn’t have to go through the physical abuse that they suffered: strapping, whatever other forms they used to punish the children for speaking their language. But they couldn’t strike me for not speaking my language because I already had lost that. To me, my grandmother and my mother suffered the consequences of the government policies.²⁶⁰

That reality was understood by parents of prospective students. They knew the harsh conditions of life at school: the punishments that led to children running away and being found frozen to death or having committed suicide, the disease and death, the sexual abuse, the hunger. Reflecting the consequences of that reality, Wendy Grant, the British Columbia regional Chief of

²⁵⁹ INAC File 116/25-4, Vol. 1, To All Indian Agents ..., 23 April, 1947. INAC File 501/25-1-105, Vol. 1, Circular No. 42, To All Superintendents ..., 6 October, 1958 and INAC File 25-2-764, Vol. 6, 27 September, 1962 and INAC File 501/1, Vol. 1, 18 January, 1968, and INAC File 116/23-16-737, 10 February, 1959 and INAC File 773/25-2-004, Family Allowances - Unsatisfactory School Report, 14 November, 1966.

²⁶⁰ See the testimony in R.C.A.P. transcripts of Charlene Belleau at the Canim Lake [British Columbia] Royal Commission Inquiry, Tuesday March 9, 1993, page 207.

the Assembly of First Nations - again at the Canim Lake hearing - told of her loss and the action taken by her grandfather and the life-long traumatic consequences for him.

... growing up as I did with a father who went through the system, and a grandfather who went through, he didn't teach the language to his son and he cries to this day and he's years old, and you go and ask him why I don't speak the language and he will ... tell you the abuse he went through he didn't want to see his children go through.²⁶¹

Chief Grant's experience of losing her language was because she was compelled to go to residential school. As a result of her grandfather's experience there, he did not allow her to speak her language. As with the number of children whose language and culture were taken from them in the often cruel confines of the residential schools, it is impossible to ascertain the number of children, whether residential or day scholars, who lost their language at home at the hands of loving, protective parents.

Chief Grant, at the end of her testimony, asserted that it was far from uncommon: "I know by going through the province that you will hear those stories right through the province."²⁶²

VIII. CONCLUSION: Answers to Questions

A. General questions

1. Through the purpose, operation or management of the Residential Schools between 1920 and 1997 (the "Class Period"), did Canada take steps to destroy or contribute to the destruction of Indigenous languages and cultures of the Survivor, Descendant and Band Classes? If so, what were those steps?

Yes, the intent of Federal policy was assimilation which meant converting Aboriginal people into being Canadians like all others. The primary part of that process was the eradication of language and culture through residential school education.

²⁶¹ See the testimony in R.A.C.P. transcripts of Chief Wendy Grant at the Canim Lake Royal Commission Inquiry, Monday, March 8, 1993 page 87.

²⁶² See the testimony in R.A.C.P. transcripts of Chief Wendy Grant at the Canim Lake Royal Commission Inquiry, Monday, March 8, 1993 page 87.

2. At any time between 1920 and 1997 did Canada become aware that the Survivor, Descendant and Band Classes suffered harm from the destruction of their languages and cultures? Did Canada take any steps to mitigate or prevent that harm?

Yes. In that period Canada received reports from social scientists, teachers and, most cogent perhaps, testimony at RCAP public consultations detailing harms done to individuals and communities.

No. Beyond “lip-service” critical of the policy in the 1960s, no mitigation was introduced. And indeed, particularly with respect to language/culture, Canada’s post-war integration policy, while provinces were directed to develop culturally appropriate curriculum, meant that, well past the Class Period, children in provincial classrooms would be again in a context beyond their culture and language.

B. More specific questions

3. Within the Class Period, what was Canada’s Residential Schools policy (i.e. the purpose for which the schools were established, including their operation and management) at the time of the establishment of the first Residential Schools? Did that policy change over time?

No, as set out in the historical section of my submission [i.e. that dealing with the time before the Class Period] that assimilative policy remained the purpose of government policy and continued, thereafter, in the Class Period.

4. Who was in charge of the policy towards Indigenous language and culture in Residential Schools?

Canada - As detailed in my Opinion Report, based on a review of the historical record, including Departmental records and documents setting out the relationship between Canada and participating churches, Canada, through the Department of Indian Affairs, was in charge of all aspects of the system.

5. What was the scope of Canada's right of audit, inspection and correction to ensure compliance with policy and are there examples of the Department exercising that right

Yes, the scope encompassed all aspects of the schools throughout the system's existence and, as set out, for example, in the section of my submission dealing with diet, abuse, and, so forth, there are examples of it being exercised.

6. With regard to Residential Schools, what degree of control did Canada exercise over the schools.

Canada's control on paper was complete but its oversight was often lacking and its "correction" often lax or even non-existent and thus was the cause of harm done to the children as recognized by the Prime Minister in his apology.

7. Did the Bands have any role in the operation and management of the Residential Schools during the class period?

No, however in the Class Period, the Department did set up advisory boards with Aboriginal members but the scope of their authority was very limited and did not include any authority over school curriculum.

8. Were day scholars required to attend Residential Schools?

Yes, to the extent that school attendance was mandatory, through both the Indian Act and the Family Allowance program, and thus the Department, for reasons of administrative convenience, might, and did, choose to send a child to one of them.

9. Is there evidence that Day Scholars were treated differently than the resident students at residential schools?

No, throughout my nearly 30 years of researching the history of residential schools - as lead researcher on the subject for RCAP, as Director of Research for the Truth and Reconciliation Commission, as an historical consultant for a number of law firms, and as a researcher for scholarly articles, presentations and two books on the subject, I have seen only one minor difference, having to do with lunch being provided.

This is Exhibit "C" referred to in the
affidavit of Peter Grant sworn before me this
20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

"C"



Government
of Canada

Gouvernement
du Canada

[Canada.ca](#) ..([Canada.ca](#)) > [Crown-Indigenous Relations and Northern Affairs Canada](#)

> [Reconciliation](#) > [Indian Residential Schools Settlement Agreement](#)

Statement of apology to former students of Indian Residential Schools

[PDF Version](#) (467 Kb.(Kilobytes), 2 Pages)



Statement of Apology – to former students of Indian Residential Schools

On Wednesday June 11, 2008, the 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.

Prime Minister Harper offers full apology on behalf of Canadians for the Indian Residential Schools system

11 June 2008

Ottawa, Ontario

PLEASE CHECK AGAINST DELIVERY

The treatment of children in Indian Residential Schools is a sad chapter in our history.

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.

One hundred and thirty-two federally-supported schools were located in every province and territory, except Newfoundland, New Brunswick and Prince Edward Island. Most schools were operated as "joint ventures" with Anglican, Catholic, Presbyterian or United Churches. 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. While some former students have spoken positively about their experiences at residential schools, these stories are far overshadowed by

tragic accounts of the emotional, physical and sexual abuse and neglect of helpless children, and their separation from powerless families and communities.

The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.

It has taken extraordinary courage for the thousands of survivors that have come forward to speak publicly about the abuse they suffered. It is a testament to their resilience as individuals and to the strength of their cultures. Regrettably, many former students are not with us today and died never having received a full apology from the Government of Canada.

The government recognizes that the absence of an apology has been an impediment to healing and reconciliation. Therefore, on behalf of the Government of Canada and all Canadians, I stand before you, in this Chamber so central to our life as a country, to apologize to Aboriginal peoples for Canada's role in the Indian Residential Schools system.

To the approximately 80,000 living former students, and all family members and communities, the Government of Canada now recognizes that it was wrong to forcibly remove children from their homes and we apologize for having done this. 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.

Nous le regrettons

We are sorry

Nimitataynan

Niminchinowesamin

Mamiattugut

In moving towards healing, reconciliation and resolution of the sad legacy of Indian Residential Schools, implementation of the Indian Residential Schools Settlement Agreement began on September 19, 2007. Years of work by survivors, communities, and Aboriginal organizations culminated in an agreement that gives us a new beginning and an opportunity to move forward together in partnership.

A cornerstone of the Settlement Agreement is the Indian Residential Schools Truth and Reconciliation Commission. This Commission presents a unique opportunity to educate all Canadians on the Indian Residential Schools system. It will be a positive step in forging a new relationship between Aboriginal peoples and other Canadians, a relationship based on the knowledge of our shared history, a respect for each other and a desire

to move forward together with a renewed understanding that strong families, strong communities and vibrant cultures and traditions will contribute to a stronger Canada for all of us.

On behalf of the Government of Canada
The Right Honourable Stephen Harper,
Prime Minister of Canada

Date modified: 2010-09-15

This is Exhibit "D" referred to in the affidavit of Peter Grant sworn before me this 20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

"D"

August 29, 2022
Ottawa, Ontario

If you need someone to talk to, a National Residential School Crisis Line offers emotional support and crisis referral services for residential school Survivors and their families. Call the toll-free Crisis Line at 1-866-925-4419. This service is available 24 hours a day, 7 days a week. The Hope for Wellness Help Line also offers support to all Indigenous Peoples. Counsellors are available by phone or online chat. This service is available in English and French, and, upon request, in Cree, Ojibway, and Inuktitut. Call the toll-free Help Line at 1-855-242-3310 or connect to the online chat at www.hopeforwellness.ca (<http://www.hopeforwellness.ca/>).

Residential schools are a shameful part of our history that continue to have a deep and lasting impact on Survivors, their families, and their communities across the country. We cannot forget this truth. As Canadians, we must all learn about the history and legacy of residential schools. Only when we face the hard truths of our past, can we truly move forward together toward a better future.

The Prime Minister, Justin Trudeau, was joined today by the Executive Director of the National Centre for Truth and Reconciliation (NCTR), Stephanie Scott, the Minister of Crown-Indigenous Relations, Marc Miller, and Survivors from across the country to raise the Survivors' Flag on Parliament Hill. This flag will fly in memory of the 150,000 Indigenous children who were forcibly separated from their families and communities to be sent to residential schools. It will honour the Survivors, their families, the communities whose lives were forever changed, and those who never came home.

The residential school system in Canada robbed Indigenous children of their childhoods. It attempted to assimilate them, forcing them to abandon their languages, cultures, spiritualities, traditions, and identities. Many suffered physical, emotional, and sexual abuse, and many never returned home. The painful legacy of the residential school system lives on today for Indigenous Peoples from coast to coast to coast.

The orange and white Survivors' Flag was designed by the NCTR in consultation with Survivors from across Canada as an expression of remembrance and to be shared with all Canadians. It features nine distinct elements, each with a special meaning. For example, the seeds depicted underneath the family and children represent the spirits of the children who never returned home.

We still have work to do. Reconciliation is not the responsibility of Indigenous Peoples – it is the responsibility of all Canadians. It is our responsibility to continue to listen, and to learn. The Government of Canada will continue to do just that and support First

Nations, Inuit, and Métis in their healing journey. Together, we will build a better future for everyone.

Quotes

“Residential schools are a shameful part of our history – that is the truth the Survivors’ Flag is going to remind us of, every day, here on Parliament Hill. By raising this flag here today, we’re saying: we will always remember. We will continue to listen to Survivors. We acknowledge the intergenerational trauma these so-called schools have caused. And we commit to continue working together as partners toward a future of healing and partnership.”

— The Rt. Hon. Justin Trudeau, Prime Minister of Canada

“Raising the Survivors’ Flag on Parliament Hill is a reflection and sign of deep grieving for the over 150,000 Indigenous children that were forcibly removed from their families and robbed of their culture and language to attend state- and church-run residential schools. Today we honour the survivors, as well as the resiliency of First Nations, Inuit, and Métis peoples. Together we are on a shared journey of reconciliation based on the principles of honesty, equity and self-determination. Raising this flag is a powerful symbol that every child matters and that the Government of Canada will do more to be an honourable partner in the work of reconciliation.”

— The Hon. Patty Hajdu, Minister of Indigenous Services and Minister responsible for the Federal Economic Development Agency for Northern Ontario

“Today’s flag raising represents Canada’s commitment to honouring the lives of those who did not return home from residential schools, and to Survivors, their families and communities, as they continue to search for the truth. The flag will also serve as a prominent focal point to highlight for all of Canada the ongoing search for truth.”

— The Hon. Marc Miller, Minister of Crown-Indigenous Relations

“The Survivors created this flag as a symbol of the complicated journey we are on together toward healing. I know the Survivors’ Flag flying on Parliament Hill will serve as a reminder to all of us that we must continue to hear and understand the truth of residential schools. When Canadians witness the flag, they must reflect on actions that they can take as individuals in all capacities on our shared path of reconciliation.”

— Stephanie Scott, Executive Director, National Centre for Truth and Reconciliation

“Reconciliation must start with the truth – a truth that I and thousands of Survivors lived through and continue to feel; a truth that was thought to have perished along with the thousands of children who never returned home. Many still don’t know. It is the responsibility of our government, our churches, and our collective peoples to uncover the truth and honour the children.”

— Jimmy Durocher, Métis residential school Survivor

Quick Facts

- The Survivors’ Flag was developed through consultation and collaboration with Inuit, Mi’kmaq, Atikamekw, Cree, Ojibway, Dakota, Mohawk, Dene, Nuu-chah-nulth, Secwepemc, and Métis Nation Survivors. Each element (<https://nctr.ca/exhibits/survivors-flag/>) depicted on the flag was carefully selected by Survivors.
- The flag will fly near West Block and the Visitor Welcome Centre on Parliament Hill until 2024, when a decision will be made to find its permanent home.
- The Survivors’ Flag was first raised on Parliament Hill in 2021, at a special ceremony to mark the inaugural National Day for Truth and Reconciliation.
- The NCTR, hosted by the University of Manitoba, was created to preserve the memory of Canada’s residential school system and legacy, not just for a few years, but forever. It is the responsibility of the NCTR to steward and share the truths of Survivors’ experiences in a respectful way and to work with Indigenous and non-Indigenous educators, researchers, communities, decision-makers, and the general public to support the ongoing work of truth, reconciliation, and healing across Canada.
- The Government of Canada continues to work with First Nations, Inuit, and Métis to support the difficult and important work of locating and commemorating missing children who attended residential schools.

Related Product

- Statement by the Prime Minister on the personal apology delivered by His Holiness Pope Francis to Survivors of the residential school system in Canada (<https://pm.gc.ca/en/news/statements/2022/07/25/statement-prime-minister-personal-apology-delivered-his-holiness-pope>)

Associated Links

- The Survivors' Flag (<https://nctr.ca/exhibits/survivors-flag/>)
- National Centre for Truth and Reconciliation (<https://nctr.ca/>)
- National Day for Truth and Reconciliation (<https://www.canada.ca/en/canadian-heritage/campaigns/national-day-truth-reconciliation.html>)
- Residential schools missing children – community support funding (<https://rcaanc-cirnac.gc.ca/eng/1622742779529/1628608766235>)

This is Exhibit "E" referred to in the
affidavit of Peter Grant sworn before me this
20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

"E"



CLASS PROCEEDING

FORM 171A - Rule 171

FEDERAL COURT

Court File No. T-1542-12	
e-document	ID 795
F I L E D	COUR FÉDÉRALE 11-FEB-2022
Natasha Brant	
Ottawa, ONT	doc 323

BETWEEN:

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

CHIEF GARRY FESCHUK, on behalf of the SECHELT INDIAN BAND and 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: 90 Sparks Street Ottawa, ON K1A 0H9

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 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 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 Indian Bands in the Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Indian 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)”, “Aboriginal People(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) “Indian Band” means any entity that:
 - (i) Is either a "band" as defined in s.2(1) of the *Indian Act* or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and
 - (ii) Asserts that it holds rights recognized and affirmed by section 35 of the *Constitution Act*, 1982.
- (g) “Class” means the Tk’emlúps te Secwépemc Indian Band and the shíshálh band and any other Indian Band(s) that:
 - (i) has or had some members who are or were Survivors, or in whose community a Residential School is or was located; and

- (ii) is specifically added to this claim in relation to one or more specifically identified Residential Schools.
- (h) “Canada” means the Defendant, Her Majesty the Queen in right of Canada as represented by the Attorney General of Canada;
- (i) “Class Period” means 1920 to 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) “Identified Residential School(s)” means one or more of the KIRS or the SIRS or any other Residential School specifically identified by a member of the Class;
- (l) “KIRS” means the Kamloops Indian Residential School;
- (m) “Residential Schools” means all Indian Residential Schools recognized under the Agreement;
- (n) “Residential Schools Policy” means the policy of Canada with respect to the implementation of Indian Residential Schools;
- (o) “SIRS” means the Sechelt Indian Residential School;
- (p) “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.

THE PARTIES

The Plaintiffs

3. The Tk’emlúps te Secwépemc Indian Band and the shíshálh band are 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 Residential Schools, including 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 individuals who *resided at Canada's Residential Schools* by way of the Agreement implemented in 2007, and subsequently, the settlement of the claims of those individuals who attended at Canada's Residential Schools in this and other proceedings.

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 Class members.

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 Class members to whom Canada owed fiduciary and constitutionally-mandated duties. The Residential Schools Policy was intended to eradicate Aboriginal identity, culture, language, and spiritual practices. This assimilation would result in a reduction in the number of individuals identifying as Aboriginal, and with that would be a reduction in Canada's obligations to Aboriginal individuals and Indian Bands, as Aboriginal individuals who no longer identify as Aboriginal would be unlikely 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 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 shíshálh 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. The Class members have all been affected by Cultural, Linguistic and Social Damage which has impaired the ability of Class members to govern their peoples and their lands.

Canada's Duties

35. 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.

36. 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, Article 8, 2(d), which commits to the provision of effective mechanisms for redress for forced assimilation, and the additional following provisions: Preamble, Articles 1-15, 17-28, 31, 33-46.

37. 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

38. Canada has constitutional obligations to, and a fiduciary relationship with, Aboriginal People and Indian Bands in Canada. Canada assumed the responsibility for educating Aboriginal children, and prevented Aboriginal Persons and Class members from doing so, by adopting and implementing the Residential Schools Policy, which included creating, planning, establishing, setting up, initiating, operating, financing, supervising, controlling and regulating a program of assimilation through the Residential Schools. Through the assumption of this role, and/or 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.

39. 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.

40. 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 and Indian Bands,

including the Class members, included the obligation to respect their Aboriginal Rights and not to deliberately seek to assimilate them, reduce their numbers, undermine, harm or impair them.

41. Canada breached the fiduciary and constitutional duties owed by Canada to the Class by targeting for destruction the collective identity and way of life established and enjoyed by the Class members.

42. Canada acted in its own self-interest and contrary to the interests of the Class members, not only by being disloyal to, but by actually betraying these communities which it had a duty to protect. Canada wrongfully exercised its discretion and power over Aboriginal Peoples, 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 and communities, 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.

43. In further 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

44. 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 Indian Bands have sustained their individual members, communities and distinctive cultures by speaking their languages and practicing their customs and traditions.

45. 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 Indian Bands, some particulars of which include, but are not limited to:

- (a) shíshálh, Tk'emlúps and other Indian Bands' 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.

46. Canada had at all material times and continues to have a duty to respect, honour and 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. Canada breached the Class members' Aboriginal Rights and caused the Class members Cultural, Linguistic and Social Harm.

Vicarious Liability

47. Canada is vicariously liable for the negligent performance of the fiduciary, constitutionally-mandated, statutory and common law duties of its Agents.

48. 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

49. 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 members have 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

50. 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

51. The Class members are Indian Bands, being collectives of Aboriginal Peoples who recognize their shared cultural and linguistic identities.

52. 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.

53. 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 Peoples and communities. Canada breached those duties, causing harm.

54. 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.

Application of the Quebec Charter

55. Where the aforementioned acts of Canada and its agents took place in the province of Quebec, they constitute breaches of article 1457 of the *Civil Code of Quebec*, CQLR c CCQ-1991, and the *Charter of Human Rights and Freedoms*, CQLR c C-12.

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, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, ss. 7, 15, 25, 35(1);

The Canadian Bill of Rights, S.C., 1960, c.44, Preamble, ss. 1 and 2;

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

Indigenous Languages Act S.C. 2019, c.23, Preamble, ss.2-10, 23-24;

Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24, s.2-4, and Schedule (Articles 6-7);

United Nations Declaration on the Rights of Indigenous Peoples Act, s.c. 2021, c. 14, Preamble, s.2, ss. 4-6, Schedule;

Civil Code of Quebec, CQLR c CCQ-1991, Article 1457;

Charter of Human Rights and Freedoms, CQLR c C-12, ss. 1, 4, 5, 39, 41, 43.

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, preamble and Articles 1-5;

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, preamble and Principles 1-10;

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), Preamble, Articles 1-9, 11-20, 24-25, 27-32, 34, 36-37, 39;

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, Preamble, Articles 1-3, 5-9, 12, 16-19, 21-27;

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), Preamble, Articles 1-3, 6, 8, 12, 13, 15, 22;

United Nations Resolution A/RES/60/147, December 16, 2005, Preamble, ss.1-3, and Annex; 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, Article 8, 2(d), Preamble, and Articles 1-15, 17-28, 31, 33-46.

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

Amended January 13, 2022

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

Solicitors for the Plaintiffs

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This is Exhibit "F" referred to in the affidavit of Peter Grant sworn before me this 20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

"F"

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 SEHEL T INDIAN
BAND AND THE SEHEL T 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 (Cowessess, 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 Igloodik/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

This is Exhibit "G" referred to in the
affidavit of Peter Grant sworn before me this
20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

"G"

Federal Court



Cour fédérale

Date: 20210924

Docket: T-1542-12

Citation: 2021 FC 988

Vancouver, British Columbia, September 24, 2021

PRESENT: The Honourable Madam Justice McDonald

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 AND REASONS

[1] To redress the tragic legacy of Residential Schools and to advance the process of reconciliation, the Truth and Reconciliation Commission *Calls to Action* called upon Canada to work “collaboratively with plaintiffs not included in the Indian Residential Schools Settlement Agreement”. This is a Motion for approval of the partial settlement of a class action brought on behalf of the Day Scholars who attended Residential Schools across Canada.

[2] In 2010, Chief Gottfriedson and Chief Feschuck decided to take action in response to the failure of the Residential School settlements to recognize the harms suffered by Day Scholars. At the urging of these Chiefs, in August 2012, this class action was filed to seek justice for the Residential School Day Scholars and to ensure that “no-one was left behind”.

[3] On June 3, 2015, Justice Harrington certified this as a class proceeding for the benefit of three classes: the Survivor Class, the Descendant Class, and the Band Class (*Gottfriedson v Canada*, 2015 FC 706).

[4] On this Motion, the Court is asked to approve the proposed settlement reached between Canada and the Survivor Class and the Descendant Class for the loss of culture and language suffered by those who attended Residential Schools as Day Scholars between 1920 and 1997. The Band Class claims have not been settled and that part of the class proceeding will continue.

[5] This Motion was heard in a hybrid manner with legal counsel and representative class members appearing in person in Vancouver with others appearing virtually via Zoom or by telephone.

[6] For the reasons outlined below, although the Court heard from class members who oppose the proposed settlement, overall, the Court is satisfied that the settlement is fair and reasonable and in the best interests of the Survivor and Descendant Class members and the settlement is therefore approved.

Background

[7] To put these claims in context, I will touch briefly on the background of the Residential School system in Canada and the compensation provided by other settlements.

[8] In 1920, the *Indian Act* made it compulsory for “every Indian child” between the ages of 7 and 15 to attend a Residential School or other federally established school. Residential Schools remained in operation for many decades in Canada with the last Residential School not closing until 1997.

[9] In keeping with that timeframe, the class period for this proceeding is 1920 to 1997.

[10] Many students who attended Residential Schools also resided there; however, there were thousands of Day Scholars who attended those same schools but returned home each day. For most Day Scholars, the Residential School was located within their community.

[11] In 2006, the Indian Residential Schools Settlement Agreement (IRSSA) was reached between Canada, Residential School Survivors, and various Church Entities (*Canada (Attorney General) v Fontaine*, 2017 SCC 47 at para 5). As part of the IRSSA, survivors who resided at Residential Schools were eligible for a Common Experience Payment (CEP), in the amount of \$10,000 for one school year, and \$3,000 for any subsequent school year. In addition, those who suffered sexual abuse and/or serious physical abuse – whether they resided at the Residential School or not – could apply for compensation through an Individual Assessment Process (IAP).

[12] In addition to Residential Schools, there were also Indian Day Schools that were operated separately from Residential Schools. Students in these schools did not reside there full-time, but returned home each day. The Indian Day School Survivors were excluded from the IRSSA and a class action was started on their behalf in 2009. The Court approval of the Day School Survivors class action settlement is reported at *McLean v Canada*, 2019 FC 1075 [*McLean*].

[13] The Day Scholars of Residential Schools, remained unrecognized by both the IRSSA and *McLean* Settlement. Although the Day Scholars could apply for the IAP portion of the IRSSA if they suffered sexual abuse or serious physical abuse, they were not eligible for the CEP.

[14] The background to this class proceeding is best explained in Plaintiffs' Counsel's written submissions as follows:

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.

[15] In 2012, this class proceeding was filed on behalf of the Day Scholars for relief described as follows in Plaintiffs' Counsel's written submissions:

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. 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.

[16] After the filing of this class proceeding, Canada aggressively defended the claim. Prior to certification, Canada brought a number of procedural motions, including a Motion to stay the action pursuant to s. 50.1 of the *Federal Courts Act*. Canada also Motioned to bring third party claims against a number of Church Entities for contribution and indemnity, and took the position that the Federal Court did not have jurisdiction over these third party claims. The Motion and an appeal from the Motion were unsuccessful. After the Plaintiffs amended their claim to only seek “several” liability against Canada and not any damages for which the Church Entities might be liable, Canada responded by filing third party claims against five religious organizations. These claims were struck by Justice Harrington.

[17] In 2015, the Certification Motion in this action was contested by Canada necessitating a 4-day hearing. During the hearing, Canada took the following positions: the claims disclosed no reasonable cause of action; the class definitions were overbroad; the proposed common issues were not capable of class-wide determination; the claims were time-barred; and the claims were released pursuant to the IRSSA general release and the release signed by Survivor Class members who accessed the IAP.

[18] In April 2019, Canada filed an Amended Statement of Defence, in which they raised a number of the same defences raised at the Certification Motion. Canada argued that there was no breach of any fiduciary, statutory, constitutional or common law duties owed to the members, and that Canada did not breach the Aboriginal Rights of the members. Canada also argued that there was no private law duty of care to protect members from intentional infliction of mental distress, or if there was, they did not breach it. Further, Canada argued that any damages suffered by the plaintiffs were not caused by Canada.

[19] In keeping with the *Calls to Action* outlined in the Truth and Reconciliation Report, Canada's litigation strategy evolved. In the spirit of reconciliation, the parties undertook intensive settlement negotiations in 2019. When those negotiations failed, the parties pressed forward with the litigation. The common issues trial was scheduled to begin on September 7, 2021 and continue for 74 days.

[20] On June 4, 2021, the parties negotiated the proposed settlement agreement of the Survivor Class and Descendant Class claims.

[21] By order of this Court, on June 10, 2021, the parties undertook a notice campaign to provide details of the proposed settlement to class members.

Motion for Approval

[22] On this Motion for approval of the settlement agreement, the parties have filed the following Affidavits:

- Affidavit of Charlotte Anne Victorine Gilbert, representative plaintiff for the Survivor Class, sworn on August 23, 2021;
- Affidavit of Diena Marie Jules, representative plaintiff for the Survivor Class, sworn on August 23, 2021;
- Affidavit of Daphne Paul, representative plaintiff for the Survivor Class, sworn on August 23, 2021;
- Affidavit of Darlene Matilda Bulpit, representative plaintiff for the Survivor Class, sworn on August 23, 2021;
- Affidavit of Rita Poulsen, representative plaintiff for the Descendant Class, sworn on August 23, 2021;
- Affidavit of Amanda Deanne Big Sorrel Horse, representative plaintiff for the Descendant Class, sworn on August 23, 2021;

- Affidavit of Peter Grant, co-class counsel, sworn on August 25, 2021 (attaching the Affidavit of Dr. John Milloy, Professor of History at Trent University, sworn on November 12, 2013);
- Affidavit of Martin Reiher, Assistant Deputy Minister of the Resolution and Partnerships Sector of the Department of Crown-Indigenous Relations and Northern Affairs Canada, sworn on August 12, 2021;
- Affidavit of Dr. Rita Aggarwala, an expert retained by class counsel for the purpose of providing an opinion to the Court on the estimated size of the Survivor Class, sworn on August 20, 2021;
- Affidavit of Joelle Gott, Partner in the Financial Advisory Services Group at Deloitte LLP, proposed Claims Administrator, sworn on August 25, 2021; and,
- Affidavit of Roanne Argyle of Argyle Communications, the court-appointed Notice Administrator, sworn on August 23, 2021.

[23] In addition to the above, the Court received a number of written submissions regarding the proposed settlement. During the settlement approval hearing, the Court heard oral submissions from 11 class members who openly expressed their views on the proposed settlement.

[24] Although the majority of those who expressed their views are in support of the proposed settlement, there are a number of class members who oppose the settlement. I will specifically address the objections to the settlement below.

Terms of the Settlement Agreement

[25] The full settlement agreement in both English and French as well as the applicable Schedules are included in the Motion Record.

[26] The objectives of the settlement are noted in the preamble at Clause E, as follows:

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.

[27] The compensation for individual Day Scholar claimants is outlined at paragraph 25.01 as follows:

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.

[28] Those eligible to make a claim are Day Scholars who attended any of the Residential Schools listed in Schedule E 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 *McLean* Settlement.

[29] For Day Scholars who passed away after the May 30, 2005 cut-off date, but who would otherwise be eligible, one of their descendants will be eligible to make a claim for distribution to their estate. In total, the claim period will be open for 24 months. Canada will cover the costs of claims administration and the *de novo* reconsiderations for any denied claims. Class members will also be entitled to free legal services from class counsel for reconsideration claims. Canada does not have any right to seek reconsideration.

[30] There is no limit or cap on the number of payments that can be made, and no amounts for legal fees or administration costs can or will be deducted from the payments.

[31] The claims process is described at paragraph 35.01 as follows:

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.

[32] The creation of the Day Scholars Revitalization Fund is outlined at paragraph 21.01 as follows:

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.

[33] The purpose and operation of the fund is described at paragraph 22.01 as:

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.

[34] If the settlement agreement is approved by the Court, Canada will be released from liability relating to the Survivor Class and Descendant Class members claims regarding their attendance at Residential Schools. However, the terms of the settlement agreement are completely without prejudice to the ongoing litigation of the Band Class claims.

[35] The Parties request that Deloitte LLP be appointed as the Claims Administrator. Deloitte is also the court-appointed Claims Administrator in the *McLean* Settlement.

Analysis

[36] Rule 334.29 of the *Federal Court Rules*, SOR/98-106 provides that class proceedings may only be settled with the approval of a judge. The applicable test is “whether the settlement is fair and reasonable and in the best interests of the class as a whole” (*Merlo v Canada*, 2017 FC 533 at para 16 [*Merlo*]).

[37] The Court considers whether the settlement is reasonable, not whether it is perfect (*Châteauneuf v Canada*, 2006 FC 286 at para 7; *Merlo*, at para 18). Likewise, the Court only has the power to approve or to reject the settlement; it cannot modify or alter the settlement (*Merlo*, at para 17; *Manuge v Canada*, 2013 FC 341 at para 5).

[38] The factors to be considered in assessing the overall reasonableness of the proposed settlement are outlined in a number of cases (see: *Condon v Canada*, 2018 FC 522 at para 19; *Fakhri et al v Alfalfa's Canada, Inc cba Capera*, 2005 BCSC 1123 at para 8) and include the following:

- a. Likelihood of recovery or likelihood of success;
- b. The amount and nature of discovery, evidence or investigation;
- c. Settlement terms and conditions;
- d. Future expense and likely duration of litigation;
- e. Recommendations of neutral parties;
- f. Number of objectors and nature of objections;
- g. Presence of good faith bargaining and the absence of collusion;
- h. Communications with class members during litigation; and,
- i. Recommendations and experience of counsel.

[39] In addition to the above considerations, as noted in *McLean* (para 68), the proposed settlement must be considered as a whole and it is not open to the Court to rewrite the

substantive terms of the settlement or assess the interests of individual class members in isolation from the whole class.

[40] I will now consider these factors in relation to the proposed settlement in this case.

a. *Likelihood of recovery or likelihood of success*

[41] This class proceeding raises novel and complex legal issues. It is one of the few actions in Canada advancing a claim for the loss of Indigenous language and culture. Advancing novel claims is a significant challenge, and success was far from certain. Recovery of damages on such claims was even more of a challenge. Layered onto this is the inherent challenge of litigating claims for historical wrongs.

[42] When this class proceeding was filed, the likelihood of the success was uncertain. The exclusion of these claimants from the IRSSA and *McLean* Settlement foretold Canada's position on the viability of these claims. Canada aggressively argued against certification, and after certification, Canada advanced a number of defences including limitation defences and claims that the IRSSA releases were a complete bar to these claims. Canada denied any breach of fiduciary, statutory, constitutional or common law duties to the class members, and denied any breach of Aboriginal Rights. Success for Canada on any of these defences would mean no recovery for class members.

[43] As well, the potential liability of the Church Entities who were involved in the Residential Schools posed significant liability and evidentiary challenges.

[44] The passage of time and the historic nature of these claims is also a factor for consideration. Historic documentary evidence is difficult to amass, and the first-hand evidence from Day Scholars themselves was being lost with each passing year. Since the filing of the action, two of the Representative Plaintiffs have passed away as have a number of Survivor Class members. The risk of losing more class members increases the longer this litigation continues.

[45] The settlement agreement provides certainty, recovery, and closure for the Survivor Class and the Descendant Class members. These results could not be guaranteed if the litigation were to proceed.

b. *The amount and nature of discovery, evidence or investigation*

[46] The settlement agreement was reached a few months before the September 2021 common issues trial was scheduled to begin. A great deal of work had been undertaken to prepare this matter for trial. Documentary disclosure was largely complete with Canada having disclosed some 120,000 documents throughout 2020. The parties had retained experts. Examinations of Representative Plaintiffs and examinations for discovery in writing and orally had taken place. Pre-trial examinations were scheduled for March and April 2021.

[47] As this proceeding was trial ready, class counsel had reviewed thousands of pages of documentary evidence and had the benefit of expert opinions. This allowed class counsel to approach settlement discussions with a clear understanding of the challenges they would face in proving the asserted claims.

c. *Settlement terms and conditions*

[48] The settlement agreement provides for a \$10,000 Day Scholar Compensation Payment for eligible Survivor Class member or, where an eligible Survivor Class member has passed away, their Descendants. Schedule E to the Agreement lists the Residential Schools which had, or may have had, Day Scholars. Any Survivor who attended a school listed in Schedule E, even if for part of the year, will be eligible for a compensation payment, provided they have not already received compensation as part of the *McLean* Settlement or IRSSA. A lengthy claim period of 21 plus 3 months and the limited 45-day timeframe within which Canada must assess claims provides flexibility to claimants while ensuring speedy resolution of their claims.

[49] Importantly, within the claims process, there is a presumption in favour of compensation and the process has been designed to avoid re-traumatization. No evidence and no personal narrative is required to make a claim. There is also a low burden of proof to establish a claim. As well, there is a simplified process for persons with a disability. This process is distinct from that of the IAP, which has been criticized for the re-victimization of survivor claimants (*Fontaine v Canada (Attorney General)*, 2018 ONSC 103 at para 202).

[50] The settlement also includes a \$50,000,000 Day Scholars Revitalization Fund. This fund provides for Indigenous led initiatives to support healing, wellness, education, language, culture, heritage and commemoration activities for the Survivor Class members and Descendant Class members. This is a significant feature of the settlement agreement, and it is uncertain if the Court could provide such a remedy as part of the common issues trial or otherwise (*McLean* at para 103).

[51] The legal fees payable to class counsel, which is the subject of a separate Order of this Court, were negotiated after the proposed settlement agreement. The legal fees agreement is not conditional upon the settlement agreement being approved. This “de-linking” of the agreements is important as it ensured that the issue of legal fees did not inform or influence the terms of the settlement agreement. As well, legal fees are not payable from the settlement funds. Therefore, there is no risk of depleting the funds available to class members.

d. Future expense and likely duration of litigation

[52] As noted, the common issues trial was scheduled to start in September 2021 and continue for 74 days. If the settlement agreement is not approved, a lengthy trial will be necessary and appeals are likely. The Survivor Class members are elderly. Two of the Representative Plaintiffs, Violet Gottfriedson and Frederick Johnson, passed away since litigation commenced, as have a number of class members. Given the nearly decade-long history of this action, as well as the novelty of the claims, the future expense and duration of litigation should the settlement not be approved is likely to be substantial and lengthy.

e. Recommendations of neutral parties

[53] In support of this Motion, class counsel re-submitted the Affidavit of Dr. John Milloy, an expert historian who provided evidence at the Certification Motion. Dr. Milloy is the author of *A National Crime*, a report on the Residential School system. Dr. Milloy outlined the Schools’ purpose as “the eradication of the children’s’ traditional ontology, their language, spirituality and their cultural practices”, and highlighted the inadequate conditions and standards of care in the

Schools. Significantly, Dr. Milloy also opined on the impact of Residential Schools on Day Scholars, writing:

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.

[54] The Court also has an Affidavit from Dr. Rita Aggarwala attaching her report titled *Estimating the Number of Day Scholars who Attended Canada's Indian Residential Schools*. Although Dr. Aggarwala notes concerns about the quality of the data she had access to for the purposes of her statistical analysis, she did provide estimates which are of assistance in understanding the order of magnitude of this settlement. Dr. Aggarwala estimates the class size of Day Scholars who attended Residential Schools from 1920 to 1997 and were alive as of 2005 to be approximately 15,484. Based upon this number, Dr. Aggarwala estimates the total value of the settlement of the Survivor Class claim, based upon a funding formula of \$10,000 per survivor, to be approximately \$154,484,000.

f. *Number of objectors and nature of objections*

[55] In advance of the hearing, class counsel filed 45 statements from class members of which 24 were objections. At the settlement approval hearing, the Court also heard oral submissions from 6 members objecting to the settlement.

[56] Those speaking against the proposed settlement provided moving and emotionally raw statements about their experiences at Residential Schools. Many made reference to the recent discovery of the bodies of young children within the school grounds as reopening the painful wounds left by the tragic legacy of Residential Schools. Their pain is real and it is palpable. The Court heard members of the Survivor Class explain how their souls were destroyed at the Residential Schools. They mourn the loss of their language, their culture, their spirit, and their pride. Survivors spoke about how the school was the centre of the community – and as a result of the treatment they received they lost both their community and their core identity. Some spoke about the opportunities lost without a proper education.

[57] Members of the Descendant Class spoke about the intergenerational trauma, the pain and dysfunction suffered by their parents and grandparents, and the resulting loss of meaningful family relationships and loss of cultural identity.

[58] Unsurprisingly, the common theme running through the objections is that a payment of \$10,000 is simply not enough to compensate for the harms endured and the losses suffered. However, as acknowledged by almost all who spoke, putting a dollar value on the losses suffered is an impossible task. Some of those objecting to the \$10,000 payment argued that any settlement should offer at least the same compensation levels as those offered through the IRSSA and the *McLean* Settlement.

[59] While it is understandable that class members compare the compensation offered by this settlement with that offered in the IRSSA and the *McLean* Settlement such a comparison fails to

recognize the key difference in the actions. The claims advanced in this class action are for loss of language and culture. The IRSSA and the *McLean* Settlement addressed claims for sexual and physical abuse.

[60] In any event, the \$10,000 payment to Day Scholars in this settlement agreement is comparable with the IRSSA and *McLean* compensation models. In the IRSSA, class members were eligible for a CEP of \$10,000 for the first school year, and \$3,000 for each additional school year. In *McLean* compensation was based on grid or levels of harm. The range of the grid was from \$10,000 for Level 1 claims, to \$200,000 for Level 5, with the higher levels of compensation for those who suffered repeated and persistent sexual abuse or serious physical abuse.

[61] The Class Representative Plaintiffs who have been involved in the litigation throughout, overwhelmingly support the settlement. Their support of the settlement is compelling. They have shouldered the burden of moving these claims forward and have had to relive their own trauma by recounting their Residential School experiences. They did this for the benefit of all class members who now, because of the terms of the settlement, will not be required to do so.

[62] Overall, when assessing the reasonableness of the proposed settlement, the Court must consider the interests of all class members, estimated to be over 15,000, as against the risks and benefits of having this class action proceed to trial.

[63] I have considered the objections voiced at the hearing as well as the written objections filed. The objections were primarily focused on the inadequacy of the settlement amount. All while acknowledging that no amount of money can right the wrongs or replace that which has been lost. However, what is certain is that continuing with this litigation will require class members to re-live the trauma for many years to come, against the risk and the uncertainty of litigation. Bringing closure to this painful past has real value which cannot be underestimated.

[64] I acknowledge that the settlement of a class proceeding will never be perfectly suited to the needs of each person within the class, however, considering the obstacles that were overcome to reach this settlement, I am satisfied that this settlement agreement is in the best interests of the Survivor Class and the Descendant Class.

[65] Finally, I commend the lawyers for designing a claims process that protects class members against having to re-live the trauma in order to establish a claim for compensation.

g. *Presence of good faith and absence of collusion*

[66] This action has been ongoing since 2012. It was not until 2017 that the parties first undertook serious settlement discussions. At that time, exploratory discussions were held between class counsel and the Minister's Special Representative (MSR). The Parties met on ten occasions. In March 2017, class counsel forwarded a settlement framework to Canada. Settlement negotiations continued into 2018, and the parties engaged in several rounds of judicial dispute resolution. Unfortunately, a settlement was not reached at that time and the parties prepared to proceed to trial.

[67] On March 4, 2021, the MSR delivered a new settlement offer to class counsel. This ultimately became the settlement agreement that was signed in June 2021 and which is now before the Court for approval.

[68] I am satisfied the parties engaged in good faith negotiations throughout and there is no collusion.

h. Communications with class members during litigation

[69] Following the public announcement of the proposed settlement on June 9, 2021, class members were contacted pursuant to a Court approved 2-month Notice Plan. The methods used to communicate the settlement agreement with potential class members included media advertisements, a website, community outreach kits, outreach to national and regional journalists, 6 information webinars, and a “Justice for Day Scholars” Facebook group.

[70] Settlement notices were provided in English, French, James Bay Cree, Plains Cree Ojibwe, Mi’kmaq, Inuktitut, and Dene. Class counsel advises that hundreds of class members made contact by phone, email and mail, and that class counsel responded to all inquiries.

[71] Notice of the settlement agreement was also provided to provincial and territorial public guardians and trustees by letter, and to provincial and territorial provincial health insurers by letter. Finally, notice of the settlement agreement was provided to the Assembly of First Nations (AFN), all AFN Regional Chiefs, and a number of other leaders of Indigenous governance organizations.

[72] I am satisfied that a robust, clear and accessible notice of the proposed settlement was provided to potential class members.

i. *Recommendations and experience of counsel*

[73] Class counsel are experienced in class actions litigation and in Aboriginal law. They have first hand experience with the IRSSA and were specifically sought out to act on this class proceeding. They wholly recommend this settlement agreement, which, in their opinion, addresses the Representative Plaintiffs' objectives.

Conclusion

[74] For the above reasons, I have concluded that the settlement agreement is fair, reasonable, and in the best interests of the Survivor Class and Descendant Class. I echo the comments of Justice Phelan in *McLean* where he states at para 3: "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."

[75] I therefore approve the settlement agreement.

[76] With the approval of the settlement agreement, the claims of the Survivor and Descendant Class members against Canada will be dismissed with prejudice and without costs.

[77] Deloitte LLP is appointed as the Claims Administrator, as defined in the settlement agreement, to carry out the duties assigned to that role.

[78] The Certification Order of Justice Harrington will be amended as requested and the Plaintiffs are granted leave to file an Amended Statement of Claim in the form attached to the Plaintiffs' Notice of Motion.

ORDER IN T-1542-12

THIS COURT ORDERS that:

1. The Settlement Agreement dated June 4, 2021 and attached as Schedule “A” 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 Courts Rules*, SOR/98-106, and shall be implemented in accordance with its terms;
2. The Settlement Agreement, is binding on all 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;
3. 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;

8. 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. 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. 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. Prior to the Implementation Date, the Parties will identify and propose an Independent Reviewer or Independent Reviewers for Court appointment.
12. 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.
13. The Certification Order of Justice Harrington, dated June 18, 2015, will be amended as requested.

14. The Plaintiffs are granted leave to amend the First Re-Amended Statement of Claim in the form attached hereto.

15. There will be no costs of this motion.

“Ann Marie McDonald”

Judge

This is Exhibit "H" referred to in the
affidavit of Peter Grant sworn before me this
20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

"H"

Federal Court



Cour fédérale

Date: 20230121

Docket: T-1542-12

Ottawa, Ontario, January 21, 2023

PRESENT: Madam Justice McDonald**CLASS PROCEEDING****BETWEEN:**

**CHIEF SHANE GOTTFRIEDSON, on behalf of the
TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the
TK'EMLUPS TE SECWÉPEMC INDIAN BAND, and
CHIEF GARRY FESCHUK, on behalf of the SECHELT INDIAN BAND
and the SECHELT INDIAN BAND**

Plaintiffs**and**

**HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL OF CANADA**

Defendant**ORDER**

UPON MOTION by the Plaintiffs for an Order approving the form and content of the notice of proposed settlement and settlement approval hearing (the "Notice"), approving the method of dissemination of the Notice (the "Notice Plan"), and approving the proposed correction to the list of Class Members;

AND UPON READING the Notice of Motion, and the Affidavit of W. Cory Wanless, sworn January 19, 2023;

AND UPON BEING ADVISED that the Defendant consents to this Order;

AND UPON hearing oral submissions on January 20, 2023;

THIS COURT ORDERS that:

1. The Order of Justice McDonald dated September 6, 2022 is hereby amended to correct the list of Band Class members (the “Class List”) in the form set out in Schedule “A”;
2. The Notice substantially in the form set out in Schedule “B” hereto is approved;
3. The Notice Plan set out in Schedule “C” hereto is approved;
4. The costs associated with the Notice Plan, including the costs of translating the Notices, shall be paid by the Defendant, regardless of whether the proposed settlement is approved, in an amount not to exceed \$20,000;
5. Class Counsel shall disseminate the Notice to all Class Members on the Class List, in accordance with the Notice Plan;
6. Class Counsel shall receive any Class Member statements of support or objection that are delivered by 11:59 p.m. PDT on February 20, 2023, and shall deliver any statements of support or objection received to the Court and to the Defendant by February 22, 2023;
7. Class Counsel shall receive any Class Member requests to make oral submissions at the Settlement Approval Hearing that are delivered by 11:59 p.m. PDT on

February 20, 2023, and shall inform the Court and the Defendant of any such requests by February 22, 2023;

8. No person may bring any action or take any proceeding against Class Counsel or any of their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, beneficiaries or assigns for any matter in any way relating to the implementation of the terms of the Notice Plan; and
9. There shall be no costs of this Motion.

"Ann Marie McDonald"

Judge

Schedule "A"

List of Class Members

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
1	NT	Deh Gah Got'ie Council	Fort Providence (Sacred Heart)	IRS Located in Community
2	NT	Deline First Nation dissolved Sept 1, 2016 and became Deline Got'ine Government	Federal Hostel at Fort Franklin; Inuvik (Grollier Hall)	IRS Located in Community; IRS Attended by Member(s)
3	NT	Deninu K'ue FN	Fort Resolution (St. Joseph's)	IRS Located in Community
4	NT	Ka'a'gee Tu FN	Fort Smith (Breynat Hall); Fort Simpson (Lapointe Hall)	IRS Attended by Member(s)
5	NT	Katloodeeche FN	Fort Smith - Grandin College	IRS Located in Community
6	NT	Liidlii Kue FN	Fort Simpson (Lapointe Hall)	IRS Located in Community
7	NT	Lutsel K'e Dene FN	Fort Resolution (St. Joseph's)	IRS Attended by Member(s)
8	NT	Nahanni Butte Dene Band	Fort Simpson (LaPointe Hall)	IRS Attended by Member(s)
9	NT	Smith's Landing First Nation	Holy Angels (Fort Chipewyan, École des Saint-Ange's); Fort Simpson (Bompas Hall); Fort Smith (Breynat Hall); Fort Smith - Grandin College	IRS Located in Community; IRS Attended by Member(s)
10	NT	West Point FN	Fort Providence (Sacred Heart)	IRS Attended by Member(s)
11	BC	Adams Lake IB	Kamloops	IRS Attended by Member(s)
12	BC	Ahousaht	Christie (Clayoquot; Kakawis); Ahousaht	IRS Located in Community
13	BC	Ashcroft Indian Band	St. George's (Lytton)	IRS Located in Community
14	BC	?aq'am	Cranbrook (St. Eugene's, Kootenay)	IRS Located in Community
15	BC	Bonaparte IB	Kamloops	IRS Attended by Member(s)
16	BC	Boothroyd IB	St. George's (Lytton)	IRS Attended by Member(s)
17	BC	Beecher Bay FN	Alberni	IRS Attended by Member(s)
18	BC	590 Bridge River IB	Kamloops; St. Mary's (Mission)	IRS Attended by Member(s)
19	BC	Canim Lake Band	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
20	BC	Cayoose Creek IB	Cariboo (St. Joseph's, William's Lake); Kamloops; St. George's (Lytton); St. Mary's (Mission)	IRS Attended by Member(s)
21	BC	Chawathil FN	St. Mary's (Mission)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
22	BC	Cheslatta Carrier Nation	Lejac (Fraser Lake)	IRS Attended by Member(s)
23	BC	Cheam First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
24	BC	Coldwater IB	Kamloops	IRS Located in Community
25	BC	Cook's Ferry IB	St. George's (Lytton)	IRS Attended by Member(s)
26	BC	Cowichan Tribes	Kuper Island; St. Mary's (Mission)	IRS Located in Community; IRS Attended by Member(s)
27	BC	Da'naxda'xw/Awaetlala Nation	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Located in Community
28	BC	Douglas First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
29	BC	Esdilagh First Nations	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
30	BC	Ehattesht Chinehkint	Christie (Clayoquot, Kakawis)	IRS Located in Community; IRS Attended by Member(s)
31	BC	Esk'etemc	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
32	BC	Fort Nelson First Nation	Kamloops	IRS Attended by Member(s)
33	BC	Gitanmaax	Lejac (Fraser Lake); Alberni; Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
34	BC	Gitan'yow Huwilp Society	Alberni	IRS Attended by Member(s)
35	BC	Gitga'at	Edmonton (Poundmaker, replaced Red Deer Industrial); Alberni	IRS Attended by Member(s)
36	BC	Gitsegukla IB	Edmonton (Poundmaker, replaced Red Deer Industrial); Alberni	IRS Attended by Member(s)
37	BC	Gitxaala Nation	Coqualeetza from 1924 to 1940; Alberni; St. George's (Lytton); Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
38	BC	Hagwilget Village Council	Lejac (Fraser Lake)	IRS Attended by Member(s)
39	BC	Haisla FN	Kitimaat	IRS Located in Community
40	BC	Halalt FN	Kuper Island	IRS Attended by Member(s)
41	BC	Heiltsuk Nation	Alberni	IRS Attended by Member(s)
42	BC	High Bar First Nation	Kamloops	IRS Attended by Member(s)
43	BC	Homalco IB	Kamloops; Sechelt; St. Mary's (Mission)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
44	BC	Hupačasath FN	Alberni	IRS Attended by Member(s)
45	BC	Huu-ay-aht FNs	Alberni	IRS Attended by Member(s)
46	BC	Kanaka Bar IB	St. George's (Lytton)	IRS Located in Community; IRS Attended by Member(s)
47	BC	Kitasoo Xai'xais Nation	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home); Alberni	IRS Attended by Member(s)
48	BC	Kispiox Band #532	Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
49	BC	Kitselas FN	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
50	BC	Klahoose First Nation	Sechelt	IRS Attended by Member(s)
51	BC	K'ómoks First Nation	Kuper Island; Sechelt	IRS Located in Community
52	BC	Kwantlen FN	Kuper Island; St. Mary's (Mission)	IRS Attended by Member(s)
53	BC	Kwikwetlem First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
54	BC	Leq'amel FN	St. Mary's (Mission)	IRS Attended by Member(s)
55	BC	Lheidli Tienneh	Lejac (Fraser Lake)	IRS Located in Community
56	BC	Lhoosk'uz Dené Nation	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
57	BC	Lil'wat Nation	St. Mary's (Mission)	IRS Attended by Member(s)
58	BC	Little Shuswap Lake Band	Kamloops	IRS Located in Community; IRS Attended by Member(s)
59	BC	Lower Kootenay IB	Cranbrook (St. Eugene's, Kootenay)	IRS Located in Community
60	BC	Lower Nicola IB	Kamloops; St. George's (Lytton); Lejac (Fraser Lake); Coqualeetza from 1924 to 1940; St. Mary's (Mission); Cranbrook (St. Eugene's, Kootenay); Sechelt; Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
61	BC	Lower Similkameen IB	Kamloops; Cranbrook (St. Eugene's, Kootenay)	IRS Attended by Member(s)
62	BC	Lyackson First Nation	Kuper Island	IRS Attended by Member(s)
63	BC	Lytton First Nation	St. George's (Lytton)	IRS Located in Community
64	BC	Malahat Nation	Kuper Island	IRS Attended by Member(s)
65	BC	McLeod Lake IB	Lejac (Fraser Lake)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
66	BC	Musqueam IB	St. Paul's (Squamish, North Vancouver)	IRS Attended by Member(s)
67	BC	Nadleh Whut'en	Lejac (Fraser Lake)	IRS Attended by Member(s)
68	BC	Namgis FN	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Located in Community
69	BC	Nanoose FN	Alberni	IRS Attended by Member(s)
70	BC	Nakazdli Whut'en	Lejac (Fraser Lake); Cariboo (St. Joseph's, William's Lake); Kamloops	IRS Attended by Member(s)
71	BC	Nazko FN	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community; IRS Attended by Member(s)
72	BC	Nee Tahi Buhn IB	Lejac (Fraser Lake)	IRS Attended by Member(s)
73	BC	Neskonlith FN	Kamloops	IRS Attended by Member(s)
74	BC	Nisga'a Village of Gitlaxt'aamiks formerly New Aiyansh	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
75	BC	Nooaitch IB	Kamloops	IRS Attended by Member(s)
76	BC	Nuxalk FN	Alberni; Cariboo (St. Joseph's, William's Lake); Coqualeetza from 1924 to 1940; St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
77	BC	Okanagan IB	Kamloops	IRS Attended by Member(s)
78	BC	Old Masset Village Council	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
79	BC	Oregon Jack Creek	Kamloops	IRS Attended by Member(s)
80	BC	Osoyoos IB	Kamloops; Cranbrook (St. Eugene's, Kootenay)	IRS Located in Community
81	BC	Peters FN	Kamloops	IRS Located in Community
82	BC	Penelakut Tribe	Kuper Island	IRS Located in Community
83	BC	Penticton IB	Kamloops; Coqualeetza from 1924 to 1940; Cranbrook (St. Eugene's, Kootenay)	IRS Located in Community
84	BC	Prophet River FN	Lejac (Fraser Lake); Lower Post	IRS Attended by Member(s)
85	BC	Red Bluff IB (Lhtako Dene Nation)	Lejac (Fraser Lake); St. Mary's (Mission); Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
86	BC	Saulteau First Nations	Grouard to December 1957; Edmonton (Poundmaker, replaced Red Deer Industrial).	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
87	BC	Seabird Island Band	St. Mary's (Mission); Coqualeetza from 1924 to 1940; Kamloops	IRS Located in Community; IRS Attended by Member(s)
88	BC	Sechelt FN	Sechelt	IRS Located in Community
89	BC	Shackan IB	Kamloops	IRS Located in Community
90	BC	Shuswap Band	Cranbrook (St. Eugene's, Kootenay); Kamloops	IRS Located in Community
91	BC	Simpcw FN	Kamloops	IRS Attended by Member(s)
92	BC	Skatin	St. Mary's (Mission); Coqualeetza from 1924 to 1940	IRS Located in Community
93	BC	Skawahlook FN	Kuper Island	IRS Attended by Member(s)
94	BC	Skeetchestn IB	Kamloops	IRS Attended by Member(s)
95	BC	Songhees Nation	Kuper Island	IRS Attended by Member(s)
96	BC	Spuzzum First Nation	St. Mary's (Mission); St. George's (Lytton); Kamloops	IRS Attended by Member(s)
97	BC	Stellat'en FN	Lejac (Fraser Lake)	IRS Attended by Member(s)
98	BC	Sts'ailes	St. Mary's (Mission)	IRS Attended by Member(s)
99	BC	Stswecem'c Xgat'tem First Nation	Kamloops; Coqualeetza from 1924 to 1940; Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
100	BC	Sliammon FN (Tla'amin Nation)	Sechelt	IRS Attended by Member(s)
101	BC	Soowahlie IB	Coqualeetza from 1924 to 1940	IRS Attended by Member(s)
102	BC	Squamish Nation	St. Paul's (Squamish, North Vancouver)	IRS Located in Community
103	BC	Shxwhay Village	St. Mary's (Mission)	IRS Attended by Member(s)
104	BC	Siska Indian Band	St. George's (Lytton)	IRS Located in Community
105	BC	Skidegate FN	Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
106	BC	Skwah First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
107	BC	Splatsin	Cranbrook (St. Eugene's, Kootenay); Kamloops	IRS Attended by Member(s)
108	BC	Sumas FN	St. Mary's (Mission)	IRS Located in Community
109	BC	Tahltan Band	Lower Post	IRS Attended by Member(s)
110	BC	Taku River Tlingit FN	Lower Post	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
111	BC	T'it'q'et	St. Mary's (Mission)	IRS Attended by Member(s)
112	BC	Tk'emlups te Secwepemc	Kamloops	IRS Located in Community
113	BC	Tla-o-qui-aht FN	Christie (Clayoquot, Kakawis); Ahousaht	IRS Located in Community
114	BC	Tl'etinqox Government	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
115	BC	Toosey IB	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
116	BC	Tsartlip FN	Kuper Island	IRS Attended by Member(s)
117	BC	Tsawwassen FN	St. Mary's (Mission)	IRS Attended by Member(s)
118	BC	Tsawout First Nation	St. Mary's (Mission)	IRS Attended by Member(s)
119	BC	Tsal'ah (Seton Lake IB)	Kamloops	IRS Attended by Member(s)
120	BC	Tseshah FN	Alberni	IRS Located in Community
121	BC	Tsleil-Waututh Nation	St. Paul's (Squamish, North Vancouver)	IRS Located in Community
122	BC	Tsideldel FN	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
123	BC	Ts'kw'aylaxw First Nation	Kamloops	IRS Located in Community
124	BC	T'Sou-ke FN	Kuper Island	IRS Attended by Member(s)
125	BC	Tzeachten FN	St. Mary's (Mission); Coqualeetza from 1924 to 1940	IRS Located in Community; IRS Attended by Member(s)
126	BC	Uchucklesaht Tribe Government	Alberni	IRS Located in Community
127	BC	Ulkatcho IB	Anahim Lake Dormitory (September 1968 to June 1977)	IRS Located in Community
128	BC	Upper Nicola Band	Kamloops	IRS Attended by Member(s)
129	BC	Westbank FN	Cranbrook (St. Eugene's, Kootenay); Kamloops	IRS Attended by Member(s)
130	BC	West Moberly First Nations	Grouard to December 1957	IRS Attended by Member(s)
131	BC	Wet'suwet'en First Nation	Lejac (Fraser Lake); Kamloops; St. Mary's (Mission)	IRS Located in Community; IRS Attended by Member(s)
132	BC	We Wai Kai Nation	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home); Alberni	IRS Attended by Member(s)
133	BC	We Wai Kum FN	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	IRS Attended by Member(s)
134	BC	Williams Lake IB	Cariboo (St. Joseph's, William's Lake)	IRS Located in Community

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
135	BC	Whispering Pines Clinton Indian Band	Kamloops; Cariboo (St. Joseph's, William's Lake)	IRS Located in Community
136	BC	Witset FN	Lejac (Fraser Lake)	IRS Attended by Member(s)
137	BC	Xatsull FN (Soda Creek)	Cariboo (St. Joseph's, William's Lake); Coqualeetza from 1924 to 1940; Kamloops; Lejac (Fraser Lake)	IRS Located in Community
138	BC	Xeni Gwet'in First Nations Government	Kamloops; Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
139	BC	Yekooche FN	Lejac (Fraser Lake)	IRS Attended by Member(s)
140	BC	Yunesit'in Government	Cariboo (St. Joseph's, William's Lake)	IRS Attended by Member(s)
141	YT	Kwanlin Dün First Nation	Yukon Hall (Whitehorse/Protestant Hostel); Coudert Hall (Whitehorse Hostel/Student Residence - replaced by Yukon Hall); Whitehorse Baptist Mission	IRS Located in Community
142	YT	Tr'ondëk Hwëch'in	St. Paul's Hostel from September 1920 to June 1943	IRS Located in Community
143	YT	First Nation of Na-Cho Nyäk Dun	Carcross (Chooulta)	IRS Located in Community; IRS Attended by Member(s)
144	YT	White River First Nation	Lower Post	IRS Located in Community
145	AB	Alexis Nakota Sioux Nation	Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Attended by Member(s)
146	AB	Athabasca Chipewyan FN	Holy Angles (Fort Chipewyan, École des Saint-Ange)	IRS Located in Community
147	AB	Bearspaw FN	Morley (Stony/Stoney, replaced McDougall Orphanage)	IRS Located in Community
148	AB	Beaver Lake Cree Nation	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Located in Community
149	AB	Blood Tribe	St. Mary's (Blood, Immaculate Conception); St. Paul's (Blood)	IRS Located in Community
150	AB	Cold Lake FNs	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Attended by Member(s)
151	AB	Dene Tha' First Nation	Assumption (Hay Lake)	IRS Located in Community
152	AB	Driftpile Cree Nation	Joussard (St. Bruno's) Desmarais (Wabisca Lake, St. Martin's, Wabisca Roman Catholic)	IRS Located in Community; IRS Attended by Member(s)
153	AB	Duncan's First Nation	Grouard to December 1957	IRS Attended by Member(s)
154	AB	Ermineskin Tribe	Ermineskin (Hobbema)	IRS Located in Community
155	AB	Enoch Cree Nation	Edmonton, Ermineskin (Hobbema)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
156	AB	Fort McKay FN	Holy Angels (Fort Chipewyan, École des Saint-Anges)	IRS Attended by Member(s)
157	AB	Frog Lake FN	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Attended by Member(s)
158	AB	Horse Lake FN	Sturgeon Lake (Calais, St. Francis Xavier)	IRS Attended by Member(s)
159	AB	Kapawe'no First Nation	Grouard to December 1957	IRS Located in Community
160	AB	Kehewin Cree Nation	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart); Onion Lake Anglican (see Prince Albert)	IRS Located in Community; IRS Attended by Member(s)
161	AB	Little Red River Cree Nation	Fort Vermilion (St. Henry's)	IRS Attended by Member(s)
162	AB	Louis Bull Tribe	Ermineskin (Hobbema)	IRS Attended by Member(s)
163	AB	Lubicon Lake Band #453	Joussard (St. Bruno's)	IRS Attended by Member(s)
164	AB	Mikisew Cree First Nation	Holy Angels (Fort Chipewyan, École des Saint-Anges)	IRS Located in Community
165	AB	Montana FN	Ermineskin (Hobbema)	IRS Attended by Member(s)
166	AB	Paul First Nation	St. Albert (Youville); Edmonton (Poundmaker, replaced Red Deer Industrial)	IRS Located in Community
167	AB	Piikani Nation	Sacred Heart (Peigan, Brocket); St. Cyprian (Queen Victoria's Jubilee Home, Peigan)	IRS Located in Community
168	AB	Saddle Lake Cree Nation	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Located in Community
169	AB	Samson Cree Nation	Ermineskin (Hobbema)	IRS Located in Community
170	AB	Sawridge FN	Grouard to December 1957	IRS Attended by Member(s)
171	AB	Siksika Nation	Crowfoot (Blackfoot, St. Joseph's, Ste. Trinite)	IRS Attended by Member(s)
172	AB	Stoney FN	Morley (Stony/Stoney, replaced McDougall Orphanage)	IRS Located in Community
173	AB	Sturgeon Lake Cree Nation	Sturgeon Lake (Calais, St. Francis Xavier)	IRS Located in Community
174	AB	Sucker Creek FN	Joussard (St. Bruno's)	IRS Located in Community
175	AB	Sunchild First Nation	Ermineskin (Hobbema)	IRS Attended by Member(s)
176	AB	Tallcree Tribal Government	Fort Vermilion (St. Henry's)	IRS Attended by Member(s)
177	AB	Tsuut'ina Nation	Sarcee (St. Barnabas)	IRS Located in Community
178	AB	Whitefish Lake IB	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	IRS Attended by Member(s)
179	AB	Woodland Cree FN	Joussard (St. Bruno's)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
180	SK	Ahtahkakoop Cree Nation	Kamloops	IRS Attended by Member(s)
181	SK	Beardy's & Okemasis First Nation	St. Michael's (Duck Lake)	IRS Attended by Member(s)
182	SK	Big Island Lake Cree Nation	Beauval (Lac la Plonge)	IRS Attended by Member(s)
183	SK	Buffalo River Dene Nation	Beauval (Lac la Plonge)	IRS Located in Community; IRS Attended by Member(s)
184	SK	Canoe Lake Cree First Nation	Beauval (Lac la Plonge)	IRS Attended by Member(s)
185	SK	Carry the Kettle FN	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
186	SK	Clearwater River Dene Nation	Beauval (Lac la Plonge)	IRS Located in Community
187	SK	Cote FN	Cote Improved Federal Day School (September 1928 to June 1940)	IRS Located in Community
188	SK	Cowessess FN #73	Marieval (Cowessess, Crooked Lake)	IRS Located in Community
189	SK	English River FN	Beauval (Lac la Plonge)	IRS Located in Community
190	SK	Fishing Lake FN	Muscowequan (Lestock, Touchwood)	IRS Located in Community
191	SK	George Gordon FN	Gordon's	IRS Located in Community
192	SK	Kahkewistahaw FN	Marieval (Cowessess, Crooked Lake)	IRS Attended by Member(s)
193	SK	Keeseekoos FN	St. Philip's	IRS Attended by Member(s)
194	SK	Key FN	St. Philip's	IRS Attended by Member(s)
195	SK	Lac La Ronge IB	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	IRS Located in Community
196	SK	Little Black Bear Band	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
197	SK	Little Pine First Nation	Thunderchild (Delmas, St. Henri); Onion Lake Anglican (see Prince Albert)	IRS Attended by Member(s)
198	SK	Montreal Lake Cree Nation	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	IRS Located in Community
199	SK	Muskoday First Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
200	SK	Muskowekwan First Nation	Muscowequan (Lestock, Touchwood)	IRS Located in Community
201	SK	Nekaneet First Nation	Gordon's	IRS Attended by Member(s)
202	SK	Ocean Man First Nation #69	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
203	SK	Ochapowace Nation	Round Lake	IRS Located in Community
204	SK	Okanese FN	File Hills	IRS Located in Community
205	SK	Onion Lake	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge) ; St. Anthony's (Onion Lake, Sacred Heart)	IRS Located in Community
206	SK	Pasqua First Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Located in Community
207	SK	Piapot First Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Located in Community
208	SK	Pheasant Rump Nakota FN #68	Marieval (Cowessess, Crooked Lake); Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Located in Community; IRS Attended by Member(s)
209	SK	Red Earth First Nation	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	IRS Located in Community
210	SK	Star Blanket Cree Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Located in Community
211	SK	Sweetgrass First Nation	St. Anthony's (Onion Lake, Sacred Heart)	IRS Attended by Member(s)
212	SK	Thunderchild First Nation	Onion Lake Anglican(see Prince Albert); Thunderchild (Delmas, St. Henri)	IRS Located in Community; IRS Attended by Member(s)
213	SK	Wahpeton Dakota Nation	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	IRS Attended by Member(s)
214	SK	White Bear First Nations	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
215	SK	Zagime Anishinabek (Formerly Sakimay FNs)	Marieval (Cowessess, Crooked Lake)	IRS Located in Community
216	SK	Waterhen Lake FN	Beauval (Lac la Plonge)	IRS Attended by Member(s)
217	MB	Berens River FN	Portage la Prairie; Brandon	IRS Attended by Member(s)
218	MB	Bunibonibee Cree Nation	Birtle; Brandon; Portage la Prairie	IRS Attended by Member(s)
219	MB	Bloodvein River FN	Assiniboia (Winnipeg)	IRS Attended by Member(s)
220	MB	Little Black River FN	Dauphin (replace McKay)	IRS Attended by Member(s)
221	MB	Ebb and Flow First Nation	Sandy Bay	IRS Attended by Member(s)
222	MB	Fisher River Cree Nation	Birtle	IRS Attended by Member(s)
223	MB	Gambler First Nation	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
224	MB	Lake Manitoba First Nation	Assiniboia (Winnipeg)	IRS Attended by Member(s)
225	MB	Sagkeeng FN	Fort Alexander (Pine Falls)	IRS Located in Community; IRS Attended by Member(s)
226	MB	Long Plain FN	Brandon; Portage la Prairie	IRS Located in Community; IRS Attended by Member(s)
227	MB	Mathias Colomb Cree Nation	Sturgeon Landing (replaced by Guy Hill, MB); Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	IRS Attended by Member(s)
228	MB	Misipawistik Cree Nation	Brandon	IRS Attended by Member(s)
229	MB	Nisichawayasihk Cree Nation	McKay (The Pas, replaced by Dauphin)	IRS Attended by Member(s)
230	MB	Norway House Cree Nation	Notre Dame Hostel (Norway House Catholic, Jack River Hostel, replaced Jack River Annex at Cross Lake); Norway House	IRS Located in Community
231	MB	O-Pipon-Na-Piwin Cree Nation	Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	IRS Attended by Member(s)
232	MB	Pinaymootang First Nation	Birtle	IRS Attended by Member(s)
233	MB	Poplar River FN	Norway House, Cross Lake (St. Joseph's, Norway House); Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	IRS Attended by Member(s)
234	MB	Pine Creek FN	Pine Creek (Campeville)	IRS Located in Community
235	MB	Roseau River Anishinabe FN	Fort Alexander (Pine Falls); Birtle; Portage la Prairie; Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	IRS Attended by Member(s)
236	MB	Sandy Bay Ojibway FN	Portage la Prairie; Sandy Bay	IRS Located in Community; IRS Attended by Member(s)
237	MB	Sioux Valley Dakota Nation	Brandon	IRS Attended by Member(s)
238	MB	St. Theresa Point FN	Assiniboia (Winnipeg)	IRS Attended by Member(s)
239	MB	Swan Lake FN	Portage la Prairie	IRS Attended by Member(s)
240	MB	Tataskweyak Cree Nation	Dauphin (replaced McKay)	IRS Attended by Member(s)
241	MB	Footinaowaziibeeng Treaty Reserve #292	Pine Creek (Campeville)	IRS Attended by Member(s)
242	MB	Waywayseecappo FN	Birtle	IRS Located in Community
243	MB	York Factory FN	Dauphin (replaced McKay)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
244	ON	Algonquins of Pikwakanagan First Nation	Mohawk Institute; Spanish Boys' School (Charles Garnier, St. Joseph's)	IRS Attended by Member(s)
245	ON	Aamjiwnaang FN-Chippewas of Sarnia	Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	IRS Attended by Member(s)
246	ON	Alderville FN	Mount Elgin (Muncey, St. Thomas)	IRS Attended by Member(s)
247	ON	Animakee Wa Zhing #37	Cecilia Jeffrey (Kenora, Shoal Lake)	IRS Located in Community; IRS Attended by Member(s)
248	ON	Aroland FN	McIntosh (Kenora)	IRS Attended by Member(s)
249	ON	Big Grassy River First Nation	Cecilia Jeffrey (Kenora, Shoal Lake)	IRS Attended by Member(s)
250	ON	Caldwell First Nation	Mount Elgin (Muncey, St. Thomas)	IRS Attended by Member(s)
251	ON	Cat Lake FN	Pelican Lake (Pelican Falls)	IRS Attended by Member(s)
252	ON	Chapleau Cree FN	Chapleau (St. John's); Shingwauk	IRS Located in Community; IRS Attended by Member(s)
253	ON	Chippewas of the Thames FN	Mount Elgin (Muncey, St. Thomas)	IRS Located in Community
254	ON	Chippewas of Kettle and Stony Point First Nation (formerly Kettle Point First Nation and Stony Point First Nation)	Mount Elgin (Muncey, St. Thomas); Mohawk Institute	IRS Attended by Member(s)
255	ON	Chippewas of Rama First Nation	Mohawk Institute	IRS Attended by Member(s)
256	ON	Constance Lake First Nation	St. Anne's (Fort Albany)	IRS Attended by Member(s)
257	ON	Couchiching FN	Fort Frances (St. Margaret's)	IRS Located in Community; IRS Attended by Member(s)
258	ON	Curve Lake FN	Mohawk Institute	IRS Attended by Member(s)
259	ON	Delaware Nation (Moravian of the Thames)	Mohawk Institute; Mount. Elgin (Muncey, St. Thomas); Shingwauk	IRS Attended by Member(s)
260	ON	Fort Albany FN	St. Anne's (Fort Albany)	IRS Located in Community
261	ON	Fort William FN	St. Joseph's/Fort William	IRS Located in Community
262	ON	Fort Severn FN	Pelican Lake (Pelican Falls)	IRS Attended by Member(s)
263	ON	Ginoogaming FN	St. Joseph's/Fort William	IRS Attended by Member(s)
264	ON	Grassy Narrows FN	McIntosh (Kenora)	IRS Attended by Member(s)
265	ON	Kashechewan FN	St. Anne's (Fort Albany)	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
266	ON	Kitchenuhmaykoosib Inninuwig	Pelican Lake (Pelican Falls); Cecilia Jeffrey (Kenora, Shoal Lake); Poplar Hill	IRS Located in Community
267	ON	Lac Seul First Nation	Cecilia Jeffrey (Kenora, Shoal Lake); Pelican Lake (Pelican Falls)	IRS Attended by Member(s)
268	ON	M'Chigeeng FN	Spanish Boys' School (Charles Garnier, St. Joseph's)	IRS Attended by Member(s)
269	ON	Mississauga First Nation	Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	IRS Attended by Member(s)
270	ON	Mississaugas of the Credit First Nation	Mohawk Institute	IRS Attended by Member(s)
271	ON	Mississaugas of Scugog Island First Nation	Mohawk Institute	IRS Attended by Member(s)
272	ON	MoCreebec Eeyoud Council of the Cree	Bishop Horden Hall (Moose Fort, Moose Factory)	IRS Located in Community
273	ON	Moose Cree FN	Bishop Horden Hall (Moose Fort, Moose Factory)	IRS Located in Community
274	ON	Mohawks of the Bay of Quinte	Mohawk Institute	IRS Attended by Member(s)
275	ON	Munsee-Delaware Nation	Mount Elgin (Muncey, St. Thomas)	IRS Attended by Member(s)
276	ON	Naicatchewenin FN	Fort Frances (St. Margaret's)	IRS Attended by Member(s)
277	ON	Naotkamegwanning FN	Cecilia Jeffrey (Kenora, Shoal Lake); Fort Frances (St. Margaret's); McIntosh (Kenora); St. Mary's (Kenora, St. Anthony's)	IRS Attended by Member(s)
278	ON	Nipissing First Nation	Spanish Boys' School (Charles Garnier, St. Joseph's)	IRS Attended by Member(s)
279	ON	Nigigoosiminikaaning First Nation	Fort Frances (St. Margaret's)	IRS Attended by Member(s)
280	ON	Ojibways of Onigaming	St. Mary's (Kenora, St. Anthony's); Fort Frances (St. Margaret's)	IRS Attended by Member(s)
281	ON	Oneida Nation the Thames	Mount Elgin (Muncey, St. Thomas)	IRS Located in Community
282	ON	Pikangikum FN	Poplar Hill	IRS Attended by Member(s)
283	ON	Sachigo Lake FN	Poplar Hill	IRS Attended by Member(s)
284	ON	Sheguiandah FN	Shingwauk; Spanish Boys' School (Charles Garnier, St. Joseph's); Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	IRS Located in Community
285	ON	Taykwa Tagamou Nation	St. Anne's (Fort Albany)	IRS Attended by Member(s)
286	ON	Temagami FN	Shingwauk	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
287	ON	Wabigoon Lake Ojibway Nation	St. Mary's (Kenora, St. Anthony's)	IRS Attended by Member(s)
288	ON	Wahgoshig First Nation	Mohawk Institute	IRS Located in Community; IRS Attended by Member(s)
289	ON	Wauzhushk Onigum Nation (Rat Portage) #153	St. Mary's (Kenora, St. Anthony's)	IRS Located in Community
290	ON	Wiikwemkoong Unceded Territory	Spanish Boys' School (Charles Garnier, St. Joseph's); Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's);	IRS Located in Community
291	ON	Weenusk First Nation	St. Anne's (Fort Albany)	IRS Located in Community
292	ON	Whitefish River First Nation	Spanish Boys' School (Charles Garnier, St. Joseph's)	IRS Attended by Member(s)
293	ON	Whitesand First Nation	Fort Frances (St. Margaret's)	IRS Attended by Member(s)
294	QC	Abénakis de Wôlinak	Sept-Îles	IRS Attended by Member(s)
295	QC	Communaute Ancinapek de Kitcisakik	Amos	IRS Attended by Member(s)
296	QC	Les Innu De Ekuanitshit	Sept-Îles	IRS Attended by Member(s)
297	QC	Cree Nation of Chisasibi	Fort George (Anglican); Fort George (Roman Catholic)	IRS Located in Community
298	QC	Cree Nation of Mistissini	La Tuque; Mistassini Hostels (September 1, 1971 to June 30, 1978)	IRS Located in Community; IRS Attended by Member(s)
299	QC	Cree Nation of Nemaska	Bishop Horden Hall (Moose Fort, Moose Factory); Shingwauk; La Tuque	IRS Attended by Member(s)
300	QC	Cree Nation of Waswanipi	Mohawk Institute; La Tuque	IRS Attended by Member(s)
301	QC	Cree Nation of Wemindji	Fort George (Anglican)	IRS Attended by Member(s)
302	QC	Nation Huronne-Wendat	La Tuque	IRS Attended by Member(s)
303	QC	Innu Takuaiakan Uashat mak Mani Utenam	Sept-Îles	IRS Located in Community; IRS Attended by Member(s)
304	QC	Listuguj Mi'gmaq Government	Shubenacadie	IRS Attended by Member(s)
305	QC	Kanesatake Mohawk	Shingwauk	IRS Located in Community; IRS Attended by Member(s)
306	QC	Kebaowek First Nation	Spanish Boys' School (Charles Garnier, St. Joseph's); Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	IRS Attended by Member(s)
307	QC	Long Point FN	Amos	IRS Attended by Member(s)

	Province / Territory	Indian Band/ FN	Identified Indian Residential School(s)	Opt In Basis
308	QC	Naskapi Nation of Kawawachikamach	La Tuque	IRS Located in Community
309	QC	Nation anishnabe du Lac Simon	Amos	IRS Located in Community; IRS Attended by Member(s)
310	QC	Odanak	Shingwauk	IRS Attended by Member(s)
311	QC	Oujé-Bougoumou Cree Nation	La Tuque	IRS Attended by Member(s)
312	QC	Pekuakamiulnuatsh Takuhikan	Pointe Bleue	IRS Located in Community
313	QC	Whapmagoostui FN	Federal Hostels at Great Whale River	IRS Located in Community
314	QC	The Crees of Waskaganish FN	Bishop Horden Hall (Moose Fort, Moose Factory)	IRS Attended by Member(s)
315	NB	Elsipogtog First Nation, formerly Big Cove Band, formerly Richibucto Tribe of Indians (#003)	Shubenacadie	IRS Attended by Member(s)
316	NB	Eel Ground First Nation	Shubenacadie	IRS Attended by Member(s)
317	NB	Eel River Bar First Nation	Shubenacadie	IRS Attended by Member(s)
318	NB	Fort Folly	Shubenacadie	IRS Attended by Member(s)
319	NB	Indian Island	Shubenacadie	IRS Attended by Member(s)
320	NB	Kingsclear First Nation	Shubenacadie	IRS Attended by Member(s)
321	NB	Oromocto	Shubenacadie	IRS Attended by Member(s)
322	NB	Tobique First Nation	Shubenacadie	IRS Attended by Member(s)
323	NS	Sipekne'katik Band	Shubenacadie	IRS Located in Community
324	PE	Abegweit FN	Shubenacadie	IRS Attended by Member(s)
325	PE	Lennox Island Band	Shubenacadie	IRS Located in Community; IRS Attended by Member(s)

Schedule “B”

Gottfriedson et al. v. His Majesty the King in Right of Canada
(Court File No. T-1542-12)

**INDIAN RESIDENTIAL SCHOOLS
BAND REPARATIONS CLASS ACTION
NOTICE OF SETTLEMENT AGREEMENT &
SETTLEMENT APPROVAL HEARING**

IMPORTANT

You are receiving this Notice because your Band has opted into (i.e. joined) the *Gottfriedson* Band Reparations Class Action.

A Settlement Agreement has been reached. A Settlement Approval Hearing will start in Vancouver on February 27, 2023 at 9:30 a.m. (Pacific Time) for up to three days.

READ THIS NOTICE CAREFULLY TO UNDERSTAND HOW YOUR BAND’S RIGHTS WILL BE AFFECTED, AND HOW TO PARTICIPATE IN THE SETTLEMENT APPROVAL HEARING

Please confirm that your Band has received this Notice by emailing Class Counsel at bandclass@waddellphillips.ca

BAND REPARATIONS CLASS ACTION

The Band Reparations Class Action is a lawsuit against the Government of Canada. The lawsuit is about the collective harm suffered by Indigenous communities as a result of Indian Residential Schools. The lawsuit says that the Government of Canada is responsible for damages to Indigenous *communities* caused by the Indian Residential School system, and in particular, the collective harm suffered by Indigenous communities due to the loss of language and culture because of Indian Residential Schools.

This lawsuit is not about harms suffered by individual survivors who attended Indian Residential Schools – instead it is about the collective harm suffered by Indigenous communities as a group as a result of Indian Residential Schools.

This lawsuit was brought by representative plaintiff First Nations Tk’emlúps te Secwépemc and shíshálh Nation (the “Representative Plaintiff Bands”), with the support of the Grand Council of the Crees (Eeyou Istchee).

325 First Nations Bands are part of the lawsuit. In order to participate, Bands had to “opt-in” or “join” the class action. The opt-in period is now closed, and it is no longer possible to join the lawsuit. For a complete list of which Bands joined the lawsuit, go to www.bandreparations.ca

SETTLEMENT AGREEMENT

A settlement agreement has been reached between the Representative Plaintiff Bands and the Government of Canada which fully and finally resolves the Band Reparations Class Action.

The agreement is based on the **Four Pillar principles**, namely:

- Revival and protection of **Indigenous languages**;
- Revival and protection of **Indigenous cultures**;
- **Wellness** for Indigenous communities and their members;
- Promotion and protection of **heritage**.

The settlement agreement needs to be approved by the Federal Court as being fair, reasonable and in the best interests of the class before it becomes final.

The key terms of the settlement agreement are:

- The government of Canada will make a payment of **\$2,800,000,000.00 (two billion eight hundred million)** (the "Fund") to a Trust/Not-For-Profit to fully and finally resolve the Band Reparations Class Action.
- The Trust/Not-For-Profit will be responsible for prudently investing the Fund, and for distributing the Fund to the 325 class members to support the **Four Pillar principles** in accordance with the Disbursement Policy.
- The **Disbursement Policy** will include the following:
 - **Planning funds**: Each Band Class member will receive an initial one-time payment of \$200,000 for the purposes of developing a plan to carry out one or more of the objectives and purposes of the Four Pillars;
 - **Initial Kick-Start Funds**: Upon receipt and review of a plan from a band, the Fund shall disburse the Initial Kick-Start Funds, which shall be equal to the Band's proportionate share of \$325,000,000, with 40% attributable for base rate, with the remaining 60% to be used to adjust for population. The base rate is an equal amount payable to each Band. The Board will determine an appropriate adjustment for remoteness for the Initial Kick-Start Funds, with any such funds required to account for remoteness being in addition to the \$325,000,000.

- **Annual Entitlement:** Each Band will receive a share of annual investment income that is available for distribution. That share will be equal to the Band's proportionate share, adjusted for population and remoteness.
- All monies that remain in the Fund after the payment of the Planning Funds and the Kick-Start Funds will be prudently invested by the Trust/Not-For-Profit in accordance with professional investment advice.
- The Fund will operate for a period of 20 years.
- For the 20 year life of the Fund, the Annual Entitlement payments will be made from the investment income earned from the Fund. The capital of the Fund will be maintained.
- At the end of the 20 year life of the Fund, the remaining funds consisting of the capital of the Fund and any undisbursed investment income will be disbursed to the Class. Each Band's share will be equal to the Band's proportionate share of the remaining funds.
- The Trust/Not-For-Profit will be responsible for determining the Disbursement Policy, which will consist of a base rate, a per capita adjustment, and a remoteness adjustment. That formula will allocate 40% to base rate, and 60% to population and remoteness adjustments.
- The Trust/Not-For-Profit will be governed by a board of nine Indigenous directors, eight of which will be selected through a process involving the Representative Plaintiff Bands and, in the case of Regional Directors, by the Class Members, and one of which will be chosen by Canada.
- The Trust/Not for Profit will have regional representation.
- In exchange for the benefits of the agreement, the Band Class members are deemed to agree to a release which will prevent them from bringing any legal claims in future against Canada regarding the collective harms caused to them by the creation and operation of Indian Residential Schools.
- Lawyers' fees and expenses incurred over the course of the lawsuit will be paid by the Government of Canada and will not be deducted from the compensation paid to the Band Class. Canada has agreed to pay \$20,000,000.00 (twenty million) for all legal fees and expenses. These fees and expenses must be approved by the court, and will be the subject of a fee approval hearing, which will take place immediately after the settlement approval hearing.

SETTLEMENT APPROVAL HEARING

A settlement approval hearing will be heard by the Federal Court, located at 701 West Georgia Street, Vancouver BC V7Y 1B6 starting on February 27, 2023 at 9:30 a.m. and lasting no more than three days.

The hearing is open to the public and will be available to be viewed via real-time webcast. Access details will be posted to www.bandreparations.ca when they become available.

The Federal Court judge will decide whether to approve the settlement agreement. The test that the judge will apply is whether the settlement is fair, reasonable, and in the best interests of the Class Members. The judge will consider the entire settlement agreement all together as a complete package. The judge is not allowed to pick and choose which parts of the settlement to approve or not approve.

Because your Band has opted into the Band Reparations Class Action, the outcome of the settlement approval hearing will be binding on your Band.

If the settlement agreement is approved:

- \$2.8 billion will be paid to the Trust/Not-For-Profit for the benefit of the Class Members in accordance with the Four Pillars;
- the case will not proceed to a trial; and
- the Band Class Members will not be able to bring another future lawsuit against Canada for harms suffered by that Band as a result of Indian Residential Schools.

If the settlement agreement is not approved:

- there will not be a settlement now;
- a new trial date will be set to determine whether Canada is legally responsible for the collective losses of languages and cultures suffered by the Band Class as a result of the Indian Residential Schools policy; and
- it is open to Canada and the parties to try to come to a new settlement agreement.

PARTICIPATION AT THE SETTLEMENT APPROVAL HEARING

Band Class Members have the right to participate in the settlement approval process by telling the Court whether the settlement agreement should be approved or not, and telling the court whether, in the view of the Band, the settlement agreement is fair, reasonable and in the best interests of the class.

Band Class Members can participate by making written submissions in advance of the hearing, oral submissions at the hearing, or both. Written or Oral Submissions must be made by individuals authorized to speak on behalf of their Band.

Written Submissions

Written Submissions must include the name of the Band Class Member, contact information, confirmation that the person making the submission has the authority to speak on behalf of the Band, a statement that the Band supports or objects to the proposed settlement, and the reasons for the Band's position.

Written statements should be no more than 10 pages in length. Written statements can be sent by email, mail or fax, and must be received by **FEBRUARY 20, 2023 at 11:59 PDT** at:

Waddell Phillips Professional Corporation Att'n: Band Reparations Class Action 36 Toronto Street, Suite 1120 Toronto, ON M5C 2C5	bandclass@waddellphillips.ca Fax: 416-477-1657
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Oral Submissions

Band Class Members wishing to make oral submissions at the Federal Court in Vancouver at the Settlement Approval Hearing must register in advance by sending a request to bandclass@waddellphillips.ca by **FEBRUARY 20, 2023 at 11:59 PDT**.

Individuals making oral submissions must be authorized to speak on behalf of a Band Class Member.

Oral submissions can be made in person in court in Vancouver, BC, or remotely via video conference. Please indicate whether you wish to participate in person, or virtually.

FURTHER INFORMATION

More information about your rights and options, details of the settlement (including the settlement agreement), and details about the settlement approval process, can be found on the bandreparations.ca website.

Class Counsel can be reached at:

Waddell Phillips Professional Corporation

Phone: 1-888-370-1045 (toll-free)

Fax: 416-477-1657

Email: bandclass@waddellphillips.ca

Att'n: Band Reparatons Class Action
36 Toronto Street, Suite 1120
Toronto, ON
M5C 2C5

Schedule “C”

Gottfriedson et al. v. His Majesty the King in Right of Canada**(Court File No. T-1542-12)****NOTICE PLAN****Notice of Settlement Agreement and Settlement Approval Hearing**

The notice of Settlement Agreement and Settlement Approval Hearing (“**Notice**”) will be sent directly to all Class Members. Class Counsel will take further steps to confirm that Class Members have received the Notice.

A comprehensive List of Class Members is attached as Schedule “A” to the Order of Justice McDonald dated September 6, 2022. Because this is an opt-in class action, all 325 Class Members are known to Class Counsel, and further, Class Counsel has had direct contact with each Class Member as part of the opt-in process.

Class Counsel have maintained a comprehensive spreadsheet of contact information for each Class Member, including email addresses, mailing addresses, fax numbers (where available) and phone numbers.

DIRECT CONTACT

The court-approved Notice will be sent directly to the administrative and/or political office of each Class Member by email, mail and, where available, fax by January 27, 2023. The Notice requests that Class Members confirm receipt of the Notice with Class Counsel to ensure that Notice is effective.

Class Counsel will contact the administrative and/or political office of each Class Member that does not confirm receipt of the Notice directly by phone to ensure that all Class Members have, in fact, received the Notice.

WEBSITE

The information in the Notice will be posted at www.bandrepairs.ca by January 27, 2023.

LANGUAGES

The Notice will be sent to the Class Members in English and French. Key information from the Notices will also be made available in six of the most commonly used Indigenous languages – James Bay / Eastern Cree, Plains Cree, Ojibwe, Dene, Inuktitut, and Mi’kmaq – as soon as practicable on www.bandrepairs.ca.

CLASS COUNSEL CONTACT

Class Counsel have established a dedicated toll-free number and email address in order to receive inquiries from Class Members and from the general public. Class Counsel will use the toll-free number and email address to communicate the information contained in the Notice.

This is Exhibit "I" referred to in the affidavit
of Peter Grant sworn before me this
20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

"I"

FEDERAL COURT**Class Proceeding****BETWEEN:**

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

CHIEF GARRY FESCHUK, on behalf of the SECHELT INDIAN BAND
and the SECHELT INDIAN BAND

PLAINTIFFS**AND:**

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

DEFENDANT

SECOND AMENDED STATEMENT OF DEFENCE

Overview

1. This is a national class action pursued by a certified class comprised of the two representative Indian Bands and other Indigenous collectives that opted into the proceedings on the basis that they had either or both at least one band member who was a student at a Residential School during the Class period (individuals referred to herein as "Survivors") or had a Residential School located in their community during the Class Period (the "Class").
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. Canada also acknowledges that the pain and suffering caused by those harms continue to be experienced by many of Indigenous persons.

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 Survivors 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 Survivors.
5. To that end, Canada entered into the Day Scholars Survivor Class and Descendant Class Settlement Agreement, signed June 4, 2021, in this proceeding (“Day Scholars and Descendants Settlement”) and previously, the Indian Residential Schools Settlement Agreement, dated May 10, 2006 (“IRSSA”).
6. 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.
7. The parties maintain differing views about precisely what federal policies were in place with respect to Residential Schools across the country and over the entire Class Period. The parties similarly have differing views on who is legally responsible to compensate the Indigenous collectives who make up the Class for any harms caused by or through the creation and operation of those schools. Any impacts that Residential Schools may have had on Indigenous communities, either because the schools were located within the communities or because of harms that students from those communities suffered while at Residential Schools, will be unique to each community and will vary based on their respective circumstances.

8. Canada admits that the actions of federal government officials or their agents noted above were, in hindsight, utterly and entirely inappropriate. However, 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 owed to, or violations of rights held and enforceable by the Indigenous collectives that make up the Class (i.e. were unlawful).
9. Canada is committed to reconciliation. In summary however, in this proceeding the Class of Indigenous collectives assert that the novel duties, rights and causes of action upon which they rely as well as the novel harms and losses for which they seek damages, are factually and legally distinct from those of the Survivors and others whose claims were resolved through the Day Scholars and Descendants Settlement and the IRSSA. The facts and the law leave these assertions very uncertain. 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 Class members are entitled to the relief claimed in paragraph 1 of the Second Re-Amended Statement of Claim (the "statement of claim").
11. In response to paragraph 2 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)“Indian Band” means any entity that:

- (i) Is either:
 - i. a “band” as defined in s.2(1) of the *Indian Act*; or
 - ii. a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of parliament recognizing or establishing it as a legal entity; and
- (ii) Asserts that it holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

(j)“IRSSA” means the Indian Residential Schools Settlement Agreement, dated May 10, 2006;

(k)“IRSSA Approval Orders” means the Orders set out in Schedule A hereto, approving the IRSSA;

(l)“IRSSA Class Member(s)” means all individuals who are members of the Class as defined in the IRSSA and IRSSA Approval Orders;

(m)“IRSSA Family Class” means all individuals who are members of the family class defined in the IRSSA Approval Orders;

(n)“KIRS” means Kamloops Indian Residential School;

(o)“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;

(p) “Resident” means a student who not only attended a Residential School for educational purposes but who also simultaneously stayed their overnight.

(q)“Residential School(s)” means all Indian Residential School(s) recognized under the IRSSA and listed in Schedule A to the Certification Order; and

(r)“SIRS” means Sechelt Indian Residential School;

THE PARTIES

12. In response to paragraph 4 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 paragraph 3, Canada admits that the Tk'emlúps te Secwépemc Indian Band and the Sechelt Indian Band are the Representative Plaintiffs for the Class.
14. Canada recognizes that the rights of Indigenous peoples as recognized and affirmed by section 35 of the *Constitution Act, 1982* include rights related to Indigenous languages, as recognized in section 6 of the *Indigenous Languages Act*, S.C. 2019, c.23.
15. 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.

16. In response to paragraphs 14-18, 34, and 44-46, 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 recognized and affirmed by section 35 of the *Constitution Act, 1982* include rights related to Indigenous languages, as recognized in section 6 of the *Indigenous Languages Act*. 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.
17. Similarly, in response to paragraphs 19-21, 34 and 44-46, Canada acknowledges that the pre-contact practices of some 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. The identities of all members of the Sechelt Band at all times, the band's criteria for adding new members, and thus the specific ancestry of "all" of the members of the Sechelt Indian Band is outside of Canada's knowledge. Canada also acknowledges that the Sechelt Indian Band is partly comprised of descendants of shashishalhem speaking individuals. As noted above, Canada recognizes that the rights of Indigenous peoples as recognized and affirmed by section 35 of the *Constitution Act, 1982* include rights related to Indigenous languages, as recognized in section 6 of the *Indigenous Languages Act*. 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.
18. In response to paragraphs 14-18, 52 and 54 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 be 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.

19. Further, in response to paragraphs 19-21, 52 and 54, Canada acknowledges that the Sechelt Indian Band is partly comprised of descendants of shashishalhem speaking individuals and that the Sechelt Indian Band sometimes refers to itself as the shíshálh Nation.
20. Canada acknowledges that the Sechelt Indian Band is a self-governing legal entity pursuant to the Sechelt Indian Band Self-Government Agreement Act, S.C. 1986, c. 27.
21. 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 Indigenous peoples. Each group of Indigenous peoples within the Class is unique; every group of Indigenous peoples within the Class will have its own particular circumstances. Accordingly, it will fall to the Court to determine this issue with respect to each Class member.
22. In response to paragraph 9, Canada says that the Class is defined in the Certification Order as amended by the February 8, 2022 Order of Justice MacDonald.
23. At the time of filing Canada's original statement of defence, the only Survivors who had 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 parties have consented to an extension of the opt-in period to permit additional Indian Bands to opt-in and become Class members after this Second Amended Statement of Defence is filed.
24. Further, in addition to the two Representative Plaintiffs for the Class, the Tk'emlúps te Secwépemc Indian Band and the Sechelt Indian Band, an additional 99 bands have currently opted in to the Class. Class members must claim to have or have had some individuals within their respective collectivities who are Survivors or have or had at the relevant time a Residential School located in their community, and they must be added to the claim with one or more specifically identified Residential Schools. Canada has no knowledge of the basis on which all current members of the Class have opted in.

25. It is not known to Canada whether all Class members, either current or those who might opt-in during the extension of the opt-in period, are owed the duties alleged or are the rights-holding collectives on whose behalf a sustainable Aboriginal rights claim as alleged can, as a matter of law, be advanced by each of them.

ACKNOWLEDGING WRONGS OF OUR RESIDENTIAL SCHOOLS

26. In response to paragraphs 4-9, 12-13, 22-28, 50, and 57 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.
27. In response to paragraphs 30 and 31, 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").
28. 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 Survivors and Indigenous communities that may have suffered damage as a result of the creation or operation of Residential Schools.

29. In response to paragraphs 32-33, 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”).
30. 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.
31. The Apology is part of a number of measures taken to advance Canada’s commitment to achieving reconciliation, including with Survivors who may have suffered harm as a result of attendance at Residential Schools and their respective Indigenous communities.
32. 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

33. However, in answer to the whole of the statement of claim, and in particular, paragraphs 1, 5-13, 18, 21-30, 32-36, 38-43, 45-46, 48-50, 57 and 58, 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.
34. 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.

35. 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 Survivors at the Residential Schools differs on a school-by-school basis.
36. 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.
37. 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.
38. The experiences and treatment of Survivors at Residential Schools were 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.
39. Other factors which had an impact on the experiences of individual Survivors 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.
40. The experiences of individual Survivors at Residential Schools, 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.

41. Given the factors affecting and varying the experiences of Survivors at Residential Schools as noted in the above paragraphs or otherwise, any harms suffered by Survivors from their attendance at Residential Schools also varied. Accordingly, the impacts, if any, each Survivor's Residential School experience could have had on the Indigenous community from which that individual came would also be unique and based on the respective circumstances of that individual and that community.
42. To the extent any Class members are such Indigenous communities, any impacts on them from having their band members attend Residential Schools would be similarly unique and vary between Class members for all the reasons above. Any harms Class members suffered would also vary based on differences in numbers and/or duration of their members' attendance. The impacts of having a Residential School in its community would also differ among Class members based on the specific circumstances, including the factors noted above. Accordingly, harms and losses suffered, if any, by Class members due to either having Survivors in their band membership or having a Residential School in their communities would vary and be unique to each.
43. 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

44. 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.
45. 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.
46. 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.
47. 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.
48. 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

49. In response to paragraph 35 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.
50. 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 Survivors while at Residential Schools;
 - (c) development and implementation of school curricula at Residential Schools;
 - (d) supervision, day-to-day care, guidance and discipline of the Survivors while at Residential Schools;
 - (e) ensuring the well-being, care and safety of the Survivors while at Residential Schools;
 - (f) taking care of and looking out for the physical and spiritual well-being of Survivors while at Residential Schools;

(g) to keep the Survivors, while at Residential Schools safe and free from harm; and

(h) to keep Canada apprised as to any situations dangerous or harmful to the Survivors while they were at Residential Schools.

51. 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.
52. 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.
53. 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.
54. 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.
55. 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 Survivors attended or with which Class members are connected, to the extent they become necessary and relevant in light of the stage parties are at in this class proceeding.
56. 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, the Survivor and Descendant Settlement, and with respect to other claims for historical harms done to Indigenous children.

THE ESTABLISHMENT AND OPERATION OF KIRS AND SIRS

57. At the time of the filing of this Statement of Defence, KIRS and SIRS are the only two Residential Schools named in the statement of claim as being relevant to the claims of the Class' two representative plaintiffs. 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

58. 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

59. 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").
60. 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").
61. 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.
62. 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.
63. 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.

64. 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

65. 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”.
66. 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.
67. 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.
68. 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”).

69. 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.
70. 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”).
71. 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.
72. 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.
73. 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

74. 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

75. 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

76. 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.
77. 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.
78. 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.
79. 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 the *Indigenous Languages Act*.

The Operation of KIRS

80. 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.
81. 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.
82. 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”).
83. 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.
84. 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.
85. 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.

86. 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.
87. 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.
88. 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 at KIRS

89. 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.
90. 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.
91. 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.
92. Therefore, in the alternative, even if there were Day Scholars at KIRS after the 1966/67 year, which is not admitted, no Survivors attended KIRS as students after the 1969-70 school year.

93. In or about 1978, the Residential School at KIRS closed in its entirety.

Establishment of SIRS

94. 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.
95. 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
96. 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.
97. 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 the *Indigenous Languages Act*.

The Operation of SIRS

98. 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.
99. 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”).
100. 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.
101. 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.
102. 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.
103. 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.

104. 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.
105. 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”).
106. 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.
107. 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 at SIRS

108. 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.
109. 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.
110. 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.
111. No Survivors attended SIRS as Day Scholars after the 1968/69 school year.

THE IRSSA AND RELEASES

112. The IRSSA was approved by the courts in nine jurisdictions and implemented on September 19, 2007.
113. 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.
114. 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.
115. 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.
116. 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.
117. 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

118. All claims by Survivors who are also IRSSA Student Class Members or in the Cloud Class Action, and who did not opt out of the IRSSA, have been released. Such claims are barred by Article 11 of the IRSSA and the corresponding paragraphs of the Approval Orders.
119. All claims by the first generation of persons descended from Survivors or persons who were legally or traditionally adopted by Survivors or their spouses who are also members of the IRSSA Family Class or otherwise members 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 Class members and Canada and 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. 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.
120. All claims by any Survivor who is a non-resident, 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.
121. To the extent that the Class claims in this proceeding arise from events that occurred during the attendance of individuals who are members of Indian Bands that make up the Class at Residential Schools, and to the extent that any or all of the Class claims duplicate, overlap with or rely on the existence of claims of any individuals with the Class member Indian Bands, 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.
122. For example, to the extent that the Class claims include claims for harms done to or compensation in relation to harms done to the former representative 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 that rely on or are in relation to the claims of or harms suffered by Charlotte Gilbert 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 all portions of the Class' claims that relate to or rely on such claims or losses of Charlotte Gilbert and/or any other IRSSA Class Member who received CEP in relation to a period of residence at any residential school should be dismissed.

123. Similarly, to the extent that the Class claims include claims for harms done to or compensation in relation to harms done to the former representative Plaintiff Diena Jules, Canada says that Diena Jules resided at KIRS from September 1971-March 1972, received payment of the CEP and is an IRSSA Class Member. Further, Diena Jules signed a Schedule P Release dated January 7, 2013. All claims Diena Jules may have had 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 Diena Jules may have had 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 all portions of the Class' claims that relate to or rely on such claims or losses Diena Jules and/or any other IRSSA Student Class Member who executed or is otherwise bound by the terms of a Schedule P release should be dismissed.
124. Similarly, the former representative Plaintiffs Rita Poulsen and Amanda Big Sorrel Horse are IRSSA Family Class Members and any claims either of them, or any other IRSSA Family Class Members have, had or, may have had in relation to the attendance of their respective parent(s) at any Residential School would be 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 all portions of the Class' claims that relate to or rely on such claims or losses of IRSSA Family Class Members should be dismissed.

125. Canada pleads and relies on the Settlement and the September 24, 2021 court Order implementing it (2021 FC 988) that resolved and released Canada from all claims the former Survivor Class members and former Descendant Class members had in relation to residential schools. In particular, Canada relies on Articles 2.01, 2.02 and the releases provided for in article 42 of the Day Scholars and Descendants Settlement, read in context with the whole of the agreement and acknowledging the limits in Article 42 about application to the Class claims. To the extent that the Class members' claims rely on the existence of causes of action that were or may have otherwise been held by, and/or duplicate in whole or in part losses suffered by, individuals in connection with their individual attendance or their parent(s)' attendance at Residential Schools that have been released through the Day Scholars and Descendants Settlement, such claims for such losses should be rejected and/or are barred and should otherwise be dismissed.

LEGAL BASIS

126. 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.
127. 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.

128. 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 at Residential Schools, which are in some respects person and time specific, cannot, without more, be grounded in the Statement of Reconciliation or Apology.
129. 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.
130. In response to paragraphs 45-46, 50 and 57 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 Class, sought to destroy the ability of all the Class member collectives 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.
131. 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 were consistent with provincial standards of education during the Class Period. Nevertheless, Canada recognizes that one of the original objectives behind the creation of Residential Schools, namely, the attempt to assimilate Indigenous peoples into the rest of Canadian society, was unquestionably wrong and resulted in harm to many Indigenous persons across the country.
132. 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.

133. To the extent that Survivors 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 the *Indigenous Languages Act*.
134. To the extent that any or all of the Class member collectives 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.
135. In specific answer to paragraph 23, 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 23, 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

136. 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 Class in paragraphs 6, 13, 39, 40-44, 48 and 50.

137. 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 Survivors at, or support of, Residential Schools.
138. 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

139. In further response to paragraphs 6, 13, 38-43, 47, 59, 52, and 56 of the statement of claim, Canada denies that it breached constitutionally-mandated duties owed to members of the Class or, or any of them, as alleged in the statement of claim.
140. 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.
141. In response to paragraph 39, 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 Class members. 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

142. Canada denies that it breached statutory duties owed to members of the Class through the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivors at, and support of, the Residential Schools.
143. Canada denies the existence of statutory duties owed to members of the Class as alleged, but Canada will reconsider the matter should additional particulars of the statutory duties be provided.
144. In further response to paragraph 55 of the statement of claim, Canada denies its conduct breached article 1457 of the Civil Code of Quebec, CQLR c CCQ-1991, and the Charter of Human Rights and Freedoms, CQLR c C-12, as alleged or at all.
145. To the extent that the Class members' claim is based upon 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.
146. 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.
147. Alternatively, even if the alleged statutory duties exist, Canada did not breach such duties.

No Breach of Aboriginal Rights

148. The Plaintiffs allege the following Aboriginal Rights on behalf of each members of the Class, respectively: (i) to speak their traditional languages; (ii) to engage in their traditional customs; and (iii) to engage in their religious practices.
149. The Plaintiffs have identified three 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.

150. 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 provided sufficient particulars to identify any other Indigenous collectives who have the authority to pursue the claim for breach of Aboriginal rights on behalf of their members.
151. It is not known to Canada whether all Class members are rights-holding collectives on whose behalf a sustainable Aboriginal rights claim can, as a matter of law, be advanced. Canada asks the Plaintiffs and/or other Class members to provide the necessary factual information to demonstrate that they are such rights-holding collectives that may advance these claims.
152. Canada denies that it breached or unjustifiably infringed the Aboriginal or other rights of members of the Class, 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.
153. To the extent the Plaintiffs allege in the statement of claim that they and the other Class members 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.
154. 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.
155. The Plaintiffs have particularized their claim, and that of the other Class members as asserting that their respective 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

156. In response to paragraphs 6, 13, 38-43 and 47-49 of the statement of claim, Canada denies that it breached common law duties owed to the Class, through the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivors at, and support of, the Residential Schools.
157. Canada denies the existence, or alternatively the scope and implications of common law duties owed to the Class members, as alleged in the statement of claim.
158. 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

159. 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 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.
160. 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.
161. Cultural, linguistic and social damage is not a known cause of action at law.

162. Irreparable harm is not a stand-alone cause of action, but rather forms part of the tripartite test for injunctive relief.
163. 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

164. In response to paragraphs 36 and 37, 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).
165. 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, except as may be explicitly provided for in those treaties.
166. 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.

167. 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.
168. 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.
169. 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.
170. Canada 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.
171. In June 2021, Canada enacted legislation, the *United Nations Declaration on the Rights of Indigenous Peoples Act* (the “*UNDRIP Act*”). The *UNDRIP Act* affirms the UNDRIP as an international human rights instrument that can be used to inform the interpretation and application of Canadian law, and it demonstrates Canada’s commitment to sustained efforts and new processes to align federal laws with UNDRIP. However, neither UNDRIP nor the *UNDRIP Act* give rise to the causes of action in Canadian law asserted in this proceeding and UNDRIP is not actionable in this proceeding in the manner alleged by the Plaintiffs. Furthermore, neither the UNDRIP nor the *UNDRIP Act* existed during the Class Period and neither applies or operates retroactively as alleged.
172. UNDRIP empowers each jurisdiction to develop the implementation of its articles. Canada engaged with Indigenous peoples and other Canadians on this issue and enacted the *UNDRIP Act* as a result. The *UNDRIP Act* requires that the federal government, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that federal laws

are consistent with the UNDRIP and develop and implement an action plan to achieve the objectives of the UNDRIP. While the *UNDRIP Act* does not give direct legal effect to the UNDRIP, it does affirm that the UNDRIP is a universal international human rights instrument that can be used to inform the interpretation and application of Canadian law.

173. 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.
174. 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.
175. 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.
176. In addition, the Plaintiffs have failed to identify particulars of the alleged breaches of international law.

Vicarious Liability

177. Canada acknowledges that some Survivors were subjected to specific actions, as alleged, by some individual priests, nuns, brothers and others. However, in response to paragraphs 47 and 48 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.
178. 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.

179. 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.

180. 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 Class members' claim.

DAMAGES AND CAUSATION

181. 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.
182. To the extent that Class members suffered any damage, losses or injuries as alleged in the statement of claim, 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 the Survivors at Residential Schools and events that occurred to individual band members that are too removed from and remote to the attendance of Survivors 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.
183. 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 Class members 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.

184. In the alternative, to the extent that Canada is liable for any portion of the Class members' damage, losses or injuries, Canada relies upon paragraph 49 of the statement of claim and claims an apportionment of damages.
185. To the extent that members of the 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 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.
186. In response to paragraphs 50 and 58 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.
187. 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 Survivors or Class members.
188. Accordingly, Canada states that the circumstances do not give rise to liability for punitive, exemplary or aggravated damages.
189. 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 Class member are unique. There was no common experience amongst students at the same Residential School, much less at different Residential Schools.
190. There is also no common experience between the treatment of Survivors at Residential Schools and the effect such treatment may have had on the Indian Bands to which they belonged at the particular time of their attendances. The differences increase over time and

with each successive generation within each Indian Band and vary from Class member to Class member. The allegations of breach of cultural and/or linguistic rights, be they Aboriginal rights or otherwise, are infinitely varied for each Survivor, each individual band member, and 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.

191. In the further alternative, to avoid double recovery, any award for damages to the Class that might otherwise be made in the circumstances must be reduced to the extent that the Class' losses have already been compensated for through operation of the IRSSA, the Day Scholars and Descendants Settlement and any other settlement, or any judgment in any proceedings, with respect to payments or benefits provided to either Class members or to the individuals who make up their respective collectives.
192. Further, any award of damages to the Class that might otherwise be made in the circumstances must also be reduced to account for mitigation measures already put in place by Canada with respect to establishment and funding of programs to preserve, promote and revitalize Indigenous languages and cultures, such as those provided for in relation to Indigenous language programs pursuant to the *Indigenous Languages Act*, for the benefit of Class members or the individuals who make up their respective collectives.

CROWN IMMUNITY AND PREJUDGMENT INTEREST

193. 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.
194. 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, all Class members are disentitled from claiming prejudgment interest. In the alternative, if the Class members 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

195. Canada asks that the action be dismissed.

DATE: March 14, 2022

**ATTORNEY GENERAL OF
CANADA**

Per: Lorne Lachance
Department of Justice, Canada
British Columbia Regional Office
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Vancouver, British Columbia
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File: 4382759

Solicitor for the Defendant

This is Exhibit "J" referred to in the
affidavit of Peter Grant sworn before me this
20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

“J”

FEDERAL COURT

Class Proceeding

BETWEEN:

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

CHIEF GARRY FESCHUK, on behalf of
the SECHELT INDIAN BAND
and the SECHELT INDIAN BAND

PLAINTIFFS

AND:

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

DEFENDANT

TRIAL BRIEF OF THE DEFENDANT

OVERVIEW

1. Historically, the federal government pursued colonialist goals in ways that had far-reaching impacts on Indigenous peoples. Indian Residential Schools separated Indigenous children from their parents and their communities. The tragic reality is that residential schools directly and/or indirectly harmed hundreds of thousands of Canada's Indigenous peoples, scarring many for life.
2. The Government of Canada ("Canada") is committed to reconciliation with our country's Indigenous peoples, including for the various roles previous federal governments historically played with respect to the creation, operation, and supervision of residential schools. Canada also recognizes that reconciliation is an ongoing process, through which it needs to work with Indigenous peoples to establish and maintain a respectful framework for living together, with a view to fostering strong, healthy and sustainable Indigenous nations within Canada. Canada has made significant strides in that regard, although it concedes it has a long way to go, and it is committed to further action in pursuit of the goal of reconciliation.
3. The Plaintiffs' claims are based on the conduct of the 23 different federal governments in office throughout the 77 year Class Period from 1920 to 1997, in designing and implementing what they refer to as the "Residential Schools Policy". The Plaintiffs' case for a finding of class-wide liability rests on proving a uniform intent and pattern of conduct¹ by each of these governments to use residential schools in a manner that intentionally infringed their linguistic and cultural rights, be they Aboriginal rights or otherwise, and violated fiduciary duties that Canada allegedly owed to them at the relevant times.²
4. Canada acknowledges that some conduct of those past governments, at some of the relevant times during the Class Period, was morally and ethically wrong and based on racist, colonialist beliefs. However, the final trial record and relevant law will demonstrate that the Plaintiffs cannot make out the causes of action they assert.
5. The onus of proof remains on the Plaintiffs, in all aspects of their case. The record will not support the conclusion that there was any approach, formal or informal policy, or pattern of conduct by Canada with respect to the treatment of Indigenous languages and cultures that was applied consistently across all residential schools at any time, let alone across the entire Class Period. Rather, the record will demonstrate that Canada's conduct varied based on the circumstances of individuals or groups of residential schools, including the nature of the entities Canada contracted with to operate the schools at issue. It will also demonstrate that Canada's conduct with respect to the treatment of Indigenous languages and cultures in residential schools was consistent with what were believed to be the legal and social norms and reasonable actions of the day, even if today we recognize the offensiveness and impropriety of such actions. As society's awareness of the harms caused by residential schools grew, so too did Canada's efforts to change its approach to those schools, ultimately leading to their gradual phasing out entirely.

¹ Plaintiffs' response to Canada's demand for particulars, March 12, 2014, response 2(c) (Trial Record, filed September 6, 2022 [TR], Tab 10, p 179).

² The Plaintiffs acknowledge "If the Plaintiffs are to succeed, the trial judge must be satisfied that the answers to the common questions do, in fact, apply to the class and not just the Plaintiffs.": See the Plaintiffs' July 23, 2020 Reply to Canada's Response to Plaintiffs' Trial Plan dated March 30, 2020, at page 7 (TR, Tab 24, p 1324).

6. Examined in context and without reliance on sweeping generalizations, the record will show that the Plaintiffs have not met their burden. In particular, it will not support a finding that Canada's conduct gave rise to and breached an asserted fiduciary duty not to destroy, or not to take steps to destroy, the Plaintiffs' language or culture. It will also not support a finding that such conduct breached a generic right, Aboriginal or otherwise, to language and culture that the Plaintiffs assert they hold.

7. Previously in this action, the parties agreed to bifurcation of the Common Questions and settled the claims of the former Survivor and former Descendant Class members. This shortened the duration and content of the first Common Questions trial by removing the need for the parties and the Court to engage, at this first hearing at least, with evidence about harms that residential schools caused to Indigenous children, their families, or communities. One of Canada's goals is to move the discussion into other forums where Canada can work in partnership with Indigenous communities to redress such harms by supporting efforts to reclaim, revitalize, maintain and strengthen languages and cultures, such as is provided through Heritage Canada's Indigenous Languages and Cultures Program. This phase of the trial is only about whether the asserted duties and rights exist and, if so, whether Canada's conduct breached or violated them. The issue of what harms resulted from such breaches/violations is only to be determined in a later trial, if required.

ANTICIPATED POSITIONS AND EVIDENCE AT TRIAL

Class Proceeding Principles

8. A preliminary principle governing the Court's determination of the matters in this case is that class action regimes do not modify or create substantive rights³ or alter the rules of evidence.⁴ While plaintiffs have a right to structure their pleading to make certification easier, such as by framing alleged wrongs as systemic in nature, they must still meet their burdens of proof and evidentiary thresholds required to establish liability at trial.⁵ For example, a plaintiff can elect to extend the class period to increase the number of potential class members and the number of different wrongs that may have been committed by a defendant. However, that plaintiff must then demonstrate legally wrong conduct was committed by the defendant towards *all* class members and throughout the *entire* period.

9. A plaintiff bears the burden of demonstrating how such conduct violates any legal standards and gives rise to causes of action that existed at the time within the class period that is relevant to each class member. The burden arises anew each time those standards or the law changes over the class period. As a result, the traditional evidentiary rules and burdens, including any challenges the Plaintiffs face in the case at bar from rules about inadmissibility of hearsay, similar fact evidence, and adverse inferences, and the significant challenges in applying findings or inferences of fact relating to one Class Member to others or to one time period to others several decades apart, all apply here.

³ [Bou Malhab v Diffusion Métromédia CMR inc., 2011 SCC 9](#) para 52, cited in [Canadian Imperial Bank of Commerce v Green 2015 SCC 60](#); [Bisaillon v Concordia University, 2006 SCC 19](#) at para 17 [[Bisaillon](#)]; [Sivak v Canada, 2012 FC 271](#) at para 17.

⁴ [Bisaillon](#), at para 18.

⁵ [Rumley v British Columbia, 2001 SCC 69](#) at para 30.

10. The low threshold for certification of a common question carries with it the prospect that the trial judge may not find an answer to it that is the same for all class members. Significantly, the law is settled that success for one class member on a common question does not necessarily mean success to all other class members.⁶ To the extent that any or all of the claims brought in this proceeding are not substantiated on the record in respect of all Class Members throughout the entire Class Period, those claims must be dismissed. The Plaintiffs will not have met the burden with respect to them.

11. If the Court determines the certified common questions could never be answered “in common”, it can decertify the case and deal solely with the issues as they apply to the two representative Plaintiffs. Alternatively, it can amend the common questions where required to avoid the common questions trial devolving in innumerable mini-trials, which is the antithesis of a proper class action.

12. The issues to be determined at any common questions trial are limited to those required to assess the common questions of law or fact that were certified (“Common Questions”), as amended by any subsequent court order.

13. Procedural fairness requires that a defendant be given appropriate knowledge of the case to meet and then appropriate pre-trial steps to do so. In that respect, it is important to recognize how trial plans can also impact the interpretation and scope of any common questions trial because of how they define the case to meet. They identify the processes that the court will follow to determine when and how any certified common questions, as well as individual ones, will be decided. While the trial plans provided by Plaintiffs at certification are minimalist in nature, they are more clearly developed as part of preparations for any common questions trial. Their development informs the defendant’s knowledge of the case to meet and thereby guide the scope of oral and documentary discovery, as well as decisions about reliance on expert and lay witnesses at the common questions trial. Thus, their consideration at any common questions trial is essential for ensuring procedural fairness. Over the last three years, the parties have exchanged trial plans for just such purposes. To the extent that they include representations by the Plaintiffs about limits of the case Canada is to meet and the process and nature of evidence they will provide at the Common Questions trial, procedural fairness requires those representations to be binding.

Scope of Issues for Phase One of the Trial

14. This case is a bifurcated proceeding in many respects. In addition to separation of common and individual issues, the scope of issues to be determined at any common questions trial is established by any court orders issued between certification and the trial. In this case, there are several Orders that limit the scope of Phase One of the trial.

⁶ [Vivendi Canada Inc. v. Dell’Aniello, 2014 SCC 1](#), at paras 45-46.

The Bifurcation Order

15. The Common Questions in this case have been bifurcated into two proceedings that logically and efficiently organize the issues to be determined in each. Each phase of trial has its own hearing, record and trier of fact. Respecting the line between the two phases is essential so as not to unnecessarily constrain the second trier of fact to determinations made at the first phase of the hearing. This first phase will have a more limited record that is tailored to the narrow issues before the trier of fact.

16. Pursuant to the August 24, 2020 Bifurcation Order, issued on consent of the parties, the Common Questions trial is bifurcated such that only two Common Questions are to be determined in full in this first phase that is to commence on September 12, 2022:

“(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? [Emphasis added.]

“(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? [Emphasis added.]

17. Importantly, in his Reasons for certifying Common Question (a), Justice Harrington confirmed that the duty “not to destroy” includes the lower threshold duty of “not to take steps to destroy”.⁷

18. By operation of the Bifurcation Order and the earlier settlement, the case for trial has gradually adapted from the three-tiered class action that was initially certified to the narrower and more focused liability trial of the remaining class: the Band Class, now simply referred to as the “Class”. Prior to receipt of the Plaintiffs’ Trial Brief, Canada’s understanding was that the parties had reached consensus on what determinations were no longer required for this liability trial of the Class, which are discussed below.

19. In particular, Canada’s position is that none of the determinations required to confirm the existence and extent of harms and damages to anyone, including the Class Members or how/why they are attributable to Canada’s conduct would be engaged until and unless liability was first established through Phase One of the trial. This is a logical approach given that a proper harms/causation/damages assessment can only be conducted after the bases and parameters/scope of liability have been identified. Without such an approach, the breadth of potential harms and causation matters at issue would create a risk of confusing the more limited record required for a liability determination.

The Punitive Damages Bifurcation Order: (i) Punitive Damage Issues are Bifurcated

20. In keeping with the Court’s August 11, 2022 Order bifurcating the punitive damages questions (“Punitive Damages Bifurcation Order”), also made on consent of the parties, in Phase

⁷ [Gottfriedson et al v Her Majesty the Queen, 2015 FC 706](#) [Certification Reasons] at para 95.

One of the trial the Court will only determine whether Canada’s conduct alone justifies an award of punitive damages. Any consideration of elements of the punitive damages test that might have required considering whether, how and the extent to which anyone was harmed by residential schools will be left for determination in Phase Two. This was not just a matter of process, but also an effort to avoid the need for painful evidence from those who attended Indian Residential Schools and whose suffering is not doubted or at issue.

The Punitive Damages Bifurcation Order: (ii) The Dividing Line Agreement

21. The parties also entered a pre-trial agreement (“Dividing Line Agreement”), accepted by the Court as part of the Punitive Damages Bifurcation Order. It confirms that the issues left for determination in Phase Two, based on the Bifurcation Order as clarified and affirmed by the Dividing Line Agreement, are:

- a. the extent or degree to which Canada’s breaches/violations caused or contributed to loss of language or culture to the Class Members and harms flowing therefrom;
- b. the extent or degree to which, if at all, such loss:
 - i. was also caused or contributed to by other events, circumstances or actors for which Canada is not liable,
 - ii. may also 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-parties for contribution, indemnity or an apportionment at common law, in equity, or pursuant to the British Columbia *Negligence Act*, RSBC 1996, c 333, as amended, and/or
 - iii. would have been caused in whole or in part even but for Canada’s breaches/violations.

22. Canada’s position is that the Dividing Line Agreement further confirms that causation issues, including the identification of harms caused by residential schools, are not engaged in Phase One unless and only to the extent necessary for the Court to confirm it can move to Phase Two. Even then, in Phase One the Court must not engage in any determinations that would pre-judge any matters properly within the scope of Phase Two. For example, loss of language and culture is a form of harm. As set out in the Dividing Line Agreement, determinations about the existence or causes of harms – such as the loss of language or culture — are not appropriate considerations in Phase One.

23. If the Court confirms the existence of any violations or breaches in answer to Common Questions (a) or (b), the Court must refer the matter to Phase Two, subject only to inherent limits in the liability findings discussed below. The Court’s pre-trial Orders noted above, the trial plans exchanged by the parties, and Canada’s pleadings make clear that it is not necessary for the Court to engage in such determinations in Phase One. Canada does not dispute that residential schools caused harms to Indigenous peoples and their communities. The Plaintiffs’ Trial Brief contains numerous formal admissions by Canada that would satisfy any causal connection analysis that

could even theoretically be required before the Court could proceed with a damages trial if liability is affirmed in Phase One.⁸ Canada’s pleadings include similar admissions:

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.*⁹ [Emphasis added.]

...

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.*¹⁰ [Emphasis added.]

24. However, the Court is not precluded from finding there is no prospect for compensable harm that would justify moving to Phase Two for *some* Class Members. For example, if the Court finds that Canada breached a duty as a result of conduct that only started half way through the Class Period, or that the violated law/duty/right was only enforceable at that date, the claims of any Class Members that require a finding of liability before that date cannot proceed further.

25. If liability is established in Phase One, the only issue of causation to be resolved (in Phase Two) is with respect to the nature and degree of harm identified during Phase Two, which Canada states will vary from community to community.¹¹ The complexity and degree of harm and/or its variation between Class Members is a matter exclusively within the purview of Phase Two. Evidence with respect to such matters is not relevant to any determination to be made in Phase One and should not be admitted or considered.

Evidentiary Challenges from the Definition of Class Member: the Opt-in Order

26. The record will not support a finding that all of the Class Members either were owed the fiduciary duty, or possessed the rights (without the particularization required in this case) alleged. Mere membership in the Class does not assist the Plaintiffs in meeting their evidentiary burden. The Court’s February 8, 2022 Order (the “Opt-in Order”) defines Class Members as any group meeting four mandatory criteria.

27. “Class” means the Tk’emlúps te Secwépemc Indian Band and the shíshálh band and any other Indian Band that (i) has or had some members who are or were Survivors, or in whose community a Residential School is or was located; and (ii) is specifically added to this claim in relation to one or more specifically identified Residential Schools. “Indian Band” is defined to

⁸ Plaintiffs’ Trial Brief, dated September 2, 2022 [PTB] at 18, 19: Admissions 22, 24-29.

⁹ Canada’s Second Amended Statement of Defence, filed March 14, 2022 [2nd ASOD] at para 3 (TR, Tab 31, p 1411).

¹⁰ 2nd ASOD at para 32 (TR, Tab 31, p 1418).

¹¹ 2nd ASOD at para 7 (TR, Tab 31, p 1412).

mean any entity that: (i) Is either a "band" as defined in s.2(1) of the *Indian Act* or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and (ii) Asserts that it holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

28. These parameters for eligibility to become Class Members do not create any expanded judicial discretion to find or infer that any facts are common to all of them. The fact that Common Questions were certified for trial does not create any basis to make inferences. The legal tests for establishing the existence of duties or rights, as discussed below, for any one, let alone all, Class Members, remains rigorous. As noted above, the record must demonstrate each Class Member suffered the breach /violation alleged.

Other Evidentiary Limits at Phase One of the Trial

29. The Plaintiffs assert that to answer the Common Questions, the Court will have to determine what Canada's role was "in the operation and management of Residential Schools, including in the creation, maintenance and implementation of a Residential School system."¹² The record will demonstrate that there was no single system implemented universally by Canada for all Indian Residential Schools, in all geographic locations throughout Canada, and for the entire duration of the 77-year Class Period.

30. To answer the Common Questions in favour of *all* Class Members, the Court would have to identify specific impugned conduct relevant to Canada's role in the system(s) above, as it applies separately to each of the "creation", "operation", or "management" of each of the Indian Residential Schools.¹³ The record will demonstrate that Canada's role in those respects varied between some or all Class Members and /or their respective residential schools and over time.

31. The Plaintiffs represented that the words "operation and management" in both Common Questions *only* require examination of Canada's conduct in the "implementation" of a policy Canada created, and that "the Common Questions are not to be decided based on what happened at any individual school".¹⁴ In the face of such representations and the Court's need to prevent the Common Questions trial from devolving into determinations about innumerable instances of alleged misconduct at the different schools, the Court should accept no evidence, or should significantly limit and give little weight to evidence, about what happened at residential schools, or at least any other than the two related to the representative Plaintiffs.¹⁵

¹² Plaintiffs' Trial Plan, dated March 30, 2020 at 3-4 (TR, Tab 21, pp 408-409).

¹³ While paragraph 17 of the Plaintiffs' Trial Brief says the Court will determine Canada's role in the "maintenance" and "implementation" of the residential school system, the Common Questions only use creation, operation and management.

¹⁴ Plaintiffs' July 23, 2020 Reply to Canada's Response to Plaintiffs' Trial Plan dated March 30, 2020: Clarification #2 at 4 (TR, Tab 24, p 1321) 4.

¹⁵ [*Anderson v Canada \(Attorney General\)*, 2015 NLTD\(G\) 146.](#)

Common Question (a): Fiduciary Duty

The Asserted Fiduciary Duty to Class Members did not Exist – Certification Ruling

32. As noted above, the only fiduciary duty identified as the subject of a Common Question regarding the Class was the duty *not to destroy*, or more specifically *not to take steps to destroy* the Plaintiffs’ language and culture. It is important to distinguish this question from issues that do not form part of the issues to be determined at Phase One.

33. Notably, Justice Harrington declined to certify a common question about whether Canada owed and breached any duty to “protect” Indigenous languages and cultures.¹⁶ The question of whether Canada owed a duty to “not intentionally cause mental harm” to the former Survivor Class was explicitly certified only with respect to that class. In addition, this Court on certification, and the Federal Court of Appeal in a pre-certification ruling, confirmed that this case does not engage questions of whether Canada is liable for physical or sexual abuse that some students suffered while at residential schools.¹⁷ Accordingly, all expert and lay witness evidence with respect to these assertions should not be examined as any part of Phase One.

34. While Canada acknowledges that knowledge and practice of the Class Members’ respective languages and cultures have suffered significant decline and may be in varying states of risk of loss, the Plaintiffs do not dispute that some knowledge and use of them remains. Therefore, it need not be established that any have been *destroyed*. The allegation of a fiduciary duty breach should only be assessed against the included lower-threshold asserted duty *not to take steps* to destroy their Indigenous languages and cultures.

35. Canada’s fiduciary relationship with Indigenous peoples does not automatically create fiduciary duties.¹⁸ Rather, fiduciary duties can only arise in relation to conduct that occurs within the fiduciary relationship in specific circumstances, which must be examined closely. It cannot create any duty to Indigenous communities because they meet the eligibility requirements in the definition of Class Member.

36. Starting with the Sechelt or Tk’emlups te Secwepemc Bands, the record will not provide the requisite evidence of Canada taking on or triggering the asserted duty to them, regardless of which of the two legal tests the Supreme Court of Canada says must be met to create fiduciary duties.¹⁹ The circumstances, timing and manner in which Canada became involved in the residential schools found in those bands’ communities, and those of the other Class Members, involved, at most, an undertaking (whether or not a duty) to educate their children in colonial languages and ways of life in a manner Canada believed at the time was in their best interests based on the prevalent knowledge of convictions held during the historical period.

37. The record will not support a finding that Canada forsook all other interests in favour of preserving, maintaining, or not taking any steps that would undermine the representative Plaintiffs’ interests, or those that any Class Members had regarding their respective languages and cultures.

¹⁶ [Certification Reasons](#), at para 95.

¹⁷ [Certification Reasons](#) at para 97; [Canada \(Attorney General\) v Gottfriedson, 2014 FCA 55](#) at para 35.

¹⁸ [Wewaykum Indian Band v Canada, 2002 SCC 79](#) at paras 81, 83 [*Wewaykum*].

¹⁹ [Wewaykum](#), at paras 72-85; [Alberta v Elder Advocates Society, 2011 SCC 24](#) at paras 37-54.

It will not support a finding that there was never any such mutual understanding or an undertaking by Canada to act in favour of such interests at the relevant times.

38. If any duty was owed, it was owed to the individual children attending the schools. To the extent a fiduciary duty can be created by assuming control over specific Indigenous interests, the record demonstrates that Canada's conduct with respect to education of Indigenous children was, at most, an undertaking of discretionary control over the children's colonial education.

The asserted Fiduciary Duty was not breached

39. The record does not support finding a breach of an alleged fiduciary duty across the entire Class and Class Period in all the circumstances.

Common Question (b): Linguistic and Cultural Rights

The Plaintiffs Have Not Established the Required Details of the Asserted Rights

40. The test for certification of the Common Questions did not require the Plaintiffs to define the scope and content of the language and culture rights they assert were violated.²⁰ After certification the Plaintiffs clarified that the only Aboriginal rights referred to in Common Question (b) are "general and class-wide" Aboriginal rights "to language" and "to culture".²¹ The only further clarifications are in the declarations they seek, namely, that they hold Aboriginal rights to speak their traditional languages and to engage in their traditional customs and religious practices.²²

41. To answer Common Question (b), the Court will have to first determine whether it has sufficient evidence to find that all Class Members possess the rights asserted. Simply because a Class Member opted in, or even that they may meet the definition of "Indian Band" in the Amended Certification Order, is not evidence that they possess the asserted rights. They must lead relevant and admissible evidence before a court can find that they possess such rights. The trial record will not support such a finding.

42. Standing is concerned with the appropriateness of a court dealing with the issue as presented by a plaintiff.²³ While a band may have capacity to sue and to be sued in certain circumstances, the ability of a band to bring a claim for breach of Aboriginal rights depends on the characterization of the rights being claimed.²⁴ A collective's status as an Indian Band under the *Indian Act* – or an Indian Band under the definition of the Amended Certification Order – is insufficient evidence to conclude that it has standing to pursue a claim for the asserted rights. Such status is also insufficient evidence to conclude that the Class Members are the collectives that possess Aboriginal rights under section 35 of the *Constitution Act, 1982*.

²⁰ [Certification Reasons](#) at paras 42 and 43.

²¹ Plaintiffs' July 23, 2020 Reply to Canada's Response to Plaintiffs' Trial Plan dated March 30, 2020: Clarification #3 at 5 (TR, Tab 24, p 1322).

²² Second Re-Amended Statement of Claim, filed February 11, 2022 [2nd Re-Amended SOC] at para 1 (a), under Relief Sought (TR, Tab 30, p 1387).

²³ [Kwicksutaineuk/Ah-Kwa-Mish First Nation v Canada \(AG\)](#), 2012 BCCA 193 at para 62.

²⁴ See for example [Wewaykum v Wewayakai Indian Band](#), [1991] 3 FC 420 at pp 428-430.

43. The Federal Court has held that identification of the proper rights holder is “integral to the analysis” and that while an *Indian Act* band is a creature of statute that post-dates contact with European settlers, it cannot be assumed that the membership of a First Nation holding an Aboriginal right is coincidental with the membership of an *Indian Act* band.²⁵ For example, in *Tsilhqot’in Nation*,²⁶ the British Columbia Supreme Court concluded that the right to bring an action for declarations of Aboriginal rights and title was held, not by the Xenigwet’in Band, but by the larger Indigenous community/collective of the Tsilhqot’in people of which the Band was a part.

44. For all of these reasons, the record will not contain sufficient evidence to demonstrate that all Class Members hold or individually have standing to advance claims for infringement of their respective asserted Aboriginal rights.

45. In that regard, the Plaintiffs’ pre-trial representations are significant. The Plaintiffs have repeatedly represented that the Common Questions do not invoke any dispute or require judicial findings to be made at the Trial regarding the existence or violations of any practice-specific Aboriginal rights held by any of the Class Members:

Clarification #3: The lawsuit is about general and class-wide Aboriginal rights to language and culture, not the specific customs and practices of each First Nation or Aboriginal group.

It is unnecessary for the Plaintiffs to establish the individual customs or practices that make up the cultures of all Indigenous peoples in Canada involved in this claim on the test established in *R. v. Van der Peet*, [1996] 2 SCR 507 (the “*Van der Peet Test*”).

Instead, the Plaintiffs intend to establish at trial that the nature of the Aboriginal right – also recognized as a fundamental human right – to language and culture is such that it can be established as a matter of law, and flows automatically from the class members’ status as Aboriginal peoples.

[...] The specifics of the cultural and linguistic practices are thus immaterial for the purposes of this litigation.²⁷ [Emphasis added.]

46. Accordingly, evidence regarding individual practices, and with respect to individual instances of alleged interferences with such specific practices, should not be permitted at trial, or should be significantly limited. Based on the Plaintiffs’ pre-trial framing of the scope of the rights, the only rights that should be considered by the Court at the trial are those the Plaintiffs demonstrate are of a nature that their violation can be established without proof of interference with a specific cultural or linguistic practice.

²⁵ [Kwicksutaineuk Ah-Kwa-Mish First Nation v Canada \(AG\), 2012 FC 517](#) at para 91. While the court ultimately concluded the required connection existed, it did so only after completing the requisite analysis.

²⁶ [Tsilhqot’in Nation v British Columbia, 2007 BCSC 1700](#) at para 470.

²⁷ Plaintiffs’ July 23, 2020 Reply to Canada’s Response to Plaintiffs’ Trial Plan dated March 30, 2020: Clarification #3 at 5 (TR, Tab 24, p 1322).

47. A fundamental obstacle to the Plaintiffs proving the asserted rights is that the rights are too general and broad to be sustainable at law. Canada acknowledges that Aboriginal rights related to language exist, and that Aboriginal self-government rights exist. However, it was incumbent on the Plaintiffs to define the specific language and culture rights at issue as they are asserting a breach of those rights. The asserted rights provide no viable framework upon which the Court could decide how or when Canada breached them.

48. In *Lax Kw'alaams Indian Band*,²⁸ the Supreme Court of Canada reiterated the importance of a clear characterization of an Aboriginal right, emphasizing that such clarity minimizes wasted time and may enhance prospects for settlement. In contrast, a lack of clarity about the right pleaded at the outset is a “commission of inquiry” approach that is not suitable in civil litigation.

49. The Plaintiffs contend that the test for establishing Aboriginal rights that was affirmed by the Supreme Court in *Van der Peet* does not apply to their claim. They assert they can prove their s. 35 rights through the operation of law. While they have a right to choose how to argue their case – as they have committed to doing in these proceedings in order to limit third party claims and keep discoveries narrow – that argument should, on the basis of the law, be rejected. The Plaintiffs have not proposed an alternative legal test, except to allege that these rights arise through the operation of law. The Plaintiffs’ approach would lead to broad rights arising automatically without the need prove these rights with evidence, which is also contrary to the current jurisprudence.

50. In the result, the asserted claims for class-wide language and culture rights, Aboriginal or otherwise, have not been adequately detailed or supported by evidence for any or all Class Members.

Additional Preliminary Issue: Temporal Application of Section 35

51. Due to the span of the Class Period, this litigation gives rise to a preliminary temporal issue regarding how the Court approaches the Plaintiffs’ claim for Aboriginal rights. Aboriginal rights received constitutional protection in 1982, when s. 35 of the *Constitution Act, 1982* came into force. Section 35 does not have retroactive effect. Since the Class Period covers the period 1920 to 1997, the Plaintiffs’ Aboriginal rights claim must be separated into two periods: a claim to common law Aboriginal rights during the period 1920 to 1982, and a claim to s. 35 Aboriginal rights from 1982 to 1997.

52. Even if a set of common historical practices could potentially be identified for all Class Members, the record will not contain sufficient evidence to establish that they meet the elements of the legal test for common law Aboriginal rights for all Class Members prior to 1982.

53. The record will also demonstrate that any common law Aboriginal rights proven by the Plaintiffs were not breached by Canada’s conduct in the period prior to 1982. To the extent that the Plaintiffs challenge one or more provisions of the *Indian Act*, or Canada’s actions pursuant to those provisions – such as those with respect to compelling attendance at residential schools – no claim exists at common law.

²⁸ [*Lax Kw'alaams Indian Band v Canada \(AG\)*, 2011 SCC 56](#) at paras 41-43.

54. The record will also demonstrate there was no universal policy or common approach related to residential schools as alleged, or at all, that could have violated the rights of all Class Members, given the variations in the schools geographically and over time.

Post-1982 Section 35 Aboriginal Rights Claims

55. The record will confirm it is not necessary for the Court to decide whether the Plaintiffs have established their asserted s. 35 rights because there is no Crown conduct after 1982 that could give rise to a claim of infringement. For example, the record will demonstrate that only 20 facilities at issue remained in operation by that point. It will also demonstrate that many of those facilities became operated by Bands or Indigenous organizations, and others were simply residences for Indigenous children attending schools elsewhere. Further, in certain cases where schools remained open, it was because of the challenges Canada faced in ensuring alternative educational and housing opportunities were in place before the schools closed. All of these factors will demonstrate why any evidence about what happened at or with respect to other residential schools before 1982 cannot support findings of fact about what happened in the facilities that continued to operate afterwards.

56. The record will not demonstrate that any of Canada's post-1982 conduct with respect to residential schools included the impugned assimilation-related goals upon which the Plaintiffs' claim is based. While the claims for s. 35 violations can be dismissed without such a finding, the record will demonstrate that by this time, the government had moved towards actively supporting Indigenous languages and cultures. If the Plaintiffs prove all Class Members hold any of the language or culture rights asserted, Canada's conduct in the period after 1982 did not infringe or violate those rights.

International Law

57. As part of Common Question (b), regarding the assertion that Canada breached their linguistic and cultural rights, the Plaintiffs plead and particularized six international instruments ("International Instruments") that they assert Canada breached. However, none of those instruments were in force before 1951, ruling out their application to Canada's conduct before 1951. The rest were entered into at various times between 1951 and 2020. None can support other causes of action for conduct that preceded their respective effective dates. Similarly, while International Instruments can inform the interpretation of common law rights, they cannot do so retrospectively.²⁹

58. The evidence about international law that the Plaintiffs' expert Dr. Woolford purports to provide in his report does not assist the Court. To the extent that Dr. Woolford's report speaks to his personal view of an appropriate sociological definition – not a legal one – of what should be considered "cultural genocide" as a vernacular term, it is irrelevant. The only matter to be determined in Phase One is whether any obligations that arise from the accepted *legal* definition of genocide (rather than its sociological interpretation) have been breached.

²⁹ [Mack v. Canada \(AG\), \[2002\] O.J. No. 3488](#), at paras 32-33; [Jurisdictional Immunities of the State \(Germany v. Italy: Greece Intervening\), Judgment, ICJ Reports 2012](#), at p 124 para 58.

59. Courts should only receive expert evidence on the interpretation of international law – which is normally a matter for argument by counsel – in rare circumstances that do not exist here. Further, Dr. Woolford is not qualified to give such evidence. In the alternative, while also suffering many errors and deficiencies in its analysis of international law, his report appears to at most offer irrelevant opinion on what the legal definition of genocide *could* be, while simultaneously confirming that what happened at residential schools did *not* infringe any international law that was in existence at any material time.

60. The Plaintiffs cannot demonstrate that at any material time Canada breached any of the International Instruments through the creation, operation or management of any residential school during the Class Period. Even if the Plaintiffs could establish such a breach it cannot support a finding of liability against Canada in this case because such instruments do not form the basis of a cause of action in Canadian domestic law.

Punitive Damages should not be Awarded in Phase One of the Trial

61. The Court should follow the general rule that punitive damages cannot be awarded until all damages are being assessed. The Supreme Court of Canada has ruled that when considering whether punitive damages are warranted, the trial court must first consider the nature and extent of other compensation that is payable to the plaintiff.³⁰ The narrow exceptional circumstances in which it would be appropriate to make a finding of punitive damages in the liability phase of a bifurcated case are not applicable here.³¹

Declaratory Relief is Not Appropriate

62. The Court did not certify as part of the Common Questions the issue of whether the declarations sought by the Plaintiffs in their pleadings should be granted. Further, the legal test to determine whether declaratory relief is appropriate is unrelated and need not be addressed to determine of any of the Common Questions. In the alternative, that legal test³² is not met in this case and none of the declarations sought should be issued in Phase One.

Apportionment to Other Entities Deferred to Phase Two of the Trial

63. To avoid Canada pursuing Third Party proceedings in this case, the Plaintiffs abandoned claims for damages for any losses “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*, RSBC 1996, c 333, as amended.”³³

³⁰ [Whiten v Pilot Insurance Co., 2022 SCC 18](#), at para 94.

³¹ [Eurocopter c. Bell Helicopter Textron Canada Ltée, 2013 FCA 219](#) at paras 173-179.

³² [Solosky v The Queen, \[1980\] SCR 821](#) at 833; [Daniels v Canada \(\(Indian Affairs and Northern Development\), 2016 SCC 12](#) at para 11; [SA v Metro Vancouver Housing Corp, 2019 SCC 4](#) at para 60.

³³ 2nd Re-Amended SOC at para 48(a) (TR, Tab 30, p 1405).

64. Given that the issue of other causes of the harms is to be dealt with in Phase Two, any liability finding against Canada in Phase One must be only on a *prima facie* basis, or alternatively, be subject to apportionment in Phase Two.

Implications of Releases Deferred to Phase Two of the Trial

65. The Class Member collectives are made up of individuals. Some of those individuals have previously released these causes of action and/or have been compensated for all of their rights to compensation for their individual losses of language and culture caused by residential schools. The Plaintiffs admitted in their earlier pleadings that all of the Class Members' losses flowed from the harms those individuals suffered at residential schools.³⁴ As these individuals have now released all of their claims for such losses, the Class Members' claims cannot include damages claims for loss of language or culture suffered by those individuals.

66. Any liability finding in Phase One must be conditional and/or subject to determination in Phase Two of numerous issues. Those include (i) what losses of language and culture suffered by the Class Members are in whole or in part duplicative of the losses suffered by individuals within each Class Member Indian Band who have already been compensated and who have released their claims for such losses; (ii) what is the percentage of individuals within each Class Member's entire membership that have already been compensated for and have released claims to such compensation; and (iii) how, if at all, do the answers to (i) and (ii) impact each Class Member's right to such compensation?

The Plaintiffs' Experts' Reports: Inadmissible and/or of Little Weight/Probative Value

67. The Plaintiffs' experts' reports contain significant deficiencies that may render them inadmissible in whole or in part.

68. Further, four of the reports were created prior to settlement with the former Survivor and Descendant Class members. All five reports include extensive portions addressing causation and harms, matters that are not relevant to and inappropriate for the record in Phase One. In those respects, all of the expert reports are in whole or in part, unnecessary and prejudicial at this stage. Permitting them to be introduced into the record will unduly lengthen the trial, divert resources away from the liability issues to be resolved in Phase One, and risk conflating findings between Phases One and Two.

³⁴ Plaintiffs' First Re-Amended Statement of Claim, filed June 26, 2015 at para 83 (TR, Tab 12, p 279).

This is Exhibit "K" referred to in the
affidavit of Peter Grant sworn before me this
20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

"K"

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,

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

PLAINTIFFS' TRIAL BRIEF

September 2, 2022

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PART I – OVERVIEW OF THE CASE

1. This is a lawsuit against Canada for designing and implementing a national Indian Residential School (“IRS”) system in which Canada forced Indigenous children to attend IRSs with the underlying goal of assimilation – taking the “Indian out of the child” – and which resulted in great harm not only to the students who attended IRSs, but also to the communities of which they were a part. The Plaintiffs allege that the IRS system, which Canada implemented from a centralized authority, was designed and implemented pursuant to its IRS Policy¹ with the specific intention to assimilate Indigenous peoples, to destroy their distinct languages and cultures and the existence of Aboriginal communities. As stated by Prime Minister Harper in the Government of Canada’s apology for the IRS system:

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.²

2. The two representative plaintiffs are shíshalh Nation (formerly known as the Sechelt Indian Band), and the t’kempl’ups Nation, formerly known as the Kamloops Indian Band. The Class consists of 325 bands³ located across Canada. Each class member has in common the fact that their First Nation, as a collective, was impacted by the IRS system, either because there was an IRS in their community, or because members of their community attended an IRS. The claim is for the collective harms suffered by First Nations as a result of the IRS system, in particular, the collective loss of language and culture.

3. The lawsuit is about class-wide rights to language and culture, not about defining and protecting specific customs and practices of each Class member. The Plaintiffs intend to lead evidence relating to the cultural and linguistic practices of the representative plaintiffs in support of its position that the Class members have generic Aboriginal rights to language and culture, existing before European contact, that for the purposes of this case can be recognized without being defined specifically for each member of the Class. Rights to language and culture also exist as a matter of common law, human rights law and/or on the basis of customary international law,

¹ As provided in the Second Re-Amended Statement of Claim, the Residential Schools Policy means the policy of Canada with respect to the implementation of Indian Residential Schools.

² Stephen Harper, Statement of apology to former students of Indian Residential Schools, June 11, 2008

³ First Nation is used herein synonymously with “Band”. See definitions from the pleadings in Schedule C.

in addition to rights protected under s.35 of the Constitution.⁴ The rights to language and culture will also be examined as a matter of Canada's fiduciary obligations to the Class members.

4. Although Canada has made various admissions, it maintains its defence that it is not in breach of its obligations to the Class members. Among other things, Canada seeks to focus on the church entities' responsibilities and the alleged variability of the operation and management of the different IRSs as a challenge to common issue consideration. The lawsuit is about Canada's role in designing, implementing and overseeing the national Indian Residential School system, not about the local operation of each IRS or the role of the churches. It is about Canada's responsibility for its decision to seek to destroy the Class members through its policy of assimilation through the IRS.

PART II – THE ROADMAP FOR TRIAL

The Witness Schedule:

5. The parties have jointly prepared an anticipated witness schedule that provides estimated dates of appearance and duration of testimony for each witness that is anticipated to be called. The Witness Schedule is attached as Schedule A. The Plaintiffs recognize that some of the witnesses may be of shorter duration than scheduled.

6. The witness schedule is provided for information only. It may continue to evolve prior to and through trial and is not an undertaking to call any listed witness, nor is it intended to foreclose the possibility of additional witnesses being called in accordance with the direction of the Court.

Witness Overview

7. The Plaintiffs will call former Chiefs from the two representative Plaintiff band communities who will testify, among other things, regarding the harms caused to their respective bands by IRSs:

- a. **Garry Feschuk** is a member of shíshálh Nation (also known as the Sechelt Indian Band), and was Chief from 1993 to 2005 and again from 2008 to 2014.

⁴ See Justice Harrington's Decision on certification, in which he stated at paragraph 42, "At this stage, it is not necessary to set the boundaries of aboriginal rights of language and culture. These are human rights which existed long before the arrival of European settlers."

- b. **Shane Gottfriedson** is a member of the Tk'emlúps te Secwépemc Indian Band, was Chief of Tk'emlúps te Secwépemc from 2003 to 2015, and Regional Chief of the Assembly of First Nations for British Columbia from 2015 to 2017.

8. The Court will also hear from elders from each of the two representative Plaintiff First Nations who will testify to, among other things, shíshálh and Secwépemc language and culture prior to the start of the class period (1920), and the loss of shíshálh and Secwépemc language and culture as a result of the Residential Schools Policy of Canada and their own observations and experience of the devastating impacts of that Policy on their Nation's language and culture. In addition, elder Wendy John will testify. She is a member of Musqueam First Nation, located in British Columbia. She was British Columbia Regional Chief of the Assembly of First Nations, and Chief of Musqueam First Nation for three terms.

9. The Plaintiffs intend to call regional and national Aboriginal leaders to speak to their experience and knowledge of the role and impact of the IRS system on Aboriginal communities across Canada, and in particular loss of Aboriginal language and culture. These leaders include:

- a. **Matthew Coon Come** is a member of the Cree Nation of Mistissini, located in Northern Quebec. He was National Chief of the Assembly of First Nations from 2000 to 2003, Grand Chief of the Grand Council of the Crees (Eeyou Itschee) from 1987 to 1999 and from 2009-2017, and Chief of the Cree Nation of Mistissini from 1981 to 1986.
 - b. **Phil Fontaine** is a member of Sagkeeng First Nation, located in Manitoba. He was National Chief of the Assembly of First Nations from 1997 to 2000 and again from 2003 and 2009, Grand Chief of the Assembly of Manitoba Chiefs from 1989-1997, Manitoba Regional Chief of the Assembly of First Nations from 1986-1989 and Chief of Sagkeeng First Nation from 1972 to 1976.

10. The Plaintiffs intend to call a number of experts, as follows:

- a. **Dr. John Milloy**, a professor of history at Trent University, will testify regarding the history of IRSs including Canada's role in establishing and operating the IRS system;
 - b. **Dr. Marianne Ignace**, a professor of linguistics and Indigenous studies at Simon Fraser University, will testify regarding, among other things, the impact of the IRS

system on Indigenous language and culture across Canada, and the impact of the IRS system on Secwépemc language and culture.

- c. **Dr. Onowa McIvor**, a professor of Indigenous education at the University of Victoria will testify regarding, among other things the relationship between language and culture, the process of language acquisition and transmission, the process of loss of language and culture, and the impact of IRSs on Indigenous language and culture.
- d. **Dr. Dwight Gardiner**, a professor of linguistics and modern languages at Capilano University, will testify regarding the impact of IRSs on shíshálh language and culture.
- e. **Dr. Andrew Woolford**, a professor of sociology and criminology at the University of Manitoba, will testify, among other things, regarding the impact of the IRS system on Indigenous societies, communities and culture.

11. The Plaintiffs are seeking to subpoena Prime Minister Trudeau and Minister Marc Miller to obtain admissions that their public statements about IRSs were in fact made by them and are accepted by the Defendant Canada as true. Canada refuses to date to make those admissions and, therefore, the Plaintiffs have no alternative but to proceed by subpoena. In each case, a short examination addressing the witness's public statements is anticipated.

Canada's Case

12. Canada has indicated an intent to call only one witness, Dr. Christopher Petrusic, an historian whose career has been spent almost entirely as an employee or contractor of Canada, often as part of its litigation management branch dealing with and advising on Aboriginal claims. Although Dr. Petrusic has identified authorship within his *curriculum vitae* of various documents relating to IRSs in order to ground his expertise, Canada has claimed privilege over these documents. The Plaintiffs object to Dr. Petrusic's admission as an expert in this proceeding because of Canada's refusal to disclose what Dr. Petrusic has described as his corpus of work in the field thereby denying the Plaintiffs the ability to test his qualifications to testify. Indeed the Plaintiffs are only left with his doctoral work on Dr. Livingstone in Africa to test his qualifications.

Expected Evidence

13. The Plaintiffs expect to lead evidence that demonstrates the following:

- a. At contact, Indigenous peoples across the land that later became Canada had their own languages, cultures and societies which had developed over thousands of years, and were transmitted from generation to generation.
- b. Prior to the Class Period, Indigenous languages and cultures continued to be transmitted from generation to generation within the Class.
- c. Starting in the late 19th century and continuing through the Class Period, Canada established, implemented and controlled an IRS system that was intended to eliminate Indigenous peoples as distinct peoples and to absorb them into the Euro-Canadian majority culture. Canada's "object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question and no Indian Department".⁵
- d. In 1920, the *Indian Act* was amended to make attendance of Indian children at IRSs or other federal schools (as dictated by the government) mandatory. Parents and other adult Indians who did not ensure Indian children attended federal schools could be punished by fines and jail time, and children could be arrested without a warrant and taken to IRSs. Mandatory attendance was introduced to address the perceived concern that Indigenous peoples were not assimilating quickly enough.
- e. The IRS system was intended to achieve assimilation by targeting Indigenous children and a) separating them from the influence of their families and communities; and b) by using education to assimilate Indigenous children into Euro-Canadian culture.
- f. Throughout the Class Period, despite the involvement of religious organizations, Canada maintained ultimate power and control over the IRS in law and in fact, including over all policies in place at IRSs.

⁵ Canada House of Commons Debates June 15 1920., testimony of Duncan Campbell Scott before Committee of House of Commons.

- g. There has been a catastrophic decline in Indigenous languages over the past 100 years, and a similar decline in Indigenous cultures.
- h. The IRS system was a key cause of the devastating loss of language and culture experienced by the Class. In particular, the IRS system disrupted and in some cases eliminated the intergenerational transmission of language and culture. The IRS system caused substantial damage to all Indigenous languages and cultures in Canada today, including the languages and cultures of all Class Members.

PART III – COMMON ISSUES AND RELATED QUESTIONS

14. The Amended Certification Order describes the nature of the claims as:⁶

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.

15. The Common Questions of Law or Fact for the first phase of the common issues trial are:⁷
- 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 Band 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 Band Class.
 - 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?
16. The following Common Questions of Fact or Law are deferred to the second phase of the common issues trial to be held at a later date:
- 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?
 - e. If the answer to (d) above is yes, what amount of punitive damages ought to be awarded?

⁶ Amended Certification Order, para 1(c).

⁷ Amended Certification Order, para 1 (e) a-g

Issues Relevant to the Common Issues in this Trial

17. The Plaintiffs assert the following issues will be addressed at the first phase of the common issues trial:

Indian Residential Schools

- (1) What was the IRS system implemented by Canada, and what was its purpose?
- (2) What was Canada's role in the operation and management of the IRS system, including the creation, maintenance and implementation of that system?

Language and Culture Rights, Duties and Breaches

- (3) Do or did the Class Members have distinct a) languages, and b) cultures?
- (4) If so, do Class Members have rights to their a) languages and/or b) cultures?
 - (a) are these rights recognized and/or protected by s. 35 of the Constitution?
 - (b) are these rights recognized and/or protected otherwise under Canadian law, including by reason of international law that informs Canadian law?
- (5) Did Canada, through the purpose, operation and/ or management of Residential Schools, breach the Class members' rights to their a) languages and b) cultures?
- (6) Did Canada owe a fiduciary duty to the Class not to take steps to destroy their Indigenous languages and their cultures?
- (7) Did Canada, through the purpose, operation and/or management of IRSs, breach the fiduciary duties owed to the Class not to take steps to destroy their a) languages and b) cultures?

Impacts to Bands

- (8) Did Canada's breaches, if any, cause harm to the Class? If so, was the impact to Class members more than *de minimis*?

Declaratory Relief

- (9) Are the Plaintiffs entitled to the declaratory relief as sought in the Statement of Claim?
 - (a) The Claim seeks declaratory relief related to Canada's conduct, as follows:
 - (i) 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 cultures, customs and religious practices;
 - (ii) 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;

- (iii) a Declaration that the Indian 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 Indian Residential Schools Policy, and the Indian Residential Schools;
- (v) 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 Residential Schools.

Punitive Damages

If a breach of fiduciary duties or cultural and linguistic rights is established, was Canada guilty of conduct that justifies an award of punitive damages? In furtherance of this question,

- (b) Was Canada's role in the establishment and maintenance of the IRS system high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour?

Issues for the Next Phase of Trial

18. This proceeding has been bifurcated as noted, and therefore the court will not be asked to make findings on the assessment of damages including aggregate or punitive damages in this phase of the common issues trial. The Plaintiffs intend to address the existence of harm as identified above in relation to the duties noted, and as part of establishing a breach and laying the foundation

for the entitlement to punitive damages, but will not be addressing the quantum of general or punitive damages until phase two of this proceeding.

PART IV – THE LAW

19. The Plaintiffs will ask the Court to find Canada liable for breaching the Class Members’ rights to language and culture (whether Aboriginal rights or otherwise) and for breaching its fiduciary obligations to the Class. The Plaintiffs will also ask the Court to find that Canada’s behaviour was so egregious that punitive damages are warranted. An overview of the key legal concepts is set out below to guide the court’s consideration of these issues.

The Honour of the Crown

20. The concept of the Honour of the Crown animates the relationship between Canada and Aboriginal peoples:

[...] The honour of the Crown is always at stake in its dealings with Aboriginal peoples: see for example R. v. Badger, [1996] 1 S.C.R. 771, at para. 41; R. v. Marshall, [1999] 3 S.C.R. 456. It is not a mere incantation, but rather a core precept that finds its application in concrete practices.⁸

21. The honour of the Crown cannot be delegated:

The Crown alone remains legally responsible for the consequences of its actions and interactions with third parties, that affect Aboriginal interests.

...

The honour of the Crown cannot be delegated.⁹

Principles of Interpretation of Section 35(1) of the Constitution Act, 1982

22. Section 35(1) of the Constitution Act, 1982, states:

The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.¹⁰

23. Section 35 (1) of the Constitution did not create rights, but rather, it constitutionalized those common law aboriginal rights that existed in 1982.¹¹

⁸ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para 16, [2004] 3 SCR 511 <<https://canlii.ca/t/1j4tq#par16>>

⁹ *Haida Nation v. British Columbia (Minister of Forests)* at para 53 <<https://canlii.ca/t/1j4tq#par53>>

¹⁰ *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11, s. 35 <<https://canlii.ca/t/ldsx>>.

¹¹ *Delgamuukw v. British Columbia* (1997), [1997] 3 SCR 1010 at para 133 <<https://canlii.ca/t/1fqz8#par133>>

Aboriginal Rights

24. The legal concept of Aboriginal rights is founded on the fact of the prior occupation of what is now Canada by Indigenous societies. In *Calder*, decided before the enactment of s. 35(1) of the *Constitution Act, 1982*, the court stated:

*Although I think that it is clear that Indian title in British Columbia cannot owe its origin to the Proclamation of 1763, the fact is that when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries.*¹²

25. This statement in *Calder* recognizes two elements of what was then called “Indian title” – (a) prior occupation and (b) organized societies. Since the coming into force of s. 35(1) of the *Constitution Act, 1982*, this basic rationale has been repeatedly found to animate Aboriginal rights more generally. For example in *Van der Peet*:

*In my view, the doctrine of aboriginal rights exists, and is recognized and affirmed by s. 35(1), because of one simple fact: when Europeans arrived in North America, aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures, as they had done for centuries. It is this fact, and this fact above all others, which separates aboriginal peoples from all other minority groups in Canadian society and which mandates their special legal, and now constitutional, status.*¹³

26. In *Mitchell*, the court noted that prior to European arrival, “aboriginal peoples were occupying and using most of this vast expanse of land in organized, distinctive societies with their own social and political structures”, and after contact, aboriginal interests and customary laws were presumed to survive the assertion of sovereignty, as part of the law of Canada.¹⁴

27. Section 35(1) thus recognizes both the right of occupation and the right to exist as **peoples** in organized societies. As explained by the Quebec Court of Appeal in *Reference re First Nations Children*:

*[...] On the contrary, the historical relationship between the Crown and Aboriginal peoples, both before and after the Constitution Act, 1867, establishes that Aboriginal peoples have always been recognized as peoples—and not merely as subjects¹⁵—and that they continue to be governed by their own laws and customs in those areas of jurisdiction that do not conflict with the Crown’s assertion of sovereignty, that have not been voluntarily surrendered by treaty, or that have not been extinguished by the government.*¹⁶

¹² *Calder et al. v. Attorney-General of British Columbia* (1973), [1973] SCR 313 <<https://canlii.ca/t/1nfn4>>

¹³ *R. v. Van der Peet* (1996), [1996] 2 SCR 507 at para 30 <<https://canlii.ca/t/1fr8r#par30>>

¹⁴ *Mitchell v. Canada (M.N.R.)* [2001] 1 SCR 911 <<https://canlii.ca/t/521d#par9>>

¹⁵ In fact, Canada continued to make treaties with Aboriginal peoples even after 1867, thereby recognizing their status as self-governing peoples.

¹⁶ *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 at para 466 <<https://canlii.ca/t/jn7nb#par466>>

28. Aboriginal rights are largely collective in nature. While any individual member of a Band enjoying an aboriginal right can take advantage of that right, the right itself belongs to the Band as a whole.¹⁷

29. To date, the Courts have primarily considered claims to Aboriginal rights as (i) rights to engage in a particular, site-specific activity or practice, often in the context of a defence to a regulatory offense, and (ii) rights to consultation where a government action may impact an aboriginal right. More recently however, in *Reference re First Nations Children* the Quebec Court of Appeal affirmed a generic (a right to self government), finding the right to be common to all Aboriginal peoples without requiring evidence of activities, practices or customs of a specific group, the test initially established in *Van Der Peet*¹⁸, and later modified in *Delgamuukw*¹⁹ to suit claims to title.

30. The Quebec Court's recognition of a generic Aboriginal right follows from *Delgamuukw*. The Court explained:

Indeed, although in Van der Peet the Supreme Court stated that "[a]boriginal rights are not general and universal" and that "their scope and content must be determined on a case-by-case basis",²⁰ it significantly nuanced this statement in Delgamuukw, concluding that Aboriginal title is a right identical in scope for all holders of that title.²¹

And then concluded:

Like Aboriginal title, one of these necessary adaptations entails recognizing the generic nature of the right to self-government in relation to child and family services, that is, the generic right to regulate those services. This is so because this jurisdiction is essential to the cultural security and survival of each Aboriginal people. The tragic history of colonial policies that led to residential schools and other assimilationist measures targeting Aboriginal children is a telling demonstration of this, as is the disproportionate number of Aboriginal children currently living in protective care compared to other Canadian cultural communities.²²

It is a generic right to language and culture that the Plaintiffs will ask this court to recognize.

¹⁷ *R. v. Lefthand*, 2007 ABCA 206 at para 125.

¹⁸ *R. v. Van der Peet* at para 46 <<https://canlii.ca/t/1fr8r#par46>>

¹⁹ *Delgamuukw v. British Columbia* at paras 140-142 <<https://canlii.ca/t/1fqz8#par140>>

²⁰ *R. v. Van der Peet* at para 69 <<https://canlii.ca/t/1fr8r#par69>>

²¹ *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis* at para 423 <<https://canlii.ca/t/jn7nb#par423>>

²² *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis* at para 487 <<https://canlii.ca/t/jn7nb#par487>>

The Right to Language and Culture Includes the Right to Pass them On

31. In *Côté*, the Court declared:

*In the aboriginal tradition, societal practices and customs are passed from one generation to the next by means of oral description and actual demonstration. As such, to ensure the continuity of aboriginal practices, customs and traditions, a substantive aboriginal right will normally include the incidental right to teach such a practice, custom and tradition to a younger generation.*²³

32. In *Sappier*, the principle was again stated:

Section 35 recognizes and affirms existing aboriginal and treaty rights in order to assist in ensuring the continued existence of these particular aboriginal societies.

...

*Flexibility is important when engaging in the Van der Peet analysis because the object is to provide cultural security and continuity for the particular aboriginal society.*²⁴

Fiduciary Duties

33. In *Sparrow*, the Court outlined the fiduciary relationship existing between Canada and Aboriginal peoples:

*[T]he Government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the Government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship.*²⁵

34. As the Supreme Court explained in *Williams Lake Indian Band*, a fiduciary obligation can arise in one of two ways: first, from the Crown's discretionary control over a specific Aboriginal interest (a sui generis fiduciary duty) or second, where the conditions for an ad hoc private law duty are found, namely where the Crown has undertaken to exercise its discretionary control over a legal or substantial practical interest in the best interests of the alleged beneficiary.²⁶

35. The classic description of a fiduciary duty requires the following characteristics:

- a. The fiduciary has scope for the exercise of some discretion or power.
- b. The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests.

²³ *R. v. Côté* (1996), [1996] 3 SCR 139 at para 56 <<https://canlii.ca/t/1fr7d#par56>>

²⁴ *R. v. Sappier; R. v. Gray*, 2006 SCC 54 at paras 26, 34, [2006] 2 SCR 686 <<https://canlii.ca/t/1q3tv#par26>>

²⁵ *R. v. Sparrow* (1990), [1990] 1 SCR 1075 <<https://canlii.ca/t/1fsvj>>

²⁶ *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4 at paras 43-44, [2018] 1 SCR 83 <<https://canlii.ca/t/hq5df#par43>>

- c. The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.²⁷

36. The Plaintiffs intend to show that Canada owed and breached the fiduciary obligations to the Class by setting out to destroy their language and culture.

International Law

37. Canada's purpose, operation and management of the IRSs was also contrary to international law principles in existence since at least 1948. Both the *Universal Declaration of Human Rights* and the *Convention on the Prevention and Punishment of the Crime of Genocide* were negotiated in that year. The latter convention acknowledged as an act of genocide those acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such, such as forcibly transferring children of the group to another group.²⁸

Punitive Damages

38. The Plaintiffs intend to show evidence that Canada knew the IRSs were harmful to the children they housed, their families and their communities, and yet it perpetuated the system until the end of the class period in furtherance of its policy of assimilation and notwithstanding its knowledge that its treatment of Aboriginal peoples was contrary to both the Universal Declaration and the Genocide Convention.

39. This is relevant not only to the issues of breach of Class Members' rights but again is conduct that justifies an award of punitive damages:

*Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency.*²⁹

Plaintiffs are Entitled to a Remedy

40. Where there is a right, there must be a remedy for the breach of that right:

²⁷ *Frame v. Smith* (1987), [1987] 2 SCR 99 <<https://canlii.ca/t/1ftl7>> para 60 (per Wilson, J. dissenting) but quoted with approval in *Lac Minerals Ltd. v. International Corona Resources Ltd.* (1989), [1989] 2 SCR 574 at paras 32, 146 <<https://canlii.ca/t/1ft3w#par32>>

²⁸ *Convention on the Prevention and Punishment of the Crime of Genocide*, Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948, Article 2(e).https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

²⁹ *Hill v. Church of Scientology of Toronto* (1995), [1995] 2 SCR 1130 at para 196 <<https://canlii.ca/t/1frgn#par196>>

*It is trite law that there can be no right without a remedy.*³⁰

³⁰ *MacBain v. Lederman* (1985), [1985] 1 FC 856 <<https://canlii.ca/t/g9c45>>; See also *Orchard v. Tunney* (1957), [1957] SCR 436 at p. 447 <<https://canlii.ca/t/22tms>>

SCHEDULE "A"

Proposed tentative witness schedule – subject to change

	Witness	Disputes / Direct Exam / Cross Exam	Anticipated Total Length in Days	Anticipated Date
	Court Days: Sept: 12, 13, 14, 15, 16 / 19, 20, 21, 22, 23 / 26, 27, 28, 29 Oct: 3, 4, 5, 6, 7 / 11, 12, 13, 14 / 17, 18, 19, 20, 21 / 24, 25, 26, 27, 28 (Also scheduled trial time 9 further court days: Oct 31, Nov 1-4 / Nov 7-10)			
	Opening Argument / Indigenous ceremonies / housekeeping		.5	Sept 12
1.	Matthew Coon Come	1.5 / 1	2.5	12 - 14
2.	Garry Feschuk	2 / 1	3	Sept 15-16, 19
3.	shíshálh Elders	2 / 1	3	Sept 20, 21, 22
4.	Shane Gottfriedson	2 / 1	3	Sept 23, 26, 27
5.	Secwépemc Elders	1 / 1	2	Sept 28, 29
6.	Violet Gottfriedson	Read in	.5	Oct 3
7.	Dr. John Milloy	.5 / 2 / 1.5	4	Oct 3, 4, 5, 6, 7
8.	Dr. Ignace	.5 / 1 / .5	2	Oct 11, 12
9.	Dr. Gardiner	.5 / .25 / .25	1	Oct 13
10.	Dr. McIvor	.5 / .25 / .25	1	Oct 14
11.	Dr. Woolford	.5 / 1.5 / 1	3	Oct 17, 18, 19
12.	Wendy John - Elder	0.5 / 0.5	1	Oct 20
13.	Phil Fontaine	0.5 / 0.5	1	Oct 20
14.	subpoena witnesses		.5	Oct 24
	End of Plaintiffs' Case			
15.	Dr. Petrusic	1 / 1 / 1	3	Oct 25, 26, 27 *date of disqualification hearing to be addressed
	End of Canada's Case			
	Last day housekeeping		1	Oct 28

SCHEDULE “B”

**Partial List of the Defendant’s Admissions from Second Amended Statement of Defence
and the Defendant’s Responses to Plaintiffs’ Requests to Admit**

Indigenous Language and Cultures

1. Canada admits that before contact, Aboriginal peoples developed, used, spoke, learned, and retained and transmitted to future generations their respective languages, the particulars, scope and duration for which they continued to do so varies from group to group from that time until and including to this day.³¹
2. Canada admits that before contact, Aboriginal peoples had distinctive cultures that consisted of practices, customs, traditions, spiritual beliefs and governance systems, the particulars, scope and duration for which they continued to do so varies from group to group from that time until and including to this day.³²
3. Canada admits that before contact, Aboriginal peoples developed, practiced, retained and transmitted to future generations their distinctive cultures, practices, customs, traditions, spiritual beliefs and governance systems, the particulars, scope and duration for which they continued to do so varies from group to group from that time until and including to this day.³³
4. Canada admits that Aboriginal peoples have distinctive cultures that consist of practices, customs, traditions, spiritual beliefs and governance systems.³⁴
5. Canada admits that after contact, Aboriginal peoples continued to have distinctive cultures, and that the content, nature and duration of the continued exercise of such cultures varies from group to group from that time until and including to today’s date.³⁵
6. Canada admits that after contact, Aboriginal peoples continued to speak their own languages, the particulars, scope and duration for which they continued to do so varies from group to group from that time until and including to this day.³⁶
7. Canada admits that after contact, Aboriginal peoples continued to practice their own customs, the particulars, scope and duration for which they continued to do so varies from group to group from that time until and including to this day.³⁷

³¹ Defendant’s Response to Request to Admit dated February 12, 2021, (“Response 2nd RTA”) at General Statement # III referencing Related Request R.20 [Trial Record, Tab 29]

³² Response 2nd RTA at General Statement # III referencing Related Request R.21 [Trial Record, Tab 29]

³³ Response 2nd RTA at General Statement # III referencing Related Request R.22 [Trial Record, Tab 29]

³⁴ Response 2nd RTA at para 1 [Trial Record, Tab 29]

³⁵ Response 2nd RTA at General Statement # III referencing Related Request R.16 [Trial Record, Tab 29]

³⁶ Response 2nd RTA at General Statement # III referencing Related Request R.17 [Trial Record, Tab 29]

³⁷ Response 2nd RTA at General Statement # III referencing Related Request R.18 [Trial Record, Tab 29]

8. Canada admits that after contact, Aboriginal peoples continued to engage in their own spiritual beliefs, the particulars, scope and duration for which they continued to do so varies from group to group from that time until and including to this day.³⁸
9. Canada admits that language is an important element of culture and identity.³⁹
10. Canada admits that the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982* include rights related to Indigenous languages, as recognized in section 6 of the *Indigenous Languages Act*, S.C 2019, c. 23.⁴⁰
11. Canada admits that it has signed other international documents, such as the International Covenant on Civil and Political rights that recognize additional linguistic and/or cultural rights to ethnic, religious and linguistic minorities.⁴¹
12. Canada admits that the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), which Canada has signed recognizes a variety of rights that Indigenous Peoples have related to their respective languages and cultures.⁴²
13. Canada admits that it has committed to implement the UN Declaration and other international documents and, as a matter of law, their content can inform the interpretation of Canadian law.⁴³

Admissions related to Canada's Relationship with Indigenous peoples

14. Canada admits that the rights of Aboriginal peoples are affirmed by s. 35 of the *Constitution Act, 1982*.⁴⁴
15. Canada admits that the relationship between the federal Crown and Aboriginal peoples is fiduciary in nature.⁴⁵
16. Canada admits 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.3.⁴⁶

³⁸ Response 2nd RTA at General Statement # III referencing Related Request R.19 [Trial Record, Tab 29]

³⁹ Response 2nd RTA at General Statement # III referencing Related Request R.23 [Trial Record, Tab 29]

⁴⁰ Response 2nd RTA at General Statement #I [Trial Record, Tab 29]

⁴¹ Response 2nd RTA at General Statement #I [Trial Record, Tab 29]

⁴² Response 2nd RTA at General Statement #I [Trial Record, Tab 29]

⁴³ Response 2nd RTA at General Statement #I [Trial Record, Tab 29]

⁴⁴ Response 2nd RTA at para 1 [Trial Record, Tab 29]

⁴⁵ Response 2nd RTA at para 1 [Trial Record, Tab 29]

⁴⁶ Second Amended Statement of Defence, dated March 14, 2022 ("2nd ASOD") at para 12 [Trial Record, Tab 31]

Canada and the Indian Residential School System

17. 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.⁴⁷
18. Canada admits that in 1920, education for Indian children as defined in the *Indian Act* 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.⁴⁸
19. Canada admits that during the Class Period it was responsible for the administration of the *Indian Act*.⁴⁹
20. Canada admits that during the Class Period it was responsible for the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessors, as well as decisions made pursuant to that Department's lawful authority.⁵⁰
21. Canada admits that it 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.⁵¹
22. Canada admits that there were federal government policies before and during the Class Period that addressed the creation and operation of Residential Schools, and the attendance of Indigenous children at such schools, particularly but not exclusively as residents. This attendance contributed to varying degrees of harm to Indigenous children, their descendants, and their communities, including with regard to the erosion of Indigenous cultural and linguistic practices.⁵²
23. Canada admits that the actions of federal government officials or their agents regarding residential schools were, in hindsight, utterly and entirely inappropriate.⁵³
24. 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

⁴⁷ 2nd ASOD at para 126 [Trial Record, Tab 31]

⁴⁸ Response 1st RTA at para 9 [Trial Record, Tab 20]

⁴⁹ Response 1st RTA at para 12a [Trial Record, Tab 20]

⁵⁰ Response 1st RTA at para 12b [Trial Record, Tab 20]

⁵¹ Response 1st RTA at para 12c [Trial Record, Tab 20]

⁵² Response 1st RTA at para 22 [Trial Record, Tab 20]

⁵³ 2nd ASOD at para 8 [Trial Record, Tab 31]

communities, and discouraging or inhibiting them from using their respective Indigenous languages, customs or traditions.⁵⁴

25. Canada admits 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.⁵⁵
26. Canada admits 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.⁵⁶
27. Canada admits that the attendance of Indigenous children at Residential Schools, particularly but not exclusively as residents, contributed to varying degrees of harm to such children, their descendants and their communities.⁵⁷
28. Canada admits that the harm arising from the attendance of Indigenous children at Residential Schools, particularly but not exclusively as residents, included not only physical and sexual abuse, but also the erosion of Indigenous cultural and linguistic practices.⁵⁸
29. Canada admits 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.⁵⁹
30. Canada acknowledges that the Statement of Apology to former students of Residential Schools made on behalf of the Government of Canada in the House of Commons by the Right Honourable Stephen Harper on June 11, 2008 (the "Apology"), accurately noted that "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."⁶⁰
31. Canada admits that First Nations, Inuit and Métis languages and cultural practices were prohibited at various times, in various residential schools, to various degrees and to various First Nations, Inuit and Métis children and for various reasons.⁶¹

⁵⁴ 2nd ASOD at para 26 [Trial Record, Tab 31]

⁵⁵ Response 2nd RTA at General Statement # III referencing Related Request R.93 [Trial Record, Tab 29]

⁵⁶ Response 2nd RTA at General Statement # III [Trial Record, Tab 29]

⁵⁷ Response 2nd RTA at General Statement # III [Trial Record, Tab 29]

⁵⁸ Response 2nd RTA at General Statement # III [Trial Record, Tab 29]

⁵⁹ Response 1st RTA at para 23 [Trial Record, Tab 20]

⁶⁰ Response 2nd RTA at General Statement # III referencing Related Request R.69 [Trial Record, Tab 29]

⁶¹ Response 2nd RTA at General Statement # III referencing Related Request R.72 [Trial Record, Tab 29]

Admissions related to Plaintiff Bands

32. Canada admits that the Tk'emlúps te Secwépemc Indian Band is a member of the broader Secwépemc Nation.⁶²
33. Canada admits that Secwepemctsin is the traditional language of the Secwépemc people.⁶³
34. Canada admits 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, but the particulars of these pre-contact practices are outside of Canada's knowledge.⁶⁴
35. Canada admits that the pre-contact practices of some of the Sechelt Indian Band members' ancestors included practices and traditions that were integral to their distinctive culture, but notes that particulars of these pre-contact practices are outside of Canada's knowledge. In addition, the specific ancestry of each of the members of the Sechelt Indian Band is outside of Canada's knowledge.⁶⁵
36. Canada admits that the Sechelt Indian Band is partly comprised of descendants of shashishalhem speaking individuals, but Canada does not have the requisite knowledge regarding the definition of "shíshálh Nation".⁶⁶

⁶² Response 2nd RTA at para 1 [Trial Record, Tab 29]

⁶³ Response 2nd RTA at para 1 [Trial Record, Tab 29]

⁶⁴ Response 2nd RTA at General Statement # III referencing Related Request R.120 [Trial Record, Tab 29]

⁶⁵ Response 2nd RTA at General Statement # III referencing Related Request R.112 [Trial Record, Tab 29]

⁶⁶ Response 2nd RTA at General Statement # III referencing Related Request R.113 [Trial Record, Tab 29]

SCHEDULE “C”

Definitions:

The **Class** is defined as:

The Tk'emlúps te Secwépemc Indian Band and the shishálh band and any other Indian Band(s) as defined that:

1. *has or had some members who are or were members who were Survivors, or in whose community a Residential School is or was located; and*
2. *is specifically added to this claim in relation to one or more specifically Identified Residential Schools.*

Indian Band is defined as:

"Indian Band" means any entity that:

- (i) *Is either a "band" as defined in s.2(1) of the Indian Act or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and*
- (ii) *Asserts that it holds rights recognized and affirmed by section 35 of the Constitution Act, 1982.*

Survivors:

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.

Residential School:

“Residential Schools” means all Indian Residential Schools recognized under the Agreement.

This is Exhibit "L" referred to in the
affidavit of Peter Grant sworn before me this
20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

"L"



September 17, 2022

Chief Shane Gottfriedson
regionalchief1965@gmail.com

Chief Garry Feschuk
gfeschk@shishalh.com

Kúkpi7 Rosanne Casimir
kukpi7.rosanne@ttes.ca

hiwus Henry Warren Paull
wpaul@shishalh.com

Matthew Coon Come
mcc@cooncome.ca

Re: *Chief Shane Gottfriedson et al. v. His Majesty The King* – Canada’s Revised Offer to Settle the Band Class Litigation

Dear Band Class Representatives:

Further to the request made by your counsel in his letter dated September 16, 2022 to me, I am pleased to present this revised offer to you. This offer replaces and supersedes Canada’s original offer letter sent to you on September 14, 2022.

I am pleased to confirm Canada’s September 11, 2022 offer of \$2.8B (two billion eight hundred million dollars) to settle the Gottfriedson Band class litigation.

To arrive at this position, Canada has considered the following:

- a) The Four Pillars’ principles as set out by you to support the establishment of the Band Class Trust;
- b) Both parties’ positions on the financial requirements to settle the Band class claim;
- c) Significant investments made by this Government in Indigenous programming related to language, culture, education, social programs and commemoration;
- d) The reopened Band class opt-in; and
- e) The Government’s ongoing commitment to reconciliation and addressing the legacy of Indian Residential Schools.

As such, the terms of Canada’s offer are as follows:

Trust, Foundation or Similar Funding Mechanism

- a) Canada will fund \$2.8B (two billion eight hundred million dollars) to support the establishment of a Trust or Foundation;



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- b) Similar to your Four Pillars, the Trust will be established to support healing, wellness, education, language, culture and commemoration activities open to all Band class members;
- c) The Trust will be established in accordance with the *Canada Not-for-Profit Corporations Act* (or similar provincial legislation) and will be independent of the Government of Canada;
- d) The Board of the Trust will have national representation and will include one representative appointed by Canada;
- e) Canada will provide a lump sum payment to the Trust within a set time period following approval by the Federal Court and implementation of the settlement and once it has been incorporated as a not-for-profit;
- f) Given the clear immediate needs of the Band class members, the parties believe that an equitable share of funding should be provided directly to Band class members within a reasonable time of the transfer of funds. Remaining funds will be invested to support ongoing and future needs of Band class members. As part of the settlement approval hearing, the plaintiffs will provide the Federal Court will details as to the equitable share of funding that will be provided directly to Band class members and the timing for the transfer of those funds; and,
- g) As this funding is to address the collective harms to the Band class, funding could not be drawn down by individual members of the Bands.

Further Negotiations

The parties will participate in further negotiations related to:

- a) The framework and establishment of the Trust; and,
- b) The Band class' request to explore a tax-exempt vehicle for the Trust.

Releases

Appropriate releases will be required, the content of which to be addressed in further negotiations.

Legal Fees

Canada will reimburse the plaintiffs for class counsel's reasonable legal fees and disbursements related to the litigation to date, other than those already compensated in relation to the Survivor and Descendant class settlement, and pay class counsel's reasonable legal fees relating to negotiating a final settlement agreement and settlement approval by the Federal Court, all of which is subject to negotiations between class counsel and Canada once agreement has been reached on the substantive terms of the settlement.

.../3



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Apology

Upon execution of this settlement agreement, Canada will propose to the Office of the Prime Minister that the Prime Minister make a public apology.

We look forward to receiving written confirmation of your acceptance of Canada's revised 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.

Peter R. Grant, Peter Grant Law
John Kingman Phillips, Waddell Phillips
Diane Soroka, Diane Soroka Avocate Inc.
Krista Robertson, CIRNAC
Travis Henderson, Department of Justice

This is Exhibit "M" referred to in the affidavit of Peter Grant sworn before me this 20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

"M"

Peter Grant Law*
Barrister & Solicitor

#407 - 808 Nelson Street EMAIL pgrant@grantnativelaw.com
PO Box 12137, Vancouver, BC TEL 604 688 7202
V6Z 2H2 TEL 604 886 4846

September 10, 2022

File No. 1055-1

Cassels
Suite 2200, HSBC Building
885 West Georgia Street
Vancouver, BC V6C 3E8

Attention: Tom Isaac

Dear Sir:

Re: *Gottfriedson et al v. The King*

I wish to confirm that we now have written direction from the three Instructing Nations to proceed with negotiations of a Settlement Agreement on the basis of the September 17th, 2022 revised Offer from Canada.

I wish to further confirm that we have been instructed to ensure that the Settlement Agreement includes a term that the settlement funds will not jeopardize or prevent any of the Class members full access to any other funding or programs and receipt of funds from the trust will not be deducted from any such other funding by Canada. I confirm that Minister Miller was asked about this when the chiefs met with him last week and he confirmed that this fund will not be used to deny or limit any other funds or programs. Again, when I spoke to you on the weekend, I confirmed that this was a necessary term of the Settlement Agreement.

If this letter is accepted by you as commencement of negotiations, we can immediately advise the Court that we are adjourning the trial in order to negotiate the terms of settlement. Therefore, your immediate attention to this matter would be greatly appreciated.

Sincerely yours,

PETER GRANT LAW



Peter R. Grant

PRG/co

cc. John Kingman Phillips
Diane Soroka
Garry Feschuk
Shane Gottfriedson
Mathew Coon Come
Morning Star Peters
Selina August

This is Exhibit "N" referred to in the affidavit of Peter Grant sworn before me this 20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

“N”

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 "O" referred to in the
affidavit of Peter Grant sworn before me this
20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

"O"

Diane Soroka
Curriculum Vitae

Tel: (514) 939-3384
Fax: (514) 939-4014
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447 Strathcona Avenue
Westmount, Quebec
H3Y 2X2

Education

1972 B.A. (Anthropology) McGill University
1975 LL.L. Université de Montréal
Member of the Quebec Bar since 1976

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

This is Exhibit "P" referred to in the affidavit of Peter Grant sworn before me this 20th day of February, 2023.



A Commissioner for Taking Affidavits

EXHIBIT

“P”



[Canada.ca](#) > [Crown-Indigenous Relations and Northern Affairs Canada](#)

Settlement agreement reached for Band class litigation

From: [Crown-Indigenous Relations and Northern Affairs Canada](#)

News release

Taking care: We recognize this news release may contain information that is difficult for many and that our efforts to honour Survivors and families may act as an unwelcome reminder for those who have suffered hardships through generations of government policies that were harmful to Indigenous Peoples.

The National Residential School Crisis Line offers emotional support and crisis referral services for residential school Survivors and their families. Call the toll-free crisis line at 1-866-925-4419. This service is available 24 hours a day, 7 days a week.

The Hope for Wellness Help Line also offers support to all Indigenous Peoples. Counsellors are available by phone or online chat. This service is available in English and French, and, upon request, in Cree, Ojibway, and Inuktitut. Call the toll-free Help Line at 1-855-242-3310 or connect to the online chat at www.hopeforwellness.ca.

January 21, 2023 — Vancouver, BC — Crown-Indigenous Relations and Northern Affairs Canada

Today, Band class representatives former Chief Shane Gottfriedson and former Chief Garry Feschuk, along with the Honourable Marc Miller, Minister of Crown-Indigenous Relations, announced that Canada has signed an agreement with the Representative Plaintiffs who represent the 325 bands that have opted into the Band class litigation.

In this settlement, Canada will provide \$2.8 billion to be placed in a not-for-profit trust, independent of the Government. Canada is committed to addressing the collective harm caused by the residential schools system and the loss of language, culture, and heritage – through this settlement guided by the Four Pillars developed by the Representative Plaintiffs. The Four Pillars include the revival and protection of Indigenous languages, the revival and protection of Indigenous cultures, the protection and promotion of heritage, and wellness for Indigenous communities and their members. This resolution aims to revitalize Indigenous education, culture, and language – to support Survivors in healing and reconnecting with their heritage.

The funding disbursement plan, developed by the plaintiffs, outlines an initial amount of \$200,000 for each band class member to support the development of a funding proposal that reflects the objectives and purposes of the Four Pillars. These proposals will be reviewed and used to support the disbursement of the Initial Kick-Start Funds, totaling \$325 million. Each Band class member will receive a share of annual investment income that is available.

Further information on the terms of the settlement will be publicly available over the next month as part of the broader notice plan. The parties are expected to appear before the Federal Court on February 27, 2023, to seek approval of the terms of the settlement. The Court will consider whether the settlement is fair, reasonable and in the best interest of the class members.

Addressing historical wrongs and the painful legacy still suffered by Survivors, their families and communities is at the heart of reconciliation, and is essential to renewing and building relationships with Indigenous Peoples.

Quotes

“Our Nations started this lawsuit because we saw the devastating impacts that residential schools had on our Nations as a whole. The residential school system decimated our languages, profoundly damaged our cultures, and left a legacy of social harms. The effects go beyond my generation. It will take many generations for us to heal. This settlement is about taking steps towards undoing the damage that was done to our Nations.”

Shane Gottfriedson

Representative Plaintiff and Former Chief of Tk'emlúps te Secwépemc

“It has taken Canada far too long to own up to its history, own up to the genocide it committed and recognize the collective harm caused to our Nations by Residential Schools. It is time that Canada not only recognize this harm, but help undo it by walking with us. This settlement is a good first step.”

Garry Feschuk

Representative Plaintiff and Former Chief of shíshálh

“As a result of residential schools, within a few generations, sháshíshálhem went from being the first language of nearly everyone in our Nation to being on the verge of disappearing forever. We lost our last fluent speakers over the past few years. Much of this harm cannot be undone. With today's announcement, First Nations will be able to continue restoring and revitalizing some of what was lost.”

hiwus Warren Paull

shíshálh Nation

“Canada spent over 100 years trying to destroy our languages and cultures through Residential Schools. Canada did not succeed, but it did cause profound damage. It is going to take incredible efforts by our Nations to restore our languages and culture – this settlement gives Nations the resources and tools needed to make a good start.”

Kúkpi7 Rosanne Casimir

Tk’emlúps te Secwépemc

“The Grand Council of the Crees is proud to have stood with Tk’emlúps te Secwépemc and shíshálh Nation in this historic struggle for recognition of the harms done to our Nations as a result of Residential Schools. My hope is that this settlement will help this generation and future generations reclaim our cultures and languages.”

Dr. Matthew Coon Come

Former Grand Chief of, and representative for, the Grand Council of the Crees (Eeyou Istchee)

“We believe that all Survivors deserve justice and the compensation to which they are owed. As we finalize this settlement, we are reminded of the importance of collaborative dialogue and partnership in resolving historic grievances outside of the court system. Together, we have developed a settlement that will support the Band class members in their healing journeys for generations to come.”

The Honourable Marc Miller

Minister of Crown–Indigenous Relations

Related products

- [Backgrounder](#)
- [Canada and Gottfriedson plaintiffs reach agreement to resolve Band class litigation outside the court - Canada.ca](#)
- [Federal Court of Canada approved the Gottfriedson settlement agreement for former Day Scholars at Indian Residential Schools](#)

Contacts

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TAB 3

Court File No. T-1542-12

FEDERAL COURT
CLASS PROCEEDING

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE
SECWEPENC INDIAN BAND and the TK'EMLUPS TE
SECWEPENC INDIAN BAND, and CHIEF GARRY FESCHUK, on
behalf of the SECHELT INDIAN BAND and the SECHELT INDIAN
BAND

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF DR. MATTHEW COON COME

I, Dr. Matthew Coon Come, of the Town of Mistissini, on the Eeyou Istchee territory, AFFIRM:

1. I am a Cree from Mistissini First Nation. I am a former Chief of the Mistissini First Nation, a former Grand Chief of the Grand Council of the Crees (Eeyou Istchee) ("**Grand Council**"), and a former National Chief of the Assembly of First Nations. I am also a survivor of Residential Schools. As such, I have knowledge of the matters to which I depose in this affidavit. Where I include information that I have received from others, I have stated the source of the information, and believe such information to be true.
2. I have devoted my career to the promotion of the rights of Indigenous people at home and abroad.
3. I hold honorary doctorates from the University of Toronto and Trent University. I am the recipient of the 1994 Goldman Environmental Prize and the 1995

National Aboriginal Achievement Award. I am an Officer of the Order of Canada, and the recipient of a Queen Elizabeth II Diamond Jubilee Medal.

My career

4. In 1975, the James Bay and Northern Quebec Agreement was signed, and in 1978, the Cree School Board was set up under the Agreement.

5. I was a councillor in Mistissini at the time, and I joined the committee to set up Cree School Board.

6. One of the primary impetuses for setting up the School Board was our desire to bring children home to their communities. The loss of language and culture of people who attended residential schools resulted in their alienation from the land. Our parents lost communication and parenting skills and were accordingly less able to transfer their values to successive generations. In order to bring children home, we knew that we would have to rely on community support and develop a Cree curriculum, which we did in conjunction with McGill University.

7. I served two terms (5 years) as Chief of the Mistissini First Nation.

8. During these terms as Chief, I had many responsibilities because our resources were stretched.

9. In the course of discharging these responsibilities, I observed the challenges of integrating those who attended residential schools with those who did not. There were frequent conflicts because of the inability to communicate. This created dysfunctionality within families, and more broadly in the community as a whole.

10. Many students at residential schools did not graduate, with the effect that they could not function in the white man's world and were not raised to function in accordance with the Cree world view either.

11. In 1987, I was elected Grand Chief of the Grand Council , a regional council that now represents the approximately 20,000 Crees of Eeyou Istchee. Eeyou Istche is

our traditional territory, which consists of over ¼ of the total area of Quebec. I served in this position until 1999.

12. In 2000, I was elected as National Chief of the Assembly of First Nations. I served in this position until 2003.

13. During my tenure as National Chief, Indian Residential Schools were a focal policy issue. I began to develop a framework for what would become the Truth and Reconciliation Commission of Canada. To this end, I met with officials in Australia, and with Bishop Tutu, to learn more about their truth and reconciliation commissions. I also visited over 400 First Nations, including many in Northern and isolated communities.

14. After my term as National Chief ended in 2003, I became an advisor to the Grand Council on a number of issues, including Residential Schools.

15. I served again as Grand Chief of the Grand Council from 2009 to 2017.

16. In these roles, I witnessed the harmful legacy left by Residential Schools, and the damage done to Indigenous languages, cultures, wellness and heritage by Residential Schools, across Cree nations and beyond.

My involvement in this litigation

17. I was aware of this litigation for some time before the Grand Council became involved.

18. I believe that it was unfair for Canada to leave Day Scholars out of the Indian Residential School Settlement Agreement. I also believe that it is important to recognize that Bands each have collective rights to their languages and cultures, and that those rights were critically impaired by Residential Schools.

19. At the time that this Action was certified as a class proceeding, I was Grand Chief of the Grand Council.

20. The Grand Council believes in the importance of supporting litigation that fights for the rights of Indigenous people.
21. Believing in the importance of this action – both for the Survivor and Descendant Classes, and for the Band Class – I, on behalf of the Grand Council, looked for ways to get involved in and to support this litigation.
22. On July 5, 2016, I, on behalf of the Grand Council, entered into a participation agreement with Tk'emlúps te Secwépemc and shíshálh Nation (the “**Original Bands**”).
23. By virtue of this agreement, the Grand Council agreed to reimburse the Original Bands for one third of the cost of this litigation to that date, and to contribute one third toward subsequent costs of the litigation going forward. The Grand Council agreed to be bound by the retainer agreement between the Original Bands and Class Counsel.
24. In exchange, the Grand Council joined the Original Bands on the Day Scholars Executive Committee (“**DSEC**”), which advises and instructs legal counsel in the management of this litigation. The Grand Council and each of the Original Bands would have equal voice in the decision-making process.

Settlement Negotiations

25. As a result of my participation on the DSEC, I have played a key role, along with the Representative Plaintiffs and Class counsel, in negotiations with Canada since at least 2016 to resolve the Band Class’s claim.
26. On October 20, 2016, the Honourable Carolyn Bennett, then Minister of Indigenous and Northern Affairs, appointed Thomas Isaac, a lawyer at Cassels, Brock & Blackwell LLP, to be the Minister’s Special Representative (“**MSR**”) to conduct exploratory discussions with the DSEC and Class Counsel.
27. Between January and July 2017, the MSR met with Representative Plaintiffs and Class Counsel ten times. I participated in these discussions. The discussions pertained to each of the Classes’ claims, though negotiations in respect of each Class were somewhat distinct.

28. I was intimately involved in developing our proposed framework to resolve the Band Class claim, which the members of the DSEC developed and proposed to Canada in the first half of 2017, and which became known as the Four Pillars Trust Model. That framework was based on the following central considerations:

- (a) first, because of the longstanding and intergenerational effects of Residential Schools, the Representative Plaintiffs considered it essential that the model offer a generational solution to the Band Class;
- (b) second, that the model was directed at remedying the central harms caused by Residential Schools to communities, namely loss of language, loss of culture, loss of heritage, and damage to the social fabric;
- (c) third, that the model included a source of long-term funding for programs and initiatives, rather than a one-time payment to Band Class Members;
- (d) fourth, that the model empower Band Class Members to set their own priorities and make their own decisions regarding how to remedy harms caused to their communities as a result of the Residential School system;
- (e) fifth, that control over use of the funds lay in the hands of Indigenous people, rather than the Government of Canada.

29. Because of breadth and scope of the damage done by a Residential School system that was imposed on us for over a century, we knew that it was going to take a generational effort to start to repair this damage. As a result, the vision of the Four Pillars Trust Model was that a structure be put in place that would allow for continued funding for initiatives related to the Four Pillars for a generation, rather than a one-time payment to Class Members.

30. The central premise of a trust model is that a majority of the settlement funds be put in a long-term trust and be used to generate investment income, which in turn can be used as a long-term source of funding. The Grand Council has successfully used the trust model in the past. I believe the trust model is one of the best approaches for ensuring long term benefits.

31. In or around April to June 2017, we had a series of meetings with the MSR, Mr. Isaac. At these meetings, I was the spokesperson in discussions about the framework for resolving the Band Class claim. We gave a full presentation on our models for the proposed Trust, which I am advised by Peter Grant, was made into a comprehensive report by Mr. Isaac to take to the defendant for its consideration.

32. The Four Pillars Trust Model that I presented involved the following:

- (a) the settlement would be animated by the Four Pillar principles established by the Representative Plaintiffs, namely:
 - (i) revival and protection of Indigenous languages;
 - (ii) revival and protection of Indigenous cultures;
 - (iii) wellness for Indigenous communities and their members; and
 - (iv) heritage.
- (b) settlement funds earmarked for the Band Class would be put into a long-term trust designed to earn income for the benefit of the Class;
- (c) annual income from the trust would be used to fund initiatives in furtherance of the Four Pillar principles for the benefit of the Class members; and
- (d) the trust would be Indigenous controlled, and all decisions regarding which initiatives to pursue in support of the Four Pillar principles would be made by the Band Class members themselves.

33. To the Representative Plaintiffs and the DSEC, it was a fundamental requirement that the Trust be led by Indigenous people. It was a central premise of the Four Pillars Trust Model, that control over funding and programs intended to repair the harm done by Residential Schools be taken out of the hands of Government and put in the hands of Indigenous peoples.

34. I am advised further by Mr. Grant that it was not until September 2022, on the eve of the Band Class claim common issues trial, that Mr. Isaac communicated Canada's willingness to accept our proposed framework for resolving the Band Class claim.

35. Canada has, in effect, agreed to the creation of a Trust substantially in the form of the Four Pillars Trust Model.

The proposed Band Class settlement

36. I participated fully in the negotiation process. I attended meetings with Class Counsel along with representatives from Tk'emlúps te Secwépemc and shíshálh Nation at each stage of the settlement process. I, along with representatives from Tk'emlúps te Secwépemc and shíshálh Nation, played an active role in negotiations. I reviewed several versions of the Settlement Agreement. At each meeting, Class Counsel explained the status of the negotiations, and what portion of the settlement agreement remained to be negotiated. Class Counsel met with me and representatives from Tk'emlúps te Secwépemc and shíshálh Nation and informed us about the terms of the proposed Settlement Agreement before it was signed, and they answered our questions.

37. I have also reviewed the Settlement Agreement myself, and I understand it, and what it will mean for Band Class Members if it is approved by the Court.

38. In the course of negotiating the settlement, we were motivated by the Four Pillars.

39. I understand the major terms of the Settlement Agreement to be as follows:

- (a) the government of Canada will make a payment of \$2.8 billion (the “**Fund**”) to a Trust (the “**Trust**”) to fully and finally resolve the Band Class claim;
- (b) the Trust will be responsible for prudently investing the Fund, and for distributing the Fund to the 325 class members to support the Four Pillar principles in accordance with a distribution policy (the “**Disbursement Policy**”);
- (c) the Disbursement Policy will include the following:
 - (i) **Planning funds:** Each Band Class member will receive an initial one-time payment of \$200,000 for the purposes of developing a plan to carry out one or more of the objectives and purposes of the Four Pillars;
 - (ii) **Initial Kick-Start Funds:** Upon receipt and review of a plan from a band, the Fund shall disburse the Initial Kick-Start Funds, which shall be equal to the Band’s proportionate share of \$325 million, adjusted for population and remoteness;
 - (iii) **Annual Entitlement:** Each Band will receive a share of annual investment income that is available for distribution, which will be equal to the Band’s proportionate share, adjusted for population and remoteness.
- (d) all monies that remain in the Fund after the payment of the Planning Funds and the Kick-Start Funds will be prudently invested by the Trust in accordance with professional investment advice;
- (e) the Trust will operate for a period of 20 years;
- (f) for the 20-year life of the Trust, the Annual Entitlement payments will be made from the investment income earned from the Fund, and the capital of the fund will be maintained;

- (g) at the end the 20-year life of the Trust, the remaining Fund consisting of the capital of the fund and any undisbursed investment income shall be disbursed to the Class, with each Band's share being equal to the Band's proportionate share of the remaining Funds;
- (h) the Trust will be responsible for determining the Disbursement Policy, which will consist of a 40% base rate to each band, and 60% for a per capita adjustment and a remoteness adjustment;
- (i) the Trust will be governed by a board of nine Indigenous directors, eight of which are chosen by the Representative Plaintiff Bands and by the Class members, and one of which is chosen by Canada;
- (j) the Trust will have regional representation;
- (k) in exchange for the benefits of the agreement, the Band Class members are deemed to agree to a release which will prevent them from bringing any legal claims in future against Canada regarding the collective harms caused to the Bands by the creation and operation of Indian Residential Schools. This release, however, will not release Canada from potential claims regarding children who died or disappeared while at Residential Schools;
- (l) lawyers' fees and expenses incurred over the course of the lawsuit will, subject to Court approval, be paid by the Government of Canada and will not be deducted from the compensation paid to the Band Class.

40. This settlement, like any settlement in a lawsuit, is not a "victory" for the Class Members; rather, it is a compromise. 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 Band Class Members.

41. I believe that no amount of money could make right what has happened to our Nations as a result of the Residential School system. These schools were designed to

take language and culture away from Indigenous children and their communities, and to weaken the bonds of members of our community with their family, and their Indigenous identity. Our communities continue to live with the impacts of these experiences every day.

42. Money cannot undo that. Still, the benefits in the proposed settlement will give Bands the tools and resources necessary to continue the process of revitalizing and protecting our languages and cultures, and for starting to address the harmful legacy left by the Residential School system. The Settlement Agreement also removes the many risks and delays that would be involved in a time-consuming trial and potential appeals.

43. As a former leader of the Grand Council and the AFN, I also particularly appreciate the importance of the funding that the Fund will provide for meaningful projects to promote healing, wellness, education, language, culture, and heritage, in accordance with the Four Pillars.

44. Again, although money by itself cannot restore our language, culture and heritage to its pre-Residential Schools level, I believe that putting this money in the hands of Indigenous people to support Bands' revitalization and commemoration efforts is an important step towards reconciliation and will help all Band Class Members.

45. This affidavit is sworn in support of the plaintiffs' motion for approval of the Settlement Agreement, and for no other or improper purpose.

Vancouver AFFIRMED before me at the City of
Montreal in the Province of Quebec, on
February 20, 2022 *British Columbia*

Commissioner for Taking Affidavits

(or as near as)
Peter R. Grant
Peter Grant Law
Box 12137
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Vancouver B.C. V6Z 2H2

Matthew Coon Come
DR. MATTHEW COON COME

TAB 4

Court File No. T-1542-12

FEDERAL COURT**CLASS PROCEEDING**

B E T W E E N :

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

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF CHIEF SHANE GOTTFRIEDSON

I, Chief Shane Gottfriedson, of the City of Kamloops, on the Tk'emlúps te Secwépemc territory, AFFIRM:

1. I am the former Chief of the Tk'emlúps te Secwépemc Indian Band ("Tk'emlúps te Secwépemc") and one of the representatives for the Band Class in this action. As such, I have personal knowledge of the facts and matters to which I depose save and except those which are stated to be based on information and belief and where so stated I verily believe the same to be true, except where stated to be for another purpose.

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2. This affidavit is affirmed in support of the plaintiffs' motion for approval of the settlement agreement entered into by the plaintiffs and the defendant and executed January 18, 2023 (the "**Settlement Agreement**").

3. If approved by the Court, the Settlement Agreement will resolve the claims of the Band Class Members in this class action, concluding this proceeding in its entirety.

A. Appointment as a representative plaintiff

4. On June 18, 2015, Justice Harrington certified this case as a class action and appointed me, on behalf of the Tk'emlúps te Secwépemc Indian Band, as one of the representative plaintiffs for the Band Class.

5. I understand that my role as a representative plaintiff has been to represent the best interests of the Band Class, and I have fulfilled this role to the best of my ability since the lawsuit was started.

6. On November 4, 2013, I swore an affidavit in support of the motion for certification. That affidavit set out my background, and what I observed from my family and community about our Secwépemcstin language, both growing up and in positions of leadership in the community. I have included here only a summary of that information.

B. Personal history and my traditional learning

7. I was born on October 7, 1965. My parents, Violet Gottfriedson and Charlie Montgomery, are now deceased.

8. I lived and grew up on Kamloops Indian Reserve #1 at Kamloops, British Columbia.

9. I was informed by my mother, Violet Gottfriedson, and believe, that she attended the Kamloops Indian Residential School ("**KIRS**") as a Day Scholar from approximately 1958 until 1963.

-3-

10. I grew up living with my mother until I was 16 years of age. I also spent time living with my aunt, Muriel Sasakamoose, and my uncle, Larry Ahdemar, when I was about 17 years of age, and my aunt, Gail Gottfriedson, for approximately one year when I was 18 years of age.

11. When I was a child, my mother told me very little about her experiences at KIRS. However, as I grew older my mother told me about the following experiences at KIRS (among others), which I believe:

- (a) students were often punished for speaking our language at KIRS;
- (b) she saw other students called 'savages' by the school staff in her presence, and she herself was called a 'savage';
- (c) the students were taught that speaking our language was bad, and that they should not respect our culture, customs, and traditions;
- (d) in this way, my mother and many other KIRS students conditioned to disrespect our elders, who were the keepers of our traditional knowledge and language.

12. My mother's account was consistent with what I was told by so many members of our community who attended KIRS. Shortly before my mother's death, she told me more about what horrible things happened to her at the residential school. I have been informed that my mother described this in her affidavit filed in support of certification and in her cross examination on that affidavit. I am not going to repeat what my mother told me although Canada's lawyers asked me to do so in their cross-examination of me on discovery.

13. My grandmother, Mildred Gottfriedson, taught me about our culture, traditions, dances, drumming and singing. She also taught me Secwépemc traditions of respect, honesty, and the importance of family in our culture. My granny taught me and showed

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me where to find the berries and Indian medicines that we traditionally use, and she introduced me to our traditional crafts.

14. My grandfather, Gus Gottfriedson, taught me our traditional songs and uses of lands. He was an amazing story-teller, who told me stories about his life, the families of our community, and how life used to be on the reserve. He told me these stories in English as I did not know Secwépemcstin.

15. My mother never criticized our culture or the use of Secwépemcstsin when I was a child. However, she did not speak to me in our language when I was growing up.

16. As we are traditionally an oral society, we learn from our elders. Indeed, I was taught ancestral stories of the Tk'emlúps people by members of my family and my elders. I learned from my elders about how life was before the residential schools.

17. When I was with my maternal grandparents as a child, I would hear them speak with their older friends and with elders in our language a lot when I was a child. However, I did not learn the language at that time.

18. I started to seek out my own Aboriginal culture when I was about 23 years old. Tk'emlúps te Secwépemc elders taught me our oral histories and traditions. They spoke Secwépemcstin. Although they would usually speak about our land in Secwépemcstin, they had to explain to me about our lands and our history in English. They taught me in English about Tk'emlúps' beliefs and spirituality, ceremonies, traditions, the land and resources, songs, dances and our histories.

19. Traditional practices were taught within families, just as I was taught by my grandparents, my elders and medicine and spiritual people of Tk'emlúps te Secwépemc. I was taught that before contact with non-Aboriginal persons, our ancestors were very traditional. That is, what we now refer to as 'traditional practices' were an everyday way of life. Our people lived off the land. They participated in sweatlodge ceremonies, fasts, berry and medicine picking, and many ceremonial and spiritual events, such as coming of age for boys and girls, weddings, and our four seasons ceremonies.

-5-

20. I was taught by my elders that, pre-contact, every member of Tk'emlúps te Secwépemc spoke Secwépemcstsin. Our language was a way of life, as it was the main form of communication, was taught within families, and was traditionally the means by which we transmitted our values, beliefs, customs and traditions. Our language was how the Tk'emlúps te Secwépemc identified ourselves and maintained our traditions, history and culture. In addition to our language, our ancestors spoke the languages of other neighboring First Nations, including other dialects of Secwépemcstsin. Before the establishment of the residential school, many of our members also knew other Indigenous languages, such as Chinook (our trade language), Thompson, Okanagan, St'at'imc, and Coast Salish to name a few.

21. There were no Secwépemcstsin language courses when I was growing up. The education system I was raised in never helped me to learn my language. There was a generational gap for me and my generation, as we were never given the opportunity to learn our language as children.

22. Unfortunately, because I was not taught my language when I was growing up, I know from personal experience that it is complex and difficult to learn, especially as an adult. I can only speak what I would describe as equivalent to a kindergarten level of the Secwépemcstsin language. For example, I am able to introduce myself in my language. I am embarrassed by my inability to practice and speak my own language.

23. This language barrier makes it challenging for me to learn about Secwépemc customs, teachings, and our lands, which elders traditionally taught younger generations about in Secwépemcstsin. Though I know the stories and history of the Secwépemc, my knowledge is very basic.

24. The language barrier also limited my ability to practice our traditions, or participate in ceremonies and prayer, even during my period as the Band's Chief. Though I felt it right, in my heart, to attend these ceremonies, because of my limited ability to speak our language, I felt lost at times and out of my comfort zone.

-6-

C. Tk'emlúps te Secwépemc Indian Band and my experience in positions of leadership

25. Tk'emlúps te Secwépemc is governed by its Kúkpi7 (Chief) and seven Band Council members. In general, the Chief and Council are elected by Tk'emlúps te Secwépemc members and hold their respective positions for a three-year term.

26. In 1992-1994, I served as an elected Band Councilor. In 2003, I was elected Chief of Tk'emlúps te Secwépemc for the first time. I was re-elected for three subsequent terms.

27. As the Chief, I needed to know more of our Tk'emlúps te Secwépemc history. I learned the history of our Band by talking to my elders. Part of the way I learned about the history of Tk'emlúps te Secwépemc is by elders talking to me and telling me what the community was like before the KIRS was established.

28. As the Chief, I was the political leader and a member of Council. I sat on various committees, including committees responsible for the cultural, physical, spiritual and mental well-being of our members. I was also in regular communication with our Band members who would contact me at all hours in cases of emergency.

29. As a result, the leadership position put me in a unique position to observe the impacts of the KIRS on our Band.

30. Based on what my Elders told me (which I believe) and my own observations, the transmission of our language from generation to generation ended as a result of the horrific experiences that students endured for speaking our language at KIRS.

31. I have observed that Secwépemcstsin is no longer the primary language spoken within the Tk'emlúps families. It is therefore no longer taught within the family and passed onto future generations of Tk'emlúps te Secwépemc members.

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32. This challenge of learning the language as adults is compounded by the fact that very few living Tk'emlúps are able to teach, write, read, or even speak Secwépemcstsin.

33. Based on my observations, when members of our community do not have Secwépemcstsin to take on the challenge of learning our traditions, spiritual practices or participating in our ceremonies, many lose their commitment to, and confidence and belief in the community. This loss of commitment is reflected in the steadily declining interest of our members in participation in Band government, community consultations, and councils.

34. During my tenure as the Chief of Tk'emlúps te Secwépemc, I attended many cultural events, including traditional dance ceremonies, burial ceremonies, and cultural celebrations with the members of our Band. This gave me the opportunity to observe the continuing loss of our culture and language as many of our elders have passed away.

35. One of my greatest concerns as Chief was that another generation of our people would be deprived of learning our language and culture because of the lack of knowledge and teachings from previous generations. I was concerned that we would continue to lose our connection to Secwépemcstsin and our traditions, histories, and spiritual practices.

36. The keepers of our language and culture are very few.

37. Our community Sk'elep School of Excellence teaches Secwépemcstsin, as well as our culture as part of its curriculum. Within the Secwépemc Nation, we have the Western, Eastern, and Northern Language Authority Groups controlled by our own people.

38. We are trying to revitalize our language and culture through our education system, but it is hard for my children's generation to become fluent in Secwépemcstsin. Because I am a descendant of a survivor of the KIRS, our language was not transmitted to me by my parents. Accordingly, my children and the children of many of my

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generation, are unable to practice our language in the home. I do not have the ability to teach my children our language.

39. The Tk'emlúps te Secwépemc look seven generations ahead to plan. As a result of the government's policy of assimilation, our Band now faces the legacy of several earlier generations of Tk'emlúps te Secwépemc children being taught that their language and culture were not to be valued. This has had an impact on our entire community and we continue to address this impact.

40. The effects of the KIRS are intergenerational and will continue to affect my people for generations.

41. To my knowledge, there are very few Tk'emlúps te Secwépemc members who still speak our language.. In my generation in our family, about ten of us understand the language but cannot fluently speak our language.

42. Currently, very few Tk'emlúps te Secwépemc members are able to speak Secwépemcstsin fluently. As the political leader of our community, I, together with our Council, was committed to continue to help members that want to learn our traditions. However, it is critical that the Tk'emlúps te Secwépemc members are prepared to learn the traditions and accept our Tk'emlúps beliefs as I was taught by my Elders, and other spiritual leaders of our community.

D. Impact of Residential School on the Band Class

43. As a leader of our Band for over ten years, I had to continually work to address the pain suffered by our members and reflected in the lateral violence, alcoholism, substance abuse, suicides, behavioral issues and violence, both within families, and within our community. By lateral violence, I mean jealousy, hate, finger-pointing, bullying, backstabbing, shunning, and shaming – in other words, where members lash out at each other in our community as a result of being oppressed.

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44. This is what I observed in Tk'emlúps while I was growing up, and it continues to the present day.

45. Based on what I have been told by my elders as to what occurred before I was born, and my own observations of our community members, the operation of the KIRS in our community has had serious adverse impacts on the Tk'emlúps te Secwépemc and its members. Generations of Tk'emlúps te Secwépemc members who attended the KIRS were prohibited from speaking Secwépemcstín, and lost pride in who they were as Secwépemc, leaving a legacy of learned behavior that they passed onto their children.

46. A lot of our members are ashamed that they cannot speak our language. We need to be able to teach our members their language.

47. Beyond language and culture, the KIRS left a legacy on the wellbeing of its students and their descendants, including serious problems including alcoholism, substance abuse, suicide and violence, a lack of individual trust authority figures, and a disinterest in the participation of our members in Band governance.

48. Based on my tenure as Chief, it is clear that the devastating cycle of learned behavior and lateral violence caused by Residential Schools has had serious impacts on our whole community.

49. Tk'emlúps te Secwépemc has further suffered by having the KIRS physically on the Band's land and in the community. The presence of this large red brick building in the centre of our community was, and continues to be, a constant reminder of the horrific experiences that many of our members suffered in that building. School and education are supposed to be a positive learning experience, but many of our members experienced the opposite in the KIRS building.

50. The 2021 discovery of about 200 unmarked graves at the school demonstrates how this facility is a constant reminder of the losses our Band has suffered as a result of the Residential Schools' legacy. I stress that our claim in this Action did not include

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the impact of having unmarked graves of little children in the centre of our community. However, the fact of the discovery of what many residential school survivors already knew, that little children died and were buried anonymously, has just underlined the genocide that occurred with our people.

E. The purposes of this litigation

51. This litigation arises from the 2006 Indian Residential School Settlement Agreement (“**IRSSA**”), which resolved 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.

52. Broadly speaking, this litigation had two purposes from its inception. Firstly, to obtain compensation for Day Scholars and their descendants, who were specifically excluded from IRSSA’s Common Experience Payment because they did not live at Residential Schools. This aspect of the litigation was settled in 2021.

53. Secondly, this litigation was intended to obtain compensation for the Bands, which suffered community-level impacts, particularly on language and culture, as a result of Residential Schools.

F. The proposed Band Class settlement

54. I participated in the negotiation process. I attended meetings with Class Counsel along with representatives from shíshálh Nation and the Grand Council. Class Counsel met with me and representatives from shíshálh Nation and the Grand Council, and informed me about the terms of the proposed Settlement Agreement before it was signed, and they answered our questions. I have also reviewed the Settlement Agreement myself, and I understand it, and what it will mean for Band Class Members if it is approved by the Court.

55. In the course of negotiating the settlement, we were motivated by four core principles (the “**Four Pillars**”):

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- (i) revival and protection of Indigenous languages;
- (ii) revival and protection of Indigenous cultures;
- (iii) wellness for Indigenous communities and their members;
- (iv) protection of heritage.

56. I understand the major terms of the Settlement Agreement to be as follows:
- (a) the government of Canada will make a payment of \$2.8 billion (the “**Fund**”) to a Trust or Foundation (the “**Trust**”) to fully and finally resolve the Band Class claim;
 - (b) the Trust will be responsible for prudently investing the Fund, and for distributing the Fund to the 325 class members to support the Four Pillar principles in accordance with the Disbursement Policy;
 - (c) the Disbursement Policy will include the following:
 - (i) **Planning funds:** Each Band Class member will receive an initial one-time payment of \$200,000 for the purposes of developing a plan to carry out one or more of the objectives and purposes of the Four Pillars;
 - (ii) **Initial Kick-Start Funds:** Upon receipt and review of a plan from a band, the Fund shall disburse the Initial Kick-Start Funds, which shall be equal to the Band’s proportionate share of \$325 million, adjusted for population and remoteness;
 - (iii) **Annual Entitlement:** Each Band will receive a share of annual investment income that is available for distribution, which will be equal to the Band’s proportionate share, adjusted for population and remoteness.

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- (d) all monies that remain in the Fund after the payment of the Planning Funds and the Kick-Start Funds will be prudently invested by the Trust in accordance with professional investment advice;
- (e) the Trust will operate for a period of 20 years;
- (f) for the 20 year life of the Trust, the Annual Entitlement payments will be made from the investment income earned from the Fund, and the capital of the fund will be maintained;
- (g) at the end the 20 year life of the Trust, the remaining Fund consisting of the capital of the fund and any undisbursed investment income shall be disbursed to the Class, with each Band's share being equal to the Band's proportionate share of the remaining Funds;
- (h) the Trust will be responsible for determining the Disbursement Policy, which will consist of a 40% base rate to each band, and 60% for a per capita adjustment and a remoteness adjustment;
- (i) the Trust will be governed by a board of nine Indigenous directors, eight of which are chosen by the Representative Plaintiff Bands and by the Class members, and one of which is chosen by Canada;
- (j) the Trust will have regional representation;
- (k) in exchange for the benefits of the agreement, the Band Class members are deemed to agree to a release which will prevent them from bringing any legal claims in future against Canada regarding the collective harms caused to the Bands by the creation and operation of Indian Residential Schools. This release, however, will not release Canada from potential claims regarding children who died or disappeared while at Residential Schools;

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- (l) lawyers' fees and expenses incurred over the course of the lawsuit will, subject to Court approval, be paid by the Government of Canada and will not be deducted from the compensation paid to the Band Class.

G. My approval of the proposed settlement

57. This settlement, like any settlement in a lawsuit, is not a "victory" for the Class Members; rather, it is a compromise. 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 Band Class Members. This is a start to change for our Nations. It is now up to us.

58. At the January 21, 2023 press conference I spoke about the positive impact of this Settlement. I have appended a copy of my speaking notes as **Exhibit "A"** to this Affidavit. I confirm that I agree with what I stated at the public announcement of this settlement as set out in those speaking notes.

59. I believe that no amount of money could make right what has happened to our Nations as a result of the Residential School system. KIRS was an institution designed to take away our language and culture, and to weaken the bonds of members of our community with their family, and their Indigenous identity. Our community continues to live with the impacts of these experiences every day.

60. Money cannot undo that. Still, the benefits in the proposed settlement will give Bands the tools and resources necessary to continue the process of revitalizing and protecting our languages and cultures, and for starting to address the harmful legacy left by the Residential School system. The Settlement Agreement also removes the many risks and delays that would be involved in a time-consuming trial and potential appeals.

61. As a former leader of our community, I also particularly appreciate the importance of the funding that the Fund will provide for meaningful projects to

promote healing, wellness, education, language, culture, and heritage, in accordance with the Four Pillars.

62. Although money by itself cannot restore our language, culture and heritage to its pre-Residential Schools level, I believe that putting this money in the hands of Indigenous people to support Bands' revitalization efforts is an important step towards reconciliation and will help all Bands Class Members.

63. This affidavit is affirmed in support of the plaintiffs' motion for approval of the Settlement Agreement, and for no other or improper purpose.

AFFIRMED BEFORE ME at the City of Kamloops, on the Tk'emlúps te Secwépemc territory, on February 21st, 2023

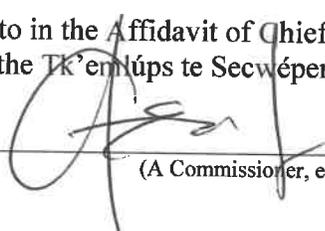
Commissioner for Taking Affidavits
(or as may be)

CHRISTIE STEWART
Barrister and Solicitor
#8 - 1540 SPRINGHILL DRIVE
KAMLOOPS, BC V2E 2H1
Phone (250) 374-6601

} _____
CHIEF SHANE GOTTFRIEDSON

Shane Gottfriedson

This is Exhibit "A" referred to in the Affidavit of Chief Shane Gottfriedson, affirmed before me at the City of Kamloops, on the Tk'emlúps te Secwépemc territory, on February 21st, 2023.



(A Commissioner, etc.)

CHRISTIE STEWART

Barrister and Solicitor
#8 - 1540 SPRINGHILL DRIVE
KAMLOOPS, BC V2E 2H1

(Print Name and Expiry/Lawyer/Student-at-Law)

Phone (250) 374-8601

Statement of former Chief Shane Gottfriedson

We are here today because of a call I received on Dec 21, 2011 from my dear friend, and then fellow chief Garry Feschuk. Both he and I led Nations who had had Indian residential schools in their midst. The May 2008 Res School Settlement excluded many of our members who were sent to the schools but went home at night. This led to pain in our communities. We both saw that no other Nations in Canada were willing to stand up to right the wrong of leaving out Day Scholars and so we brought this action. We finally received a resolution for the individual Day Scholars 10 years later.

However, Garry and I both saw, and lived in, and were the leaders of nations who suffered deeply from lateral violence and dysfunction. What does that mean? It means that we had a hard time making good governance decisions for our communities. It means protests and blockades of our government offices by our own people. It means that no matter what we do to include our members and inform them, they fight with us and with each other. It means that it is very difficult to advance the interests of our nations. And, it also means, as both Garry and I saw, that outside non Indigenous governments, from Ottawa to the local town or city government, distrusted our government and did not take us seriously.

Garry and I agreed that Canada's policy of attacking our language and culture for over 120 years had devastated our own systems of government and laws and seriously impacted our languages. These impacts on our peoples were damages Canada caused with their policy of destruction of our language and culture, later re-labelled "assimilation policy" and then an effort to 'integrate Indigenous peoples' .

No Nation in Canada had taken this on but Garry and I decided that we would stand together for our own Day Scholars and also for all the Indigenous Nations in Canada who have had to live with Canada's racist legacy and try to govern our nations and our small pieces of land known as reserves.

I knew Len Marchand, a Secwepemc lawyer, (and now an Indigenous judge on our Court of Appeal). We went to Len and he recommended that he together with Peter Grant and John Phillips could advance this unprecedented case. There had been no class action for collective damages before or based on collective rights to language and culture.

Canada fought us all the way to the Courthouse steps and into the halls outside the Court room. Then 10 days before our trial was to start, Canada offered to settle. We are now representing 325 Indigenous Nations across Canada and we have

developed a settlement plan to allow for the Nations to work towards the four pillars of

- Revitalization of our languages
- Revitalization of our cultures
- Wellness for our peoples
- Heritage and commemoration

What is different is that this settlement allows our Indigenous Nations to control the process, not the non-Indigenous governments. We will manage and distribute the funds. We will provide it to all the 325 nations in a fair and objective manner and take into account added costs for larger populations and for remoteness.

The Nations will decide which of the four pillars that they will focus on. The Nations will decide how to invest or use the monies and will develop three 10 year plans for its implementation.

This is the beginning of a new era in Canada when the government in Ottawa is saying : We are giving over the authority to care for Indigenous peoples, and to right the wrongs that we as a government created, back to the Indigenous Nations of Canada.

TAB 5

FEDERAL COURT
CLASS PROCEEDING

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE
SECWEPEMC INDIAN BAND and the TK'EMLUPS TE SECWEPEMC
INDIAN BAND, and CHIEF GARRY FESCHUK, on behalf of the SECHELT
INDIAN BAND and the SECHELT INDIAN BAND

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF CHIEF GARRY FESCHUK

I, Chief Garry Feschuk, of the Municipality of ch'atlich, on the territory of the shíshálh Nation, AFFIRM:

1. I am the former elected Chief of shíshálh Nation, formerly known as the Sechelt Indian Band ("**shíshálh Nation**" or the "**Sechelt Indian Band**"), and one of the representatives for the Band Class in this action. As such, I have personal knowledge of the facts and matters to which I hereafter depose save and except those which are stated to be based on information and belief and where so stated I verily believe the same to be true, except where stated to be for another purpose.
2. This affidavit is sworn in support of the plaintiffs' motion for approval of the settlement agreement executed January 18, 2023 (the "**Settlement Agreement**"), which will, if approved, resolve the claims of the Band Class, and conclude this action in its entirety.
3. Unless otherwise indicated, the capitalized terms in this affidavit bear the same meanings as the defined terms set out in the Settlement Agreement.

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A. My background

4. I am a member of shíshálh Nation and I bear the hereditary chief's name of ʔakista xaxanak for my Nation and I am an "Aboriginal Person" under the *Constitution Act, 1982*.
5. I grew up and continue to live on Sechelt Band Lands #2 in Sechelt, BC, on which the Sechelt Indian Residential School ("SIRS") was located.
6. My mother was First Nations, but my father was not, so I did not have status until 1989, when I finally obtained status and my membership in the Sechelt Indian Band.
7. I have been involved in the leadership at the Sechelt Indian Band since 1990. Since then, I have served three terms on Council and six terms as Chief. I was Chief of the Sechelt Indian Band when I started this litigation in 2012 with my co-representative plaintiff, Chief Shane Gottfriedson from Tk'emlúps te Secwépemc.
8. Because I was a non-status child, I attended local public schools during the day and I attended SIRS after school for catechism.
9. My maternal grandparents were both members of the Sechelt Indian Band and IRS survivors. I recall that they would only speak to one another in the shíshálh language, Sháshíshálhem, but they did not teach the language to me or my siblings.
10. Several key figures in my upbringing, including my aunt Violet Jackson and elders Diana Joe and Yvonne Joe, were forced by the Government of Canada to attend SIRS. Although Violet, Diane, and Yvonne knew Sháshíshálhem, they were afraid to teach the language to me.
11. I did not speak or understand Sháshíshálhem until, as an adult, I learned a small bit of the language at language classes.
12. While I learned some aspects of shíshálh history, traditions, and culture from my family and community members growing up, I learned most of my traditional knowledge as an adult.
13. I was taught by my grandparents, aunts, and uncles that, prior to the operation of SIRS, shíshálh elders passed on their traditions and cultural practices to the younger generations.

14. My wife was also forced to attend SIRS and told me about the traumas she personally suffered as a result. She does not share those experiences with other people.

15. Since I became involved in the leadership at the Sechelt Indian Band, I have had the chance to speak to many Band members about their experiences at SIRS. It was through these conversations that I learned about the extent to which SIRS harmed the Band culturally, physically, spiritually, and mentally.

16. Additional details of the devastating intergenerational impact of the IRS policy on my Band and my family – and in particular the community-wide loss of language and culture – are set out in my affidavit sworn in support of the motion for certification of this action as a class proceeding.

17. Prior to suffering a stroke, I travelled with Jo-Anne Gottfriedson of Tk'emlúps te Secwépemc to many Nations across Canada and attended Assembly of First Nations meetings to discuss this lawsuit and the impacts that Residential Schools had on other Nations. I learned that many Nations suffered the same issues as shíshálh Nation has regarding lateral violence and dysfunction arising from being separated from their Indigenous languages and cultures.

18. Based on my conversations with elders and chiefs of the other members of the Band Class and my conversations with my lawyers following their review of the evidence produced over the course of this litigation, I verily believe that each of the 325 Indigenous Bands represented in this action suffered comparable harms.

19. Indigenous languages and cultures are disappearing across Canada, and I have seen in shíshálh that this harm has manifested in broken families, mental health issues, alcohol and drug abuse, violence, and suicides. More Band-led interventions in our communities are the most effective way forward to revitalize the languages and cultures that were taken from us.

B. Involvement in this Action

20. The 2006 Indian Residential School Settlement Agreement (“IRSSA”) was intended to resolve outstanding litigation against the Government of Canada (“Canada”) for the physical, psychological, and sexual abuse and other harms suffered by Indigenous children who were forced

to attend Indian Residential Schools (“IRS”). The IRSSA compensation structure consisted of (1) a Common Experience Payment (“CEP”) for survivors who resided at an IRS, and (2) an Independent Assessment Process (“IAP”) for claims of sexual or serious physical abuse.

21. Under the IRSSA, survivors who attended IRS as Day Scholars (*i.e.*, did not reside at the IRS) were only eligible to apply for compensation through IAP and were excluded from the CEP.

22. On August 15, 2012, Shane Gottfriedson, then-Chief of Tk'emlúps te Secwépemc, the representative plaintiffs for the Day Scholars Survivor and Descendant Classes, and I commenced these proceedings as a class action against the Canada for individual and collective damages suffered as a result of the IRS policy. We commenced this action because we were hurt and disappointed that the deep and lasting harms suffered by Day Scholars went unrecognized and uncompensated by Canada, and we believed that the Bands themselves, as collectives, suffered a compensable loss of language and culture as a result of Residential Schools.

23. Since 2012, I have been actively involved in all aspects of this litigation – including instructing counsel, consulting with stakeholders, public advocacy on behalf of the class members, being cross-examined and examined for discovery, and cooperating with opposing counsel’s many requests at discovery. I never stopped leading this lawsuit, even as I retired as Chief of shishálh Nation.

24. On June 4, 2021, we reached a settlement with Canada with respect to the Day Scholars Survivor and Descendant Classes. The Court approved the settlement on September 24, 2021 but the Band Class claims for our collective losses of language and culture remained unresolved and were scheduled to proceed to trial in September 2022.

C. The Band Class Trial

25. From September 2021 onwards, I was in frequent communication with members and fellow leaders from my Band, Class Counsel, Chief Gottfriedson, and the Day Scholars Executive Committee, as we dedicated significant time and resources to prepare for the first phase of the common issues trial.

26. As one of the representative plaintiffs, I was subject to examinations for discovery by lawyers from Canada on April 12 and 13, 2022 for a total of approximately 7 hours. The Canada's lawyers demanded that I review several thick binders of documents in preparation for the examinations.

27. During the examinations, the Canada's lawyers extensively questioned me on a number of challenging topics, including:

- (a) alcoholism, drug abuse, physical abuse, and sexual abuse in my community;
- (b) the complex intergenerational traumas suffered by my family as a result of SIRS;
- (c) specifics of the cultural genocide that my people have suffered at the hands of the Canadian government, including the public burning of our culturally and spiritually significant artifacts; and
- (d) mass deaths in my community resulting from epidemics and the legacy of SIRS.

28. Counsel for Canada demanded that I dig deep into the history of shíshálh Nation, specifics about my Band's customs, and my Band's history dating back hundreds of years to answer the questions. For example, I was asked to give comprehensive accounts of individual shíshálh cultural practices and the language revitalization efforts my community has taken to date.

29. The examination was particularly difficult when the Canada's lawyers repeatedly insinuated that my Band wanted a residential school to be built in our community, even though SIRS inflicted great pain onto my community, which endures to this day.

30. At the beginning of September 2022, Chief Gottfriedson, our lawyers, and I were ready to go to trial. There was no indication from Canada that they would agree to resolve the Band Class Claim. To the contrary, based on the Canada's legal position and conduct, we expected to be challenged on all of the evidence – including all of our expert and elder testimonies – and legal arguments that we relied upon to make our case.

31. I believe we had a strong case going into the trial, but I understood that we still faced many litigation risks that could lengthen the trial, make the process more onerous, or result in a series of appeals. Success was never guaranteed.

32. In addition to the legal risks of which we were advised by Class Counsel, I was specifically concerned about the cross-examinations and the likely delays. I expected to be cross-examined at trial, potentially even more intrusively than I had been at my cross-examination in advance of the certification motion or my examination for discovery. I expected that Canada's lawyers would treat me the same way they would treat the other plaintiff-side witnesses, Chief Gottfriedson, Chief Matthew Coon Come, and Chief Phil Fontaine. We were all prepared to tell the Court our stories, and to explain the many harms that the Residential Schools inflicted on the Band Class, but we knew that this would mean being forced to relive the traumas that we, our families, and our communities experienced.

33. As it turned out, this re-traumatization was inevitable, as I was required to prepare for cross-examinations under the expectation that the trial was to commence imminently.

34. With respect to delays, neither I, nor our legal team, had a clear idea of when we would receive a final ruling on the Band Class claims. We anticipated Phase One of the trial to take about two months, but key issues, including damages, would remain to be determined at Phase Two of the trial, which was not yet scheduled. I was also advised by my lawyers that the outcome of the trial, whether we were successful or not, would very likely be appealed, potentially all the way to the Supreme Court of Canada. I understand that this process can take years.

35. After having already spent over twelve years on this litigation, we believed that continued delays would cause irreversible harm to Band Class. Our languages and cultures are at risk of going extinct, as our elders passed away. Very recently, my band lost key people who had been leading revitalization efforts, including the last two remaining members of the Sechelt Indian Band Language Committee, Yvonne Joe and Ann Quinn, and the master carver who had been working on a reconciliation totem pole when he suddenly passed.

D. The proposed Band Class settlement

36. Despite Canada's aggressive positions on the Band Class claims from the start of this litigation to the eve of trial, and its refusal to admit almost any of our allegations, the Government of Canada surprised us in early September by responding to our proposal for a settlement of the Band Class claim for the first time since we made the proposal in 2017.

37. On September 19, 2022, Chief Gottfriedson and I reached an agreement in principle with Canada that would, if approved by the Court, fully and finally resolve the Band Class claims and end this litigation. A final Settlement Agreement was signed by all the parties on January 18, 2023.

38. I participated in the negotiation process. I attended meetings with Class Counsel along with representatives from Tk'emlúps te Secwépemc and the Grand Council during the settlement process and consulted with our shíshálh representatives on the DSEC, Jasmine Paul and Selina August. At each meeting, Class Counsel explained the status of the negotiations, and what portion of the settlement agreement remained to be negotiated. Class Counsel met with me and representatives from Tk'emlúps te Secwépemc and the Grand Council, and informed us about the terms of the proposed Settlement Agreement before it was signed, and they answered our questions.

39. I have reviewed the Settlement Agreement myself, and I understand it, and what it will mean for Band Class Members if it is approved by the Court.

40. In the course of negotiating the settlement, we were motivated by four core principles (the "Four Pillars"):

- (i) Revival and protection of Indigenous languages;
- (ii) Revival and protection of Indigenous cultures;
- (iii) Wellness for Indigenous communities and their members;
- (iv) Protection of heritage.

41. I understand the major terms of the Settlement Agreement to be as follows:

-8-

- (a) the government of Canada will make a payment of \$2.8 billion (the "**Fund**") to a Trust or Foundation (the "**Trust**") to fully and finally resolve the Band Class claim;
- (b) the Trust will be responsible for prudently investing the Fund, and for distributing the Fund to the 325 class members to support the Four Pillar principles in accordance with a distribution policy (the "**Disbursement Policy**");
- (c) the Disbursement Policy will include the following:
 - (i) **Planning funds:** Each Band Class member will receive an initial one-time payment of \$200,000 for the purposes of developing a plan to carry out one or more of the objectives and purposes of the Four Pillars;
 - (ii) **Initial Kick-Start Funds:** Upon receipt and review of a plan from a band, the Fund shall disburse the Initial Kick-Start Funds, which shall be equal to the Band's proportionate share of \$325 million, adjusted for population and remoteness;
 - (iii) **Annual Entitlement:** Each Band will receive a share of annual investment income that is available for distribution, which will be equal to the Band's proportionate share, adjusted for population and remoteness.
- (d) all monies that remain in the Fund after the payment of the Planning Funds and the Kick-Start Funds will be prudently invested by the Trust in accordance with professional investment advice;
- (e) the Trust will operate for a period of 20 years;
- (f) for the 20 year life of the Trust, the Annual Entitlement payments will be made from the investment income earned from the Fund, and the capital of the fund will be maintained;
- (g) at the end the 20 year life of the Trust, the remaining Fund consisting of the capital of the fund and any undisbursed investment income shall be disbursed to the Class,

with each Band's share being equal to the Band's proportionate share of the remaining Funds;

- (h) the Trust will be responsible for determining the Disbursement Policy, which will consist of a 40% base rate to each band, and 60% for a per capita adjustment and a remoteness adjustment;
- (i) the Trust will be governed by a board of nine Indigenous directors, eight of which are chosen by the Representative Plaintiff Bands and by the Class members, and one of which is chosen by Canada;
- (j) the Trust will have regional representation;
- (k) in exchange for the benefits of the agreement, the Band Class members are deemed to agree to a release which will prevent them from bringing any legal claims in future against Canada regarding the collective harms caused to the Bands by the creation and operation of Indian Residential Schools. This release, however, will not release Canada from potential claims regarding children who died or disappeared while at Residential Schools;
- (l) lawyers' fees and expenses incurred over the course of the lawsuit will, subject to Court approval, be paid by the Government of Canada and will not be deducted from the compensation paid to the Band Class.

42. I also understand that, should the Court order that Canada pay a sum in respect of legal fees and expenses incurred by Class Counsel and the Funding Nations, the sum will not be deducted from the settlement Fund.

E. My approval of the proposed settlement

43. This settlement, like any settlement in a lawsuit, is not a "victory" for the Class Members; rather, it is a compromise. 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 Band Class Members.

44. No amount of money could make right what has happened to Nations as a result of the Residential School system. SIRS was an institution designed to take away our language and culture, and to weaken the bonds of members of our community with their family, and their Indigenous identity. In short, SIRS was created with the intention of committing genocide against our people through the attempted destruction our language and culture. Our community continues to live with the impacts of these experiences every day.

45. Money cannot undo that. Still, the benefits in the proposed settlement will give Bands the tools and resources to continue the process of revitalizing and protecting our language and culture, and for starting to address the harmful legacy left by the Residential School system. The Settlement Agreement also removes the many risks and delays that would be involved in a time-consuming trial and potential appeals.

46. As a former elected leader of our community and an hereditary chief of our Nation, I particularly appreciate the importance of the funding that the Fund will provide for meaningful and Indigenous-designed projects to promote healing, wellness, education, language, culture, and heritage, in accordance with the Four Pillars.

47. For decades, my Band has attempted to develop resources and programs to teach and promote Sháshíshálhem and distinctive shíshálh practices, such as traditional drumming, woodcarving, and crocheting. While there have been very dedicated elders and scholars that have made extraordinary efforts to revitalize our language and culture that had been harmed by SIRS and its legacy, the existing funding for those initiatives have been irregular, uncertain and unreliable. Most significantly, the funding has been controlled by an outside government.

48. Each *Indian Act* band receives block funding from the Government of Canada in support of language and culture projects, but any money that our Band contributes towards these same projects are treated as “own-source revenue” and result in a corresponding deduction in the block funding. For shíshálh Nation, this means we would only receive an average of about \$25,000 in block funding every even though Sháshíshálhem is one of the most critically endangered Indigenous languages in Canada. Further, the funding that we receive is often subject to close auditing

49. In order to build robust language and culture revitalization programs that suit our Band's short- and long-term needs, we need to have an adequate, predictable flow of funds and independence over how we use those funds. We also need those funds to be available as soon as possible so that we can begin to plan and implement our programs immediately.

50. The Planning Funds and Initial Kickstart Funds will provide readily available sources of funding so that the Band Class Members can begin to address their priority areas, while the Annual Entitlement will provide each Band with reliable funds each year, over a 20-year period, to support their long-term goals.

51. For greater self-determination, the Fund will be managed by a Board composed entirely of Indigenous directors, all of whom except one will be appointed by the Band Class Members.

52. The sizes of block grants from the government are calculated purely based on a band's population. The Representative Plaintiffs believe that we have come up with a more equitable model that consists of a base amount for each Band with adjustments based on the Band's population and remoteness. This is intended to ensure that Bands with smaller populations are provided with sufficient funds to develop meaningful programs, and so that remote Bands who face higher costs in order to deliver programs have the funds to do so.

53. Again, although money by itself cannot restore our language, culture and heritage to its pre-Residential Schools level, I believe that putting this money in the hands of Indigenous people to support revitalization efforts led by the Bands is an important step towards reconciliation and will help all of the Band Class Members.

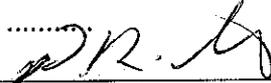
54. When I heard the statement of Minister Marc Miller when this settlement was announced on January 21 2023, I said to our Nation and our legal team that I was very happy as this was the end to the genocide that Canada had engaged in with our people.

55. Based upon the advice of our lawyers, my understanding of many Class Members' experiences, and my understanding of what would be involved if this action did not settle, I believe that the proposed settlement is fair and reasonable.

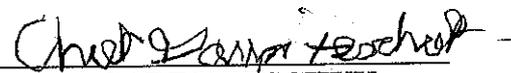
56. Resolution to the litigation now also means that I can also embark on my journey of personal healing at long last, after having been at the helm of this litigation for over 12 years.

57. This affidavit is affirmed in support of the plaintiffs' motion for settlement approval and for no other or improper purpose.

AFFIRMED BEFORE ME at the Municipality of ch'atlich, on the territory of the shishálh Nation, on .February 20, 2023.....

.....


Commissioner for Taking Affidavits
(or as may be)

}


CHIEF GARRY FESCHUK

**Peter R. Grant
Peter Grant Law
Box 12137
#407-808 Nelson Street
Vancouver B.C. V6Z 2H2**

TAB 6

FEDERAL COURT
CLASS PROCEEDING

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE
SECWEPEMC INDIAN BAND and the TK'EMLUPS TE SECWEPEMC
INDIAN BAND, and CHIEF GARRY FESCHUK, on behalf of the SEHEL
INDIAN BAND and the SEHEL INDIAN BAND

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF JEANINE ALPHONSE

I, Jeanine Alphonse, of the City of Toronto, in the Province of Ontario, AFFIRM:

1. I am a law clerk with the law firm of Waddell Phillips Professional Corporation, Class Counsel in this litigation, and as such have knowledge of the matters to which I hereinafter depose. Where the information in this affidavit is based on information, I have stated the source of the information, and I believe that information to be true.

Notice to Potential Class Members of Certification and Opportunity to Opt-in

2. This Class Action was certified by Court order dated June 18, 2015. On September 1, 2015, the Court issued an order regarding the form, content and manner of providing notice to potential band class members of certification, and providing bands eligible to become band class members to opt-in. I have marked the September 9, 2015 Order as **Exhibit "A"** to this affidavit.

3. The Court-approved notice regarding the band class stated, amongst other things that bands needed to opt-in by sending in an opt in form or letter in order to become a member of the Band Class. The notice set an opt-in deadline of February 29, 2016.

4. The September 1, 2015 order required, amongst other things, that the Plaintiffs distribute the Court-approved notice regarding the band class in the following manner:

- a. Publication in national newspapers;
- b. Publication in national Aboriginal newspapers;
- c. Publication in local general circulation and Aboriginal newspapers;
- d. Posting on www.justicefordayscholars.ca;
- e. Posting on the websites of both Phillips Gill LLP and Peter Grant & Associates;
- f. Through regional and local meetings with Aboriginal communities;
- g. Direct mailing to all potentially affected bands across Canada;
- h. Direct communication with Class Members in the Representative Plaintiff bands;
- i. Posting on the website of Aboriginal Affairs and Northern Development Canada;
- and
- j. A national media release within 15 days of the signing of the order.

5. I have marked as **Exhibit “B”** the affidavit of Jo-Anne Gottfriedson, sworn June 3, 2016, and its exhibits that confirms that the Plaintiffs distributed the notice as required by the September 9, 2015 order. In addition, the affidavit confirms that the Plaintiffs, with the assistance of the Assembly of First Nations, sent the notice by fax to all First Nations in Canada. In addition, the notice was posted on the Assembly of First Nations’ website, and national media releases were periodically published and circulated by the Assembly of First Nations, the Federation of Saskatchewan Indians, the First Nations Summit, and the Union of BC Chiefs.

6. On July 17, 2017, on motion by the Dene Tha’ First Nation, the Court ordered that Dene Tha’ First Nation be added as a member of the band class. Schedule “A” to that order is a Band Class Opt-In List as amended July 17, 2017 that lists 99 band class members, not including the two Band Class Representative Plaintiffs. A copy of the order of Justice Harrington dated July 17, 2017 is marked as **Exhibit “C”**.

Efforts to Notify Potential Class Members of the Re-opening of the Opt-in Period

7. By order dated February 8, 2022, the Court reopened the opt-in period and approved the form and content of the opt-in notice. Pursuant to the February order, the Representative Plaintiffs were required to provide notice by direct mailing and emailing the notice to all Indian Bands known to Class Counsel, or made known to Class Counsel by the Defendant that were not already class member. A copy of the February 8, 2022 order is marked as Exhibit “G” to the affidavit of Peter Grant sworn in support of the settlement approval motion.

8. I am informed by W. Cory Wanless, a member of the Class Counsel team, that Class Counsel compiled a contact list of all Bands in Canada using a combination of the contact information for First Nations publicly available from Crown-Indigenous Relations and Northern

Affairs Canada (<https://fnp-ppn.aadnc-aandc.gc.ca/fnp/Main/Search/SearchFN.aspx?lang=eng>) and from the public websites of the First Nations themselves.

9. I am informed by W. Cory Wanless that, pursuant to the February 8, 2022 court order, Class Counsel distributed the court approved notice by mail and email in February 2022 to all First Nations in Canada that were not already Band Class Members.

10. I am informed by Jo-Anne Gottfriedson, a member of Tk'emlúps te Secwépemc hired to assist with outreach to eligible bands, that the notice of the re-opening of the opt-in period was also sent to all the Regional Chiefs and the Assembly of First Nations.

11. I am informed by W. Cory Wanless that Jo-Anne Gottfriedson and other members the Class Counsel team engaged in extensive efforts to speak to representatives of bands that had not yet opted in and their legal counsel by phone, by video-conference, and, in some instances, in person.

Efforts to Notify Potential Class Members of the Extension of the Opt-in Period

12. Beginning in June 2022, I became involved in the efforts to reach out the Potential Class Members.

13. By order dated June 15, 2022, Justice McDonald extended the opt-in deadline from May 31, 2022 to June 30, 2022.

14. On June 20, 2022, I sent an email to all Bands on our email list using MailChimp, advising Potential Class Members of the extended deadline for opting in that the Court had set.

15. At the end of the extended opt-in period, the Band Class consisted of 325 Bands that had opted in, or otherwise been added to the Class by Court order. The 325 Bands included a number

of Bands that, at the request of the Representative Plaintiffs, were authorized by the Court to opt in after the extended deadline. A copy of the final list of Class Members, as amended by order of Justice McDonald dated January 23, 2023, is marked as Exhibit “H” to the affidavit of Peter Grant sworn in support of the settlement approval hearing.

Ongoing Communications with Band Class Members

16. Class Counsel has engaged in ongoing communications with Band Class Members first through the websites www.justicefordayschoars.com and later www.bandreparations.ca and www.bandreparations.com; updates to a designated webpage on Waddell Phillips’ firm website (<https://waddellphillips.ca/class-actions/band-reparations-class-action/>) and a designated toll-free number (1-888-370-1045) and a designated email inbox (bandclass@waddellphillips.ca). A printout of the Waddell Phillips website dedicated to this litigation, accessed February 14, 2023, is marked as **Exhibit “D”**.

17. Class Counsel has also sent out periodic news releases regarding status of the Band Reparations lawsuit over a news wire that sends the news release to all news outlets in Canada, and publishes the news release online. For example, Class Counsel sent out a press releases on August 30, 2022 announcing the start of the Band Reparations trial on September 12, 2022, and on September 20, 2022 announcing the adjournment of the Band Reparations trial to allow for the completion of settlement negotiations. These press releases are attached respectively as **Exhibit “E”** and **Exhibit “F”**.

18. Class Counsel maintained a Band Class Member contact list containing emails, mailing address, phone numbers and in most cases, fax numbers. Class Counsel generally provided updates to the Band Class via email.

19. The Representative Plaintiffs also engage in ongoing communications with Band Class Members, for example, notifying them of the start and adjournment of the common issues trial. Letters from Kúkpi7 Rosanne Casimir of Tk'emlúps te Secwépemc and hiwus Warren Paull of shíshálh Nation, dated September 12 and 20, 2022, collectively marked as **Exhibit "G"**, were sent to the Band Class Member email list maintained by Class Counsel.

Efforts to Notify Band Class Members of the Settlement / Settlement Approval Hearing

20. Beginning January 2023, I became involved in the efforts to reach out to the Band class members regarding the Notice of Settlement and Settlement Approval Hearing.

21. On January 21, 2023, the Representative Plaintiffs and Minister Marc Miller held a joint press conference in order to announce the settlement to the media, and to the Canadian public. A transcription of the statements made at the press conference is marked as **"Exhibit L"**.

22. On January 21, 2023, a press release was published by Class Counsel announcing the Settlement Agreement with Canada. I am informed by W. Cory Wanless that the www.bandreparation.ca webpage was updated on January 21, 2023 to become a standalone website that contained information regarding the settlement and the settlement approval hearing. Printouts of the press release published by Global Newswire and the Bandreparations.ca webpage, accessed February 14, 2023, are marked as **Exhibit "H"** and **Exhibit "I"**.

23. The January 23, 2023 order of Justice McDonald details the Notice Plan for the distribution of the Notice of Settlement Approval and Settlement hearing to all Band class members. A copy of the Notice Plan is marked as **Exhibit "J"**.

-7-

24. On January 23, 2023, I sent an email to all 325 Band Class Members on our email list using MailChimp, advising of the Notice of Settlement Approval and Settlement Hearing. Of the emails sent to 333 email addresses, 16 were returned as undeliverable.

25. On January 24, 2023, I sent the Notice to all 325 Band class members by regular mail. Of the Notices sent by mail, three have been sent back to us as returned to sender. The three nations that did not receive the notice by mail received a confirmed fax.

26. Beginning January 25 to January 27, 2023, I and other staff at Waddell Phillips faxed the Notice to all Band class members. Of the 325 Band class members, 34 of the faxed Notices came back as unsuccessful deliveries, the rest were confirmed as received.

27. Pursuant to the Notice Plan, all Band class members who did not confirm receipt that they had received the Notice were contacted by telephone beginning on January 30, 2023. During these calls, I spoke to or left voicemails for members of the Bands asking them to confirm whether the Notice was received and, if not, to provide an alternate email to which to send the Notice.

Class Member Support of and Opposition to the Settlement Agreement

28. I am responsible for receiving and compiling Class Member written submissions, and requests to make oral submissions at the Settlement Approval Hearing. As of the deadline of 11:59pm PT, February 20, 2023, Class Counsel have received five written submissions from representatives from confirmed Band Class Members. Of these, one objects to the Settlement Agreement, and four support the Settlement Agreement. I have attached as **Exhibit "K"** a package of all written submissions received from representatives from confirmed Band Class Members received by the deadline of 11:59pm PT, February 20, 2023.

29. As of the deadline of 11:59pm PT, February 20, 2023, Class Counsel have received requests to make oral submissions at the Settlement Approval Hearing from six representatives from confirmed Band Class Members. Of those, four will make submissions in person, while two will make submissions virtually.

30. Class Counsel will inform the Court of any Class Member that submits written submissions, or requests to make oral submissions, after the deadline set out in the Notice.

31. I have been advised by Jonathan Schacter, a member of the Class Counsel team that, based on his experience as Class Counsel, this is a low number of objections relative to the size of the Band Class. The number of objections is also 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 outnumber the objections.

32. I swear this affidavit in support of the Plaintiffs' motion for settlement approval, and for no other improper purpose.

AFFIRMED by Jeanine Alphonse, at the City of Toronto, in the Province of Ontario, before me on February 22, 2023.



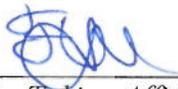
Commissioner for Taking Affidavits
(or as may be)

FLORA YU
(LSO No.: 84025W)



JEANINE ALPHONSE

This is **Exhibit "A"** as referred to in the Affidavit of Jeanine Alphonse sworn before me on this 22nd day of February, 2023



Commissioner for Taking Affidavits (or as may be)

FLORA YU
(LSO NO.: 84025W)

Federal Court



Cour fédérale

Date: 20150901

Docket: T-1542-12

Ottawa, Ontario, September 1, 2015

PRESENT: The Honourable Mr. Justice Harrington

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 reading the written submissions filed on behalf of the plaintiffs on August 27, 2015;

AND UPON the consent of the defendant, Her Majesty the Queen in Right of Canada;

THIS COURT ORDERS that:

1. The Notices of Certification in both English and French attached as Schedule "A" to this Order shall be approved for distribution.
2. The manner of distribution shall be by the plaintiffs and shall be implemented as soon as reasonably practicable and, in the case of monthly publications, in the next available issue following the date of this Order as follows:
 - a. Publication in national newspapers;
 - b. Publication in national Aboriginal newspapers;
 - c. Publication in local general circulation and Aboriginal newspapers;
 - d. Posting on www.justicefordayscholars.ca;
 - e. Posting on the websites of both Phillips Gill LLP and Peter Grant & Associates;
 - f. Through regional and local meetings with Aboriginal communities;
 - g. Direct mailing to all potentially affected bands across Canada;

- h. Direct communication with Class Members in the Representative Plaintiff bands;
- i. Posting on the website of Aboriginal Affairs and Northern Development Canada; and
- j. A national media release within 15 days of the signing of this Order.

“Sean Harrington”

Judge

SCHEDULE "A"

1. Notice (Survivor and Descendant Classes)
2. Avis (Groupes des Survivants et des Descendants)
3. Notice (Band Classes)
4. Avis (Groupe des Bandes)

NOTICE (BAND CLASSES)

To Any Aboriginal Band in Canada who had Band members attend an Indian Residential School and has or had an Indian Residential School on or proximate to Band lands or property

A Class Action Lawsuit May Affect Your Rights.

A court authorized this notice. You are not being sued.

- You could be affected by a class action lawsuit involving the Kamloops and Sechelt Indian Residential Schools and additional Indian Residential Schools (the "Schools") (see attached Appendix 'A' for the list of eligible schools).
- A Court has approved the lawsuit as a class action that may include anyone who attended at any Indian Residential School, for any times they attended as a "Day Scholar" (i.e. non-resident student) as well as their children and the bands within communities that contained a Residential School. The Plaintiffs in the class action are suing the Government of Canada ("Canada") claiming that it is responsible for damages arising from attendance at the Schools. Attached to this Notice is a copy of the June 18, 2015 Court Order of Justice Harrington. This Order, and all other decisions related to this lawsuit can also be found on the Federal Court website at:
<http://decisions.fct-cf.gc.ca/fc-cf/en/d/s/index.do?cont=gottfriedson>.
- This claim is different from the Residential Schools Class Action Settlement entered into by Canada. In that settlement, only those who lived at an Indian Residential School were compensated for the fact of having gone to the school. This claim is for compensation relating to time spent attending, but not living in, the Schools.
- The Court has not decided whether Canada did anything unlawful, and the case is currently planned to go to a trial. There is no money available now and no guarantee there will be. However, your rights are affected, and you have a choice to make now.

YOUR OPTIONS AT THIS STAGE	
Opt-in	<p>Join this lawsuit. Await the outcome. Share in possible money and benefits. Give up certain rights.</p> <p>By opting in, your band gains the possibility of getting money or other benefits that may come from a trial or settlement. But, you give up any rights to sue Canada, or any religious organizations, on your own about the same legal claims in this lawsuit.</p>
Do Nothing	<p>Get no money or benefits from the lawsuit. Keep rights.</p> <p>If you do nothing your band will not be included in this lawsuit. This does not affect the rights of individual band members to participate as Survivors or Descendants. If money or benefits are later awarded in this lawsuit, you won't share in that money or benefits. But, you keep any rights to sue Canada, or any religious organization, on your own about the same legal claims in this lawsuit.</p>

- Lawyers must prove the claims against Canada at a trial. If money or benefits are obtained you will be notified about how to ask for a share.
- Your options are explained in this notice. To be included, you must act by **February 29, 2016**

**QUESTIONS? CALL TOLL-FREE 1-844-558-5538 OR VISIT
WWW.JUSTICEFORDAYSCHOLARS.COM**

WHAT THIS NOTICE CONTAINS

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BACKGROUND INFORMATION

The Purpose of this Notice:

This lawsuit has been "certified" as a Class Action. This means that the lawsuit meets the requirements for class actions and may proceed to trial. If you are included in the Class, you may have legal rights and options before the Court decides whether the claims being made against Canada on your behalf are correct. This notice explains all of these things.

The Honourable Justice Harrington, together with Prothonotary Lafrenière of the Federal Court, is currently overseeing this case. The case is known as *Gottfriedson v. The Attorney General of Canada*, Court File No. T-1542-12. The people who started this lawsuit are the Plaintiffs, and Canada is the Defendant.

The Claims in this Lawsuit

The lawsuit claims that Canada acted unlawfully and harmed those who attended at the Schools, and their children and band communities because the Schools were used to attempt to eliminate aboriginal languages, cultures and traditions. Further, the lawsuit claims that many people who attended the Schools also suffered mental, emotional and spiritual abuse. The Court has not decided this lawsuit and the Plaintiffs' claims still have to be proven in Court.

Relief Sought

The Plaintiffs are seeking a variety of different forms of relief from the Court. In part, they are asking for Declarations by the court that Canada's actions in overseeing the Indian Residential School System, and particularly the treatment of Day Scholars, were wrong. In addition, the Plaintiffs are seeking monetary compensation for surviving Day Scholars, their children and Bands that were home to Residential Schools.

The Defendant's Position

Canada is defending this lawsuit and denies the Plaintiffs' claims including the Plaintiffs' allegations of breaches of rights and duties. Canada also states that, with respect to claims being made by class members who are also class members of the Indian Residential School Settlement Agreement ("IRSSA") and did not opt out of the IRSSA, those claims are barred by the IRSSA. Canada also states that the damages claimed, if they occurred, were caused by the churches and other religious groups and their employees who operated, ran, or otherwise worked at the schools.

Description of a Class Action

In a class action one or more people called "representative plaintiffs" sue on behalf of people who have similar claims. All of these people with similar claims are called the "class" or "class members." The Court resolves the issues for all class members, except for those who remove themselves from the class.

The Representative Plaintiffs in this action are as follows:

For the Survivor Class:

Violet Catherine Gottfriedson (Tk'emlúps te Secwépemc Indian Band)
 Charlotte Anne Victorine Gilbert (Tk'emlúps te Secwépemc Indian Band)
 Diana Marie Jules (Tk'emlúps te Secwépemc Indian Band)
 Darlene Matilda Bulpit (Sechelt Indian Band)
 Frederick Johnson (Sechelt Indian Band)
 Daphne Paul (Sechelt Indian Band)

For the Descendant Class:

Amanda Deanne Big Sorrel Horse (Tk'emlúps te Secwépemc Indian Band)
 Rita Poulsen (Sechelt Indian Band)

For the Band Class:

Tk'emlúps te Secwépemc Indian Band
 Sechelt Indian Band

Those Belonging to the Class

Bands can join the class by choosing to 'opt in' to the Action. A Band is eligible to opt in if:

- The Band Members include some who are Survivors (defined below); and
- An Indian Residential School, recognized in the Indian Residential School Settlement Agreement and listed in Appendix "A" to this notice is present on, or proximate to, Band lands or property.

Individuals are included in this lawsuit and a member of a Class if they are:

A Survivor: This Class consists of all Aboriginal persons who attended at one of the Schools, but only for periods that were not compensated for through a Common Experience Payment; or

A Descendant of a Survivor: This Class consists of all persons who are the children of Survivor Class Members or were adopted either legally or traditionally by a Survivor or their spouse.

The Band Class currently consists of the Tk'emlúps te Secwépemc Indian Band and the Sechelt Indian Band. Other bands can join by 'opting-in' to the lawsuit.

YOUR OPTIONS

You have to decide whether to opt into the Class before a possible trial, and you have to decide this by **February 29, 2016**.

Opt – in

If you wish to become a member of the Class you will need to "opt-in". To opt-in complete the Opt In Form included with this notice, or send a letter that says you want to join the Class. Your letter must contain the Band Name, contact name and address, telephone number and a representative's signature. The Opt In Form or letter must be sent to Peter Grant & Associates at the following address:

900 -- 777 Homby Street,
 Vancouver, British Columbia
 Canada V6Z 1S4
 Email: dayscholar@grantnativeclaw.com
 Phone: 604-685-1229
 Fax: 604-685-0244

You can also get the Opt In Form or complete the form online at www.justicefordayscholars.com.

Your opt in must be received by **February 29, 2016**.

If you are a member of the class you will not be able to pursue your own lawsuit against Canada or any other parties. In a previous ruling in this action, Justice Harrington determined that the Representative Plaintiffs had made a decision not to seek damages from any third parties, which in this lawsuit are the various churches who ran the Residential Schools, and as a member of the class you will be bound by that decision. At the conclusion of this lawsuit you will not be able to sue the churches even if the Court finds that the churches are responsible for any damages you suffered.

This lawsuit is seeking benefits on behalf of the entire class. If any benefit is awarded, you may need to take action in order to receive these benefits.

Call **Karena Williams** at 604-685-1229 or **Patric Senson** at 416-477-6978 if you have any questions about how to opt in to the Class.

Opting in to this Lawsuit will not impact any benefits or services you may receive from the Government of Canada.

Do Nothing

If you decide not to participate in the lawsuit, you do not have to take any actions. However, you will not receive any money or benefit that may be obtained as a result of this lawsuit. You will not be bound by any Court orders and you keep your right to sue Canada regarding the issues in this case. You also maintain the right to sue any other parties, i.e. a Church organization that ran the Residential School on or near your Band property. You cannot change your mind later and opt into the class action.

THE LAWYERS ACTING FOR THE CLASS

The Representative Plaintiffs have retained Class Counsel. The Court has approved Class Counsel to act for the Class. The Class Counsel consists of two firms, Peter Grant & Associates,

and Phillips Gill LLP. As a Class member, you will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense. You will not have to pay the costs of Class Counsel.

A TRIAL

This Lawsuit may go to Trial

If the case is not dismissed or settled, the Plaintiffs will have to prove the claims and the claims of the Class at a trial. The trial would be likely be in Vancouver, British Columbia. At trial, the Court hears evidence from witnesses so that a decision can be reached about whether the Plaintiffs are right about the claims in the lawsuit. There is no guarantee that the Plaintiffs will win any money or benefits for the Class.

Money or Benefits for the Class

The Representative Plaintiffs will be responsible for legal costs on all common issues. The two Band Class Representatives would like to discuss with you whether or not your Nation will be willing to be responsible for a share of legal costs on the common issues. If you opt in and following the common issues trial there are individual cases involving your Band, you will be responsible for the costs of advancing those individual issues.

If the Plaintiffs obtain money or benefits as a result of a trial or settlement, Class members will be notified about how to ask for a share or what your other options are at that time. These things are not known right now. Important information about the case will be posted on the websites of the Bands and the Class Counsel.

LEARN MORE

You can get more information about this case and opting in:

Karena Williams
900 — 777 Hornby Street,
Vancouver, British Columbia
Canada V6Z 1S4
Phone: 604-685-1229
Email: day scholar@grantnative law.com
Fax: 604-685-0244

Patric Senson
200 – 33 Jarvis Street
Toronto, ON
M5E 1N3
Phone: (416) 477-6978
Email: patric@legaladvocates.com

Jo-Anne Gottfriedson
Tk'emlúps te Secwépemc Day Scholar Co-
ordinator
200-300 Chief Alex Thomas Way
Kamloops, British Columbia
Canada V2H1H1
Phone: 250-828-9788 or 250-318-5628
Fax: 250-372-8833
Email: jo-anne.gottfriedson@kib.ca

Hereditary Chief Garry Peschuk
Sechelt Nation Counsellor
5545 Sunshine Coast Highway
Sechelt, British Columbia
Canada V0N3A0
Phone: 604-885-2273 or 604-230-3415
Fax: 604-885-3490
Email: ggeschuk@sechelt nation.net

Or visit www.justicefordayscholars.com

Please Note:

Do not contact the Federal Court or the Federal Government of Canada with questions about this lawsuit. Rather refer all questions to Plaintiffs' counsel or the Bands as listed above. The Federal Court and the Federal Government of Canada, including the Department of Aboriginal Affairs and Northern Development Canada and its employees and lawyers will not respond to questions about this lawsuit.

AVIS (GROUPE DES BANDES)

À toute bande autochtone au Canada dont certains des membres ont fréquenté un pensionnat indien et qui a ou avait un pensionnat indien sur ses terres ou à proximité des terres ou des biens appartenant à la bande

Un recours collectif peut affecter vos droits.

Un tribunal a autorisé cet avis. Vous n'êtes pas poursuivi en justice.

- Vous pourriez être affecté par une poursuite en recours collectif impliquant les pensionnats indiens de Kamloops et de Sechelt et d'autres pensionnats indiens (les pensionnats) (voir la liste ci-jointe des autres pensionnats à l'Annexe A).
- Un tribunal a autorisé un recours collectif dans cette poursuite pour toute personne ayant fréquenté un pensionnat indien en tant qu'externe, c'est-à-dire en tant qu'élève qui ne vivait pas dans un pensionnat, et également pour leurs enfants et potentiellement les bandes sur les terres desquelles se trouvait un pensionnat. Dans le recours collectif, les demandeurs poursuivent le gouvernement du Canada (le Canada), affirmant qu'il est responsable des préjudices résultant de la fréquentation des pensionnats. Une copie de l'ordonnance du juge Harrington est jointe à cet avis. Cette ordonnance et toutes les autres décisions ayant trait à cette poursuite peuvent être consultées sur le site Web de la Cour fédérale à :
<http://decisions.fct-cf.fr/d/s/index.do?cont=gottfriedson>.
- Cette demande est différente de la Convention de règlement relative aux pensionnats indiens signée par le Canada. Dans cette Convention de règlement, seuls ceux et celles qui avaient vécu dans un pensionnat ont reçu une compensation pour avoir fréquenté un pensionnat. Cette demande d'indemnisation couvre les périodes où des élèves fréquentaient un pensionnat, mais où ils ne vivaient pas dans le pensionnat.
- La Cour n'a pas décidé si le Canada a agi de manière illégale, et l'affaire sera jugée plus tard. Aucune somme d'argent n'est disponible maintenant, et il n'y a aucune garantie qu'une somme d'argent sera disponible plus tard. Cependant, vos droits sont affectés, et vous devez faire un choix maintenant.

VOS OPTIONS À CE STADE	
Joignez-vous à la poursuite	<p>Joignez-vous à cette poursuite. Attendez le résultat. Partagez l'argent et les avantages possibles. Renoncez à certains droits.</p> <p>En se joignant à la poursuite, votre bande conserve la possibilité de recevoir un montant d'argent ou d'autres avantages qui pourraient découler d'un procès ou d'un règlement. Mais vous renoncez à tout droit de poursuivre vous-même en justice le Canada ou tout organisme religieux sur les mêmes revendications juridiques que celles présentées dans cette action en justice.</p>
Ne faites rien	<p>Ne recevez aucun montant d'argent ou avantages qui pourraient découler de cette poursuite. Conservez vos droits.</p> <p>Si vous ne faites rien, votre bande ne sera pas incluse dans cette poursuite. Cela n'affecte pas les droits des membres individuels de la bande de participer en tant que survivants ou descendants. Si plus tard un montant d'argent ou certains avantages étaient accordés, vous n'aurez pas droit à cet argent ou à ces avantages. Mais vous conservez vos droits de poursuivre en justice le Canada ou tout organisme religieux sur les mêmes revendications juridiques que celles présentées dans cette action en justice.</p>

- Les avocats doivent prouver les allégations portées contre le Canada au cours d'un procès. Si un montant d'argent ou des avantages en découlent, vous serez informé de la procédure à suivre pour en bénéficier.
- Vos options sont expliquées dans cet avis. Pour vous joindre à la poursuite, vous devez agir avant le 29 février 2016.

**QUESTIONS? APPELEZ SANS FRAIS LE 1-844-558-5538 OU CONSULTEZ LE SITE
WWW.JUSTICEFORDAYSCHOLARS.COM**

CE QUE CONTIENT CET AVIS

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INFORMATIONS GÉNÉRALES

Le but de cet avis

Cette poursuite a été autorisée comme recours collectif. Cela signifie que la poursuite répond aux exigences des recours collectifs et pourrait donner lieu à un procès. Si vous faites partie du groupe, vous pourriez avoir des droits juridiques et des options à faire valoir avant que la Cour décide si les allégations portées contre le Canada pour votre compte sont correctes. Cet avis explique tous ces éléments.

L'honorable juge Harrington, conjointement avec le protonotaire Lafrenière de la Cour fédérale, supervise actuellement cette affaire. Le cas est connu sous l'appellation *Gottfriedson c. le Procureur général du Canada*, dossier de la Cour No. T-1542-12. Les personnes qui ont lancé cette poursuite s'appellent les demandeurs, et le Canada est le défendeur.

Les revendications présentées dans cette action en justice

La poursuite allègue que le Canada a agi de manière illégale et a porté préjudice à ceux qui ont fréquenté les pensionnats, à leurs enfants et aux collectivités des bandes parce que les pensionnats ont été utilisés pour tenter d'éliminer les langues, les cultures et les traditions autochtones. En outre, la poursuite prétend que de nombreuses personnes qui ont fréquenté les pensionnats ont aussi été victimes de cruauté mentale, de violence émotionnelle et d'abus spirituel. La Cour ne s'est pas prononcée sur cette poursuite et les revendications des demandeurs restent à être prouvées devant un tribunal.

Redressement demandé

Les demandeurs cherchent à obtenir plusieurs formes de redressement de la Cour. En partie, ils demandent à ce que la Cour déclare que le Canada agissait de manière illégale lorsqu'il supervisait le système scolaire des pensionnats indiens, et en particulier dans le cas du traitement des externes. En outre, les demandeurs réclament une compensation financière pour les externes survivants, leurs enfants et les bandes sur les terres desquelles se trouvait un pensionnat.

La position du défendeur

Le Canada se défend dans cette poursuite et nie les revendications des demandeurs, y compris les allégations des demandeurs en matière de violations de droits et d'obligations. Le Canada déclare également que certaines revendications sont prescrites par la CRRPI, à savoir celles présentées par des membres du groupe qui font également partie de la Convention de règlement relative aux pensionnats indiens (CRRPI) et qui ne se sont pas retirés de la CRRPI. Le Canada affirme également que les préjudices relatifs aux dommages-intérêts réclamés, s'ils se sont produits, ont été causés par les églises et d'autres groupes religieux, et par leurs employés qui faisaient fonctionner ou travaillaient dans les pensionnats.

Qu'est-ce qu'un recours collectif?

Dans un recours collectif, une ou plusieurs personnes, appelées représentants des demandeurs, intentent une action en justice pour le compte des personnes qui ont des revendications similaires. Toutes les personnes ayant des revendications similaires sont désignées comme le groupe ou les membres du groupe. La Cour résout les enjeux pour tous les membres du groupe, à l'exception de ceux et celles qui se sont retirés de la poursuite.

Dans cette action en justice, les représentants des demandeurs sont les suivants :

Pour le groupe des survivants :

Violet Catherine Gottfriedson (bande indienne Tk'emlúps te Secwépemc)
 Charlotte Anne Victorine Gilbert (bande indienne Tk'emlúps te Secwépemc)
 Diana Marie Jules (bande indienne Tk'emlúps te Secwépemc)
 Darlene Matilda Bulpit (bande indienne Sechelt)
 Frederick Johnson (bande indienne Sechelt)
 Daphne Paul (bande indienne Sechelt)

Pour le groupe des descendants :

Amanda Deanne Big Sorrel Horse (bande indienne Tk'emlúps te Secwépemc)
 Rita Poulsen (bande indienne Sechelt)

Pour le groupe des bandes :

Bande indienne Tk'emlúps te Secwépemc
 Bande indienne Sechelt

Les membres du groupe

Les bandes peuvent devenir membres du groupe en se joignant à la poursuite. Une bande peut se joindre à la poursuite si :

- Certains des survivants (tels que définis ci-dessous) font partie des membres de la bande; et si
- Un pensionnat indien, tel que reconnu dans la Convention de règlement relative aux pensionnats indiens (dont la liste figure à l'annexe A de cet avis), se trouve ou se trouvait sur ses terres ou à proximité des terres ou des biens appartenant à la bande.

Des membres individuels sont inclus dans cette poursuite et sont considérés comme membres du groupe s'ils sont :

Un survivant : ce groupe se compose de toutes les personnes autochtones qui ont fréquenté un des pensionnats (tel qu'indiqué à l'annexe A de cet avis), mais uniquement pour les périodes qui n'ont pas été couvertes par le paiement d'expérience commune; ou

Un descendant d'un survivant : ce groupe se compose de tous les enfants des membres du groupe des survivants, ou des enfants qui ont été adoptés légalement ou selon les rites traditionnels par un membre du groupe des survivants ou par son conjoint.

La catégorie des bandes comprend à l'heure actuelle la bande indienne Tk'emlúps te Secwépemc et la bande indienne Sechelt. D'autres bandes pourront potentiellement se joindre à la poursuite.

VOS OPTIONS

Vous devez décider si vous souhaitez vous joindre à la poursuite et devenir un membre du groupe avant un éventuel procès, et vous devez vous décider avant le 29 février 2016.

Joignez-vous à la poursuite

Si vous souhaitez devenir un membre du groupe, vous devez vous joindre à la poursuite. Pour vous joindre à la poursuite, remplissez le formulaire d'adhésion inclus avec cet avis ou envoyez une lettre qui indique que vous souhaitez vous joindre à la poursuite. Votre lettre doit inclure votre nom, votre adresse, votre numéro de téléphone et votre signature. Le formulaire d'adhésion ou la lettre doit être envoyé à Peter Grant & Associates à l'adresse suivante :

777, rue Hornby - Bureau 900
 Vancouver (Colombie-Britannique)
 Canada V6Z 1S4
 Courrier électronique : dayscholar@grantnativelaw.com
 Télécopieur : 604-685-0244

Vous pouvez également obtenir le formulaire d'adhésion en ligne ou le remplir en ligne à : www.justicefordayscholars.com.

Votre décision de vous joindre à la poursuite doit être reçue au plus tard le 29 février 2016.

Si vous êtes un membre du groupe, vous ne pourrez pas mener votre propre action en justice contre le Canada ou contre toute autre partie. Dans une décision antérieure dans cette affaire, le juge Harrington a décidé que les représentants des demandeurs avaient pris la décision de ne pas réclamer de dommages à des tiers qui, dans cette action en justice, sont les différentes églises qui dirigeaient les pensionnats, et en tant que membre du groupe, vous serez lié par cette décision. À l'issue de cette action en justice, vous ne pourrez pas poursuivre les églises même si la Cour estime que les églises sont responsables des préjudices que vous avez subis.

Cette poursuite demande une action en réparation au nom de tous les membres du groupe. Si un paiement ou des avantages étaient octroyés, vous pourriez avoir à prendre des mesures afin d'en bénéficier.

Appelez Karena Williams au 604 685 1229 si vous avez des questions quant à la façon de procéder pour vous joindre à la poursuite.

Le fait de vous joindre à cette poursuite n'aura aucune incidence sur les prestations ou les services que vous pourriez recevoir du gouvernement du Canada à l'heure actuelle.

Vous ne faites rien

Si vous décidez de ne pas participer à la poursuite, vous n'avez pas besoin de faire quoi que ce soit. Dans ce cas, vous ne recevrez aucun montant d'argent ou aucun avantage qui pourraient être octroyés à l'issue de cette action en justice. Vous ne serez pas lié par une ordonnance quelconque de la Cour concernant cette cause et vous conserverez votre droit de poursuivre le Canada pour toutes les questions relatives à cette affaire. Vous conserverez également le droit de poursuivre d'autres parties, comme par exemple l'organisation religieuse qui gérait le pensionnat qui se

trouvait sur les terres ou à proximité des terres ou des biens appartenant à la bande. Vous ne pouvez pas changer d'avis plus tard et décider de vous réinscrire au recours collectif.

LES AVOCATS AGISSANT AU NOM DU GROUPE

Les représentants des demandeurs ont retenu les services de conseillers juridiques pour les membres du groupe. La Cour a donné son accord pour que ces conseillers juridiques agissent au nom des membres du groupe. Les conseillers juridiques du groupe sont les deux cabinets Peter Grant & Associates, et Phillips Gill LLP. En tant que membre du groupe, vous n'aurez pas à payer les honoraires de ces avocats. Si vous voulez être représenté par un autre avocat, vous pourrez en retenir un qui comparaitra en Cour à vos propres frais. Vous n'aurez pas à payer les coûts des conseillers juridiques du groupe.

UN PROCÈS

Cette poursuite peut donner lieu à un procès

Si l'affaire n'est ni rejetée ni réglée, les demandeurs devront prouver les revendications et les allégations des membres du groupe au cours d'un procès. Le procès se tiendrait probablement à Vancouver, en Colombie-Britannique. Au procès, la Cour entend les déclarations des témoins pour décider si les demandeurs ont raison quant aux revendications relatives à la poursuite. Rien ne garantit que les demandeurs gagneront un montant d'argent ou des avantages quelconques pour les membres du groupe.

L'argent ou les avantages pour les membres du groupe

Les représentants des demandeurs seront responsables des frais juridiques relatifs à toutes les questions communes. Les deux représentants du groupe des bandes aimeraient discuter avec vous pour déterminer si votre Nation serait disposée ou non à assumer la responsabilité d'une partie des frais juridiques relatifs aux questions communes. Si vous vous joignez à cette poursuite, et si à l'issue du procès relatif aux questions communes, il y a des questions individuelles qui concernent votre bande, vous serez responsable des coûts afférents à ces questions individuelles.

Si les demandeurs obtiennent un montant d'argent ou des avantages suite à un procès ou à un règlement, les membres du groupe seront informés de la manière d'y avoir accès ou des autres options disponibles à cette époque. Ces éléments ne sont pas connus à l'heure actuelle. Des renseignements importants seront affichés sur les sites Internet des bandes et des conseillers juridiques du groupe dès qu'ils seront disponibles.

POUR EN SAVOIR PLUS

Vous pouvez obtenir plus de renseignements sur cette cause et sur la possibilité de vous joindre à la poursuite en contactant :

Karena Williams
777, rue Homby - Bureau 900
Vancouver (Colombie-Britannique)
Canada V6Z 1S4
Téléphone : 604-685-1229
Courrier électronique : dayscholar@grantnativelaw.com
Télécopieur : 604-685-0244

Jo-Anne Gottfriedson
Coordinatrice des externes Tk'emlúps te
Secwépemc
300, chemin Chef Alex Thomas - Bureau 200
Kamloops (Colombie-Britannique)
Canada V2H1H1
Téléphone : 250-828-9788
Télécopieur : 250-372-8833
Courrier électronique: [jo-
anne.gottfriedson@kib.ca](mailto:jo-
anne.gottfriedson@kib.ca)

Chef héréditaire Garry Feschuk
Conseiller de la nation Sechelt
5545, Sunshine Coast Highway
Sechelt (Colombie-Britannique)
Canada V0N3A0
Téléphone : 603-885-2273
Télécopieur : 604-885-3490
Courrier électronique :
gfeschk@sechelnation.net

Ou en consultant le site www.justicefordayscholars.com

Veuillez noter ce qui suit :

Ne contactez pas la Cour fédérale ou le gouvernement fédéral du Canada pour des questions relatives à cette poursuite. Adressez plutôt toutes vos questions aux conseillers juridiques des demandeurs ou aux bandes dont la liste figure ci-dessus. La Cour fédérale et le gouvernement fédéral du Canada, y compris Affaires autochtones et Développement du Nord Canada et ses employés et avocats, ne répondront pas aux questions relatives à cette poursuite.

This is **Exhibit "B"** as referred to in the Affidavit of Jeanine
Alphonse sworn before me on this 22nd day of February, 2023



Commissioner for Taking Affidavits (or as may be)

FLORA YU
(LSO NO.: 84025W)

Date _____
Registrar _____
Greffier _____

JUN 6 - 2018

MUN Y CHAN

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 #2 OF JO-ANNE GOTTFRIEDSON

I, Jo-Anne Gottfriedson, of Kamloops in the Province of British Columbia, SWEAR THAT:

1. I am a member of the Tk'emlúps te Secwépemc ("TteS") Indian Band and as such have personal knowledge of the facts and matters hereafter deposed to save and except those which are stated to be based on information and belief and where so stated I verily believe the same to be true, except where stated to be for another purpose.

2. I am the Day Scholar Coordinator (“DS Coordinator”) for TteS and co-chair of the Executive Council, a committee created by TteS and Sechelt Indian Band, to administer the Day School class action for TteS and Sechelt.

A. Satisfaction of the Court Approved Notice of Certification

3. A copy of the Notice of Certification (the “Notice”) was published in the Globe & Mail on October 28, 2015. Appended hereto and marked as **Exhibit “A”** to this my affidavit is a copy of the Notice as it appeared in the Globe & Mail.
4. A copy of the Notice was published in the First Nations Drum on November 13, 2015. Appended hereto and marked as **Exhibit “B”** to this my affidavit is a copy of the Notice as it appeared in the First Nations Drum.
5. A copy of the Notice was additionally published in various newspapers and magazines. Appended hereto and marked as **Exhibit “C”** to this my affidavit is a list of the media outlets and date of publication of the Notice.
6. A copy of the Notice was posted on www.justicefordayscholars.com, and remains accessible on this website.
7. With the assistance of the Assembly of First Nations, we provided a copy of the Notice via broadcast fax to all First Nations in the country. Additionally, the Notice was posted on the Assembly of First Nations’ website, sent to each of the Regional Chiefs and the public subscription e-list. Appended hereto and marked as **Exhibit “D”** is an email from the Assembly of First Nations confirming distribution of the Notice nationally.
8. Appended hereto and marked as **Exhibit “E”** to this my affidavit is a list of the communities and/or individuals that either myself, hereditary chief Garry Feschuk, or our legal counsel presented with information on the class action.

- 9. As of at least September 25, 2015, the Notice was posted on the website of Aboriginal Affairs and Northern Development Canada. Appended hereto and marked as **Exhibit "F"** to this my affidavit is a letter dated September 28, 2015, from the Defendant's legal counsel, Michael Doherty, confirming that the Notice was posted on their website.
- 10. National media releases were periodically published, posted on our website and circulated by the Assembly of First Nations, the Federation of Saskatchewan Indians, the First Nations Summit, and the Union of BC Chiefs. Appended hereto and marked as **Exhibit "G"** to this my affidavit are copies of these media releases.

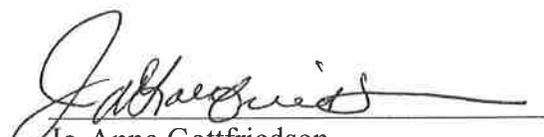
B. Opt-In Forms Received

- 11. Ninety six (96) Bands have opted in to this class proceeding within the opt in period said to have ended February 29, 2016. Appended hereto and marked as **Exhibit "H"** to this my affidavit is a copy of the list of Bands who have opted in to the Band Class.
- 12. Two Bands purported to opt in after February 29, 2016. The Cree Nation of Nemaska and Sandy Bay Ojibway First Nation both sent opt in forms on March 1, 2016.

C. Opt-Out Forms Received

- 13. We received two (2) opt out forms. Appended hereto and marked as **Exhibit "I"** to this my affidavit is a copy of the list of individuals who have opted out.

SWORN BEFORE ME at the City of)
 Vancouver, in the Province of British)
 Columbia, this 3rd day)
 of June, 2016.)
 _____)
 A Commissioner for taking Affidavits)
 within British Columbia)



 Jo-Anne Gottfriedson

KARENNA L. WILLIAMS
PETER GRANT & ASSOCIATES
 Barristers and Solicitors
 900 - 777 Hornby Street
 Vancouver, B.C. V6Z 1S4

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF #2 Jo Anne Gottfriedson
SWORN BEFORE ME AT Vancouver, B.C.
THIS 3RD DAY OF June, 2012

LDH

A Commissioner for taking Affidavits within
British Columbia

INTERNATIONAL

U.S. BUDGET

GOP, White House agree on debt extension

The accord would extend U.S. borrowing authority until 2017 and prevent a default

JAMES BOWLEY
ERIK WASSON
TERRENCE DOPP

U.S. President Barack Obama and top lawmakers from both parties reached a tentative budget agreement that would avert a U.S. debt default and reduce chances of a government shutdown, easing years of political friction over fiscal policy in Washington.

It's going to pass with a bipartisan majority and I'll be really happy," U.S. House Speaker John Boehner, who is set to give up his gavel this week to the House ways and means committee chairman Paul Ryan, told reporters Tuesday. The House plans to vote Wednesday, a day before the Speaker election, Mr. Boehner said.

The accord also praised by Democratic leaders, would extend U.S. borrowing authority until March 2017, and prevent a

default as soon as next week. It would include a two-year deal on defence and non-defence spending levels, with details to be worked out later before current funds expire Dec. 11.

The administration embraced the deal, saying it would give U.S. President Barack Obama almost 90 per cent of the additional spending he asked for in his budget. Jason Furman, chairman of the White House Council of Economic Advisers, said the agreement achieves the administration's goals while avoiding cuts to Social Security and Medicare.

Bloomberg News

TICKER

Walgreens closes on Rite Aid deal

Walgreens Boots Alliance Inc., the largest U.S. drugstore chain, is nearing a deal to buy smaller peer Rite Aid Corp. for more than \$10-billion (U.S.), people familiar with the matter said on Tuesday.

The deal would follow CVS Health Corp.'s \$10-billion acquisition of Omnicare Inc. in August. It would further consolidate the U.S. drugstore sector and attract activist scrutiny.

Walgreens and Rite Aid could announce an agreement as early as Wednesday, the people said, requesting anonymity because the negotiations are confidential. - Reuters

Pfizer beats expectations

Pfizer Inc., finally turning the corner after years of generic competition that slashed revenue from the drug maker's former blockbuster, easily beat Wall Street expectations for the third quarter and raised its 2015 earnings forecast on Tuesday, the second time in barely two months. The world's second-largest drug maker benefited from surging sales for its newest drugs and key products that are slightly older. These include Eliquis for preventing heart attacks and strokes, cancer drug Ibrance, rheumatoid arthritis drug Xeljanz and Prevnar 13, a vaccine against pneumonia and ear and other infections. - Associated Press

Deliveries drive Embraer results

Embraer SA rose the most in seven weeks after delivering more aircraft last quarter and reaffirming its financial targets as the Brazilian plane maker develops a new generation of regional jetliners. The 21 commercial planes and 30 business jets handed over to buyers in the third quarter topped the tally of 31 from a year earlier, the Sao Jose dos Campos, Brazil-based company said in its earnings report Tuesday. Embraer's results marked a bright spot for Brazil, which is enduring its longest recession since the Great Depression. Embraer shares climbed 4.6 per cent, the most since Sept. 7, to 29.81 reais in Sao Paulo. - Bloomberg News

DuPont earnings drop in third quarter

E.L. du Pont de Nemours & Co. said weak agricultural sales, a strong dollar and continued weakness in emerging markets contributed to a sharp decrease in third-quarter earnings. "Amid the current challenging macro environment, our priority is to aggressively manage what is within our control, including taking a fresh look at DuPont's cost structure and capital allocation strategy to identify ways to further improve shareholder return," interim chairman and chief executive officer Ed Breen said. Mr. Breen took over after the sudden resignation of CEO Ellen Kullman earlier this month. - Associated Press

CLASSIFIED

TO PLACE AN AD CALL 1-800-387-9022
EMAIL: ADVERTISING@GLOBEANDMAIL.COM

LEGALS

NOTICE (SURVIVOR AND DESCENDENT CLASSES)

To Anyone Who Attended an Indian Residential School or is the Child of Someone Who Did

A Class Action Lawsuit May Affect Your Rights.

A court authorized this notice. You are not being sued.

You could be affected by a class action lawsuit involving the Kamloops and Sechelt Indian Residential Schools and additional Indian Residential Schools (the "Schools") (see attached list at Appendix 'A' for the additional Schools).

A Court has approved the lawsuit as a class action that includes anyone who attended at any Indian Residential School, for any times they attended as a "Day Scholar" (i.e. non-resident student), as well as their children and potentially the bands within communities that contained a Residential School. The Plaintiffs in the class action are suing the Government of Canada ("Canada") claiming that it is responsible for damages arising from attendance at the Schools. Attached to this notice is a copy of the June 18, 2015 Court Order of Justice Harrington. This Order, and all other decisions related to this lawsuit can also be found on the Federal Court website at: <http://fedcourts.ca/>

This claim is different from the Residential Schools Class Action Settlement entered into by Canada. In that settlement, only those who lived at an Indian Residential School were compensated for the fact of having gone to the Schools. This claim is for compensation relating to time spent attending, but not living in, the Schools.

The Court has not decided whether Canada did anything unlawful, and the case is currently planned to go to a trial. There is no money available now and no guarantee there will be. However, your rights are affected, and you have a choice to make now.

YOUR OPTIONS AT THIS STAGE

Do Nothing	Stay in this lawsuit. Await the outcome. Share in possible money and benefits. Give up certain rights. By doing nothing, you keep the possibility of getting money or other benefits that may come from a trial or settlement. But, you give up any rights to sue Canada, or any religious organizations, on your own about the same legal claims in this lawsuit.
Remove Yourself (Opt Out)	Get out of this lawsuit. Get no money or benefits from it. Keep rights. If you ask to be removed (opt-out) and money or benefits are later awarded, you won't share in that money or benefits. But, you keep any rights to sue Canada, or any religious organizations, on your own about the same legal claims in this lawsuit.

Lawyers must prove the claims against Canada at a trial. If money or benefits are obtained you will be notified about how to ask for a share. Your options are explained in this notice. To be removed, you must act by November 30, 2015.

QUESTIONS? CALL TOLL-FREE 1-844-558-5538 OR VISIT WWW.JUSTICEFORDAYSCHOLARS.COM

BUSINESS TO BUSINESS

BUSINESS TO BUSINESS
Tired of Bay St. legal/compliance fees for your small/midsize corp? Call Eugene Hrelvay, JD CPA @ (416)508-3472

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MEDIA

Twitter shares fall with user growth slower than expected

Twitter Inc. shares fell 12 per cent as the microblogging company gave a disappointing revenue forecast and reported slower user growth than expected, a sign that more time is needed for a turnaround. Twitter on Tuesday forecast fourth-quarter revenue within a range of \$695-million to \$710-million (U.S.), well below analysts' average estimate of \$737.7-million, according to Thomson Reuters I/B/E/S.

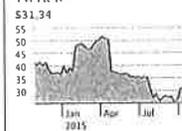
Twitter had 320 million average active monthly users in the third quarter, up from 316 million in the prior quarter, missing analysts' expectations of 324 million.

This is Twitter's first earnings report with Jack Dorsey as its permanent chief executive. As interim CEO in the prior quarter, he delivered a downbeat view of the company's earnings and criticized its product lineup.

"People that were making a huge bet on Dorsey's shake-up things up within five months of being there may be disappointed," said Andrew Chanin, CEO of PureFunds and a Twitter shareholder. "With a company like Twitter, there's a huge risk to making any big changes."

Since becoming permanent CEO earlier this month, Mr. Dorsey has launched Moments, which showcases Twitter's best

TWITTER



tweets and content, laid off more than 300 employees, given back a third of his stock, about 1 per cent, to employees, and hired former Google Inc. executive Omid Kordestani as executive chairman.

The company posted better-than-expected quarterly revenue and adjusted profit.

Revenue rose 57.6 per cent to \$69.2-million in the quarter. Net loss narrowed to \$1.7-million, or 20 cents a share, in the quarter ended Sept. 30 from \$175.5-million, or 29 cents a share, a year earlier.

Excluding items, it earned 10 cents a share. Analysts had expected a profit of \$59.4-million, according to Thomson Reuters I/B/E/S.

Reuters

ENERGY

Oil flowing to Quebec to leave an Oklahoma pipeline empty

DAN MURTAUGH

A pipeline to the largest crude-oil hubs in the United States is about to find itself in an unfamiliar position: not full.

One of the main pipelines that carries crude to Cushing, Okla., will run at less than capacity in December for the first time in nearly 2 1/2 years. The drop in supply coincides with the opening of a pipeline to Quebec, giving shippers the option of diverting some oil from the middle of the United States.

"There will be less light sweet crude available to make its way to Cushing," said Andy Lipow, president of Lipow Oil Associates LLC, in Houston. "There's going to be some significant rebalancing of where oil flows in North America."

Shippers on Enbridge Inc.'s Spearhead pipeline only asked to transport about 165,000 barrels of crude a day in December, below the system's capacity to move about 193,000 to Cushing from Flanagan, Ill. It's the first

time shippers haven't filled the line since August 2013. Some months, shippers request to times more space than is available.

The drop in Spearhead interest comes as Enbridge plans to start another pipeline carrying 300,000 barrels of crude a day from the U.S. Midwest to Montreal by the end of 2015. Suncor Energy Inc. and Valero Energy Corp. have said they plan to use the line to supply refineries in Quebec with crude from Western Canada and the U.S. Midwest.

Crude in Eastern Canada competes with the global benchmark, Brent, which is priced a few dollars higher than West Texas Intermediate in Cushing.

Enbridge next month will also start filling its Southern Access pipeline, which carries crude within Illinois from Flanagan to Patoka, according to a U.S. regulatory filing. The company expects to put the 270-kilometre-long spur in service in December.

Bloomberg News

CIMA CONFERENCE ON TECHNOLOGY AND THE FUTURE OF BUSINESS

CGMA

Wednesday, 28 October 2015
1:30 p.m. to 5:30 p.m.

Guests of Honor:
Andrew Miskin, FCMA, CGMA, Deputy President of The Chartered Institute of Management Accountants
Arleen Thomas, CPA, CGMA, Senior Vice President, American Institute of Certified Public Accountants

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Chartered Institute of Management Accountants **CIMA**

Keynote speaker:
Michael Hyatt
Tech Entrepreneur, CBC Dragon,
Recipient of Canada's Top 40 under 40 Award

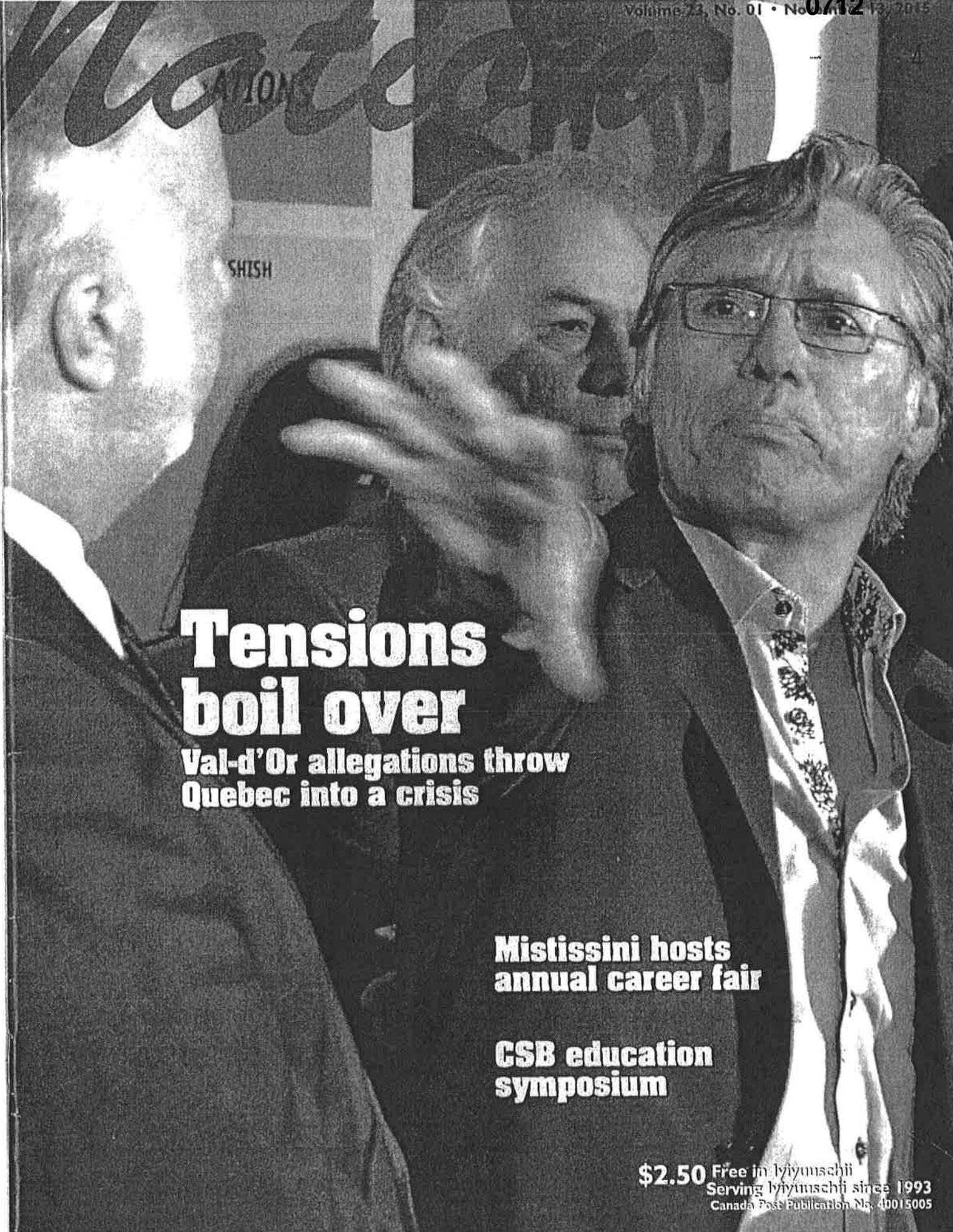
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THIS 31st DAY OF June, 2016



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Tensions boil over

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For years the CBHSSJB only provided information on how to eat right and live well through diet and exercise. However, the number of cases of diabetes in Eeyou Istchee continued to grow.

With this in mind, Awashish said that Public Health is working on a new approach to fight diabetes, which is to get the people to come up with their own plan and then have the Health Board facilitate it.

"We are getting back to basics; we want people to tell us what they want and we will do that," said Awashish. "We are asking the com-

munities to set up sub-committees and with this new health committee we will provide the training. In some cases, the training has already been done. Because of the turnover of personnel and people in the communities, every time there is a new leader we have to do another orientation – we are always going back and forth."

Public Health's Paul Linton made a presentation on the latest diabetes numbers for Eeyou Istchee, revealing both good and bad news.

"We now have one in every four Crees who is being diagnosed as dia-

betic. The tricky thing about this is that if you look at information from the World Health Organization, the Canadian Diabetes Association, the American Diabetes Association and even those in Europe, they all say that for every case that is diagnosed, there is another one that you don't know about and so that puts us up to 50% according to what they are saying," said Linton.

He said that the good news is that the number of cases being diagnosed per year has pretty much stabilized to an average of about 136 annually.

NOTICE (SURVIVOR AND DESCENDENT CLASSES)

To Anyone Who Attended an Indian Residential School or is the Child of Someone Who Did

A Class Action Lawsuit May Affect Your Rights. A court authorized this notice. You are not being sued.

- You could be affected by a class action lawsuit involving the Kamloops and Sechelt Indian Residential Schools and additional Indian Residential Schools (the "Schools") (see attached list at Appendix 'A' for the additional Schools).
- A Court has approved the lawsuit as a class action that includes anyone who attended at any Indian Residential School, for any times they attended as a "Day Scholar" (i.e. non-resident student), as well as their children and potentially the bands within communities that contained a Residential School. The Plaintiffs in the class action are suing the Government of Canada ("Canada") claiming that it is responsible for damages arising from attendance at the Schools. Attached to this Notice is a copy of the June 18, 2015 Court Order of Justice Harrington. This Order, and all other decisions related to this lawsuit can also be found on the Federal Court website at:
www.decisions.fct-cf.gc.ca/fc-cf/en/d/s/index.do?cont=gotfriedson.
- This claim is different from the Residential Schools Class Action Settlement entered into by Canada. In that settlement, only those who lived at an Indian Residential School were compensated for the fact of having gone to the Schools. This claim is for compensation relating to time spent attending, but not living in, the Schools.
- The Court has not decided whether Canada did anything unlawful, and the case is currently planned to go to a trial. There is no money available now and no guarantee there will be. However, your rights are affected, and you have a choice to make now.

YOUR OPTIONS AT THIS STAGE

<p>Do Nothing</p>	<p>Stay in this lawsuit. Await the outcome. Share in possible money and benefits. Give up certain rights. By doing nothing, you keep the possibility of getting money or other benefits that may come from a trial or settlement. But, you give up any rights to sue Canada, or any religious organizations, on your own about the same legal claims in this lawsuit.</p>
<p>Remove Yourself (Opt Out)</p>	<p>Get out of this lawsuit. Get no money or benefits from it. Keep rights. If you ask to be removed (opt out) and money or benefits are later awarded, you won't share in that money or benefits. But, you keep any rights to sue Canada, or any religious organization, on your own about the same legal claims in this lawsuit.</p>

- Lawyers must prove the claims against Canada at a trial. If money or benefits are obtained you will be notified about how to ask for a share.
- Your options are explained in this notice. To be removed, you must act by **November 30, 2015**.

QUESTIONS? CALL TOLL-FREE 1-844-558-5538 OR VISIT WWW.JUSTICEFORDAYSCHOOLARS.COM

Among Eeyouch, rates are higher in women than in men: 29.2% vs. 20.2%. This is the inverse of the rest of Quebec and Canada, where men have a higher diabetes rate than women.

Linton addressed this issue in his presentation, discussing what may be behind these numbers. Rates in women may be higher because of complications during pregnancy, gaining more weight when they take standard tests for diabetes. Men, he said, may be "too chicken to get tested."

"Even when we look at those who go for blood tests, it is almost

always women and never men and so in any given month you will have 50 women who will get tested and two men. Why we ask? Where are the other 48 men who should be getting tested? We are trying to make changes. One of them is we are encouraging men to go with their pregnant partners for their gestational diabetes test and do a sugar test at the same time," explained Linton.

The idea behind this is that knowing about your health is the best way to move forward in starting a family. Until the cycle is broken, Eeyouch will contin-

ue to have a diabetes problem, Linton said.

"We have to ask the question, is this just genetics? The answer is yes and no. Yes, there is a genetic disposition but most of your lifestyle like what you cook and what you eat and the amount of activity that you do are all things that you have learned from your parents and your grandparents. So, if your parents and grandparents are diabetic and you continue with the same lifestyle and eating habits, chances are you will end up diabetic too!"

AVIS (GROUPES DES SURVIVANTS ET DES DESCENDANTS)

À toute personne ayant fréquenté un pensionnat indien ou étant l'enfant de quelqu'un qui a fréquenté un pensionnat indien

Un recours collectif peut affecter vos droits. *Un tribunal a autorisé cet avis. Vous n'êtes pas poursuivi en justice.*

- Vous pourriez être affecté par une poursuite en recours collectif impliquant les pensionnats indiens de Kamloops et de Sechielt et d'autres pensionnats indiens (les pensionnats) (voir la liste ci-jointe des autres pensionnats à l'Annexe A).
- Un tribunal a autorisé un recours collectif dans cette poursuite pour toute personne ayant fréquenté un pensionnat indien en tant qu'externe, c'est-à-dire en tant qu'élève qui ne vivait pas dans un pensionnat, et également pour leurs enfants et potentiellement les bandes sur les terres desquelles se trouvait un pensionnat. Dans le recours collectif, les demandeurs poursuivent le gouvernement du Canada (le Canada), affirmant qu'il est responsable des préjudices résultant de la fréquentation des pensionnats. Une copie de l'ordonnance du juge Harrington est jointe à cet avis. Cette ordonnance et toutes les autres décisions ayant trait à cette poursuite peuvent être consultées sur le site Web de la Cour fédérale à : <http://decisions.fct-cf.gc.ca/fc-cf/fr/d/s/index.do?cont=gottfriedson>.
- Cette demande est différente de la Convention de règlement relative aux pensionnats indiens signée par le Canada. Dans cette Convention de règlement, seuls ceux et celles qui avaient vécu dans un pensionnat ont reçu une compensation pour avoir fréquenté un pensionnat. Cette demande d'indemnisation couvre les périodes où des élèves fréquentaient un pensionnat, mais où ils ne vivaient pas dans le pensionnat.
- La Cour n'a pas décidé si le Canada a agi de manière illégale, et l'affaire sera jugée plus tard. Aucune somme d'argent n'est disponible maintenant, et il n'y a aucune garantie qu'une somme d'argent sera disponible plus tard. Cependant, vos droits sont affectés, et vous devez faire un choix maintenant.

VOS OPTIONS À CE STADE

<p>Ne faites rien</p>	<p>Continuez à faire partie de cette poursuite. Attendez le résultat. Partagez l'argent et les avantages possibles. Renoncez à certains droits. En ne faisant rien, vous conservez la possibilité de recevoir un montant d'argent ou d'autres avantages qui pourraient découler d'un procès ou d'un règlement. Mais vous renoncez à vos droits de poursuivre vous-même en Justice le Canada ou tout organisme religieux sur les mêmes revendications juridiques que celles présentées dans cette action en Justice.</p>
<p>Retirez-vous de la poursuite (option de retrait)</p>	<p>Retirez-vous de cette poursuite. Ne recevez aucun montant d'argent ou avantages qui pourraient en découler. Conservez vos droits. Si vous demandez à être exclu de la poursuite, et si plus tard un montant d'argent ou certains avantages sont accordés, vous n'aurez pas droit à cet argent ou à ces avantages. Mais vous conservez vos droits de poursuivre vous-même en Justice le Canada ou tout organisme religieux sur les mêmes revendications juridiques que celles présentées dans cette action en Justice.</p>

- Les avocats doivent prouver les allégations portées contre le Canada au cours d'un procès. Si un montant d'argent ou des avantages en découlent, vous serez informé de la procédure à suivre pour en bénéficier.
- Vos options sont expliquées dans cet avis. Pour vous retirer de la poursuite, vous devez agir avant le **30 novembre 2015**.

QUESTIONS? APPELEZ SANS FRAIS LE 1-844-558-5538 OU CONSULTEZ LE SITE WWW.JUSTICEFORDAYSCHOLARS.COM

THIS IS EXHIBIT " C "REFERRED TO IN THE
AFFIDAVIT OF #2 Jo-Anne Gottfriedson
SWORN BEFORE ME AT Vancouver, B.C.
THIS 3RD DAY OF June, 2016

V. Kida 3

A Commissioner for taking Affidavits within
British Columbia

PUBLICATION COSTS FOR THE OPT-OUT NOTIFICATONS – FOR YOUR CONSIDERATION

Publication Outlet	Ad size:	Issue: One weekday ad	Optional to publish on weekend cost	Cost to publish ad:	
Toronto Star	3x5	October 27, 2015		n/a	
Globe & Mail	2col x 108agate	October 28, 2015		n/a	
The Vancouver Sun	3x5	October 26, 2015		n/a	
Newspaper/Magazines	Options:	Issues:			
Native Publication Outlets	Ad size		Optional to publish longer	n/a	
First Nations Drum	5x7.5	October issue			
First Nations Drum	Published article	October issue	Opt-Out deadline & update on DS process		
The Nation	1/2 page	English		n/a	
		November issue			
The Nation	Will run in Francophone	French language uses double space	So therefore we can double the cost	n/a	
		November issue			

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THIS 3rd DAY OF June, 2016.

LDKMS

A Commissioner for taking Affidavits within
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Karenna Williams

From: Karen Campbell <kcampbell@afn.ca>
Sent: Wednesday, September 16, 2015 11:53 AM
To: Jo-Anne Gottfriedson
Cc: Jenna Young; Jon Thompson
Subject: Information you requested

Hello Jo-Anne, here is the information you requested when we spoke last week.

The opt-in and opt-out notices were sent to our Chiefs email list (which has 226 subscribers) and our public list (which has 1079 subscribers) on August 31, 2015. When people subscribe to these lists they do not provide consent for their names or addresses to be shared externally.

The notices were posted on our website on August 31, 2015. I am also going to ask that the powerpoint you provided be posted for additional information. The link to that posting is here:

<http://www.afn.ca/index.php/en/news-media/current-issues/8-31-15-attention-day-scholars-descendants-and-first-nations>

The notices were also faxed this morning to all First Nations by our office.

You had asked for national media contacts and I have copied Jenna Young Castro, AFN communications officer on this message so you can speak with her directly about what you require.

Please let me know if you have any questions.

Karen

Karen Campbell

Director, Research and Policy Coordination
Assembly of First Nations

ph: (613) 241-6789 x. 263
fax: (613) 241-5808

Toll-free: 1-866-869-6789

55 Metcalfe Ave., Suite 1600
Ottawa, ON K1P 6L5



Please print this email only when necessary.

THIS IS EXHIBIT " E "REFERRED TO IN THE
AFFIDAVIT OF #2 Jo-Anne Gottfriedson
SWORN BEFORE ME AT Vancouver, BC
THIS 30 DAY OF June, 2016.

1/2/16

A Commissioner for taking Affidavits within
British Columbia



TteS -SIB Certified Day Scholar Presentations

DATE	Nation	Contact	Address
June 4/15	TRC	Denis Guertin	TRC-Ottawa
June 4/15	Member of Parliament	Hon. Carolyn Bennett	613-995-9666
June 4/15	NDP CRITIC	Romeo Saganish	819-824-2942
June 10/15	UBCIC	Maureen Grant 604-684-0231	Floor - 342 Water Street, Vancouver
June 25/15	BC AFN Regional	Jody Wilson Raybould	
July 9/15	AFN NATIONAL ASSEMBLY	Montreal - Bobbi Herriea	613-241-6789
July 10/15	Chief Real McKenzie /Billy A-Ted Quewezance	Montreal - Bobbi Herriea	"
June 25/15	Nisga'a Lisims	Reginald Percival	250-633-2652
July 14/15	Ttes Nation	Kamloops	Chief Shane Gottfreidson
July 15/15	Squamish Nation	Deb Baker	604-789-4765
Sept 3/15	Nazko Nation	Chief Stuart Alec	205-992-9085
Sept 3/15	Williams Lake Indian Band	Rick Gilbert	
Sept 28/15	SNTC	Chief Wayne Christain	778-471-8200
Sept 9/15	Mikmaq Shubenacadie	Chief Rufus Copage	902-758-2049
Sept 28/15	Summitt		
Sept 9/15	Carcross First Nation	Ruth Massie	867-393-9200
Sept 15/15	NUU-CHAH-NULTH	Garry Dawson	250-724-3939
Sept 16/15	UBCIC	Musqueam Nation	
Sept 25/15	YellowKnife	Chief Edward Singers	867-873-4307
Sept 26/15	Lower Nicola	Chief Harvey McLeod	
Nov-10-15	Cat Lake First Nation	Chief Russell Wesley	807-347-2100
	Piikani Nation	Chief Stanley Grier	rwesley@catlake.ca
Oct 7/15	Saddle Lake Ab	Eric Large	780-614-0064
Oct 7/15	Good Fish Ab	Bernedene Koluk	780-573-6734
Oct 8/15	Treaty 7	Leonard Bastine	403-297-3450
Oct 8/15	Edmonton Ab	Harvey Youngchief	780-645-4288
Oct 14/15	First Nations Summit		



TteS -SIB Certified Day Scholar Presentations

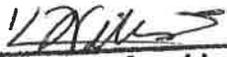
DATE	Nation	Contact	Address
Oct 15/15	Squamish Nation	Deb Baker	604-789-4765
Oct 17/15	Chipewen of the Thames	Brend Young	byoung@cottfn.com
Oct 18/15	Shuswap Tribal Council	Chief Wayne Christain	kukpi7_christian@splatsin.ca
Oct 27/15	Canoe Lake-Butch Iron	Butch Iron	1-306-344-5165
Oct 29/15	Onion Lake -	Bernadene Harper	bernadene.harper@onionlakewellness.org
Oct 29/15	Ahatahkoop First Nations	Chief Larry Ahenkew	
Oct 29/15	Federation of Saskatchewan First Nations	Chief Dutch LeRat	306-665-1215
Sept 29/15	Senator Ted Quewezance	Cote First Nation	
Nov 2 /15	Alert Bay	Verna Ambers	VernaA@namgis.bc.ca
Nov 13/15	Onion Lake Sask	Bernadene Harper	bernadene.harper@onionlakewellness.org
Nov 20/15	Squamish Nation	Deb Baker	604-789-4765
Nov 25/15	Treaty 3	Delores Kelly	807-548-8446
Dec 7/15	Musqueam Indian Band	Faye Michel	fmitchell@musqueam.bc.ca
Dec 8/15	AFN	Karen Campbell	kcampbell@afn.ca
Dec 8/15	Romeo Saganish MP	Ana Collins	613-992-3030
Dec 8/15	Chippewans of Thames	Brenda Young	519-289-5555
Dec 10/15	Neskonlith First Nation	Chief Judy Wilson	250-679-3295
Jan 7/16	Regina Sask	Corrine Macnab	306-835-2937
Jan 11/16	Lethbridge Alberta	Jackie Red Crow	403-382-7278
Jan 25/16	Musqueam Indian Band		
Jan 5/16	Blood First Nations	Chief C Weasel Head	
Jan 4/16	Sisikia Zfirst Nations	Leonard Benstien	403-325-0539
Jan 4/16	Chief Bobby Cameron	FSIN	
Jan 6/16	Chief Robin Billy	Adams Lake First Nation	250-679-8841
Jan 8/16	Kahkewistahaw First Nation	Darci	306-696-3291
Jan 25/16	Sagkeeng First Nation	David Henerdson	204-909-2037



TteS -SIB Certified Day Scholar Presentations

DATE	Nation	Contact	Address
Jan 26/16	Cowessess First Nation	Allen DELORME	615-776-0733
Feb 9/16	Thunder Bay	Mzarthia Lui	807-622-1413
Feb 15/16	Chief Ryan Day	Bonaparte First Nations	250-457-9624
Feb 15/16	Simpimw First Nations	Chief Nanthan Mathew	250-672-9995
Feb 15/16	Steetcheten	Chief Ron Ignace	250-373-2493
Feb 15/16	Dehcho 1st Nation	Chief Greg Newly	excutiveassistant@dehcho.org
Feb 16/16	Kitamat First Nation	Councilor Brenda Duncan	250-639-9361
Feb 17/16	Chief Bill Erasmes	NWT AFN Reg Chief	780-298-6585
Feb 16/16	ulkatcho 1st nation	Chief Zach Parker	250-742-2090
Feb 22/16	Burrard First Nation TWN	Jen Thomas	604-354-2090
Feb 25/16	Chief Charlie Weasal Head	Blood First Nation	403-315-4711
Feb 25/16	Okanagan First Nations	Chief Byron Louis	
Feb 25/16	Chief Louie Pausbley	Fort Resoultion NWT	867-394-5407
Feb 26/16	Penticton Indian Band	B Louie	
Feb 26/16	APTN	Cheryl McKenzie	204-947-9331

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AFFIDAVIT OF # 2 To Anne Gottfriedson
SWORN BEFORE ME AT Vancouver B.C
THIS 3RD DAY OF June, 2016


A Commissioner for taking Affidavits within
British Columbia



British Columbia Regional Office
Public Safety Defence and Immigration
900 - 840 Howe Street
Vancouver, BC V6Z 2S9

Telephone: (604) 666-6057
Facsimile: (604) 666-2639

September 28, 2015

By E-mail

Peter Grant & Associates
Barristers & Solicitors
900 - 777 Hornby Street
Vancouver, BC V6Z 1S4

Attention: Peter R. Grant

Dear Sir:

Re: Gottfriedson, Chief Shane et al. v. HMTQ
Court No.: T-1542-12
Our File: 4382759

We write at this time to inform you that the Notices are now "live" on the website of Aboriginal Affairs and Northern Development Canada. The specific Notices can be found under the "What's New" section of the Reconciliation tab.

For your convenience we include the English and French hyperlinks.

<http://www.aadnc-aandc.gc.ca/eng/1443037172649/1443037220181>

<http://www.aadnc-aandc.gc.ca/fra/1443037172649/1443037220181>

Yours truly,

Michael P. Doherty
General Counsel

MD/lgr

cc: John Kingman Phillips

THIS IS EXHIBIT " G " REFERRED TO IN THE
AFFIDAVIT OF #2 To Anne Gottfriedson
SWORN BEFORE ME AT Vancouver, B.C
THIS 3RD DAY OF JUNE, 2016.



A Commissioner for taking Affidavits within
British Columbia



Tk'emlúps te Secwepemc



shíshálh

First Nations Bands across Canada are Opting in daily!

Momentum is building for the Day Scholars Class Proceeding. In addition to the original two Bands, twenty two other First Nations Bands have opted into the action and several more have committed to joining. The deadline for other First Nation Bands to opt in is February 29, 2016.

In 2012 Tk'emlúps te Secwépemc and shíshálh Indian Bands launched, the Day Scholars Class Action lawsuit which seeks compensation on behalf of all Aboriginal who attended an Indian Residential School, but who did not sleep there. The case also seeks declarations regarding Canada's role in the failure to protect Aboriginal language and culture, we are certified at three levels: Survivor, Descendent and Band Class. The day scholar class action is seeking compensation for the children of survivors, and the bands to which survivors belong.

Canada has, for several years now, recognized that the Indian Residential Schools had a profound impact not just on those who resided at the schools, but also on their communities and families. Until the new Liberal Government was elected Canada failed to recognition of "cultural genocide" Canada has refused to provide compensation for those who did not sleep at the schools. This lawsuit aims to rebalance that difference.

In addition to seek compensation for individuals who attended the Indian Residential Schools, an important part of the lawsuit is includes Indian Bands that were affected by the presence of an Indian Residential School on or near their lands. Individual Bands can decide whether or not they wish to opt-in, or be a part of the lawsuit. Only those Bands that opt in will be eligible for compensation if any is awarded by the Courts.

Chief Calvin Craigan stated “Nation to Nation standing together we can show the Canadian Government that they can no longer ignore the predicament of those who lost our sacred language and culture at the Government’s hands. Needless to say that is not just an isolated story of a few children in British Columbia, it is a national issue.”

Chief Fred Seymour “We thank the bands that have joined us already and we continue to encourage our follow nations to come on board to show strength, unity and a commitment to moving our day scholar class action forward. Now is the critical time to address the remaining legacy of the Residential Schools and their effects not just on people. Together we can speak to the Government with one voice, representing Aboriginal people from coast to coast to coast.”

Bands have until February 29, 2016 to decide if they wish to opt-in. Individual survivors, and their first descendents as of November 30, 2015 are now “in”.

For more information contact:

Jo-Anne Gottfriedson
Tk'emlúps te Secwépemc Day Scholar Coordinator
200-300 Chief Alex Thomas Way
Kamloops, British Columbia
Canada V2H1H1
Phone: 250-828-9788
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“Healing one heart, one mind and one Spirit at a time”



Tk'emlúps te Secwepemc



shíshálh

First Nations Bands across Canada have Opted In!

As of February 26, 2016 First Nations Bands across Canada have Opted into the Tk'emlúps Te Secwepemc and Sechelt First Nations Certified Day Scholar Class action. The deadline for other First Nation Bands to opt in is February 29, 2016.

The First Nations Bands across Canada share the common heart string of the loss of their sacred language and culture. More importantly the Bands who Opted in are committed to obtain justice on behalf of their nations members who attended an Indian Residential School, during the day and returned home daily.

The Ttes and SFN is certified as a class action at three levels: Survivor, Descendent and Band class.

Canada has recognized that the Indian Residential Schools had caused overwhelming impacts on the former students but failed to confirm the devastating impacts on Day Scholars due to the simple fact that the Day Scholar did not "sleep" at the residential school.

The First Nations who decided to fully support and who have opted into the Day Scholar Class action also share the TK'emlúps te Secwepemc and Sechelt First Nations directive to seek justice and compensation for their nation members. Only the bands that opted in are eligible for compensation that may come from settlement.

Chief Calvin Craigan, Sechelt First Nation stated "Nation building is strongly expressed from the kind caring nations who have decided to opt in with us. We are grateful for their support and we look forward to working with them for the betterment of all our nations. At this time we encourage other nations to join our justice journey the deadline is February 29, 2016.

Chief Fred Seymour , Tk'emlúps te Secwepemc stated: with leap year upon us we are very thankful for the first nations who jumped on board with us. We will continue to strive to heal our people at any cost. Let us stay united, strong and stand together for justice for our nations.

Bands have until February 29, 2016 to decide if they wish to opt-in. Individual survivors, and their first descendents as of November 30, 2015 are now "in".

For more information contact:

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"Healing one heart , one mind and one spirit at a time"



Tk'emlúps te Secwépemc



shíshálh Nation

Ttes and SIB Day Scholar Class Action

VANCOUVER- For Immediate Release

April 13, 2015 marks the opening day for a ground breaking hearing in the Federal Court of Canada on the rights of Aboriginal Canadians from coast to coast to coast.

His Honour, Justice Sean Harrington will start hearing arguments that day from lawyers for the Tk'emlúps te Secwépemc and shíshálh Indian Bands. The two bands are seeking certification of a class proceeding on behalf of all Aboriginal children who attended Indian Residential Schools as day scholars – returning home every night to their families.

Since 1989, the stories of abuse and mistreatment of students who attended Indian Residential Schools have begun to come to light. The widespread harm was recognized by the Canadian government and ultimately led to the Indian Residential Schools Settlement Agreement, an agreement that saw payment of compensation to those who had lived at Canada's Residential Schools across Canada.

But one group of students was never compensated under the agreement. That was the Day Scholars who attended alongside residential students, and returned home at the end of the day.

The proposed class action law suit seeks compensation for those Day Scholars, alleging that as students participating in classes and the social life of the Indian Residential Schools, these Day Scholars suffered the same loss of language and connection to culture as those who were resident at the schools. The suit alleges that these losses were an intentional aspect of Canada's education policy and caused serious and life-long harm to the survivors.

The hearing in April 2015, is a certification hearing. Justice Harrington will hear argument from the Bands' lawyers and Canada's lawyers in order to determine whether the two bands can represent all Canadian Aboriginal Day Scholars in a law suit against Canada. If the bands are successful the law suit will move to the next stage – the gathering of evidence in preparation for a trial. At trial the bands will present evidence to show that Canada both intended and caused the harm, or at a minimum did nothing to prevent the harm, that Day Scholars have suffered, and continue to suffer after their time at the Indian Residential Schools.

Chief Shane Gottfriedson stated “This is an important step in our fight for justice for those who suffered through being punished for speaking their language at the Indian Residential Schools, but were not recognized in the Indian Residential Schools Settlement. Success at this stage will mean we can start the real work of getting compensation and absolute wellness for the residential school survivors who have been left out.”

Chief Calvin Craigan stated “This has been a long fight it has taken us 3 years just to get to this stage. But it is a crucial battle to hold Canada responsible for how our people have been treated. The losses aren’t just to individuals, our bands have suffered as well, and we will keep working to ensure that all aboriginal Canadians receive a fair result out of this lawsuit.”

The hearing will be held at the Federal Court in Vancouver, and is scheduled to last for five days, finishing on Monday April 20. The court is not sitting on April 14, 2015. It is anticipated that Mr. Justice Harrington will reserve his judgment and issue reasons at some point during the summer.

Representatives of both bands will be present at the hearing on April 13, 2015 and available for interviews and questions.

For more information please contact:

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T’kemplups te Secwepemc
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Councilor Garry Feschuk
shishálh Nation
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“Healing one heart, one mind & one spirit at a time”



Tk'emlúps te Secwépemc



shíshálh Nation

VANCOUVER –APRIL 20 2015

For Immediate Release

The theme of reconciliation flowed through the closing submissions of lawyers for the Tk'emlúps and Sechelt First Nations at the recent Federal Court of Canada hearing to determine whether or not their class action was to be certified.

“They asked for a hand, and got a fist,” submitted Karena Williams to the Court, responding to earlier comments of government lawyers who had argued that Indian Residential Schools came about in response to First Nation’s peoples own requests for education.

The two bands are now awaiting the decision of Justice Sean Harrington of the Federal Court who is expected to rule within the next few months on whether to allow their lawsuit to continue as a class action. The bands are seeking to represent all Aboriginal persons who attended Indian Residential Schools as day students (leaving the school property at night) for compensation for their losses of language and culture.

The bands launched their lawsuit almost 3 years ago, by issuing a statement of claim in which they allege that Canada was responsible for ensuring the preservation of Aboriginal languages and cultures, but through their own policy has failed completely in that duty. The bands now seek compensation for all those who lost their birthright through day to day attendance at the Indian Residential Schools.

If certification is successful, the lawsuit will move to the evidentiary stage, where both Canada and the bands will produce evidence relating to day scholars who attended the Indian Residential Schools and the treatment those students received. If there is no negotiated settlement of the suit, the matter would then move to trial.

The certification seeks to extend the lawsuit to cover all Aboriginal people who attended an Indian Residential School recognized in the Settlement Agreement anywhere in Canada, who attended but did not reside at the school. The lawsuit also proposes to seek compensation for the descendants of those people.

“Successful certification of this lawsuit is an important step towards reconciliation between our peoples and the Canadian Government,” says Chief Shane Gottfriedson. “Canada needs to understand that an apology is needed for all Aboriginal people, not just those who were residents at the Indian Residential Schools. These schools affected our entire communities and this lawsuit will help start the healing for those who felt left out by the Government’s actions to date.”

“This reconciliation needs to happen now. Our people are dying, and the legacy of the Indian Residential Schools is still with us,” says Chief Calvin Craigan. “We hope that the court comes to a swift decision and realizes that certification of this lawsuit needs to happen now, so that we can move forward with Canada to put this legacy behind us once and for all and help rebuild the communities that have been destroyed by Canada’s actions.”

The hearing concluded on Thursday April 16th, 2015. Justice Harrington reserved his judgment and can be expected to render a decision sometime before the end of the year.

Healing one heart, one mind & one spirit at a time!

For more information please contact:

Chief Shane Gottfriedson	250-314-0797
Elected Council Member Gary Feschuk	604-230-3415
Jo-Anne Gottfriedson Coordinator	250-318-5628



Tk'emlúps te Secwépemc

(Kamloops Indian Band)



shíshálh

VANCOUVER: For Immediate Release

Momentum is building for the Day Scholars Class Proceeding. In addition to the original two Bands, three others have already opted into the action and several more have committed to joining. This despite the deadline to opt in being February 29, 2016.

Launched in 2012 by the Tk'emlúps te Secwépemc and shíshálh Indian Bands, the Day Scholars Class Action lawsuit seeks compensation on behalf of all Aboriginal Canadians who attended an Indian Residential School, but who did not sleep there. The case also seeks declarations regarding Canada's role in the failure to protect Aboriginal language and culture, and looks for compensation for the children of survivors, and the bands to which survivors belong.

Canada has, for several years now, recognized that the Indian Residential Schools had a profound impact not just on those who resided at the schools, but also on their communities and families. But for all its recognition of a 'cultural genocide' Canada has refused to provide compensation for those who did not sleep at the schools. This lawsuit aims to rebalance that difference.

In addition to seeking compensation for individuals who attended the Indian Residential Schools, an important part of the lawsuit is including Indian Bands that were affected by the presence of an Indian Residential School on or near their lands. Individual Bands can decide whether or not they wish to opt-in, or be a part of the lawsuit. Only those Bands that opt in will be eligible for compensation if any is awarded by the Courts.

Chief Shane Gottfriedson This much interest this soon after Certification of the lawsuit shows how important this action is for Aboriginal people across Canada. By standing together we can show the Canadian Government that it can no longer ignore the plight of those who lost their language and culture at the Government's hands. This is not just an isolated story of a few children in British Columbia, it is a national issue."

Hereditary Chief Garry Feschuk “We thank the bands that have joined already and encourage those remaining to come on board to show strength, unity and a commitment to moving forward. It is time to address the remaining legacy of the Residential Schools and their effects not just on residents, but on entire communities. Together we can speak to the Government with one voice, representing Aboriginal people from coast to coast to coast.”

Bands have until February 29, 2016 to decide if they wish to opt-in. Individual survivors, Aboriginals who attended the Indian Residential Schools, but did not spend the night there, can opt out of the lawsuit if they wish before November 30, 2015.

For more information please call:

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Hereditary Chief Garry Feschuk
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Fax: 604-685-0244

www. Justicefordayscholars.com
toll free : 1-844-558-5538

“Healing one heart, one mind & one spirit at a time”

THIS IS EXHIBIT " H "REFERRED TO IN THE
AFFIDAVIT OF #2 To Anne Gottfriedson
SWORN BEFORE ME AT Vancouver B.C.
THIS 3rd DAY OF June, 2016.

V. Gillis

A Commissioner for taking Affidavits within
British Columbia

Band Class Opt-In List

	Date	Province	Band/First Nation
1.	February 29, 2016	NT	Deninu K'ue First Nation
2.	February 29, 2016	NT	Lutsel K'e Dene First Nation
3.	February 26, 2016	NT	Liidlii Kue First Nation
4.	February 26, 2016	NT	Deh Gah Got'ie First Nation
5.	January 20, 2016	NT	Smith's Landing First Nation
6.	February 26, 2016	NT	Nahanni Butte Dene Band
7.	February 29, 2016	NT	Deline First Nation
8.	February 29, 2016	NT	Katloodeche First Nation

9.	September 28, 2015	BC	Waywayseecappo First Nation
10.	October 28, 2015	BC	Williams Lake First Nation
11.	December 14, 2015	BC	Neskonlith Indian Band
12.	January 22, 2016	BC	Sliammon First Nation
13.	January 25, 2016	BC	Soowahlie Indian Band
14.	January 25, 2016	BC	Penelakut Tribe
15.	January 26, 2016	BC	Adams Lake Indian Band
16.	January 26, 2016	BC	Halalt First Nation
17.	February 1, 2016	BC	Homalco Indian Band

18.	February 17, 2016	BC	Musqueam Indian Band
19.	February 18, 2016	BC	Sts'ailes
20.	February 19, 2016	BC	Cowichan Tribes
21.	February 22, 2016	BC	Squamish Nation
22.	February 24, 2016	BC	Ulkatcho Indian Band
23.	February 24, 2016	BC	Skeetchestn Indian Band
24.	February 25, 2016	BC	Okanagan Indian Band
25.	February 25, 2016	BC	Bonaparte Indian Band
26.	February 25, 2016	BC	Simpco First Nation

27.	February 25, 2016	BC	Red Bluff Indian Band
28.	February 26, 2016	BC	Yekooche First Nation
29.	February 26, 2016	BC	Nadleh Whut'en Band
30.	February 26, 2016	BC	Stellat'en First Nation
31.	February 26, 2016	BC	Tseshah First Nation
32.	February 29, 2016	BC	Gitxaala Nation
33.	February 29, 2016	BC	Nakazdli Band
34.	February 29, 2016	BC	Tla-o-qui-aht First Nations
35.	February 29, 2016	BC	Leq'a:mel First Nation

36.	February 29, 2016	BC	Haisla Nation Council
37.	February 29, 2016	BC	T'Sou-ke First Nation
38.	February 29, 2016	BC	Nazko First Nation
39.	February 29, 2016	BC	Da'naxda'xw/Awaetlala Nation
40.	February 29, 2016	BC	Nisga'a Village of New Aiyansh
41.	February 29, 2016	BC	Tsleil-Waututh Nation
42.	February 29, 2016	BC	Chawathil First Nation
43.	February 24, 2016	AB	Siksika Nation
44.	October 30, 2015	AB	Saddle Lake Cree Nation

45.	November 6, 2015	AB	Piikani Nation
46.	February 25, 2016	AB	Ermineskin Tribe
47.	February 26, 2016	AB	Blood Tribe
48.	February 29, 2016	AB	Samson Cree Nation
49.	February 29, 2016	AB	Sturgeon Lake Cree Nation
50.	February 29, 2016	AB	Stoney First Nation
51.	February 29, 2016	AB	Louis Bull Tribe
52.	February 29, 2016	AB	Alexis Nakota Sioux Nation
53.	February 29, 2016	AB	Horse Lake First Nation
54.	February 29, 2016	AB	Whitefish Lake Band

55.	November 24, 2015	SK	Onion Lake
56.	January 21, 2016	SK	Cowessess First Nation #73
57.	January 28, 2016	SK	Kahkewistahaw First Nation
58.	February 23, 2016	SK	Keeseekoose First Nation
59.	February 26, 2016	SK	Key First Nation
60.	February 29, 2016	SK	Cote First Nation
61.	February 29, 2016	SK	Carry The Kettle First Nation
62.	February 29, 2016	SK	Lac La Ronge
63.	February 2, 2016	MB	Fort Alexander Indian Band (Sagkeeng)
64.	February 16, 2016	MB	Pine Creek First Nation
65.	February 23, 2016	MB	Norway House Cree Nation
66.	February 29, 2016	MB	Bloodvein River First Nation

67.	February 29, 2016	MB	St. Theresa Point First Nation
68.	February 29, 2016	MB	Roseau River Anishinabe First Nation
69.	February 29, 2016	MB	Long Plain First Nation
70.	February 29, 2016	MB	Swan Lake First Nation
71.	November 10, 2015	ON	Cat Lake First Nation
72.	February 23, 2016	ON	Aroland First Nation
73.	February 19, 2016	ON	Moose Cree First Nation
74.	February 26, 2016	ON	Naoatkamegwanning First Nation
75.	February 29, 2016	ON	Oneida Nation of the Thames
76.	February 29, 2016	ON	Alderville First Nation
77.	February 29, 2016	ON	Aamjiwnaang First Nation – Chippewas of Sarnia
78.	February 29, 2016	ON	Fort Albany First Nation

79.	February 29, 2016	ON	Naicatchewenin First Nation
80.	February 29, 2016	ON	Pikangikum First Nation
81.	February 29, 2016	ON	Grassy Narrows First Nation
82.	February 29, 2016	ON	MoCreebec Eeyoud Council of the Cree
83.	February 29, 2016	ON	Chippewas of The Thames First Nation
84.	February 29, 2016	ON	Ojibways of Ongaming
85.	February 12, 2016	QC	Innu Takuaikan Uashat mak Mani Utenam
86.	February 12, 2016	QC	Cree Nation of Chisasibi
87.	February 23, 2016	QC	Cree Nation of Mistissini
88.	February 25, 2016	QC	Conseil Des Innu De Ekuanitshit
89.	February 23, 2016	QC	Cree Nation of Wemindji
90.	February 26, 2016	QC	Pekuakamiulnuatsh Takuhikan

91.	February 29, 2016	QC	Listuguj Mi'gmaq Gouvernement
92.	February 29, 2016	QC	Conseil des Ancinapek de Kitcisakik
93.	February 10, 2016	QC	Waskaganish First Nation
94.	February 26, 2016	NS	Sipekne'katik Band
95.	February 29, 2016	AB	Montana First Nation
96.	February 29, 2016	BC	Nuxalk First Nation

THIS IS EXHIBIT " I "REFERRED TO IN THE
AFFIDAVIT OF #2 Jo Anne Gottfriedson
SWORN BEFORE ME AT Vancouver, B.C.
THIS 3RD DAY OF June, 2016.

[Signature]

A Commissioner for taking Affidavits within
British Columbia

Opt-Out Record List for Individual Contacts**Day Scholar Survivor (SS) or Descendant Class Members (DC)**

Name	Date [year/month/day]	Phone Number(s)	Email	Band/First Nation	Class Membership	Opt-Out [Yes/No]
1 Ryan Jason Hunter	2015/11/29 & 30	403-721-2262 or 403-844-6419			Survivor	Yes
2. Sidney Beaverbones	2015-11-30	403-418-7772			Descendant	Yes

This is **Exhibit "C"** as referred to in the Affidavit of Jeanine Alphonse sworn before me on this 22nd day of February, 2023



Commissioner for Taking Affidavits (or as may be)

FLORA YU
(LSO NO.: 84025W)

Federal Court



Cour fédérale

Facsimile Transmittal Form / Formulaire d'acheminement par télécopieur

TO / DESTINATAIRE(S):

(Waddell Phillips)

1. Name / Nom : John Kingman Phillips | Diane H. Soroka | Peter Grant (Grant Huberman)

Facsimile / Télécopieur : 514-939-4014 Telephone / Téléphone : 604-685-0244

As requested / tel que demandé Left voice message / suite au message vocal

2. Name / NOM Michael P. Doherty | Nicholas Claridge, DOJ (Vancouver, BC)

Facsimile / Télécopieur : 604-666-2710 Telephone / Téléphone :

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3. Name / Nom : Jessica Labranche, Pape Salter Teillet LLP (Toronto, ON)

Facsimile / Télécopieur : 416-916-3726 Telephone / Téléphone :

As requested / tel que demandé 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

FROM / EXPÉDITEUR :

Sheila de Santos, Registry Officer

Telephone / Téléphone : (604) 666-3232

Facsimile / Télécopieur : (604) 666-8181

DATE: July 17, 2017

TIME / HEURE : 12:26 PM

Total no. of pages (including this page) / Nombre de pages (incluant cette page) : 10

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 Order / Judgment / Reasons of / Vous trouverez ci-joint une copie conforme de l'ordonnance / jugement / motifs de : The Honourable Mr. Justice Harrington

dated / date : July 17, 2017

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.

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: 20170717

Docket: T-1542-12

Vancouver, British Columbia, July 17, 2017

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

ORDER

UPON motion on behalf of the Dene Tha' First Nation to be added as a member of the band class;

UPON the plaintiff taking no position and the defendant consenting;

UPON reviewing the record, including the Order of June 18, 2015, and noting the applicant falls within the definition of the "Band Class", and that the Court retained discretion to extend the time for a Band to opt-in.

THIS COURT ORDERS:

1. The motion is granted.
2. Schedule A to the Order of May 24, 2017 is further amended to add the applicant
3. A further fresh as amended Schedule "A" is attached hereto.

"Sean Harrington"

Judge

**Schedule "A" to the Order of Justice Harrington
Band Class Opt-In List**

As amended July 17, 2017

	Date	Province	Band/First Nation
1.	February 29, 2016	NT	Deninu K'ue First Nation
2.	February 29, 2016	NT	Lutsel K'e Dene First Nation
3.	February 26, 2016	NT	Liidlii Kue First Nation
4.	February 26, 2016	NT	Deh Gah Got'ie First Nation
5.	January 20, 2016	NT	Smith's Landing First Nation
6.	February 26, 2016	NT	Nahanni Butte Dene Band
7.	February 29, 2016	NT	Deline Got'ine First Nation
8.	February 29, 2016	NT	Katloodeeche First Nation
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31.	February 26, 2016	BC	Tseshah First Nation
32.	February 29, 2016	BC	Gitxaala Nation
33.	February 29, 2016	BC	Nakazdli Band
34.	February 29, 2016	BC	Tla-o-qui-aht First Nations
35.	February 29, 2016	BC	Leq'a:mel First Nation
36.	February 29, 2016	BC	Haisla Nation Council
37.	February 29, 2016	BC	T'Sou-ke First Nation

38.	February 29, 2016	BC	Nazko First Nation
39.	February 29, 2016	BC	Da'naxda'xw/Awaetlala Nation
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53.	February 29, 2016	AB	Alexis Nakota Sioux Nation
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55.	February 29, 2016	AB	Whitefish Lake Band
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60.	February 23, 2016	SK	Keeseekoose First Nation
61.	February 26, 2016	SK	Key First Nation
62.	February 29, 2016	SK	Cote First Nation
63.	February 29, 2016	SK	Carry The Kettle First Nation
64.	February 29, 2016	SK	Lac La Ronge
65.	February 2, 2016	MB	Fort Alexander Indian Band (Sagkeeng)
66.	February 16, 2016	MB	Pine Creek First Nation

67.	February 23, 2016	MB	Norway House Cree Nation
68.	February 29, 2016	MB	Bloodvein River First Nation
69.	February 29, 2016	MB	St. Theresa Point First Nation
70.	February 29, 2016	MB	Roseau River Anishinabe First Nation
71.	February 29, 2016	MB	Long Plain First Nation
72.	February 29, 2016	MB	Swan Lake First Nation
73.	February 29, 2016	MB	Sandy Bay Ojibway First Nation
74.	November 10, 2015	ON	Cat Lake First Nation
75.	February 23, 2016	ON	Aroland First Nation
76.	February 19, 2016	ON	Moose Cree First Nation
77.	February 26, 2016	ON	Naotkamegwanning First Nation
78.	February 29, 2016	ON	Oneida Nation of the Thames
79.	February 29, 2016	ON	Alderville First Nation
80.	February 29, 2016	ON	Aamjiwnaang First Nation - Chippewas of Sarnia
81.	February 29, 2016	ON	Fort Albany First Nation
82.	February 29, 2016	ON	Naicatchewenin First Nation
83.	February 29, 2016	ON	Pikangikum First Nation
84.	February 29, 2016	ON	Grassy Narrows First Nation

85.	February 29, 2016	ON	MoCreebec Eeyoud Council of the Cree
86.	February 29, 2016	ON	Chippewas of The Thames First Nation
87.	February 29, 2016	ON	Ojibways of Ongaming
88.	February 12, 2016	QC	Innu Takuaikan Uashat mak Mani Utenam
89.	February 12, 2016	QC	Cree Nation of Chisasibi
90.	February 23, 2016	QC	Cree Nation of Mistissini
91.	February 25, 2016	QC	Conseil Des Innu De Ekuanitshit
92.	February 23, 2016	QC	Cree Nation of Wemindji
93.	February 26, 2016	QC	Pekuakamiulnuatsh Takuhikan
94.	February 29, 2016	QC	Listuguj Mi'gmaq Gouvernement
95.	February 29, 2016	QC	Conseil des Ancinapek de Kitcisakik
96.	February 10, 2016	QC	Waskaganish First Nation
97.	February 29, 2016	QC	Cree Nation of Nemaska
98.	February 26, 2016	NS	Sipekne'katik Band
99.	July 17, 2017	AB	Dene Tha' First Nation

This is **Exhibit "D"** as referred to in the Affidavit of Jeanine Alphonse sworn before me on this 22nd day of February, 2023



Commissioner for Taking Affidavits (or as may be)

FLORA YU
(LSO NO.: 84025W)

CLASS ACTIONS

Band Reparations Class Action —

This is a certified class action proceeding in Federal Court. The representative plaintiff Bands in the class action, Tk'emlúps te Secwépemc Indian Band and shishalh Band are suing the Government of Canada claiming that it is responsible for damages to Bands arising from Indian Residential Schools, and in particular, the collective harm suffered by Bands due to loss of language and culture. There is a proposed settlement agreement - please go to <https://bandreparations.ca/> for more information.

Jump To

[Summary](#)[Updates](#)[Documents](#)[Ask a question](#)

Case Overview

There is a proposed settlement in this lawsuit. For more information regarding the proposed agreement and the settlement approval hearing, go to <https://bandreparations.ca/>

The Band Reparations Class Action is a lawsuit against the Government of Canada. The lawsuit is about the collective harm suffered by Indigenous communities as a group as a result of Indian Residential Schools. The lawsuit says that the Government of Canada is responsible for damages to Indigenous communities caused by the Indian Residential School system, and in particular, the collective harm suffered by Indigenous communities due to the loss of language and culture because of Indian Residential Schools.

This lawsuit is not about harms suffered by individual survivors who attended Indian Residential Schools – instead it is about the collective harm suffered by Indigenous communities as a group as a result of Indian Residential Schools.

This lawsuit was brought by representative plaintiff First Nations Tk'emlúps te Secwépemc and shíshálh Nation, with the support of the Grand Council of the Crees (Eeyou Istchee).

Settlement Agreement



best interests of the class before it becomes final.

Each of the 325 First Nations that have joined the lawsuit and are class members have the right to make submissions to the court at the Settlement Approval Hearing about whether the proposed settlement is fair, reasonable and in the best interests of the class as a whole.

For more information regarding the lawsuit, the settlement agreement or the settlement approval hearing, see: www.bandreparations.ca, or contact

Tel.: 1-888-370-1045

Email: bandclass@waddellphillips.ca

[← BACK TO CLASS ACTIONS](#)

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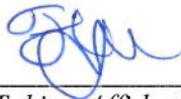
OUR LAWYERS

CONTACT US

647.261.4486

36 Toronto St, Suite 1120, Toronto, On. M5C 2C5

This is **Exhibit "E"** as referred to in the Affidavit of Jeanine Alphonse sworn before me on this 22nd day of February, 2023



Commissioner for Taking Affidavits (or as may be)

FLORA YU
(LSO NO.: 84025W)



WADDELL PHILLIPS

*Source:**August 30, 2022 13:00 ET*

Waddell Phillips Professional Corporation, Peter Grant Law, and Diane Soroka Avocate Inc. - Band Class Reparations Trial for Collective Damages Caused by Canada's Indian Residential School Policies Begins on September 12, 2022

VANCOUVER, British Columbia, Aug. 30, 2022 (GLOBE NEWSWIRE) -- On September 12, 2022 a trial regarding the collective losses suffered by Aboriginal communities as a result of Canada's Indian residential school system will commence before the Federal Court of Canada in Vancouver.

325 First Nations from across Canada have joined this class action and are standing together and asking that Canada be accountable to the nations it worked so hard to destroy in its attempted assimilation of Aboriginal peoples through the residential school system.

This case is intended to address the reality of the destruction of the languages and cultures of the Aboriginal peoples of Canada. Canada has now recognized in public statements the damages it caused the Aboriginal peoples of this country through its residential school policy, but has nonetheless left them alone to rehabilitate their languages and cultures which have been so impacted by Canada's conduct.

When this case was commenced on August 15, 2012, then Chief Garry Feschuk of shíshálh Nation stated:

The government has acknowledged that it set out to remove the culture of our people, and the harm it caused by forcing our people to turn away from their traditions. The residential schools were an attempt to destroy our traditions and cultures for day students as well as residential students. As our people and our communities work to rebuild from the effects of the residential schools, the government must step forward and take responsibility.

Former Federal Court judge Justice Harrington referred to the stated intention to destroy Aboriginal languages which was a foundation of the Indian residential school policy at paragraph 63 of his decision certifying the lawsuit as a class action:

The Annual Report of the Department of Indian Affairs of 1895 deems the acquisition of the English (or French) language to be a necessity: "So long as he keeps his native tongue, so long he will remain a community apart." The policy was to be executed "with as much vigor as possible". Educated English speaking Indians would be enfranchised, and become accustomed to the ways of civilized life. This would bring about rapidly decreased expenditures "until the same should forever cease, and the Indian problem would have been solved."

In June 2015, Justice Harrington found that the Band Class claim was an appropriate means to seek the collective damages for loss of language and culture to Aboriginal Nations arising from Canada's residential school policies.

In the last two years, Canada's Prime Minister and Minister of Indigenous Relations have spoken out repeatedly about the need for reconciliation and to redress the wrongs of the Indian residential schools.

On June 25, 2021, Prime Minister Trudeau on behalf of the government of Canada stated:

"[the residential school policy] was an incredibly harmful government policy that was Canada's reality, for many, many decades and Canadians today are horrified and ashamed of how our country behaved. It was a policy that ripped kids from their homes, from their communities, from their culture and their language and forced assimilation upon them."

On January 27, 2021, Minister of Indigenous Relations, Marc Miller, acknowledged:

“To suggest that residential schools were anything other than to assimilate, layered with a religious fervour at the time to convert peoples who still have vibrant cultures-in some cases that have been ripped away from them, the trauma has been passed on for generations – not to acknowledge that that exists and there are carry-on effects, is the product of a twisted and closed mind.”

0765

Former Chief Shane Gottfriedson of Tk'emlúps te Secwépemc has responded to the support of 325 First Nations who have joined the court action as class members:

“With over half of the First Nations in Canada now being part of our court case, Canada now needs to recognize the collective damages to our Nations caused by Canada’s efforts for over 100 years to destroy our Nations’ languages and culture.”

Former Chief Garry Feschuk asks:

“When is Canada going to stop denying in the court what we have suffered? When will Canada provide the support needed to First Nations to allow us to take charge of language and cultural revitalization and provide us with the means to rehabilitate our language and culture?”

It appears that 12 years after shíshálh Nation and Tk'emlúps te Secwépemc first sought a remedy for the damages caused to Indigenous peoples across Canada, that Canada is still, in Justice Harrington’s words “talking the talk but not walking the walk”.

Kúkpi7 Rosanne Casimir of Tk'emlúps te Secwépemc says:

“325 First Nations have joined with us to demand that Canada repair the damage done by residential schools by providing compensation to help restore and revitalize our rich languages and cultures which were decimated by residential schools. Canada has already recognised in public statements that it caused this damage; now it needs to stop denying it in the courts. Reconciliation demands that action be taken to restore what was lost.”

Hiwus Warren Paull of shíshálh Nation says:

“Intergenerational harms that are the direct result of residential school policies continue to decimate our communities today. Our communities are being ravaged by drug and alcohol abuse and overdoses, lateral violence, and suicides, all of which are a direct and continuing result of the abuse, displacement, and mistreatment suffered by survivors of residential schools. It is a continuing genocide. It is time that Canada take action to repair the damage done.”

For further information please contact:

Councillor Selina August, shíshálh Nation: saugust@shishalh.com

This is **Exhibit "F"** as referred to in the Affidavit of Jeanine Alphonse sworn before me on this 22nd day of February, 2023



Commissioner for Taking Affidavits (or as may be)

FLORA YU
(LSO NO.: 84025W)



WADDELL PHILLIPS

*Source :**20 sept. 2022 18h09 HE*

Waddell Phillips Professional Corporation, Peter Grant Law, and Diane Soroka Avocate Inc. - Band Reparations Trial Adjourned to Allow for Completion of Settlement Negotiations

VANCOUVER, British Columbia, Sept. 20, 2022 (GLOBE NEWSWIRE) -- The Representative Plaintiffs of the Band Reparations Class Action, shíshálh Nation and Tk'emlúps te Secwépemc, have announced today the adjournment of the Band Reparations trial to allow for the completion of settlement discussions with Canada. Canada and the Representative Plaintiffs are currently working on the specifics of a Settlement Agreement that would resolve the claims of the Band Class. The Class Action is regarding collective harm suffered by Indigenous communities as a result of Canada's role in the Indian residential school system.

Because this is a class action, any proposed Settlement Agreement will not be finalized until it is approved by the Federal Court after a Settlement Approval Hearing, which will not be heard for a few months.

The next steps are as follows:

- Over the next few weeks, Canada and the Representative Plaintiffs will engage in continued negotiations regarding the terms of a proposed Settlement Agreement.
- If a proposed Settlement Agreement is reached, the Representative Plaintiffs will provide notice of the full details of the proposed Settlement Agreement to all 326 Class Members and the public.
- If a proposed Settlement Agreement is reached, the Federal Court will hold a Settlement Approval Hearing to decide whether the proposed Settlement Agreement is fair, reasonable and in the best interests of the Class. At the Settlement Approval Hearing, the 326 Band Class members will have the opportunity to express their views regarding the proposed settlement.

For more information, please contact lawyers for the Band Class at bandclass@waddellphillips.ca, or by calling 1-888-370-1045.

This is **Exhibit "G"** as referred to in the Affidavit of Jeanine Alphonse sworn before me on this 22nd day of February, 2023



Commissioner for Taking Affidavits (or as may be)

FLORA YU
(LSO NO.: 84025W)



Dear Chief and Council:

Re: Update on the Band Reparations Class Action – trial starts Monday September 12, 2022 in Vancouver, B.C.

Thank you for standing shoulder to shoulder with representative plaintiffs shíshálh Nation and Tk'emlúps te Secwépemc in our fight for compensation for the collective harm suffered by our nations as a result of the residential school system, including in particular the loss of and damage to our languages and cultures. In total, 326 First Nations across Canada, including your First Nation, have joined the Band Reparations lawsuit as class members.

The trial starts on September 12, 2022 at 10:30 a.m. at the Federal Court in Vancouver, BC, and is expected to last six to eight weeks. The trial will be broadcast live online on the Zoom platform. Those wishing to watch will need to register with the Federal Court here: https://cas-satj.zoom.us/webinar/register/WN_p-zrAg2WSfqtFS-ZBPWK-g

At the trial in September, the court will decide whether Canada is legally responsible for the collective harms suffered by bands as a result of residential schools, including in particular loss of language and culture.

If the court decides that Canada is legally responsible, there will be a process later to determine how much in damages is owed to each band – it is possible that individual bands will need to participate at this stage in the lawsuit by submitting evidence of the extent of harms caused to their community because of residential schools.

If successful this lawsuit will provide the resources needed to allow us as First Nations to take charge of language and cultural revitalization.

The representative plaintiffs are expecting to call the following individuals as witnesses:

- Phil Fontaine, former National Chief of the AFN
- Matthew Coon Come, former National Chief of the AFN
- Shane Gottfriedson, former Chief of Tk'emlúps te Secwépemc
- Garry Feschuk, former Chief of shíshálh Nation
- Dr. Marianne Ignace, an expert in Indigenous languages, language loss, and the Secwépemc language
- Dr. Onowa Mclvor, an expert in Indigenous language loss and language revitalization

- Dr. John Milloy, an expert in the history of Indian Residential Schools, and author of the book “A National Crime”
- Dr. Andrew Woolford, an expert sociologist on the topics of Indian Residential Schools and genocide
- Elders, including Elders from shíshálh Nation and Tk'emlúps te Secwépemc

We encourage all class members to speak out in support of the lawsuit. With over half of the First Nations in Canada now being part of our court case, it's time for Canada to recognize the collective damages to our Nations caused by Canada's efforts for over 100 years to destroy our Nations' languages and cultures.

Canada has already recognized in public statements that it caused this damage; now it needs to stop denying it in the courts. Reconciliation demands that action be taken to restore what was lost.

For more information, please contact class counsel at bandclass@waddellphillips.ca.

Sincerely,

Kúkpi7 Rosanne Casimir Tk'emlúps te Secwépemc Representative Plaintiff	Hiwus Warren Paull Shíshálh Nation Representative Plaintiff
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Want to change how you receive these emails?

You can [update your preferences](#) or [unsubscribe from this list](#).



Dear Chief and Council:

Re: Update on the Band Reparations Class Action – Band Reparations Trial adjourned to allow for completion of settlement negotiations

The trial originally scheduled to start on September 12, 2022 was adjourned last week to allow for meaningful settlement talks between Canada and the Representative Plaintiffs shíshálh Nation and Tk'emlúps te Secwépemc, with support from the Grand Council of the Crees.

Those settlement talks have borne fruit, and the Representative Plaintiffs are pleased to announce that the parties are currently working the details of a Settlement Agreement that would resolve the claims of the Band Class. The Band Class claim is regarding the collective harm suffered by Indigenous communities as a result of the Indian residential school system.

Because this is a Class Action, any proposed Settlement Agreement **will not be finalized** until it is approved by the Federal Court after a Settlement Approval Hearing. That Settlement Approval hearing would not be heard for a few months. Full details of any proposed settlement will be provided to all Class Members well before the Settlement Approval hearing.

The next steps are as follows:

- Over the next few weeks, Canada and the Representative Plaintiffs will engage in continued negotiations regarding the terms of a proposed Settlement Agreement.
- If a proposed Settlement Agreement is reached, the Representative Plaintiffs will provide notice of the full details of the proposed Settlement Agreement to all 326 Class Members.
- If a proposed Settlement Agreement is reached, the Federal Court will hold a Settlement Approval Hearing to decide whether the proposed Settlement Agreement is fair, reasonable and in the best interests of the Class. At the Settlement Approval Hearing, the 326 Band Class members will have the opportunity to express their views regarding the proposed settlement.

The press release announcing the adjournment of the band class trial, which contains the same information as above, can be found: <https://www.globenewswire.com/news-release/2022/09/20/2519744/0/en/Waddell-Phillips-Professional-Corporation-Peter-Grant-Law-and-Diane-Soroka-Avocate-Inc-Band-Reparations-Trial-Adjourned-to-Allow-for-Completion-of-Settlement-Negotiations.html>

For more information, please contact lawyers for the Band Class at bandclass@waddellphillips.ca, or by calling 1-888-370-1045.

Sincerely,

Lawyers for the Band Class
Peter Grant, John Phillips and Diane Soroka



This is **Exhibit "H"** as referred to in the Affidavit of Jeanine Alphonse sworn before me on this 22nd day of February, 2023



Commissioner for Taking Affidavits (or as may be)

FLORA YU
(LSO NO.: 84025W)



WADDELL PHILLIPS

Source:

January 21, 2023 13:03 ET

Waddell Phillips Professional Corporation, Peter Grant Law, and Diane Soroka Avocate Inc. - First Nations sign historic settlement agreement with Canada to address collective harms caused by Indian Residential Schools

VANCOUVER, British Columbia, Jan. 21, 2023 (GLOBE NEWSWIRE) -- Tk'emlúps te Secwépemc, shíshálh Nation and the Grand Council of the Crees (Eeyou Istchee) are pleased to announce that they have reached a historic \$2.8 billion settlement with Canada that recognizes the collective harms suffered by Indigenous communities caused by Indian Residential Schools.

Gottfriedson v. His Majesty the King in Right of Canada, also known as the Band Reparations Class Action, is a class action against the Government of Canada. The lawsuit says that the Government of Canada is responsible for the collective damages to Indigenous communities caused by the Indian Residential School system, including collective loss of language and culture and damage to the social fabric.

325 First Nations Bands are part of the lawsuit. In order to participate, Bands had to “opt-in” or “join” the class action. The opt-in period is now closed, and it is no longer possible to join the lawsuit. For a complete list of Bands that joined the lawsuit and are band class members, go to www.bandreparations.ca

This lawsuit was brought by representative plaintiff First Nations Tk'emlúps te Secwépemc and shíshálh Nation, with the support of the Grand Council of the Crees (Eeyou Istchee).

The settlement agreement is based on the Four Pillar Principles:

- Revival and protection of Indigenous languages;
- Revival and protection of Indigenous cultures;
- Wellness for Indigenous communities and their members;
- Promotion and protection of heritage.

The key terms of the settlement agreement are:

- The Government of Canada will make a payment of \$2.8 billion (the “Fund”) to a Trust/Not-For-Profit to fully and finally resolve the Band Reparations Class Action.
- The Trust/Not-For-Profit will be responsible for prudently investing the Fund for a period of 20 years, distributing investment income from the Fund to the band class members, and, at the end of 20 years, distributing the remaining Fund to the band class members to support programs and activities which further the Four Pillar principles.
- The Trust/Not-For-Profit will be Indigenous-led and Indigenous controlled. The Trust/Not-For Profit will be governed by a board of nine Indigenous directors.

The settlement agreement must be approved by the Federal Court as being fair, reasonable and in the best interests of the class before it becomes final. A Settlement Approval Hearing will start in Vancouver on February 27, 2023 at 9:30 a.m. (Pacific Time) for up to three days. Band class members have the right to participate in the hearing.

For more information, including the full Settlement Agreement, go to www.bandreparations.ca

QUOTES:

Shane Gottfriedson, Representative Plaintiff and Former Chief of Tk'emlúps te Secwépemc:

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this lawsuit because we saw the devastating impacts that residential schools had on our Nations as a whole. The residential school system decimated our languages, profoundly damaged our cultures, and left a legacy of social harms. The effects go beyond my generation. It will take many generations for us to heal. This settlement is about taking steps towards undoing the damage that was done to our Nations.”

Garry Feschuk, Representative Plaintiff and Former Chief of shíshálh: “

to its history, own up to the genocide it committed and recognize the collective harm caused to our Nations by Residential Schools. It is time that Canada not only recognize this harm, but help undo it by walking with us. This settlement is a good first step.”

hiwus Warren Paul, shíshálh Nation:

went from being the first language of nearly everyone in our Nation to being on the verge of disappearing forever. We lost our last fluent speakers over the past few years. Much of this harm cannot be undone. With today’s announcement, First Nations will be able to continue restoring and revitalizing some of what was lost.”

Kúkpi7 Rosanne Casimir, Tk'emlúps te Secwépemc:

languages and cultures through Residential Schools. Canada did not succeed, but it did cause profound damage. It is going to take incredible efforts by our Nations to restore our languages and culture – this settlement gives Nations the resources and tools needed to make a good start.”

Dr. Matthew Coon Come, former Grand Chief of, and representative for, the Grand Council of the Crees (Eeyou Istchee): “

Nation in this historic struggle for recognition of the harms done to our Nations as a result of Residential Schools. My hope is that this settlement will help this generation and future generations reclaim our cultures and languages.”

CONTACT (media only):

Cory Wanless
Waddell Phillips PC
Email: cory@waddellphillips.ca
Phone: 647-874-2555

This is **Exhibit "I"** as referred to in the Affidavit of Jeanine Alphonse sworn before me on this 22nd day of February, 2023



Commissioner for Taking Affidavits (or as may be)

FLORA YU
(LSO NO.: 84025W)

Band Reparations Class Action Settlement

i There is a proposed **settlement** in the Band Reparations Class Action. Bands that have joined the lawsuit have the right to participate at the Settlement Approval Hearing. **Read the Notice here.**

Key information available in six Indigenous languages:

- James Bay Cree | ᐃᓕᓕᓐ ᐃᓕᓕᓐ
- Plains Cree | Nēhiyawēwin
- Ojibwe | Anishinaabemowin
- Denesuline | Déně Sųłiné
- Inuktitut (South Baffin) | ᐃᓄᓐᓂᓂᓐ (ᐅᐃᓐᓄᓐ ᓄᓄᓐᓂᓂᓐ)
- Mi'kmaq | Mi'kmaw

The Band Reparations Class Action

Gottfriedson v. His Majesty the King in Right of Canada (Court File No. T1542-12)

The Band Reparations Class Action is a lawsuit against the Government of Canada. The lawsuit is about the collective harm suffered by Indigenous communities as a group as a result of Indian Residential Schools. The lawsuit says that the Government of Canada is responsible for damages to Indigenous communities caused by the Indian Residential School system, and in particular, the collective harm suffered by Indigenous communities due to the loss of language and culture because of Indian Residential Schools.

This lawsuit is not about harms suffered by individual survivors who attended Indian Residential Schools – instead it is about the collective harm suffered by Indigenous communities as a group as a result of Indian Residential Schools.

This lawsuit was brought by representative plaintiff First Nations Tk'emlúps te Secwépemc and shishálh Nation, with the support of the Grand Council of the Crees (Eeyou Istchee).



Band Class Members

325 Bands are part of the lawsuit; [click here](#) to see the full list of class members. In order to participate in the lawsuit, Bands were required to “opt-in” or “join” the lawsuit by the extended June 30, 2022 opt-in deadline. The opt-in period is now closed, and it is no longer possible to join the lawsuit.

The First Nations that are part of the lawsuit are:

Settlement

A settlement agreement has been reached between the Representative Plaintiff Bands and the Government of Canada, which fully and finally resolves the Band Reparations Class Action.

The settlement agreement needs to be approved by the Federal Court as being fair, reasonable and in the best interests of the class before it becomes final.

Each of the 325 First Nations that have joined the lawsuit and are class members have the right to make submissions to the court at the [Settlement Approval Hearing](#) about whether the proposed settlement is fair, reasonable and in the best interests of the class as a whole.

Proposed Settlement Agreement

[Full Settlement Agreement](#)

The key terms of the settlement agreement are:

- The government of Canada will make a payment of **\$2.8 billion** (the "Fund") to a Trust/Not-For-Profit to fully and finally resolve the Band Reparations Class Action.
- The Trust/Not-For-Profit will be responsible for prudently investing the Fund, and for distributing the Fund to the 325 class members to support the Four Pillar principles in accordance with the Disbursement Policy.
- The Four Pillars are:
 - Revival and protection of **Indigenous languages**;
 - Revival and protection of **Indigenous cultures**;
 - **Wellness** for Indigenous communities and their members;
 - Promotion and protection of **heritage**.
- The Disbursement Policy will include the following:
 - **Planning funds**: Each Band Class member will receive an initial one-time payment of \$200,000 for the purposes of developing a plan to carry out one or more of the objectives and purposes of the Four Pillars;
 - **Initial Kick-Start Funds**: Upon receipt and review of a plan from a band, the Fund shall disburse the Initial Kick-Start Funds, which shall be equal to the Band's proportionate share of \$325 million,

with 40% attributable for base rate, with the remaining 60% to be used to adjust for population. The base rate is an equal amount payable to each Band. The Board will determine an appropriate adjustment for remoteness for the Initial Kick-Start Funds, with any such funds required to account for remoteness being in addition to the \$325 million;

- **Annual Entitlement:** Each Band will receive a share of annual investment income that is available for distribution. That share will be equal to the Band's proportionate share, adjusted for population and remoteness.
- All monies that remain in the Fund after the payment of the Planning Funds and the Kick-Start Funds will be prudently invested by the Trust/Not-For-Profit in accordance with professional investment advice.
- The Fund will operate for a period of 20 years.
- For the 20 year life of the Fund, the Annual Entitlement payments will be made from the investment income earned from the Fund; the capital of the Fund will be maintained.
- At the end of the 20 year life of the Fund, the remaining funds consisting of the capital of the Fund and any undisbursed investment income will be disbursed to the Class. Each Band's share shall be equal to the Band's proportionate share of the remaining funds.
- The Trust/Not-For-Profit will be responsible for determining the Disbursement Policy, which will consist of a base rate, a population adjustment, and a remoteness adjustment. That formula will allocate 40% to base rate, and 60% to population and remoteness adjustments.
- The Trust/Not-For-Profit will be governed by a board of nine Indigenous directors, eight of which will be selected through a process involving the Representative Plaintiff Bands, and, in the case of Regional Directors, the Class Members, and one of which will be chosen by Canada.
- The Trust/Not-For-Profit will have regional representation.
- In exchange for the benefits of the agreement, the Band Class members are deemed to agree to a release which will prevent them from bringing legal claims in future against Canada regarding the collective harms caused to them by the creation and operation of Indian Residential Schools. For greater clarity, this release does not relate to, and will not impact, any possible claims regarding children who died or disappeared while in attendance at Residential Schools.
- Lawyers' fees and expenses incurred over the course of the lawsuit will be paid by the Government of Canada and will not be deducted from the compensation paid to the Band Class. Canada has agreed to pay for all legal fees and expenses. These fees and expenses must be approved by the court, and will be the subject of a fee approval hearing, which will take place immediately after the settlement approval hearing.

Settlement Approval Hearing

A settlement approval hearing will be heard by the Federal Court, located at 701 West Georgia Street, Vancouver BC V7Y 1B6, commencing on **February 27, 2023 at 9:30 AM PDT** for up to three days.

The hearing is open to the public and will be available to be viewed via real-time webcast. Access details will be posted here when they become available.

The Federal Court judge will decide whether to approve the settlement agreement. The test that the judge will apply is whether the settlement is fair, reasonable, and in the best interests of the Class Members. The

judge will consider the entire settlement agreement all together as a complete package. The judge is not allowed to pick and choose which parts of the settlement to approve or not approve.

Band Class Members have the right to participate in the settlement approval process by telling the Court whether the settlement agreement should be approved or not, and whether the settlement agreement is fair, reasonable and in the best interests of the class.

Band Class Members can participate by making written submissions in advance of the hearing, oral submissions at the hearing, or both. Written or Oral Submissions must be made by individuals authorized to speak on behalf of their Band.

Written Submissions

Written submissions must include the name of the Band Class Member, contact information, confirmation that the person making the submission has the authority to speak on behalf of the Band, a statement that the Band supports or objects to the proposed settlement, and the reasons for the Band's position.

Written submissions should be no more than 10 pages in length. Written submissions can be sent by email, mail, or fax, and must be received by **February 20, 2023 at 11:59 PM PDT** at:

Waddell Phillips Professional Corporation
Att'n: Band Reparations Class Action
36 Toronto Street, Suite 1120
Toronto, ON M5C 2C5
bandclass@waddellphillips.ca
Fax: 416-477-1657

Oral Submissions

Band Class Members wishing to make oral submissions at the Federal Court in Vancouver on **February 27, 2023** must register in advance by sending a request to bandclass@waddellphillips.ca by **February 20, 2023 at 11:59 PM PDT**.

Individuals making oral submissions must be authorized to speak on behalf of a Band Class Member.

Oral submissions can be made in person in court in Vancouver, BC, or remotely via video conference. Please indicate whether you wish to participate in person, or virtually.

Documents

Key documents:

- [Settlement Agreement](#), signed January 18, 2023
 - [Schedule A: Second Re-Amended Statement of Claim](#), filed February 11, 2022
 - [Schedule B: Certification Order](#), June 18, 2015
 - [Schedule B.1: September 24, 2021 Order \(order only\)](#) + [Schedule G of the Settlement Agreement](#)
 - [Schedule B.2: February 8, 2022 Order \(order only\)](#)
 - [Schedule C: List of Opted-In Band Class Members](#)
 - [Schedule D: Investment Policy](#)
 - [Schedule E: Disbursement Policy and Disbursement Formula](#)

- [Schedule F: The Four Pillars](#)
- [Notice of Proposed Settlement and Settlement Approval Hearing](#)

For other legal documents, please contact class counsel at bandclass@waddellphillips.ca

Frequently Asked Questions

- ⊕ What is the Band Reparations Class Action about?
- ⊕ How was this settlement achieved?
- ⊕ Are individual members of the Bands entitled to compensation from this settlement?
- ⊕ Which Bands are included in this settlement?
- ⊕ My Band is not on the list. Is it too late for my Band to join?
- ⊕ Does this settlement affect the rights of my Band or its members with respect to harms caused by churches or religious orders?
- ⊕ Does this settlement affect Aboriginal or Treaty rights?
- ⊕ Can the Government use this settlement to stop future claims relating to children who died or disappeared while attending an Indian Residential School?
- ⊕ Is there an opportunity for my Band to tell the Court what it thinks about this settlement?
- ⊕ I still have questions.

Class Counsel

Class Counsel in this lawsuit are:

Peter R. Grant
Peter Grant Law Corporation

Contact

Phone: 1-888-370-1045 (toll-free)
Fax: 416-477-1657

John K. Phillips
Waddell Phillips Professional Corporation

Diane Soroka
Diane Soroka Avocate Inc.

Email: bandclass@waddellphillips.ca
Att'n: Band Reparatons Class Action
36 Toronto Street, Suite 1120
Toronto, ON
M5C 2C5

This is **Exhibit "J"** as referred to in the Affidavit of Jeanine Alphonse sworn before me on this 22nd day of February, 2023



Commissioner for Taking Affidavits (or as may be)

FLORA YU
(LSO NO.: 84025W)

Schedule “C”

Gottfriedson et al. v. His Majesty the King in Right of Canada

(Court File No. T-1542-12)

NOTICE PLAN

Notice of Settlement Agreement and Settlement Approval Hearing

The notice of Settlement Agreement and Settlement Approval Hearing (“**Notice**”) will be sent directly to all Class Members. Class Counsel will take further steps to confirm that Class Members have received the Notice.

A comprehensive List of Class Members is attached as Schedule “A” to the Order of Justice McDonald dated September 6, 2022. Because this is an opt-in class action, all 325 Class Members are known to Class Counsel, and further, Class Counsel has had direct contact with each Class Member as part of the opt-in process.

Class Counsel have maintained a comprehensive spreadsheet of contact information for each Class Member, including email addresses, mailing addresses, fax numbers (where available) and phone numbers.

DIRECT CONTACT

The court-approved Notice will be sent directly to the administrative and/or political office of each Class Member by email, mail and, where available, fax by January 27, 2023. The Notice requests that Class Members confirm receipt of the Notice with Class Counsel to ensure that Notice is effective.

Class Counsel will contact the administrative and/or political office of each Class Member that does not confirm receipt of the Notice directly by phone to ensure that all Class Members have, in fact, received the Notice.

WEBSITE

The information in the Notice will be posted at www.bandrepairs.ca by January 27, 2023.

LANGUAGES

The Notice will be sent to the Class Members in English and French. Key information from the Notices will also be made available in six of the most commonly used Indigenous languages – James Bay / Eastern Cree, Plains Cree, Ojibwe, Dene, Inuktitut, and Mi’kmaq – as soon as practicable on www.bandrepairs.ca.

CLASS COUNSEL CONTACT

Class Counsel have established a dedicated toll-free number and email address in order to receive inquiries from Class Members and from the general public. Class Counsel will use the toll-free number and email address to communicate the information contained in the Notice.

This is **Exhibit "K"** as referred to in the Affidavit of Jeanine Alphonse sworn before me on this 22nd day of February, 2023



Commissioner for Taking Affidavits (or as may be)

FLORA YU
(LSO NO.: 84025W)

FEDERAL COURT

CLASS PROCEEDING

B E T W E E N :

**CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE
SECWEPEMC INDIAN BAND and the TK'EMLUPS TE SECWEPEMC
INDIAN BAND, and CHIEF GARRY FESCHUK, on behalf of the SECHELT
INDIAN BAND and the SECHELT INDIAN BAND**

Plaintiffs

and

**HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL OF CANADA**

Defendant

BAND CLASS MEMBER WRITTEN STATEMENTS

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ELSIPOGTOG BAND COUNCIL

373 Big Cove Road, Elsipogtog, N.B. E4W 2S3
 Telephone: (506) 523-8200 Fax: (506)-823-8230

February 19, 2023

Via Email: bandclass@waddellphillips.ca

Waddell Phillips Professional Corporation
 Attn: Band Reparations Class Action
 36 Toronto Street, Suite 1120
 Toronto, ON
 M5C 2C5

To Whom it May Concern:

RE: Band Class Reparations Settlement - Letter of Support from Elsipogtog First Nation

On behalf of the Elsipogtog Chief, Council and members of the Elsipogtog First Nation, I write this letter to confirm support of the Band Class Reparations Settlement and the benefits it offers to Elsipogtog First Nation as a Band collectively impacted by the operation of Indian Residential Schools.

The Elsipogtog First Nation, formerly known as Big Cove Band or Richibucto Tribe of Indians (#003) have suffered shared collective harms to the community, to the Mi'kmaq language, and to Mi'kmaq culture, spirituality and traditions. Members of the Elsipogtog First Nation were taken away from the community as small children and forced to attend the Shubenacadie Indian Residential School. Although a single residential school is too many, the Shubenacadie Indian Residential School was the only one in operation in the Maritimes.

The Shubenacadie Indian Residential School was located in Shubenacadie, Nova Scotia and was run by the Roman Catholic church and operated from 1930 to 1967. Many children from Elsipogtog First Nation attended the Shubenacadie Indian Residential School. Many residential school survivors were from big families that went on to have large families; the survivors suffered horrific abuse and the trauma experienced was, and continues to be, passed on intergenerationally.

The late Rita Joe was a prominent member of the Mi'kmaq Nation whose legacy strongly endures. A member of the We'koqma'q First Nation, she attended the Shubenacadie Indian Residential School. She wrote a famous poem that described the changes within her while attending the residential school. A passage in her poem states, "I lost my talk. The talk you took away. When I was a little girl at Shubenacadie school. You snatched it away: I speak like you, I think like you, I create like you."

Like the late Rita Joe, many children had the same experiences at Shubenacadie Indian Residential School. They lost their Mi'kmaq language and began thinking in synch with the



ELSIPOGTOG BAND COUNCIL

373 Big Cove Road, Elsipogtog, N.B. E4W 2S3
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ideology of the Roman Catholic Church, which despised Mi'kmaq ways and ways of knowing. Thinking like members of the Roman Catholic church meant adopting and internalizing the mindset that Indigenous people were savages and unworthy of dignity unless and until fundamentally transformed into euro-centric ideologies, ways and ways of knowing. Survivors of the residential schools felt self-hatred and returned to the community despising their ways, language, culture and traditions, resulting in devastating impacts on their family and community. Residential school survivors felt isolated from the community, no longer able, or willing, speaking the Mi'kmaq language and/or loathing their culture and traditions. Without their own culture and language, residential school survivors were unable to pass knowledge on to their children, of which impacts are still sorely felt today in Elsipogtog. A memorial for the Shubenacadie Indian Residential School sits in front of the Elsipogtog band office - a somber reminder of the hard work that lies ahead to revitalize the buried culture, traditional practices, spirituality and language.

Elsipogtog supports the Band Class Reparations Settlement and believes that the four pillars named in Schedule F, namely, the revival and protection of Indigenous language, the revival and protection of Indigenous language culture, protection and promotion of heritage and wellness for Indigenous communities and people will give rise to a measure of needed repair over time.

Language revitalization and the establishment of Mi'kmaq language and cultural programs are very important to the essence of Elsipogtog in current times, and to our future. Elsipogtog First Nation sees the Band Class Reparations Settlement as a set of instruments to commence collectively healing harms done to the community and to revitalize the deeply affected cultural knowledge base.

Further, Elsipogtog First Nation is supportive of the settlement's relatively innovative structure as a Trust/Not-For-Profit responsible for prudently investing the 2.8 billion-dollar fund. The distribution policy appears to align with the fundamental tenant of fairness and recognizes the ongoing nature of the work as ongoing in nature by setting forth an annual entitlement based on proportionality grounded in the formula of population and remoteness. As a relatively large Band, and generally, initial payments will be put towards thoughtful programming and approaches to address immediate needs and their companions spurred by the collective harms. With the 20-year plan, Elsipogtog First Nation will be in a position to take a long-term approach to planning and have the capacity to calibrate programming taking into account initial and compounding outcomes from previous years. The long-term nature of the plan, viewed from an internal and planning perspective, is more trauma-informed than other settlements.

Further, the Trust/Not-For-Profit's board composition is regionally representative, which gives rise to a greater measure of balance based on need and experience.

Even further, the law firm's approach to the payment of its fees has not gone unnoticed and should be viewed as a practice preferential to previous practices. We know that much resources and deliberations arise from law firms debating on how much they should be paid for the work



ELSIPOGTOG BAND COUNCIL

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they did, and in our experience, that payment has always come from settlement proceeds. The fee amount is not insignificant, and neither is the work required to arrive at this point. However, it is appreciated that the firm and Canada worked the costs of resolving the action among themselves this time. Further, the firm's payment appears to be in decimal proportionality to the settlement, which strikes us as fair and reasonable, from a comparative perspective. It is perfectly acceptable for law firms and lawyers to be paid for the work they do to resolve important matters. However, their payment cannot be so disproportionate to the compensation of the class members such as to steepen grievances and compound harm, as it has in other cases. In our view, the competent conduct of matters to resolution by lawyers is not worthy of windfall rewards – it is an expectation of the legal profession, which is foremost just that - a profession, not a business.

In brief, this settlement will be good for us. We will be able to address some of the improvements we need to make because of residential schools because of it. Because the settlement's structure provides for it, we will have resources to continue to address and lift up those improvements on a compounding basis, with consistent and focused programming and other forms of interventions designed to stimulate improvements.

Elsipogtog First Nation can be reached at the Elsipogtog Band Council office:

Elsipogtog Band Council
373 Big Cove Road
Elsipogtog, NB
E4W 2S3

Regards,
ELSIPOGTOG FIRST NATION



Per: Sagamao Arren Sock
Chief of Elsipogtog First Nation

cc. Alisa Lombard and Paula Sock, Lombard Law (via email: alombard@lombardlaw.ca;
psock@lombardlaw.ca)



Star Blanket Cree Nation
Box 456
Balcarres, SK S0G-0C0
Phone (306) 334.2206
Fax (306) 334.2606

February 17, 2023

Waddell Phillips Professional Corporation
Attn: Band Reparations Class Action
36 Toronto Street, Suite 1120
Toronto, ON.
M5C 2C5
bandclass@waddellphillips.ca

Waddell Phillips:

This letter confirms that I have authorization of Council and membership as Chief of the Star Blanket Cree Nation to support the proposed settlement. We support the proposed call action settlement and strong statement; “collective harm suffered by Indigenous communities due to loss of language and culture because of Indian Residential Schools.”

The Star Blanket Cree Nation is of Plains Cree Nehiyawewin ancestry with many of our family relatives attending reluctantly the Qu’Appelle Indian Residential School – St. Paul’s Indian Residential School – White Calf Collegiate in Lebrét, Saskatchewan. The former site of that residential school was situated at one of our communities called Wahpiimoostosis reserves (White Calf) land base. It was closed in 1998 and demolished in 2000. We are currently in the I.R.S. process of doing the important work, searching for unmarked graves.

The Star Blanket Cree Nation is looking forward to developing a long-term strategic plan utilizing the four pillars of this class action settlement. This long-term funding will enhance and support on going Plains Cree Language revitalization and sustainability into the future. With only one fluent Cree speaker remaining in our nation, this work will be vitally important.

The educational concept of land base learning will continue the enhancement of our traditional ways of life, instilling our Cree ancestral culture beliefs and values into our young people. On-going programming and active practise to carry on ceremonial songs and dancing/regalia styles. Survival skills and protocols of hunting, fishing, and gathering including the knowledge of animal, plant medicines and food we utilized for sustenance.

As we continue to enhance our indigenous epistemologies and ways of life, building a strong Health and Wellness Plan is important. With a vision of a healthy, vibrant and self-determine children, families and communities with in our nation. We hope to take a holistic approach in ongoing wellness programs to remove harmful social addictions from our people. We hope to create an understanding of Nehiyawewin natural law and the teachings associated with treaties into our programs and most importantly, into our educational systems.

In closing, we are honoured to be a part of this class action settlement journey. Through unity and resilience, we will work together to overcome the negative impacts caused by Indian Residential Schools.

Respectfully



Chief Michael G. Starr
Star Blanket Cree Nation
Box 456
Balcarres, SK S0G 0C0
Bus. (306)334-2206
Cell (306)331-6885
michael.starr@starblanketcreenation.com



Táakú Heeni Lingít Kwáan
Taku River Tlingit First Nation

Statement on behalf of the Taku River Tlingit First Nation re: Day School Settlement

By Spokesperson Charmaine Thom

Introduction

On behalf of the Clan Director's Council and the citizens of Taku River Tlingit First Nation, I, Spokesperson Thom, make the following written submissions.

The Taku River Tlingit First Nation's citizens have been deeply and thoroughly impacted by the historically destructive actions of the Government of Canada and the Catholic Church through residential school and day schools forced upon First Nations peoples.

I know I can never truly put into words the level of hurt and devastation my community has experienced from the imposition of residential schools and day schools on us. It is a level of hurt that has caused families to shatter and crumble under the weight of the sadness, loss and historical trauma caused by these schools. It is a level of devastation that has caused too many members of this community to struggle with addiction to drugs and alcohol to try and numb the pain of having the branches of their family tree hacked and torn off by the very institutions that promised to protect us. It is a level of dehumanization that our families, our children, and multiple generations have had to carry with them for far too long, and unfortunately, it is a burden that most of us will continue to carry to some degree for the rest of our lives.

While these settlement funds serve as a first step towards reconciling the dark history between First Nations people and non-First Nations people in Canada, we must remember that reconciliation is not about forgetting the lasting impact of these schools on our community and

our people, but about acknowledging the true extent of the wrongfulness of what occurred at these schools without using euphemisms and soft language to minimize what happened. True reconciliation can only occur without censoring our history so that present and future generations can learn from the past and break the cycle of historical trauma, violence and cultural suppression so that the evil inflicted on First Nations people is never again repeated.

History of the Taku River Tlingit First Nation

The Taku River Tlingit First Nation is located in Atlin, British Columbia. Our Nation is a small, remote community which is currently made up of about 400 people, although this number was once much higher. Our traditional territory covers approximately 40,000 square kilometers and covers land that is now known as British Columbia, the Yukon Territory, and parts of the state of Alaska. This territory is full of beautiful mountains, rich, dense forest area and diverse wildlife and natural resources that our community has relied on for many generations.

Atlin is located about 2.5 hours south of Whitehorse by road. Before the construction of the Atlin Road was completed by the Canadian Military in 1951, our community was not easily accessible. To visit our community before this time, a person would have to travel over land by horseback or on foot, and would often require a local guide to avoid getting lost.

When the government first came for our children, it was not a simple matter of driving down a highway and scooping our children into the back of vehicles to take them to school. The government had to travel for days through treacherous terrain and extreme weather. They had to plan and prepare and strategize about how they would steal our children. This was no accident or crime of opportunity. They made multiple trips. They had to drag building supplies into the wilderness to build schools they insisted we needed, while dragging our children out of their homes and away from their families to put them into these institutions that were designed to

teach them that everything they had learned about their culture, their communities, and their histories was inferior, wrong and shameful.

The Lower Post Residential School operated from 1951 to 1975. During these 25 years, countless children from our community and surrounding communities were subjected to unimaginable physical, emotional, cultural, spiritual and sexual violence. To call this collective violence perpetrated against these children “torture” still fails to capture the magnitude of the deplorable treatment these children experienced. Disease, starvation and abuse were rampant.

We must remember that these atrocities are not ancient history. While the imposition of residential schools and day school on First Nations people began in the 1800’s, many people are not aware that some residential schools and day schools continued to operate in Canada until the 1990’s. While many children perished in residential schools and day schools, many of those that survived were never the same. Their bodies may have been alive, but their spirits, their language and many parts of their cultural identity were as cold and lifeless as the dead bodies of their classmates and communities members who were discarded like trash and buried in unmarked graves, which are still being discovered across Canada today.

The life that many of the survivors returned to was nothing like the lives they had been torn away from. Many of those broken children returned to broken parents and broken grandparents, who were devastated by the trauma of having their babies and grandbabies torn from their arms by people claiming they were there to “help”. They grew into broken adults who eventually had their own children, and in many cases, these broken adults struggled to provide a life for their children that could spare them from the effects of the trauma they had endured.

The Seventh Generation Principle

There is a concept in many First Nations cultures called the “seventh generation principle.” While the history of this principle is complex and challenging to trace¹, it is believed that the principle dates back to a period between 1142 and 1500 A.D. and may have developed initially within the Iroquois Nation before being shared with and adopted by other First Nations groups.

The seventh generation principle is a philosophy that holds that the decisions we make today should result in a better, more sustainable world for the next seven generations – not just for First Nations people, but for everyone. The seventh generation principle encourages us to think of ourselves as more than individuals, but as part of a greater community that considers the impact our actions will have on future generations who must live with the consequences of the things we do today.

Did the government workers who ripped children away from the communities and the loving arms of their families consider how those actions would affect the next seven generations? Did the teachers and staff in the residential and day schools think about how traumatic it would be for children to have the bond with their families trampled, discarded and undermined? About how it would feel for these children to have their tiny hands and other body parts slapped with rulers, books, and closed fists as punishment for speaking their native language or crying because they were terrified of what was happening to them?

Whether these people thought about the consequences of these actions or not, we are all seeing and feeling the ripple effects of this abuse on First Nations peoples, and unsurprisingly, these effects are devastating.

The Lasting Impact of Residential Schools and Day Schools

¹ Source: <https://www.ictinc.ca/blog/seventh-generation-principle>

For First Nations people, our historical trauma has in many ways become our present trauma. These concepts are deeply intertwined. Systemic racism has disenfranchised our communities in fundamental ways, and in order for true reconciliation to ever occur, we must acknowledge the fundamental truth that residential schools and day schools were a failed attempt at cultural genocide perpetuated on First Nations peoples by the Government of Canada and the Catholic Church. Anything less fails to acknowledge the true scope of what happened to my community and other First Nations communities, and only serves to minimize the impact these schools have had on generations of First Nations people.

The impacts of these schools continue to present day. First Nations people are disproportionately incarcerated across Canada – despite forming about 4 to 6% of the population in Canada, First Nations adults make up approximately 32 to 42% of the incarcerated population across Canada. First Nations youth represent between 48 to 68% of juveniles who are convicted of criminal offences.² It should come as no surprise that many of these people who eventually return to the community after being incarcerated are as broken as their parents and grandparents who survived their time in residential and day schools, or forcible “adoptions” that occurred as a result of the 60’s Scoop.

First Nations infants and children are also disproportionately over-represented in the child “welfare” system. Approximately 54% of the children in the Canadian foster system are First Nations, despite forming less than 8% of the population of children in Canada.³ Far too many of these children are taken away from their families based on speculation and rumors without adequate investigation, and are placed in foster families who are not always adequately vetted. In some cases, children in the foster care system experience abuse similar to the

² Source: Statistics Canada website.

³ Source: <https://www.sac-isc.gc.ca>

violations their parents and grandparents experienced in residential and day schools. It is a sickening reality.

First Nations people in all age groups disproportionately struggle with access to health care and die in unfathomable numbers from preventable diseases compared to non-First Nations people. Even those who are lucky enough to see a doctor often face harmful stereotyping and assumptions, where their symptoms and pain are not treated seriously and are written off as fabrications and lies in order to obtain medications that the doctor assumes will be misused. This is just another sad example of systemic discrimination that perpetuates and magnifies the shame and trauma that contribute to serious health issues, and cause many First Nations people not to even attempt to seek care at all.

It should come as no surprise that First Nations people also face disproportionate rates of alcohol and drug dependency in our communities. One Canadian study⁴ found that First Nations youth were more likely than other youth demographics to struggle with alcohol and drug abuse. These substances problems contribute to the horrific cycles and perpetuation of historical trauma within our communities. There are no easy answers about how to break these cycles, especially when certain people believe that First Nations people have somehow brought these issues on themselves, rather than seeing these problems as the natural and predictable outcome of a focus effort to “kill the Indian in the child” under the guise of “education.”

Reconciliation and Breaking the Cycle of Violence and Trauma

As I wrote in the beginning of this statement, receiving settlement funds from the Government of Canada is a first step in addressing these historical wrongs caused by residential

⁴ Source: <https://www.canada.ca/en/public-health/services/reports-publications/health-promotion-chronic-disease-prevention-canada-research-policy-practice/vol-39-no-6-7-2019/tobacco-alcohol-marijuana-use-indigenous-youth-off-reserve-schools.html>

schools and day schools, but there is still so much work to do. Prime Ministers Stephen Harper and Justin Trudeau have issued apologies to First Nations peoples for the atrocities which occurred in the residential and day school systems, yet the federal government continues to fight First Nations groups seeking compensation in court. Is it any wonder that many First Nations people remain highly skeptical of the government?

In 2022, Pope Francis issued an apology to First Nations Canadians during a visit to Alberta, on behalf of “some” members of the Roman Catholic Church who abused and harmed children in these schools. While some people found a degree of comfort in this apology, many others like myself found it inadequate, especially given Pope Francis’ previous refusal⁵ to apologize for the unimaginable damage caused to First Nations people victimized through their attendance at residential schools and day schools.

The Catholic Church has been very slow to apologize or acknowledge any wrongdoing caused by residential schools, leaving First Nations people to question whether the Church really understands or appreciates how much lasting harm it has caused. Many Catholic Churches and groups continue to fight First Nations people in court while we seek some redress and compensation for our communities that have been largely abandoned by the institutions that inflicted this trauma upon us and then spent decades blaming First Nations people who have been left to grapple with the damage.

The United Nations Declaration on the Rights of Indigenous People (UNDRIP) was drafted with the intention of establishing a human rights framework that would allow First Nations people to have dignity, agency and their own voice in regaining an ability to self-govern, which is a critical component in working towards reconciliation.

⁵ Source: <https://globalnews.ca/news/4110276/canada-residential-school-pope-francis-church-apology/>

The Truth and Reconciliation Commission (TRC) issued 94 Calls to Action when the Commission completed their report in 2015. While all of these Calls to Action serve an important purpose, Calls to Action 27, 28, 42, 43, 44, 45, 48, 50, 57, 67, 69, 70, 86 and 92 specifically address the importance of Canada fully adopting and implementing the framework in UNDRIP, within the provincial and federal governments, as well as institutions which has historical harmed and excluded First Nations people, including the public service, law school and societies, the medical profession and health care industry, journalism and the media, and the business world. First Nations people possess a wealth of knowledge and resources which would benefit all of these spaces if only First Nations people could have fair opportunities to contribute to these spaces and industries, which have historically been very unwelcoming for them.

Section 35 of the *Constitution Act* also specifically recognizes and affirms the rights of First Nations people, yet this constitutional duty – the duty to consult – is often treated as just another hurdle to overcome, rather than an essential and meaningful process that is enshrined in the foundational laws of Canada. How can First Nations people trust in the reconciliation process when their history and their rights are still so often treated as an inconvenience? As an afterthought? As nothing more than a box to be checked?

In order for reconciliation between First Nations and non-First Nations people to be possible, the government and other institutions which have historically failed First Nations people need to appreciate and understand that First Nations people are not artifacts in a museum or textbook. We are a resilient and vibrant people who can and will overcome the historical traumas we have endured, but it will take time and resources to achieve.

One of the ways this must happen is to recognize and restore First Nations peoples' right to sovereignty and self-government and to decolonize the very institutions which continue to be

plagued with systemic racism and discrimination. These institutions include the child welfare sector, the justice system, the education system, and the broader economic system, including the food industry, energy industry, and natural resources industries.

First Nations people must have a real voice in these conversations that affect them, their communities, their resources, and the next seven generations who will have to live with the decisions that are made today. Only when this occurs can we truly begin to break the cycle of historical trauma and violence and build a future of strength and innovation for future generations.

Looking Towards the Future while Remembering the Past

As I wrote at the beginning of this statement, receiving these settlement funds will serve as an important first steps towards reconciliation, but we must acknowledge that many of the individuals who endured the abuse, neglect and horror of residential school and day schools firsthand are no longer alive to benefit from these funds or to experience any sense of justice or acknowledgement for the terrible things that happened to them. Many of these people – our parents, uncles, aunties, cousins, grandparents and friends – died at these schools, and even those that returned could barely be described as alive, having already experienced a spiritual death that left their physical bodies as empty shells that struggled to comprehend what had happened to them as children. Where is their justice? Perhaps the only justice for them is keeping their memories alive.

While our First Nations culture and spirituality were severely impacted by residential and day schools and other demeaning policies and programs inflicted on our people, I have come to believe that to achieve reconciliation, we must return our focus to the seventh general principle, and ensure that the decisions First Nations and Non-First Nations people make from here onward

consider the impact on future generations. The heart and soul of our communities must be restored by having meaningful conversations about our collective past, present, and future. Only through cooperation, consultation and conversation can we achieve reconciliation.

On behalf of the Taku River Tlingit First Nation Clan Director's Council and our citizens, I am honored and grateful for the opportunity to make this statement.

A handwritten signature in cursive script that reads "Charmaine Thom".

Spokesperson Charmaine Thom, February 27, 2023

Chief Barry McKay
Councillor Derek Mancheese
Councillor Caroline Mintuck
Councillor Sharon Ironstand-Cloude
Councillor Grant Rattlesnake

Tootinaowaziibeeng Treaty Reserve #292

B6x 1

Tootinaowaziibeeng, Manitoba

ROL 2L0

PH: (204) 546 – 3334

FAX: (204) 546 – 3090



February 16, 2023

Federal Court Judge
Federal Court
701 West Georgia Street
Vancouver, BC
V7Y 1B6

Dear Federal Court Judge,

We, the Chief and Council of Tootinaowaziibeeng Treaty Reserve #292, elected November 24, 2021, have held a duly convened meeting on February 16, 2023. Please accept this letter as confirmation that Jessica Ironstand-Nelson has authorization to speak on behalf of the Band Class Member Tootinaowaziibeeng Treaty Reserve #292 as to participate in the settlement approval hearing regarding the Indian Residential School Band Reparations Class Action Settlement.

If you should have any questions, please call 204-546-3334.

Respectfully,

Quorum of three (3)



Chief Barry McKay



Councillor Caroline Mintuck



Councillor Derek Mancheese

Councillor Sharon Ironstand-Cloude

Councillor Grant Rattlesnake

C.C. Admin File

As long as the river flows and the grass grows

February 16, 2023

Jessica Ironstand-Nelson
Tootinaowaziibeeng Treaty Reserve #292
Box 1
Tootinaowaziibeeng, MB
R0L 2L0

Federal Court Judge
Federal Court
701 West Georgia Street
Vancouver, BC
V7Y 1B6

Dear Federal Court Judge:

I am writing to participate in the settlement approval process for Indian Residential Schools Band Reparations Class Action Settlement Approval Hearing that is to take place on February 27, 2023, on behalf of Tootinaowaziibeeng Treaty Reserve #292.

Enclosed you will find a letter from Tootinaowaziibeeng Treaty Reserve #292 Chief and Council that confirms that I have authority to speak on behalf of the Band Class Member, Tootinaowaziibeeng Treaty Reserve #292.

Tootinaowaziibeeng Treaty Reserve #292 fully supports the proposed settlement between the Representative Plaintiff Bands and the Government of Canada. The reasoning behind this support is due to the past and ongoing collective harm that is suffered by our Indigenous community as a direct result of our lost Language and Culture that was stripped from us because of Residential School. Our Elders that attended these heinous institutions suffered unimaginable and at times, fatal consequences for speaking our Language and it resulted in their apprehension of passing the Language onto their children or they completely lost their Language altogether. As it trickled down the generations, the new generations do not know or speak our Language, but not for lack of wanting.

Our loss of Culture has led to many irreparable damages to our people. There are high numbers of drug and alcohol abuse that take place in our communities. The children are suffering to this day as a result of Residential Schools. Everyone in our community either has parents, grandparents, or they themselves have attended Residential Schools. This is not something that happened hundreds of years ago. With some institutions being closed in the 90's, the direct harm is still carried by some of our people; the coping of their deteriorated mental health with self medicating with drugs and alcohol continues to harm our community, our people, and our children.

Another significant reasoning of support is that this settlement being approved can lead to wonderful initiatives such as reviving our Language and Cultural practices so that we can begin to heal as a community. We can begin to build meaningful practices to help those suffering directly and as a community, we all suffer directly. There is not a corner of our community that has not been touched with the awfulness that Residential School was and remains to this day. As Indigenous peoples, there is not a day that goes by where you do not encounter someone that has a terrible opinion of us whether it is in person, on the phone, or online due to the misunderstanding of Residential School Survivors. Those encounters linger with us and we carry that with us into our homes.

Lateral violence also runs rampant in our community as a direct result of Residential School. Lateral violence is displaced violence and our people that hurt from their Residential School experiences end up hurting their own people because their anger and frustration has no outlet. They have every right to be angry but perhaps if they receive the opportunities to feel safe to practice their Language and Culture and embrace their Heritage, they can heal and feel pride in being Indigenous.

With funding meant for Cultural and Language revival and protection, wellness for our community and its members, and promotion of Heritage, there can be great change achieved. Our people can begin to revert to the old ways that were stolen from us and we can make a better community for our children and the future generations.

Sincerely,



Jessica Ironstand-Nelson

Tootinaowaziibeeng Treaty Reserve #292 Representative

Court File No. T-1542-12

**FEDERAL COURT
CLASS PROCEEDING**

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE SECWEPEMC INDIAN
BAND and the TK'EMLUPS TE SECWEPEMC INDIAN BAND, and CHIEF GARRY
FESCHUK, on behalf of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND

PLAINTIFFS

and

HIS MAJESTY THE KING IN RIGHT OF CANADA as represented by THE ATTORNEY
GENERAL OF CANADA

DEFENDANT

**WRITTEN REPRESENTATIONS OF WAUZHUSHK ONIGUM NATION
POSITION ON SETTLEMENT**

PART I – STATEMENT OF FACTS

1. Wauzhushk Onigum Nation (“Wauzhushk Onigum”) is part of the Anishinaabe Nation in Treaty #3, and is a band under the *Indian Act*. Wauzhushk Onigum was formally known as Rat Portage.¹

2. The centre of the Wauzhushk Onigum community and its main reserve, Indian Reserve Kenora 38B (“IR 38B”), are located on Lake of the Woods in Ontario.²

The Discovery of Potential Burial Sites on IR 38B

3. Canada and the Roman Catholic Church operated St. Mary’s Indian Residential School (“St Mary’s”) on IR 38B from 1897 to 1972.³ The school changed names three times. It was previously known as the Rat Portage Boarding School, the Kenora Boarding School, and St. Anthony’s Roman Catholic School, before it was renamed St. Mary’s in 1938.⁴

4. During the 1960s, St. Mary’s began integrating students into the local day school system.⁵

5. In its 75 years of operation, over 6,000 Indigenous children attended St. Mary’s. This included many members of Wauzhushk Onigum. Wauzhushk Onigum has over 50 survivors who were forced to attend St. Mary’s during the 1940s, 50s, and 60s.⁶

6. In 2021, Wauzhushk Onigum received funding from Canada and Ontario for the Residential Schools Survivor Project (the “Project”).⁷

7. As part of the Project, Wauzhushk Onigum is currently undertaking Ground Penetrating Radar (“GPR”) field surveys in the vicinity of what was previously St. Mary’s.⁸

8. In November and December 2022, using the GPR, Wauzhushk Onigum discovered 171 potential burial sites on IR 38B near St. Mary’s (the “Discovery”).⁹

¹ Affidavit #1 of Chris Skead sworn on February 19, 2023 at para. 2 [Skead Affidavit].

² Skead Affidavit at para. 3.

³ Skead Affidavit at para. 9.

⁴ Skead Affidavit at para. 10.

⁵ Skead Affidavit at para. 11.

⁶ Skead Affidavit at para. 12.

⁷ Skead Affidavit at para. 13.

⁸ Skead Affidavit at para. 14.

⁹ Skead Affidavit at para. 15.

9. The Discovery retraumatized members of Wauzhushk Onigum. The Nation's efforts since the Discovery have focused on supporting survivors and members whose family members attended St. Mary's.¹⁰

The Class Action

10. The Certification Order in this proceeding (the "Band Reparations Class Action") was made by Harrington J. on June 18, 2015 (the "Certification Order").¹¹ The Certification Order explicitly sets a period during which Indigenous groups may opt into the Band Class. Further, in relation to the Survivor and Descendent Classes, it sets out a period during which individuals may opt out of the proceeding. However, it is silent as to whether, how, or at what time an Indigenous group that opts into the proceeding may change its mind and rescind its decision to opt in.

11. The Certification Order was amended on February 8, 2022.¹² That amendment extended the time for Indigenous groups to opt into the proceeding to May 31, 2022. Again, it did not address whether, how, or at what time an Indigenous group who has opted in may re-evaluate and rescind its election to opt in.

12. Wauzhushk Onigum received notice of the Band Reparations Class Action in or around February 8, 2022.¹³

13. Wauzhushk Onigum joined the Band Reparations Class Action on May 30, 2022. This was the second to last day to opt into the class action.¹⁴

14. Wauzhushk Onigum received notice that a potential settlement (the "Potential Settlement Agreement") had been reached in the Band Reparations Class Action on January 23, 2023.¹⁵

15. The Potential Settlement Agreement includes the broad release that will be given by Band Class Members in the Band Reparations Class Action, which includes releasing as against His Majesty the King in Right of Canada and its servants, agents, officers, and employees (defined in both the Potential Settlement Agreement and this document as the "Release"):

¹⁰ Skead Affidavit at para. 16.

¹¹ Affidavit #1 of Sylvie Canning sworn on February 19, 2023, Exhibit A [Canning Affidavit].

¹² Canning Affidavit, Exhibit B.

¹³ Skead Affidavit at para. 4.

¹⁴ Skead Affidavit at para. 5.

¹⁵ Skead Affidavit at para. 7.

... any and all actions, causes of action, common law, international law, Quebec civil law, and statutory liabilities, contracts, claims, and demands of every nature or kind and in any forum (“Claims”) available against Canada that were asserted or could have been asserted in relation to those asserted in the Second Re-Amended Statement of Claim regarding the purpose, creation, planning, establishment, setting up, initiating, funding, operation, supervision, control and maintenance of Residential Schools, the obligatory attendance of Survivors at Residential Schools, the Residential Schools system, and/or any Residential Schools policy or policies (the “Release”) and all such claims set out herein are dismissed on consent of the Parties as if determined on their merits.¹⁶

16. The Proposed Settlement Agreement further stipulates that: “[f]or greater clarity, and without limiting the forgoing, the Claims do not relate to, or include any claims regarding, children who died or disappeared while in attendance at Residential School.”¹⁷

17. Wauzhushk Onigum did not turn its mind to the impact that the Discovery would have on its participation in the Band Reparations Class Action until after it was notified of the Potential Settlement Agreement.¹⁸

18. Wauzhushk Onigum may not have elected to opt into the Band Reparations Class Action had it known at the time it opted in of the potential burial sites revealed in the Discovery.¹⁹ The Discovery has caused a significant change in Wauzhushk Onigum’s circumstances.²⁰

The Motion

19. On February 20, 2023, Wauzhushk Onigum expects to file a motion seeking to amend the Certification Order to afford it the option to rescind its election to opt into the Band Reparations Class Action (the “Motion”).

PART II – ISSUES

20. Should the Potential Settlement Agreement be approved?

PART III – ARGUMENT

21. Wauzhushk Onigum has filed two written arguments relevant to its position on the Potential Settlement Agreement: these submissions and its submissions in support of the Motion.

¹⁶ Canning Affidavit, Exhibit D, s. 27.01.

¹⁷ Canning Affidavit, Exhibit D, s. 27.02.

¹⁸ Skead Affidavit at para. 19.

¹⁹ Skead Affidavit at para. 21.

²⁰ Skead Affidavit at para. 20.

22. Wauzhushk Onigum's primary position is that Canada should clarify in a legally binding way that the Release will in no way affect Wauzhushk Onigum's ability to bring a claim arising out of the Discovery. If Canada can provide certainty in a legally binding form on this point, Wauzhushk Onigum will not oppose the settlement.

23. However, if Canada cannot provide such binding certainty, the Proposed Settlement Agreement should not be approved because it unreasonably covers claims that are outside the scope of the Second Re-Amended Statement of Claim.

24. Further, as an alternative position, if:

- (1) Wauzhushk Onigum's position on the reasonableness of the scope of the Release is not accepted, and
- (2) this Court does not grant the relief sought in the Motion, i.e., granting Wauzhushk Onigum an option to rescind its election to opt-in,

the settlement should be rejected for unreasonably failing to accommodate Indigenous groups who have experienced a material change in circumstances since opting in by providing an opportunity to rescind the election to participate.

Approval of a Class Action Settlement

25. The law on how a Court is to approach the approval of a class action is well settled. The test is whether, in all of the circumstances, the settlement is fair, reasonable, and in the best interests of the class as a whole, taking into account the claims and defences and any objections to the settlement by class members.²¹

26. The terms and conditions of the settlement is recognized as a factor to consider when assessing a settlement.²² Wauzhushk Onigum's concerns touch on key issues inherent to the exceptional context of this case as being an attempt to further reconciliation in relation to residential schools.

The Scope of the Release

27. Wauzhushk Onigum's primary difficulty regarding the Potential Settlement Agreement is in relation to the scope of the Release. Specifically, Wauzhushk Onigum is concerned that the scope of the Release will be interpreted by Canada or by the Courts as barring a claim that may be brought by it against Canada as a result of the Discovery. At present, Wauzhushk Onigum

²¹ *Condon v. Canada*, [2018 FC 522](#) at para. 17 (T.D.).

²² *Ibid* at para. 19.

cannot fully assess what claims it may have against Canada arising from the Discovery. However, it may be confirmed that there are gravesites on IR 38B that exist as a consequence of Canada's Residential School Policy. If so, Canada's actions will have permanently limited and interfered with Wauzhushk Onigum's use of its reserve land, and this will require compensation from Canada.

28. Wauzhushk Onigum understands that the Band Reparations Class claim was never intended to address claims related to graves on reserve land. Rather, Wauzhushk Onigum understood that the claim was limited to addressing the cultural, linguistic, and social harm suffered by First Nations as a result of residential schools. Wauzhushk Onigum does not read the Second Re-Amended Statement of Claim as having in any way raised the harm that may be caused by Canada or its servants burying children, or anyone else, on reserve lands.

29. However, the scope of the Release leaves ambiguity on whether a claim related to the Discovery would be covered and released. Specifically, s. 27.01 of the Potential Settlement Agreement provides that each Band Class Member will release His Majesty the King in Right of Canada of all claims of every nature that "~~were asserted or could have been asserted in relation to those asserted~~ in the Second Re-Amended Statement of Claim regarding the... operation, supervision, control... of Residential Schools... and/or any Residential Schools policy or policies" (emphasis added).

30. Wauzhushk Onigum is concerned that if it brings a claim for harm caused as a result of the burying of remains on IR 38B, it will face an argument that this claim has been released. Specifically, it is concerned the Crown will say the claim could have been asserted in the Second Re-Amended Statement of Claim and is in regards of the operation, supervision, or control of residential schools or a residential school policy or policies.

31. Wauzhushk Onigum recognizes that s. 27.02 of the Potential Settlement Agreement may provide some comfort, in that it states that the released claims "do not relate to, or include any claims regarding, children who died or disappeared while in attendance at Residential School." However, Wauzhushk Onigum is concerned that this provision will be interpreted as relating only to claims about the specific children who died or disappeared, rather than claims about the practice of disposing of remains on IR 38B and its impact on Wauzhushk Onigum's use of its reserve. Indeed, it may be the case that the remains are not only of children, but also of adults

associated with the school whose bodies were buried in unmarked or poorly marked graves on IR 38B, which would fall outside s. 27.02. At this point it is simply not known what further investigation will reveal.

32. To the extent that the parties did not intend to release claims related to the impact to a Nation from having bodies buried on reserve lands, then Wauzhushk Onigum's concerns should be addressed through Canada clarifying the scope of the Release in a legally binding way. However, if Canada cannot provide adequate binding clarity to confirm that any potential claim arising from the Discovery will not be released, then the proposed settlement is unreasonable.

33. Specifically, it is unreasonable to include in a class action settlement an overly broad release that extends beyond the scope of the issues litigated in that action. As explained by Hall J., in rejecting a proposed settlement as overly broad:

[15] Were I to approve those words in the description of Released Matters, I would be venturing outside this certified class action and approving more than I have certified.²³

34. In the present case, damages arising from the existence of human remains on reserve lands was not part of the Second Re-Amended Statement of Claim. Accordingly, it cannot be part of what is released.

35. Further, the Courts have recognized that it can be unfair and unreasonable to attempt to bar future claims that have not yet arisen through a class action release.²⁴

36. In the present case, Wauzhushk Onigum's potential claims arising from the Discovery are not known, and could not be known, by it. While any claim that arises will relate to past wrongs, it will not crystalize until Wauzhushk Onigum is aware of what the Discovery means.

37. Given that the Wauzhushk Onigum's potential claims arising from the Discovery are not contemplated in the Second Re-Amended Statement of Claim and are not at present known by it, it would be manifestly unreasonable for such claims to be released. If the Proposed Settlement Agreement would have the effect of releasing such claims it is unreasonable and should be rejected.

²³ *Walter v. WHL*, [2020 ABQB 631](#).

²⁴ *2038724 Ontario Ltd. v. Quizno's Canada Restaurant Corporation*, [2014 ONSC 5812](#), at paras. 54-55.

Alternative Position

38. As an alternative position, if
- (1) the settlement is approved despite potentially impacting claims arising from the Discovery,
 - (2) neither the Certification Order nor the Potential Settlement Agreement have the effect of allowing a Nation whose circumstances have changed from rescinding its election to opt-in; and
 - (3) the relief sought in the Motion is denied;

then the settlement should be rejected for unreasonably failing to allow Wauzhushk Onigum a period to rescind its election to opt-in if it so chooses.

39. There is jurisprudence from this Court that suggests it is essential in a class action of a similar nature that plaintiffs be afforded an opportunity to review the settlement terms and determine if they wish to be bound by them. In *McLean v. Canada*, a case concerning a settlement agreement reached in a class action involving Indian Day Schools, Phelan J. observed:

[49] An important right enshrined in this Court’s class action rules is the right of any class member to opt out of the Settlement after which they may pursue their own claim independent of the Settlement.

[50] The original opt-out period was amended from 60 days after Court approval of the Settlement to 90 days.²⁵

40. A process that allows plaintiffs to know the terms of settlement before electing to be bound by them was also followed in the *Tataskweyak Cree* class action related to drinking water (Court File T-1673-19). The *Tataskweyak Cree* class action followed a similar procedural model to the present case, whereby First Nation organizations were permitted to “opt-in” to the Class Action prior to settlement.²⁶ Only such Nations as had opted-in were permitted to participate in the settlement. In that matter First Nations were required to individually accept the settlement before they would be bound by its terms and entitled to share in its benefit. As explained by this Court:

[51] To participate in the Settlement, First Nation Class Members must give notice of acceptance to the Administrator.²⁷

41. The settlement agreement set out that:

²⁵ *McLean v. Canada*, [2019 FC 1075](#)

²⁶ *Tataskweyak Cree Nation v. Canada (Attorney General)*, [2021 FC 1415](#) at para. 98.

²⁷ *Ibid* at para. 51.

If a First Nation Class Member does not give notice of Acceptance by the Acceptance Deadline, this Agreement will not bind the First Nation Class Member and the First Nation Class Member will not be entitled to any benefit hereunder unless the Courts order otherwise.²⁸

42. The settlement agreement in that matter contemplates that the acceptance by a First Nation of the settlement will be communicated through a Band Council resolution.²⁹

43. In both *McLean* and *Tataskweyak Cree*, the plaintiffs were not asked to accept a settlement blindly. Whether it is always necessary that a party be afforded an opportunity to opt out of a settlement is an issue that jurisdictions have split on, with that being the practice in Quebec but not apparently in other provinces.³⁰

44. Wauzhushk Onigum respectfully submits that it may be appropriate for this Court to determine whether, as is stated in *McLean* and as is done in Quebec, it is necessary (either as a matter of general practice or in class actions dealing with historical wrongs against First Nations) to provide an opportunity to opt-out at settlement once the terms are known. However, at a bare minimum, Wauzhushk Onigum says that it is unreasonable that, despite having experienced a material change in circumstances since its election to opt in, the Potential Settlement Agreement does not permit it an opportunity to determine not to be bound.

Self-Determination

45. Indigenous self-determination is a key concept recognized both by s. 35 of the *Constitution Act, 1982* and by UNDRIP.³¹ The proposition is put in its clearest and plainest terms in UNDRIP, which declares “Indigenous peoples have the right to self-determination.”³²

46. When there is a material change in circumstances that dramatically changes whether it is good and wise for a Nation to continue as a plaintiff in a class action, the right of self-determination strongly suggests that the Court ought to allow the Nation time to consult with its members and determine a way forward. If the Nation decides that it continues to make sense to participate in the class action it should be allowed to do so. But if it determines that the class action is no longer is a sensible way to achieve redress, respecting the principle of self-

²⁸ Canning Affidavit, Exhibit E, s. 2.01.

²⁹ Canning Affidavit, Exhibit E, s. 1.01, definition of “Acceptance”.

³⁰ *Macaronies Hair Club and Laser Center Inc v. BofA Canada Bank*, [2019 ABQB 181](#) at paras. 32, 35.

³¹ *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2020 CHRT 20](#); *Pilot v. McKenzie*, [2021 FC 296](#) at para. 27.

³² *United Nations Declaration on the Rights of Indigenous Peoples Act*, [S.C. 2021, c. 14](#), Annex Article 3.

determination requires respecting the will of the Nation. This is especially so in the present circumstance, given the subject matter at issue.

Allowing Nations whose Circumstances Have Changed to not be Bound Will Not Frustrate the Spirit or Purpose of the Settlement

47. The exceptional and rare circumstances of this case require care to ensure that the settlement process heals some of the historical and ongoing devastation of residential schools, rather than further harms Indigenous people and groups. There is a potential of great harm if a Nation is required to be bound by a settlement when it may not have entered the action at all had it known at the time of its election of a development as serious as the Discovery. Proceeding in such a fashion has the potential to undermine trust between the Nation and Canada, between members and their leadership, and in the settler legal system as a whole.

48. Conversely, allowing a Nation that has had a material change in circumstances to leave the class action will have no significant bearing on the overall effectiveness of the action. While 326 Indigenous groups have opted into this action, there are over 630 First Nation bands recognized by Canada.³³

49. The representative plaintiff and the defendant agreed that this class action would proceed on an opt-in basis, despite the accepted principle that opt-out models ensure that as many plaintiffs as possible are covered by the class.³⁴ Indeed, it seems likely that had this proceeded as an opt-out action, many more Indigenous groups would have participated.

50. The clear implication from this is that it was contemplated that some sacrifice of the total number of plaintiffs was reasonable so as to ensure that the process allowed Nations to maintain self-determination and autonomy by only being included if they opted-in. Canada clearly never expected to settle all claims of the nature raised in the pleadings in this action. Consequently, to allow a Nation to evaluate whether it makes sense to participate in a settlement in light of a material change in circumstances, as opposed to binding a Nation to a decision made on incomplete knowledge, furthers the broad goals of this action.

Conclusion

51. Wauzhushk Onigum does not know what will happen as a result of the Discovery. It does not know what further investigation into the potential burial sites will reveal.

³³ Canning Affidavit, Exhibit F.

³⁴ *British Columbia v Apotex Inc.*, [2022 BCSC 2147](#) at paras. 17-18.

52. The settlement should have no bearing on Wauzhushk Onigum's rights arising in relation to the Discovery. It concerns an issue that was not raised in the Second Re-Amended Statement of Claim, and any potential claim that Wauzhushk Onigum may have remains uncrystallized at present.

53. However, the language of the Potential Settlement Agreement may be construed such that the Release would affect Wauzhushk Onigum's ability to bring a claim in the future. If Canada cannot give a legally binding assurance that this will not be the case, then the settlement should be rejected as unreasonable.

54. In the alternative, if the Proposed Settlement Agreement is to be approved despite a lack of assurance this will not affect Wauzhushk Onigum's rights arising in relation to the Discovery, then it needs an opportunity to consider rescinding its election to opt-in. Wauzhushk Onigum requires time to investigate the Discovery, process the findings, and determine the best path forward. Such relief could be granted in the context of the Motion, but if it is not and this right is not provided by the Proposed Settlement Agreement then that agreement should be rejected as unreasonable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: February 20, 2023



Bruce McIvor
Melissa Rumbles
Oliver Pulleyblank

Solicitors for Wauzhushk Onigum

This is **Exhibit "L"** as referred to in the Affidavit of Jeanine Alphonse sworn before me on this 22nd day of February, 2023



Commissioner for Taking Affidavits (or as may be)

FLORA YU
(LSO NO.: 84025W)

**TRANSCRIPTION/TRANSCRIPTION
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DATE/DATE: January 21, 2023 9:30 a.m. (PST)
LOCATION/ENDROIT: Fairmount Hotel Vancouver, 900 Georgia Street West,
VANCOUVER, BC
PRINCIPAL(S)/PRINCIPAUX: Hon. Marc Miller, Minister of Crown-Indigenous
Relations
Ann Whonnock, Spokesperson, Squamish Nation
Chief Jen Thomas, Tsleil-Waututh Nation
Chief Wayne Sparrow, Musqueam Nation
Shane Gottfriedson, Former Chief, Band class
representative
Hiwus Warren Paul
Matthew Coon Come, Former Grand Chief
Peter R. Grant, Class Counsel

SUBJECT/SUJET: Minister of Crown-Indigenous Services Marc Miller, joined by the
Band Class representative plaintiffs, holds a news conference to make an
announcement on the Gottfriedson Band Class Settlement.

Moderator: Good morning. Hello everyone. I would like to
begin by acknowledging that the land on which we gather is located on the traditional
unceded territory of the Musqueam, Squamish and Tsleil-Waututh Nations. Welcome
elders, host nations, former Chief Shane Gottfriedson, former Chief Gary Feschuk,
who's joining us virtually today and Minister of Crown-Indigenous Relations Marc Miller.
Amongst our head table guests today are going to be Rosanne Casimir, former Grand
Chief Dr. Matthew Coon Come, Coon Come, Hiwus Warren Paull and class counsel
Peter.

I now invite Chief Wayne Sparrow of Musqueam Nation, Chief Jen Thomas of
Tsleil-Waututh and Syexwáliya Ann Whonnock of Squamish Nation to join us on stage
to open today's event in a good way.

Ann Whonnock: (Indigenous language)

I'd like to welcome each and every one of you, all of you our friends and elders to the
ancestral territories of (Indigenous language) Squamish Nation, my nation,
Tsleil-Waututh and Musqueam. Raising our hands to you in welcome on this historic
day. And of all the good work that's been done on behalf of many of our residential
school survivors, day scholars; also I have to mention and those who didn't make it
home, and raising our hands to all that here today.

(Indigenous language)

Chief Jen Thomas: Good morning. My ancestral name is (Indigenous language) and I just want to thank every one of you guys for being here. You know, it's been a long time coming. I remember the day when Sechelt and Kamloops came to our community and, you know, they wanted our community to join this class action suit. You know it's been how many years since that day. We've lost survivors since then, you know. So I want to thank all of you on behalf of the ones who aren't with us today. You know, they could be here in these empty seats, sitting here with us. I'm grateful for all of you being here and honoured ones, you know, so I raise my hands to all of you. Thank you.

Chief Wayne Sparrow: (Indigenous language)

My name's Wayne Sparrow, I'm elected Chief of the Musqueam First Nation. My traditional name is (Indigenous).

I just want to echo my cousin's comments. Welcome each and every one of you here, but I want to do a big shout out, you know, for the day scholars. I want to thank – I don't call them former Chiefs – Chief Shane and Chief Gary. I want to personally thank Chief Gary, who's a very good friend of mine, very good friend of our community, and when he reached out to us, we gave the support that we needed. We had, they got forgotten and if we didn't have these individuals and these communities stepping forward on behalf of all of the day scholars, they would have been forgotten. And it's their leadership that brought us to where we are today. And so many times in politics and representing communities, they don't get the credit that they deserve.

I know Gary for a long time and I know his health took its toll and I can't wait now, he's back on the sideline, where we're arguing with each other, screaming at each other and having the fun that we do in sports and then shaking hands and, and carrying on life. So once again, on behalf of our community, I want to thank everybody that was involved. Now that's a very, it's a very good day. And, you know, our language, I can't speak our language. It's so important. I'm going to a cultural event in Musqueam after and that was our vision from our community that we get fluent speakers again within the next two years. Now, that's all the hard work that these individuals have that hopefully will help us accomplish some of those things in our journey to, to recover and once again, (Indigenous language), thank you.

I do apologize; I have to leave pretty quick because of a cultural event in our community. So I just wanted to make sure I was down here to say those words. (Indigenous language). Thank you.

Ann Whonnock: Great Wayne. We also want to raise our hands and thank the Minister Miller for being here today and all the dignitaries and nations that were part of this class action. Squamish Nation was one of them, as well as Tsleil-Waututh and Musqueam, so we thank all those who did the hard work that got us here today. (Indigenous language) Those are our words.

Moderator: Thank you very much for that welcome. I am now inviting Minister Miller, Minister of Crown-Indigenous Relations, to speak.

Hon. Marc Miller: (Indigenous language) kwe kwe, ullaakkut, tansi, hello, bonjour, (Indigenous language).

Thank you Chief Wayne Sparrow, Chief Jen Thomas, Syexwáliya Ann Whonnock for your warm welcome on the territory of the Musqueam, the Squamish and the Tsleil-Waututh today.

Today, with band class representatives, former Chief Shane Gottfriedson, former Chief Gary Feschuk on, online on Zoom, Kukpi Rosanne Casimir, Dr. Matthew Coon Come, Hiwus Warren Paull, we're announcing that we've reached a settlement agreement of the band class litigation, one that builds on the 2021 Gottfriedson Day Scholar settlement. I've already gotten into legalese, so let me try to say it a little plainer. In, in 2021, Canada and the, and the people you see here today representing their nations and their peoples agreed to separate class action that was separate from survivors and dependents that were entitled to individual compensation for the pain and suffering that they had suffered to the extent financial compensation can even adequately replace, replace it.

We knew that compensation had to get out quickly but it left some unfinished business. Especially in the last two years, our government, I and the Prime Minister has had the opportunity to meet with many survivors, leadership and communities and hear directly from them and the experiences they've had, the trauma, the tragedy they suffered. Take a moment to salute their courage for speaking up because we do know that there are people still holding things in. Some may take it with them forever and we have to salute the courage of those who are still holding those on the inside and not speaking up, but there are those that are speaking up and they've shared that with the Prime Minister, shared it with me, shared it with other Ministers, other officials. They're instrumental to this day in, in making their words resonate around the Cabinet table.

Durant les deux dernières années, j'ai rencontré plusieurs survivants, tout autant que le premier ministre, des chefs dans les communautés. On nous a dit à, souvent à quel point il est important pour les survivants d'un âge avancé de pouvoir guérir et d'être témoins des efforts du Canada pour aborder les conséquences du système des pensionnats, système tragique qui a ses séquelles aujourd'hui dans la perte de langue et de culture. Ces gens-là surtout méritent de voir des actions et de pouvoir guérir, de pouvoir en sorte tourner la page.

And while settlements that are being announced like these today do not erase or make up for the past, and I will leave it up to the speakers today to even begin to think whether this actually constitutes justice. What it can do is help address the collective harm caused by Canada's past, a deeply colonial one, and the loss of language, the loss of culture and the loss of heritage.

La revitalisation de la langue et de la culture est au centre de notre travail vers la réconciliation et contribue à la préservation du patrimoine autochtone pour que toutes les générations futures présentes puissent connaître leur héritage, être fier de leur culture, être fier de leur culture et leur langue.

It's why, over the past several months, we've been engaged in those negotiations in a respectful fashion, out of the public eye, around the negotiation table and reengaged negotiations in a way to resolve this case in a fair, compassionate and respectful way. As part of this settlement, Canada will provide \$2.8 billion in a not-for-profit, independent of the government trust. It'll be guided by, by four pillars that were developed by these people here today and you'll hear more about this, as a resolution to support healing, wellness, education and commemoration activities and can be, contribute, contribute to the revitalization of Indigenous languages, cultures and heritage.

These four pillars explicitly are the revival and protection of Indigenous language, the revival and protection of Indigenous cultures, the protection and promotion of heritage and the wellness of Indigenous communities and their members. This is the first time Canada is compensating bands and communities as a collective for this type of harm in regards to residential schools. It represents our continual and ongoing commitment to filling the gaps left from the Indian Residential School Settlements Agreement, Day School Agreement and the Day Scholars Settlement, one that places language and culture at the centre of healing to address the legacy of institutions that were aimed at destroying Indigenous heritage, Indigenous culture, Indigenous languages and Indigenous identity.

This agreement is a testament to the diligence, dedication and resilience of the people you see here today and many that have passed and to Canada's commitment to revitalize Indigenous languages, cultures and heritage. As we prepared to appear before the Federal Court on February 27th to seek approval of the terms of the settlement, I want in particular to thank Shane and Gary for their dedication and resolve over the last 10 years on behalf of the band class. This historic settlement wouldn't be possible without their efforts.

Cet accord ne signifie en aucun cas que notre travail est terminé. Aujourd'hui, le Canada n'a pas à se féliciter. Aujourd'hui, il ne s'agit pas de moi, il ne s'agit pas du gouvernement du Canada ni du premier ministre. Aujourd'hui, il s'agit des survivants, de leurs communautés, les peuples autochtones et la guérison qu'ils méritent.

Today isn't about me or the Prime Minister, the Government of Canada. It doesn't mean the work of Canada's finished. It isn't about Canada congratulating itself. It's about survivors, communities, Indigenous peoples and the health and wellness that they deserve and they fought for for far too long, sometimes against people that have held my position. There's always more to do and I think that's important. You'll hear from it today and I think to any Canadian listening here today, it's less important to pay attention to my words today than the ones that will follow. We can all learn from this.

Reconciliation isn't free. This is a lot of money. Is it enough? I think only time will tell, but we know there's a heck of a lot more to do.

I also want to honour those language and culture teachers who have been doing this without any money over the last few years, and fighting for the preservation of their language and their people and their heritage and culture and have trained generations of teachers to revitalize culture, sometimes outside the eyes, the prying eyes of the government. They've done some without money and I think today, the cards are a little less stacked against them.

Today's an important step forward against the harmful past and a work towards addressing it in the present in hopes for the future of this country and the generations to come.

La réconciliation, comme vous le voyez aujourd'hui, n'est certainement pas gratuite. Aujourd'hui, nous franchissons une étape majeure, une réalisation qui reconnaît un passé pénible, qui s'efforce de répondre à ce passé dans le présent et qui donne de l'espoir pour le future pour l'avenir de notre pays et de nos enfants et pour les générations à venir.

I really look forward to continuing the work alongside new survivors, families, indigenous leadership and the provinces and territories to resolve a lot of the remaining claims as well. And we can't forget those.

(Indigenous language), miigwetch, (Indigenous language), marsi, thank you et merci.

Moderator: Thank you Minister. We'll now turn to former Chief Shane Gottfriedson for remarks.

Chief Shane Gottfriedson: (Indigenous language). Former Chief Shane Gottfriedson of Kamloops. You know, I would first of all like to thank our, our elder for the blessing this morning in the room and you know, acknowledge the, the three, three nations that we're on here today. Very powerful moment for you to be witness to the work that we're doing here today. I'd also like to acknowledge, you know, our Chief, Rosanne Casimir and Chief Warren for, you know, their patience, dedication and commitment to this ongoing work. I'd also, you know, like to, you know, acknowledge, you know, all of our ancestors that didn't make it as well, all of our day scholars that, you know, signed on to the fight that didn't live to see the end result and have moved on to the spirit world.

You know, I haven't been up on a stage in quite some time so I'm, I was a little bit nervous coming into today and, you know, travelling down last night and, you know, thinking about the journey that we've been on here for, you know, the last 15 years and the journey that our people have been on for many, many generations, you know, looking at, you know, that word called reconciliation and looking at, you know, building a, a better way forward for our people, you know. And I remember very clearly and

vividly when Harper did the announcement and the public apology, you know, for Indian residential school settlement and apology, and you know, at that time, you know, the Leadership Council, the AFN and Canada got together and there was this huge gathering in Ottawa and, and all the Chiefs wanted to be in the room, in the meeting with the Prime Minister, but there was only a limited amount of people that were allowed.

So I, I decided I wanted to stay home with our people and, and I remember that day very, very clearly when the announcement happened where our people were left out of that announcement, and sitting with some of our people that have now moved on to the spirit world, and they said that we were left out. And, you know, so, so the journey began and, you know, and I'm here today because of, you know, our council believed that, you know, we wanted to, you know, make sure that our people were looked after and compensated and, you know, and I remember, you know, when we were moving forward, it was Chief Gary Feschuk was the only Chief that actually reached out to, to our community and, you know, the fight began.

And, you know, both Gary and I, you know, led our respective communities. You know, in 2008, the Indian Residential School Settlement, as I mentioned, excluded our people and our communities and we saw the need to stand up for our people. So we did, we stood up and, you know, and, and brought this plan into action and, you know, and it was finally 10 years later, after that fight that we, we did receive, you know, resolution for individual day scholars 10 years after the fact. But it was, you know, which was one step in, in what we thought could be a good relationship and building reconciliation with Canada. And, you know, being a leader in, in First Nations politics, it's a tough business. You know, both Gary and myself, you know, like Chief Paull and Chief Casimir, you know, they live, we live, you know, dysfunction in our communities. You know, we suffered deeply from lateral violence and, you know, dysfunction, you know, in our own communities on a daily basis. And it hasn't changed much.

But what does this mean in looking at, you know, moving forward, you know, we had, you know, a hard time in governing ourselves in our communities and making good decisions for our people. You know, we had people that, you know, were so frustrated that they would protest the band office or do roadblocks and, you know, cause, you know, all sorts of, you know, problems for our people, you know, over the years. And, you know, what happened with our people being excluded, you know, you know, it meant that they wanted to fight with us, you know, and that's the common problem amongst our First Nations governance is everybody runs to the band office thinking that the band office is going to fix everything. And, you know, I think today, you know, I think our leadership still fights with that issue.

But it was very difficult for us to look after the interest of our communities in our nations and both Gary and I, you know, saw that, you know, the outside non-Indigenous governments from Canada, you know, in Ottawa and our local and regional and city governments distrusted our governments in many different ways and didn't take us seriously. For many generations, our people have suffered. Gary and I agreed that

Canada's policy of attacking our languages and culture for over 120 years had devastated our own system of government, government law, government and laws and seriously impacted our language. As Chief Sparrow talked about, he doesn't speak the language and neither do I, unfortunately. There's a lot of our people that, you know, lost their language and these impacts on our people were damages caused by Canada with their policy of destruction of our language and culture, later relabelled assimilation policy and then an effort to integrate Indigenous people, as we all know, through the Indian school.

That no nation in Canada had taken this on, but Gary and I decided with our councils that we would stand together for our own day scholars and also for all of the Indigenous people in Canada who live with Canada's racist legacy and tried to govern our nations and our small pieces of land as reserves. When we first started, you know, we really had, you know, not a lot of resources and we called on a friend of ours by the name of Len Marchand, Jr., who's a Syilx (Indigenous language) Okanagan lawyer and I remember that meeting very vividly because we met in the bottom of the Indian Residential School in the kitchen and, you know, and it was, we told, we told Len we don't have no money to pay you, but we believe this fight is worth, worth, worth every, every, every bit of value for our people, and he agreed. Like, he, he worked for probably about a year before we actually got enough money to pay him.

And, you know, we moved forward with Len and, you know, Len recommended that this was a big, big piece of work to take on, and Len recommended that we, we get Peter Grant and, and John Phillips who could advance, you know, our unprecedented case forward, you know. There had been no class action for collective damages before or based on collective rights to the language and culture in the history of Canada. Canada fought us all the way to the courthouse steps and on, and into the halls outside the courtroom. Right, Tom? Where's Tom? And then 10 days before the trial was to start, Canada offered to settle. So today, we are representing 325 Indigenous nations across Canada and have developed a settlement plan to allow for the nations to work towards the four pillars.

The four pillars are revitalizations of our language, revitalization of our culture, wellness for our people and heritage, heritage and commemora-, commemoration (sic) for our communities how we see fit. What is different in this settlement, it allows our indigenous nations to control this process, not the Indigenous governments. We will manage and distribute the funds. We will provide it to all 325 nations in a fair and objective manner and taking into account added costs for larger populations and remoteness. The nations will decide which of the four pillars that they will focus on, that the nations will decide how to invest for the use, the uses of the money and will develop three 10-year plans for implementation.

This is the beginning of a new era in Canada for our people. When the government in Ottawa is saying we're giving over the authority to care for Indigenous people and right the wrongs that we as a government created back to the Indigenous nations of Canada. Now it's up to us to do the work. It's up to, for our people to take these tools and move

forward.

I want to thank Minister Miller and his government for seeing our vision and working in collaboration with us. I know it was tough negotiations, but in the end, if it was easy, you know, where would we all be? I'm very honoured to be able to live to see this day because I think historically when we look at the fights when it comes to our human rights, our land claims fights and our way of life as Indian, Indian people, it's always been a fight with government, you know. And this took 15 years and I never thought, you know, you know, it would take this long, but we got through it. And I've known that other people and other nations that have had fights that never lived to see an end resolution.

So with this, I want to say a big shout out to my brother Gary, who's on video who couldn't be here today, you know, Gary, I hold my hands up to you, brother. I thank you for always believing and never giving up and always, you know, keeping a positive but firm hold on the direction that we were going in. And I want to thank Sechelt and Chief Matthew and the James Cree, Cree First Nation for also believing in us and all the other 325 First Nations that put languages, language and culture as a priority. With that, I say all my relations. Thank you.

Moderator: Thank you for those words former Chief Gottfriedson. Now, over to Hiwus Warren Paull.

Chief Warren Paull: Thank you all for coming today and to sharing this, this announcement. I greatly appreciate it. Thank you for the, the blessing on this and for getting us started in a good way.

My name is Warren Paull. My given name is (Indigenous language). I am the current elected Chief of the Sechelt Nation, but I'm also a Hereditary Chief as well. I'd like to thank the Minister for being here, to have this conversation with us and do this announcement because it's been a long, long, long journey that's gotten us to this place. This is all for the people that really didn't, didn't make it here, and I really look forward to doing what's necessary, like, like Chief Sparrow has done and like Chief Gottfriedson has said and I don't speak the language. My grandmother told me when I was young I don't want you to go through what I went through. So this is for them.

This has been a long battle and Gary has said himself that it's taken far too long for us to get to this place where we can have this conversation. But we're here and it's a great day for that. As a result of the gen-, of generational trauma, residential schools, ours didn't close until 1974. Our administration building is sitting right on top of where our residential school was. Our language went from our first spoken to we no longer have any fluent speakers in our community. And, but we are working really hard to try and resolve that issue, and it's coming. We've hired several MBAs and several people who are capable of putting together a language program that's going to put us in a good place to be able to start getting our language back, getting our culture back.

I have to say at this particular point in time that when we had our first initial meeting with Mr. Phillips and Ms. Soroka and with Mr., Mr. Grant, when they said that this thing was, was coming forward and they were having a conversation about it and said what do we want to do? I said I want to carry on. I want to keep the fight going, I want to take it to the next level and do what they got to do to get, to get us to that place. They prevailed upon me, well, Tk'emlups prevailed upon me, Gary prevailed upon me and said we have to do this for those who are still here and need that closure. So here we are.

In my conversation with Minister Miller today, I was, it isn't just this agreement that convinced me to withdraw and carry on. It was the collaborative fiscal policy table piece that, that we're in with the other LCAC groups, the 27 First Nations who signed self-government treaties were in a fiscal policy review process and their language and culture is going forward for, for Cabinet approval and for the budget this year. And it's a significant bite, it's a significant piece and it's a significant commitment. So this commitment, with the 325 is one step. The other part is coming. So it shows to me that Canada's seriously committed to going forward and, with, to try and right the wrongs of what, what has happened and I, and I look forward to the day.

To quote Gary, it is time for Canada to not only recognize the harm, but help by walking with us along the trail. The settlement is a great first step and I look forward to starting that walk with Canada. I don't have to say that it has been a tough journey. It has been. It's been a long, long haul. But with the help of James Bay Cree, with the help of Tk'emlups, we got to this day and that's, that's a good first step and we look forward to the rest of the journey with everyone.

(Indigenous language)

Moderator: Thank you Hiwus Warren Paull. Over to former Grand Chief, Dr. Matthew Coon Come.

Dr. Matthew Coon Come: (Indigenous language)

Mr., Minister Miller, I agree with you – nous sommes ici pour tourner la page. How's my French? Not bad, eh? (Laughter) I'm just saying that I agree with Mr. Minister for saying that we're here to, to turn the page. I'll send the bill to him for translation.

We're here, of course, to make an announcement. I'm glad to be here with Minister Miller, Chiefs, Shane and Gary and guests. I would like to acknowledge the three host nations in whose territory we are meeting: Musqueam, Tsleil-Waututh and Squamish. I would like to thank Canada for the efforts made to arrive at a solution for this case. It took them a while to come to the table, but we are finally here. For the 325 band class members, it was not enough that Canada settled this court action with First Nations. Canada must act to help First Nations recover as well as commit to never repeating their destructive policies. The settlement agreement shows that Canada is taking responsibility for past actions and is resolving to do better on this journey of reconciliation.

I would particularly like to thank and to honour Gary Feschuk and Shane Gottfriedson. Twelve years ago as Chiefs of their respective nations, they met to discuss what they were seeing in their communities. As leaders, they saw how the pain of the individual survivors of residential schools impacted their nations' cultures, their social structures and their ability to function. And it was this wisdom that pushed them to start this court case and to claim reparations not only for individuals but also for the nations as collectives.

This was the first time such a claim had been made, but they were determined to see it through. It was their determination, the continued work of the leaders of Sechelt and Kamloops who followed, including Chief Warren Paull and Chief Rosanne who are here today, which got us to this moment. The Grand Council of the Crees of Eeyou Istchee has always believed in the importance of supporting ground breaking litigation to advance Indigenous rights. We are glad to have had the opportunity to stand with our brothers and sisters in this.

We have all heard that the purpose of the residential schools was to take the Indian out of the child. To carry out that intent, Canada instituted a policy designed to wipe out aboriginal cultures by breaking the links between family members, between individuals and their communities, and between communities and their lands. They did this by removing us as children from our homes and sending us to institutions as residential schools in which we were forbidden to speak our languages, were severely punished for doing so. Our cultures were integrated as savage and heathen and we were taught to despise those who continued their traditional cultural practices, our own parents and grandparents.

This settlement is about giving our nations the support they need to pick up the broken pieces and to start healing our communities. It is about overcoming the pain of past oppression and rebuilding our societies. This is about restoring wellness in our communities. Programs and projects developed by governments without First Nations involvement usually fail. The Band Reparations Agreement will allow First Nations to develop their own incentive to support healing, to restore language, to restore culture, to restore traditions destroyed through past government actions. This is not going to be easy. It will take years. Rebuilding our languages, our cultures, our social institutions, is complicated but it is work we need to do for our young people.

Our young people need to know what it means to belong to proud vibrant cultures and to be secure in their identities. With this ground breaking, they can face the future of optimism instead of despair, with confidence instead of overwhelming hopelessness. This court case has been a long fight, but the truth is it's just the beginning. I want to thank you very much, miigwetch, merci beaucoup.

Moderator: Thank you to all the speakers today for your words. We will now begin the Q&A portion of this event. To answer your questions, we have the Honourable Marc Miller, Minister of Crown-Indigenous Relations, and Peter Grant, class counsel here to answer any technical questions.

Pour répondre à vos questions sont ici présents l'honorable Marc Miller, ministre des Relations Couronne-Autochtones, ainsi que Peter Grant, avocat du recours collectif pour répondre à toutes les questions techniques.

We'll begin with media attending virtually and then those joining in person. For those in person, I'll ask that you line up at the microphones so that we can hear your questions through the feed. Please be sure to identify yourself and your media outlet.

Veillez vous identifier ainsi que le média pour lequel vous travaillez.

Please also mention who your question is directed to. We'll please start with one question and one follow-up and if time allows, we'll take more.

On va commencer avec une question et une question de suivi chacun, et si le temps le permet, on prendra plus de questions.

First question, for those joining virtually.

If you'd like to ask a question, please put your hand up virtually. Any questions? Okay. We'll move to the room. If you'd like to ask a question, please step to the mic.

Question: Can I really just ask on that one? It's okay? Sorry. Brieanna Charlebois, Canadian Press. I'm just a little confused on the breakdown, so I was wondering if you could go over that again. I know the nations are going to be distributing it, but initially, there's \$20,000 that's being – I'm just wondering if you could break that down for me again a little bit, more clearly? Sorry.

Hon. Marc Miller: I don't know if Peter wants to speak to it, but –

Peter R. Grant: I can speak to that. The, the, after the settlement approval, if the judge approves the settlement, which is going to take place in February 27th, 28th, March 1st, then the judge will decide, then there will be an appeal period of 60 days. And if there is no appeals, 30 days after that period of time, the \$2.8 billion will be transferred to, as Minister Miller said, a not-for-profit trust for, invested, which will have directors. The initial directors will be from the three nations that are here, and then there will be regional directors determined within one year. The first task of the initial directors and why it has to be set up for the time of the implementation of the investment is to have investment advice so that the money is invested immediately. The money will not be going through any legal trust accounts or anything like that.

And then, the second task of the first directors will be there will be an initial payment of \$200,000 to each of the 325 First Nations. That will happen as soon as possible after receipt of the funds. That will be, that is called a planning, planning funds. Those funds will be to give the nations the opportunity to develop their first 10-year plan and that 10-year plan will be for them to implement a plan relating to language, one or more of the four pillars. And so, each of the nations will determine that. And as soon as

that plan is brought forward, then there will be an initial what is called colloquially a kick start fund, \$325 million from the fund will immediately be distributed to the nations. It, although that is, looks like an equal amount, what it will be is there will be a base rate and then there will be a rate based on population, percentage based on population.

Also, there's an issue about some nations are remote so the cost for them to implement is much higher. And so that remoteness will be, be paid an additional amount for those remote communities, say, fly-in communities north of 60, etc. However, and that will be determined by the board, but that will be in addition to the \$325 million. So at the very beginning, that is what will happen. The timing of the delivery of that first installment will be, depend on each nation. Some will have their plans in place right away, some may take some time. Then, the money, as I said, is invested and that money will be earning income every year. the intention is it will be the income earned on that money will be tax protected – that is part of the settlement – and Canada will, and therefore, the investment on that money, that is, the interest on that money will be distributed to each of the 325 First Nations, again on the basis of the formula.

There will be a base rate, that is every nation gets the same amount. There will be an increase, or there will be a population basis, so over and above the base rate, there will be a base, an amount that will be proportional to population and there will then be the remoteness factor, which will have been determined by the board. The base rate and the population rate is set out in the disbursement policy of the settlement agreement. I must underline that the disbur-, investment policy and the disbursement policy, as with the four pillars, was all created by these nations that are before you. None of this was imposed by the government. They, these policies were developed and then tabled to the government as that, that's how it will go.

So the, there will be a reporting requirement to meet the minimum standard to the board of directors, which is all Indigenous except for, well, it may well be an Indigenous person, but Canada will have one representative. There will be one from each of the five regions and the other three, so a total of nine board members. The, they will get reports back from each of the nations as to how they're doing. A nation may want a cultural centre, another nation may be hiring language teachers. There is very, the, the four pillars are defined very broadly in the settlement agreement so that it is not tying the hands of any of the 325 nations.

And, but each nation will get those monies. If a nation says I, we need more time to develop our plan, their portion can be held in interest bearing, held in a trust in the trust and they can get it later. In other words, a nation may say we don't want this right this year, we're not ready yet. But that money will be held for them. That will be their decision. After 10 years, there will be a follow-up 10-year plan and that plan will be distributed. The intention is after 20 years, all of the funds from the trust will be disbursed, which will be as I've told you, the interest on the investment will be being given out to the nations each year, and then after the 20 years, the, the principal will be distributed.

The trust itself will be wound up. But the not-for-profit will continue as necessary just to have the monitoring, solely for the monitoring that the money is used for up to 10 years for one of the four pillars. The intention of both Canada and the plaintiffs here is this money is for revitalization of language, revitalization of culture, wellness and heritage and commemoration. Those pillars are also defined in the settlement agreement in a schedule, but very broadly.

If a nation, for example, at 20 years says we want to invest the money in our own trust, our share of the \$2.8 billion, in our own trust and we will take care of it and it'll be for the four pillars, that will, there won't be any more need for monitoring of that nation. Other nations may have a two-year plan, etc. The idea is that the whole matter, the, the, it's not to create an institutional structure that lives forever. It's to create a process by which nations will be able to move forward. As one of the Chiefs – he didn't say it today, but he's at this table, one of the founding Chiefs, not the one on the monitor – said to me Peter, if we can't get this done in 20 years, then there's something wrong. So that is the position that the founding nations had.

Now obviously, for rehabilitation of language, it may take longer for some nations than others. That, that is all under control. The key here is first of all, the investment is going to be controlled by the Indigenous people. Secondly, the disbursement policy has been created by the Indigenous people, not by government. Thirdly, the four pillars was created by Indigenous people. And the decisions as to how any of the 325 nations use the money is not controlled by the board, it'll be controlled by that nation and they will be able to do it. So this is, as I believe Chief, former Chief Gottfriedson stated, this is controlled, this has, this has never been done. This is where the government is saying you take care and you're in charge of how you wish to start to repair the damage.

Hope that may, sorry it was a longwinded answer, but I hope it answered your question. I am legally trained, so I end up taking too long, that's why they threw me at the end of the table. (Laughter)

Moderator: Any questions or follow-ups for those in person today?

Question: (Off microphone) want to make sure we got your name on camera. And official title.

Peter R. Grant: I'm Peter Grant, class counsel. I'm one of the class counsel, together with John Phillips and Diane Soroka, who prosecuted the action for the nations of Sechelt, Kamloops and the Cree.

Question: Yasmin Gandham, CBC News. I just wanted to ask, you know, you've spoken about the four pillars and that's where the money is going to be going towards. One of those things is preserving languages. For some of the, you know, Chiefs that are here today, can you speak to what that might look like and, and

what you hope to see when you have this settlement?

Chief Shane Gottfriedson: Thank you for your question. Shane Gottfriedson. I think when you talk about the four pillars of revitalizing our language, culture, our wellness plan for people, heritage and commemoration, I think our communities all have their own strategic plan and looking at, you know, what it's going to take to revitalize our language by, you know, maybe hiring more fluent speakers, maybe starting by maybe even possibly, you know, looking at going for possibly a full immersion school, you know, teaching the language for our kids.

And when we talk about our culture and revitalizing our culture, I think there's a lot of, you know, people that don't understand or know our culture because they were always taught it was, you know, a bad thing, not to, to practise that. So we're going to be looking at revitalizing a lot of our cultural programs within our community. And I think each First Nation is unique and different in their own way in how they, the different cultures all across Turtle Island. So I think we're unique in that way, but I think when we talk about wellness for our people as well, I think there's lots of different, I think, wellness and traditional practices is that we can do in our own community that, you know, we don't, like, for example, you know, part of our culture and wellness is, you know, going out and picking berries or going out and picking roots or going out hunting or going out to a fish camp or, you know, going to, you know, spend time with elders or, or learn our, our creation stories, you know.

And I think part of that other four pillars is looking at our, our heritage. We could, you know, maybe put heritage markers in our territory talking about significant timelines and our history of, of, you know, what was important to each nation and whether it's a traditional territory or whether, you know, it's a monument or whether it's, you know, a healing centre or a wellness centre. So it's, you know, pretty dynamic in the way, I think, that we, we created those four pillars because I think, you know, when you live and breathe and live a res life, I call it res life, you know, it's not, there's not a lot of these programs that exist today. So I think that's why we put a lot of effort and thought because I think the people that did practice, you know, they weren't big on sharing because, you know, of how, you know, bad our language was thought of by government, by getting the Indian out of the child and that was part of it.

So I think there's been a lot of thought in these four pillars. I think it was that, that ability in our leadership, the ability to do, to be dynamic and create, you know, what's important to us, not what's important to government, but what's important to us as Indigenous people.

Moderator: Any follow-up?

Question: Yeah. Just, you know, I think – thank you for answering my question – but, you know, I know that it was mentioned that the timeline for different nations might look a little different, but what do you kind of envision when you mentioned some of those ideas of somewhat of a timeline?

Chief Shane Gottfriedson: Well, I mean, I think, you know, the step one is, you know, looking at what, what Peter talked about and looking at, you know, the kick start funds to be able to, you know, start the planning process of, you know, you know, what each pillar would look like. I think there are some communities that have the administrative support and there are other communities that don't have the administrative support. There are some communities that are ahead and some people that are very active in these four pillars already and there's others that aren't.

So I think it gives, you know, communities, you know, you know, the ability to, you know, take as much time as required to be able to build these steps, but I think there is a timeline, you know, of 20 years on this. So I'm a firm believer, like, let's not fart around here and let's, let's get the work done. I think we know what we want, we know what we need in our communities so it, it's not going to take as much time, I don't think and I think it'll be First Nations driven. I think that's the most important thing, is Canada allowed us that space to be able to, you know, be creative and dynamic in the way that we want to move forward on these four pillars. It's led by us not by, not by our friends over here.

Question: Thank you.

Moderator: Do we have any more questions for media in the room? I'm just going to turn over to the Zoom again to see if there are any questions virtually. Please raise your hand. If there are no more questions, this concludes our press conference.

S'il n'y a pas plus de questions, ceci conclut notre conférence de presse.

I will now welcome elder Gene Harry to help us close. Please note this will be off-camera. For media in attendance, we ask that you turn your cameras off now and stop all recording devices.

TAB 7

FEDERAL COURT

CLASS PROCEEDING

THE HONOURABLE), THE
)	
JUSTICE ANN MARIE McDONALD)	DAY OF, 2023

B E T W E E N:

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE SECWEPEMC INDIAN BAND and the TK'EMLUPS TE SECWEPEMC INDIAN BAND, and CHIEF GARRY FESCHUK, on behalf of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

(Settlement Approval)

THIS MOTION, made by the Plaintiffs, on consent, for an order approving the settlement of this action pursuant to Rule 334.29 of the *Federal Courts Rules*, SOR/98-106, in accordance with the terms of the settlement agreement between the Plaintiffs and the Defendant, dated January 18, 2023 (together with all schedules appended to the agreement, the “**Settlement Agreement**”), appended hereto as **Schedule “A”**, was heard commencing on February 27, 2023 at the Federal Court, Vancouver, British Columbia;

WHEREAS this Court certified this action as a class proceeding by Order dated June 3, 2015, which Order has been amended from time to time;

AND WHEREAS this Court approved the Day Scholars Survivor and Descendant Class Settlement Agreement with respect to the Survivor and Descendant Classes by Order dated September 24, 2021, without prejudice to the ongoing litigation of the Band Class's claims;

AND WHEREAS the Plaintiffs and the Defendant entered into a framework to settle the Band Class claims and resolve this litigation in its entirety on September 17, 2022;

AND WHEREAS the Band Class consists of 325 Bands that either are named as Representative Plaintiffs or have opted in to this class proceeding (the "**Band Class Members**");

AND WHEREAS the parties entered into the Settlement Agreement on January 18, 2023;

AND WHEREAS the Settlement Agreement provides for a not-for-profit entity incorporated pursuant to the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 or analogous federal legislation or legislation in any of the provinces or territories (the "**Not-For-Profit**") to act as a Trustee of the Trust for the benefit of the Band Class and in furtherance of the Four Pillars set out in Schedule F to the Settlement Agreement (the "**Four Pillars**");

AND WHEREAS this Court approved the form of notice and the plan for distribution of the Notice of Settlement and Settlement Approval Hearing by Order dated January 21, 2023 (the "**Notice Order**"), which constituted good and sufficient notice of the hearing of the motion for Settlement Approval;

AND WHEREAS the parties have adhered to and acted in accordance with the Notice Order and the procedures provided therein;

AND WHEREAS, in accordance with this Court's Advanced Costs Order dated January 21, 2023, the Defendant has paid \$500,000.00 to the Representative Plaintiffs to pay the costs associated with establishing the Not-For-Profit and Trust referred to in ss. 21 and 22 of the Settlement Agreement;

AND UPON BEING ADVISED that the parties consent to this Order;

AND WITHOUT ADMISSION OF LIABILITY on the part of the Defendant;

AND UPON READING the motion record of the Plaintiffs, filed, including the Settlement Agreement, and on hearing the submissions of Class Counsel and the lawyers for the Defendant, and certain Class Members;

THIS COURT ORDERS AND ADJUDGES that:

1. The Settlement Agreement, in its entirety and including all of its schedules, is incorporated by reference into this Order.
2. Any interpretation of the Orders below will be made by reading them in context with all of the clauses in the Settlement Agreement, and, unless otherwise defined in this Order, capitalized terms in this Order shall have the meanings set out in the Settlement Agreement.

SETTLEMENT APPROVAL

3. The Settlement Agreement is fair and reasonable and in the best interests of the Band Class, 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.

4. This Order, including the releases referred to in paragraph 6 below and the Settlement Agreement, is binding on Canada and on all Band Class Members.

5. The notice of approval of the Settlement Agreement (the “**Notice**”) shall be given to the Band Class in accordance with the Notice Plan attached as **Schedule “B”** to this Order, and the Notice shall be substantially the form of Notice attached as **Schedule “C”** to this Order.

6. The Band Class claims set out in the Second Re-Amended Statement of Claim, filed February 11, 2022, are dismissed without costs and with prejudice, and the following releases and related Orders are made and shall be interpreted as ensuring the conclusion of all Band Class claims, in accordance with section 27 of the Settlement Agreement:

- (a) Each Band Class Member (“**Releasor**”) fully, finally and forever releases His Majesty the King in Right of Canada, its servants, agents, officers and employees, from any and all actions, causes of action, common law, international law, Quebec civil law, and statutory liabilities, contracts, claims, and demands of every nature or kind and in any forum (“**Claims**”) available against Canada that were asserted or could have been asserted in relation to those asserted in the Second Re-Amended Statement of Claim regarding the purpose, creation, planning, establishment, setting up, initiating, funding, operation, supervision, control and maintenance of Residential Schools, the obligatory attendance of Survivors at Residential Schools, the Residential Schools system, and/or any Residential Schools policy or policies (the “**Release**”) and all such claims set out herein are dismissed on consent of the Parties as if determined on their merits.

- (b) For greater clarity, and without limiting the forgoing, the Claims do not relate to, or include any claims regarding, children who died or disappeared while in attendance at Residential School.
- (c) For greater clarity and without limiting the foregoing, the Release does not settle, compromise, release or limit in any way whatsoever any claims by the Releasers, in any other action, claim, lawsuit, or complaint regarding a declaration of Aboriginal or Treaty rights, a breach of Aboriginal rights, a breach of Treaty rights, a breach of fiduciary duty, or the constitutionality of any provision of the *Indian Act*, its predecessors or Regulations, other than claims related to the purpose, creation, planning, establishment, setting up, initiating, funding, operation, supervision, control and maintenance of Residential Schools, the obligatory attendance of Survivors at Residential Schools, the Residential School system, and/or any Residential Schools policy or policies as set out in Section 27.01 of the Settlement agreement and subparagraph 6(a) above.
- (d) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasers against any person other than Canada. For greater clarity, and without limiting the foregoing, the Release cannot be relied upon by any Third Party, including any religious organization that was involved in the creation and operation of Residential Schools.
- (e) If any Releaser makes any claim or demand or takes any actions or proceedings, or continues such claims, actions, or proceedings against other person(s) or entities in relation to the allegations, matters or the losses or injuries at issue in the Action,

including any claim against Provinces, Territories, other legal entities, or groups, including but not limited to religious or other institutions that were in any way involved with Residential Schools, the Releasor will expressly limit their claims so as to exclude any portion of loss for which Canada may be found at fault or legally responsible for, or that Canada otherwise would have been liable to pay but for this Release.

- (f) Canada may rely on this Release as a defence to any lawsuit by the Releasors that purports to seek compensation from Canada for anything released through this Agreement.
- (g) Each Releasor is deemed to have agreed, warranted, and represented that it is the holder of the collective rights to whom the duties are owed on behalf of their respective communities as asserted in the Second Re-Amended Statement of Claim.
- (h) Canada may rely on this Agreement as a defence in the event that any other individual, group, or entity (“**Third Party**”) pursues any action, claim, or demand for the claims or losses released by this Agreement and asserts that it, and not any Releasor, is the proper holder of the collective or community rights, is the community entity to whom the asserted duties were owed, or holds the authority to advance and release such claims, either because it is a sub-group within the Releasor entity or a larger entity to which the Releasor belongs, or is otherwise related, connected or derived.

- (a) If a court or tribunal determines that a Third Party, and not the Releasor, is the appropriate rights holder or otherwise owed the duties at issue, Canada may seek a set-off of the amounts paid to the Releasor through operation of this agreement.

7. This Order does not affect the rights of persons who are not Band Class Members.
8. Without in any way affecting the finality of this Order, this Court reserves exclusive and continuing jurisdiction over the Action, for the limited purpose of implementing the Settlement Agreement and enforcing the Settlement Agreement and this Approval Order.

THE FUND, THE NOT-FOR-PROFIT CORPORATION, AND THE TRUST

9. The not-for-profit entity incorporated by Plaintiffs shall act as the sole trustee of the Trust.
10. The not-for-profit entity shall have as its purposes the Four Pillars as defined by s. 21.03 and Schedule F of the Settlement Agreement.
11. Canada shall pay two billion eight hundred million Canadian dollars (\$2,800,000,000) (the “**Fund**”) no later than thirty (30) days after the Implementation Date to settle the Trust.
12. The Fund will be used in furtherance of the Four Pillars as defined by s. 21.03 and Schedule F of the Settlement Agreement;
13. The Not-For-Profit, as sole trustee of the Trust, shall receive, hold, invest, manage and disburse the Trust for the benefit of the Band Class Members in accordance with the Settlement Agreement, the terms of the Trust as set out in a written trust agreement signed by the not-for-profit entity to indicate its acceptance of the Trust and the duties and obligations of trustee, and in

accordance with the Investment Policy and Disbursement Policy attached as Schedules D and E to the Settlement Agreement.

14. Canada shall make best efforts to exempt any income earned by the Trust from federal taxation, and Canada shall have regard to the measures that it took in similar circumstances for the class action settlements addressed in paragraph 81(1)(g.3) of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp.).

15. Neither the Fund nor income earned on the Fund can be used:

- (a) to fund individuals;
- (b) to fund commercial ventures;
- (c) as collateral or to secure loans; or
- (d) as a guarantee.

16. No monies paid out from the Trust to a Band Class Member may be subject to redirection, execution, or seizure by third parties, including third party managers.

REPORTING TO THE COURT

17. Class Counsel shall report to the Court on the implementation of the Settlement Agreement six (6) months after the Implementation Date subject to the Court requiring earlier or additional 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.

COSTS

18. **THIS COURT ORDERS** that there will be no costs of this motion.

Justice McDonald

TAB 8

Federal Court



Cour fédérale

Date: 20220208

Docket: T-1542-12

Ottawa, Ontario, February 8, 2022

PRESENT: Madam Justice McDonald**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****ORDER****(Representative Plaintiffs' Motion to Extend the Band Class Opt-In Period)**

UPON MOTION by the Representative Plaintiffs for an Order varying the Certification Order dated June 18, 2015 (the "Certification Order"), an Order that the opt-in period for Indian Bands to be added as Class members be extended to May 31, 2022, an Order approving a Notice to potential Class members in the form attached as Schedule "A", an Order directing the

Representative Plaintiffs to distribute the Notice to potential Class members in accordance with the Representative Plaintiffs' plan of notice, as set out in the affidavit of Peter R. Grant, and an Order granting leave to amend the First Re-Amended Statement of Claim in the form attached hereto as Schedule "B";

AND UPON ON READING the Affidavit of Peter R. Grant, sworn January 12, 2022, filed, and upon reviewing the Certification Order and the pleadings and proceedings herein;

AND UPON NOTING the consent of the Defendant to the relief sought on this motion;

AND CONSIDERING that the relief sought herein is in the best interests of the Class as a whole;

THIS COURT ORDERS that:

1. Pursuant to Rule 334.19 of the *Federal Courts Rules*, the definition of "Band Class" set out at paragraph 1(a) of the Certification Order, as previously amended to "Class" by paragraph 13 and Schedule G of the Order dated September 24, 2021, is hereby struck and amended with the definition of "Class" below, and the definition of "Indian Band" is added as paragraph 1 (f) m. of the Certification Order, as follows:

1 (a) "Class" means the Tk'emlúps te Secwépemc Indian Band and the shíshálh band and any other Indian Band that:

- (i) has or had some members who are or were Survivors, or in whose community a Residential School is or was located; and
- (ii) is specifically added to this claim in relation to one or more specifically identified Residential Schools.

1 (f) m. "Indian Band" means any entity that:

- (i) Is either a "band" as defined in s.2(1) of the *Indian Act* or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and
 - (ii) Asserts that it holds rights recognized and affirmed by section 35 of the Constitution Act, 1982.
2. All Indian Bands, as defined in paragraph 1 of this Order that otherwise meet the eligibility requirements set out in paragraph 1(a) of this Order for being a Class member but have not already opted into and therefore been added to the claim shall have from the date of this Order until May 31, 2022 at 11:59 pm PST (the "Additional Opt-in Period") to opt into this action;
3. Pursuant to Rule 334.32(5) of the *Federal Courts Rules*, the form of notice of the Additional Opt-in Period, and opt in form included in the notice, set out at Schedule "A" to this Order (the "Notice") is approved for dissemination to Indian Bands not already Class members by this Court;
4. Pursuant to Rule 334.32(4) of the *Federal Courts Rules*, that the Representative Plaintiffs shall provide notice of the Additional Opt-in Period to all Indian Bands not already Class members as soon as reasonably practicable, by:
 - (a) Posting the Notice on this class proceeding's websites at www.justicefordayscholars.ca and www.bandreparations.ca.
 - (b) Posting the Notice (or links to the notice) on the website of Class Counsel;
 - (c) Direct mailing and emailing the Notice to all Indian Bands known to Class Counsel, or made known to Class Counsel by the Defendant that are not already Class members;

5. Class Counsel, within 7 days of this Order, shall produce to the Defendant a list of all Indian Bands known to Class Counsel to whom Class Counsel intends to disseminate the Notice in accordance with paragraph 4(c) (the “List of Bands”);
6. The Defendant shall produce to Class Counsel a list of, and contact information for, any other Indian Band it believes may be eligible to opt-into this action that is not on the List of Bands, Class Counsel shall thereafter promptly disseminate the Notice to that/those Indian Band(s);
7. Within 14 days of the expiry of the Additional Opt-in Period, Class Counsel shall provide to the Court a list of Indian Bands that have opted into this action during the Additional Opt-in Period;
8. Within 14 days of the expiry of the Additional Opt-in Period, Class Counsel shall provide to the Defendant a list of Indian Bands that have opted into this action during the Additional Opt-in Period, together with the bases identified by each Indian Band of its eligibility to opt into the Class, including the Indian Residential School(s) at issue and the years at issue (“Opt-in Information”);
9. By March 1, 2022, Class Counsel shall provide the Defendant with Opt-in Information relating to each Indian Band that is a Class Member as of the date of this Order;
10. Within 60 days of expiry of the Additional Opt-in Period, the Defendant may examine the Representative Plaintiffs for discovery for up to two hours each, unless extended by further Order, solely for the purpose of addressing any issues arising from the addition of new Class members;

11. A case management conference shall be arranged with the Court prior to August 5, 2022 to address any outstanding issues related to pre-trial deadlines or issues raised by newly opted in Class members;
12. The style of cause is amended, with immediate effect, as proposed by the Representative Plaintiffs in Schedule “B”, and the Representative Plaintiffs are granted leave to amend the First Re-Amended Statement of Claim in the form attached hereto as Schedule “B”; and
13. There shall be no costs of this motion.

"Ann Marie McDonald"

Judge

TAB 9

**FEDERAL COURT
CLASS PROCEEDING**

B E T W E E N:

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE
SECWEPEMC INDIAN BAND and the TK'EMLUPS TE SECWEPEMC
INDIAN BAND, and CHIEF GARRY FESCHUK, on behalf of the SEHEL
INDIAN BAND and the SEHEL INDIAN BAND

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL OF CANADA

Defendant

WRITTEN REPRESENTATIONS OF THE PLAINTIFFS

(Motion for Settlement Approval)

February 22, 2023

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PART I- OVERVIEW

1. Canada's establishment and operation of the Indian Residential Schools (“**Residential Schools**” or “**IRSs**”) system has been widely recognized as a cultural genocide: a “systematic, government-sponsored attempt to destroy Aboriginal culture and languages...”¹ Canada has repeatedly acknowledged the assimilationist intent of the IRS system and the harm that it has caused to survivors, their families, and their communities – notably through the 2008 Statement of Apology by then-Prime Minister Stephen Harper and subsequent public statements by current Prime Minister Justin Trudeau.²

2. The Band Class Claim was commenced to seek reparations for the harm suffered by Indigenous communities as collectives as a result of Canada's Residential School policies, including the loss of language and culture. The Band Class consists of 325 Bands from across Canada.

3. After eleven years of hard-fought litigation, quite literally on the eve of trial, the Parties reached an historic \$2.8 billion settlement which, if approved, will resolve the claims of the Band Class, and will give the Bands themselves some of the tools and the resources necessary to engage in the difficult and important tasks of reviving and protecting Indigenous languages and cultures, engaging in community healing, and protecting heritage based upon their own assessment of priorities within their own communities.

¹ 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/> >.

² Affidavit of Peter Grant, sworn February 20, 2023 (“Grant Settlement Affidavit”), at paras 29-30, **Plaintiffs’ Motion Record for Settlement Approval (“Settlement Approval MR”), Tab 2.**

4. The Settlement Agreement adopts a generational model which will provide long-term and Indigenous-controlled funding for language, culture and heritage projects, and empowers Band Class Members to decide for themselves how best to use these funds to remedy the harms caused to their respective communities as a result of Residential School policies. This unique and visionary model, which was proposed by the Representative Plaintiffs, could not have been ordered by a Court, even if the plaintiffs had fully succeeded at trial.

5. Without this settlement, the Band Class Members will have to await the uncertain result of a lengthy, vigorously-contested first phase of the common issues trial, followed by a similarly lengthy second phase of the common issues trial, likely each followed by appeals, and then likely by individual assessments of each Band Class Member's damages – a process that in total would take many years. This delay will have real and irreparable consequences: for some Band Class Members, further delays would mean losing language speakers and knowledge keepers whose knowledge will be key to revitalization efforts.³

6. The proposed settlement is the result of extensive arm's-length negotiation, is supported by Class Members, is recommended by experienced Class Counsel, and represents a fair and reasonable resolution of the Band Class claim. Its approval is in the best interests of the Class.

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.

³ Affidavit of Garry Feschuk, sworn February 22, 2023 ("Feschuk Affidavit"), at para 35, **Settlement Approval MR, Tab 5**.

PART II - FACTS

A. The Indian Residential School system

8. Prior to the start of the Class Period, Indigenous peoples across the land that later became Canada had their own distinctive languages and cultures that they had developed, practised, retained and transmitted from generation to generation over thousands of years.⁴

9. Starting in the 1870s and continuing for over 100 years, Canada funded, oversaw and, together with certain religious organizations, operated a system of 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.”⁵

10. The Truth and Reconciliation Commission concluded that “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.”⁶

11. While Residential Schools were often operated by churches and religious orders, they were created and operated under the authority, and pursuant to the supervision and direction of, Canada. Canada began funding and controlling the operation of Residential Schools as early as 1868, and amended the *Indian Act* in 1920 to make it compulsory for “every Indian child” between the ages of 7 and 15 to attend either an IRS or other federally established school, as determined by Canada.⁷

⁴ Grant Settlement Affidavit at para 21, **Settlement Approval MR, Tab 2**.

⁵ Grant Settlement Affidavit at para 22, **Settlement Approval MR, Tab 2**; TRC Summary Report at p. 153.

⁶ Grant Settlement Affidavit at para 23, **Settlement Approval MR, Tab 2**; TRC Summary Report at p. v.

⁷ Grant Settlement Affidavit at paras 24-25, **Settlement Approval MR, Tab 2**.

Parents who refused to send their children to IRSs were imprisoned, and Canada gave truant officers broad powers to enforce compulsory attendance.⁸ Canada maintained control over the IRS system through Orders-In-Council and funding agreements that required IRSs to be run in accordance with its regulations and standards until the last Residential School closed in 1997.⁹

12. The TRC concluded that Canada's assimilationist policy towards Aboriginal people, including the establishment and operation of Residential Schools, was cultural genocide:¹⁰

For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. **The establishment and operation of residential schools were a central element of this policy, which can best be described as "cultural genocide".**

13. Canada has repeatedly acknowledged the assimilationist intent of Residential Schools and the harm done by the IRS system to Indigenous children who attended these schools, their families, and their communities.¹¹

14. The consequences of Canada's Indian Residential School policies were profoundly negative, and this system has had a lasting and damaging impact on Indigenous survivors, their families, and communities.¹² The IRS system and policies caused grievous damage to all Indigenous cultures and has led to a catastrophic decline in all Indigenous languages over the past 100 years, in particular by disrupting or eliminating the intergenerational transmission of language

⁸ Grant Settlement Affidavit at para 25, **Settlement Approval MR, Tab 2**.

⁹ Grant Settlement Affidavit at para 26, **Settlement Approval MR, Tab 2**.

¹⁰ Grant Settlement Affidavit at para 27, **Settlement Approval MR, Tab 2**; TRC Summary Report, p. 1 (emphasis added).

¹¹ Grant Settlement Affidavit at para 28, **Settlement Approval MR, Tab 2**.

¹² Settlement Agreement, executed January 18, 2023 ("**Settlement Agreement**") at para C, **Settlement Approval MR, Tab 1A**.

and culture.¹³ Both Representative Plaintiff First Nations, and all Band Class members, suffered such losses to their respective communities.¹⁴

15. This Court is acutely familiar with the devastating impact of Residential Schools on students who attended as residents, as well as on Day Scholars, whose compensation was the subject of a prior settlement approved by this Court in this proceeding.

B. Nature & history of this Action

16. While the 2006 Indian Residential Schools Settlement Agreement (“**IRSSA**”) was intended to provide a “fair, comprehensive and lasting resolution of the legacy of Residential Schools” and to promote “healing, education, truth and reconciliation and commemoration,”¹⁵ it nonetheless left some matters unresolved.

17. This class action was commenced by Tk’emlúps te Secwépemc Indian Band and Sechelt Indian Band (now known as shíshálh Nation) in order to address two gaps left by the IRSSA: first, the exclusion of Day Scholars (children who attended Residential Schools during the day only) from receipt of the IRSSA’s Common Experience Payment, and second, the failure to address the collective harms caused to Indigenous communities as whole as a result of Canada’s IRS policies.¹⁶

18. This action was commenced on August 15, 2012, and certified as a class proceeding on June 18, 2015 on behalf of three classes: the Survivor Class, sometimes referred to as the Day

¹³ Grant Settlement Affidavit at paras 31-23, **Settlement Approval MR, Tab 2**.

¹⁴ Feschuk Affidavit at paras 9-19, **Settlement Approval MR, Tab 5**; Affidavit of Shane Gottfriedson, sworn February 22, 2023 (“Gottfriedson Affidavit”), at para 34, **Settlement Approval MR, Tab 4**.

¹⁵ Grant Settlement Affidavit at para 33, **Settlement Approval MR, Tab 2**.

¹⁶ Grant Settlement Affidavit at para 37, **Settlement Approval MR, Tab 2**.

Scholars, consisting of children who attended an IRS for an educational purpose but did not receive the Common Experience Payment under IRSSA; the Descendant Class, consisting of the children of members of the Survivor Class (by birth or adoption); and the Band Class. The certification order names Tk'emlúps te Secwépemc Indian Band and Sechelt Indian Band (now known as shíshálh Nation) as Representative Plaintiffs for the Band Class.¹⁷ In certifying this Action as a class proceeding, Justice Harrington observed that “the outcome of the case is far from certain.”¹⁸

19. On June 4, 2021, after nearly a decade of hard-fought litigation, the parties executed the Day Scholar Survivor Class and Descendant Class Settlement Agreement (“**Day Scholars Settlement Agreement**”) to resolve the claims of the Survivor and Descendant Classes in their entirety, while permitting the Band Class claim to continue to be litigated.¹⁹ The Court approved the Day Scholars Settlement Agreement on September 24, 2021.²⁰

C. Continued claims of the Band Class

20. The Band Class claim continued after the Day Scholars Settlement Agreement.²¹ The Band Class claim is about the collective harm suffered by Indigenous communities as a group as a result of Canada’s Indian Residential School policies.²² The Action claims that the purpose, establishment, funding, operation, supervision, control, maintenance, and obligatory attendance of children at Residential Schools destroyed the Band Class Members’ language and culture, violated their cultural and linguistic rights, and caused cultural, linguistic and social damage and irreparable harm to the Band Class Members. The Action seeks declarations and compensation for the

¹⁷ Grant Settlement Affidavit at paras 39-40, **Settlement Approval MR, Tab 2**.

¹⁸ *Gottfriedson v Canada*, [2015 FC 706](#) at para. 80, Tab 1 of Book of Authorities [BoA].

¹⁹ Grant Settlement Affidavit at para 45, **Settlement Approval MR, Tab 2**.

²⁰ Grant Settlement Affidavit at para 47, **Settlement Approval MR, Tab 2**.

²¹ Grant Settlement Affidavit at paras 48-49, **Settlement Approval MR, Tab 2**.

²² Grant Settlement Affidavit at para 53, **Settlement Approval MR, Tab 2**.

collective losses of language and culture and other collective harms caused by Canada's Residential School policies.²³

D. Band Class membership

21. Justice Harrington certified the Band Class claim on an opt-in basis in order to respect the sovereignty of Band governments.²⁴ In order to become a class member, a Band was required to opt in by the opt-in deadline, or otherwise be added to the Class by Court order.²⁵

22. In total, there are 325 Bands that have opted-in to this Action, or otherwise added been to the Class.²⁶

E. Band Class trial preparation

23. Soon after the Day Scholars Settlement was approved by the Court, the parties began to prepare for trial in earnest again. The first phase of the common issues trial for the Band Class claims was scheduled to commence in September 2022 for ten weeks.

24. Trial preparation for a claim of such scope, historical significance, and national importance was a prodigious and intensive undertaking. It involved, amongst other things, review of hundreds of thousands of historical documents, retaining and instructing expert witnesses, preparing and conducting examinations for discovery, conducting legal research, preparing trial strategy,

²³ Grant Settlement Affidavit at para 53, **Settlement Approval MR, Tab 2.**

²⁴ Grant Settlement Affidavit at para 67, **Settlement Approval MR, Tab 2.**

²⁵ Grant Settlement Affidavit at para 57, **Settlement Approval MR, Tab 2.**

²⁶ Grant Settlement Affidavit at para 64, **Settlement Approval MR, Tab 2.**

identifying and preparing witnesses, and crafting opening and closing submissions.²⁷ By September 2022, Class Counsel and the Representative Plaintiffs were fully trial ready.²⁸

F. Canada's defences

25. From the commencement of this claim right up until the trial adjournment on September 19, 2023, Canada took a hard line in its defence of the Action, which set the parties up for protracted and hard-fought litigation.²⁹ Throughout the litigation, Canada admitted very little, and put the Representative Plaintiffs to the strict proof of all aspects of their claim.

26. In Canada's Second Amended Statement of Defence, Canada maintained the following positions, amongst others:³⁰

- a. 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;
- b. Canada sought to rely on the releases contained in IRSSA as a bar to the claims of the Classes, including the Band Class;
- c. Canada did not breach any fiduciary, statutory, constitutional or common law duties owed to, or the Aboriginal Rights of, the Class Members in the operation of Residential Schools;

²⁷ Grant Settlement Affidavit at para 75, **Settlement Approval MR, Tab 2**.

²⁸ Grant Settlement Affidavit at para 76, **Settlement Approval MR, Tab 2**; Feschuk Affidavit at para 30, **Settlement Approval MR, Tab 5**.

²⁹ Grant Settlement Affidavit at para 69, **Settlement Approval MR, Tab 2**.

³⁰ Grant Settlement Affidavit at para 71, **Settlement Approval MR, Tab 2**.

- d. Canada challenged the Band Class Representative Plaintiffs' legal authority to pursue the claim for breach of Aboriginal Rights;
- e. Canada denied that it breached or unjustifiably infringed the Aboriginal or other rights of members of the 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; and
- f. Canada denied that any damages suffered by the Classes were caused by Canada.

27. Canada's trial brief, delivered one week before the trial on September 7, 2022, set out in great detail its intended arguments at trial and continued the approach of vigorously contesting every aspect of the Plaintiffs' claim:³¹

- a. Canada would deny that there was a "universal policy or common approach related to residential schools as alleged, or at all, that could have violated the rights of all Class Members, given the variations in the schools geographically and over time."
- b. Canada would argue that the case is inappropriate for class-wide determination: "The Plaintiffs' claims are based on the conduct of the 23 different federal governments in office throughout the 77 year Class Period from 1920 to 1997, in designing and implementing what they refer to as the 'Residential Schools Policy'." Further, "The record will demonstrate that there was no single system implemented universally by Canada for all Indian Residential Schools, in all geographic locations throughout Canada, and for the entire duration of the 77-year Class Period."

³¹ Grant Settlement Affidavit at para 73, **Settlement Approval MR, Tab 2**.

- c. Canada would argue that “the Court should accept no evidence, or should significantly limit and give little weight to evidence, about what happened at residential schools, or at least any other than the two related to the representative Plaintiffs.”
- d. Canada’s trial brief noted that the Court could decertify the case if it determined that the certified common issues could not be answered in common.
- e. On the basis of the Bifurcation Order, Canada would attempt to limit the Plaintiff’s evidence on liability to exclude any evidence of harms, causation or damages.
- f. Canada would vigorously deny that Canada owed a fiduciary duty, or if it did have a fiduciary duty, it did not apply Class-wide, and would maintain that if there was a duty owed, it was owed exclusively to individual children who attended a Residential School. Even if a duty were established, Canada would argue that the record does not support the finding of a breach across the entire Class and Class Period.
- g. Canada would argue that Canada did not owe the Class Members a duty not to take steps to destroy their languages and cultures. It would argue, rather, that “[t]he circumstances, timing and manner in which Canada became involved in the residential schools found in [the Representative Plaintiffs’] communities, and those of the other Class Members, involved, at most, an undertaking (whether or not a duty) to educate their children in colonial languages and ways of life in a manner Canada believed at the time was in their best interests based on the prevalent knowledge of convictions held during the historical period”. In other words, Canada

was prepared to argue at trial in 2022 that Canada's destruction of Indigenous language and culture through Residential Schools was historically justified.

- h. Canada would argue that even if there was a generic Aboriginal right to speak traditional languages and to engage in traditional customs and religious practices, which they denied, the record did not have sufficient evidence that all Class Members had the right, or that each Class Member had standing to advance a claim to the right's infringement.
- i. Canada would argue that the rights asserted by the Representative Plaintiffs are too general and broad to be sustainable at law. The asserted rights, according to Canada, are not adequately detailed and not supported by evidence "for any or all Class Members".
- j. Canada would argue that the Aboriginal rights issues would have to be determined both pre-1982 and post-1982, by virtue of the fact that section 35 of the *Constitution Act, 1982* came into force in 1982 and did not have retroactive effect. Canada would argue further that any common law Aboriginal rights proven by the Representative Plaintiffs were not breached by Canada's conduct in the period prior to 1982 and that "there is no Crown conduct after 1982 that can give rise to a claim of infringement [of the Representative Plaintiffs' s. 35 rights]".
- k. Canada indicated that it would object to all of the Representative Plaintiffs' expert reports as inadmissible or of little weight and probative value, notwithstanding that those experts included, for example, the leading Canadian historian on Residential Schools who had contributed to the Royal Commission on Aboriginal Peoples and

been consulted by the TRC, leading linguists in the field of Indigenous languages, and Canada's foremost expert on genocide.

G. Negotiations leading to the settlement of the Band Class Action

28. Negotiations leading to the settlement of the Band Class Action first started in October 2016, when then Minister of Indigenous and Northern Affairs, Carolyn Bennett appointed Thomas Isaac to be the Minister's Special Representative ("MSR") to conduct exploratory discussions with the Representative Plaintiffs and Class Counsel.³² In the six years since, the Parties engaged in several rounds of negotiations and talks regarding the claims of all three Classes.

(i) Development of the Four Pillars Trust Model

29. After the certification of this action, the Grand Council of the Crees (Eeyou Istchee) (the "**Grand Council**") entered into an agreement with Tk'emlúps te Secwépemc and shíshálh Nation (together, the "**Three Nations**"), whereby the Grand Council would provide support for the ongoing litigation and participate in decision-making on the DSEC.³³

30. In preparation for the 2017 settlement discussions, the Representative Plaintiffs, together with their legal counsel and the DSEC, developed a detailed framework for resolution of the Band Class claim that became known as the Four Pillars Trust Model.³⁴ That framework was based on the following central considerations:

³² Grant Settlement Affidavit at paras 77-78, **Settlement Approval MR, Tab 2**.

³³ Grant Settlement Affidavit at paras 41-43, **Settlement Approval MR, Tab 2**; Affidavit of Matthew Coon Come, sworn February 20, 2023 ("Coon Come Affidavit"), at para 22-23, **Settlement Approval MR, Tab 3**.

³⁴ Coon Come Affidavit at para 28, **Settlement Approval MR, Tab 3**.

- a. first, because of the longstanding and intergenerational effects of Residential Schools, the Representative Plaintiffs considered it essential that the model offer a generational solution to the Band Class;
- b. second, that the model was directed at remedying the central harms caused by Residential Schools to communities, namely loss of language, loss of culture, loss of heritage, and damage to the social fabric;
- c. third, that the model included a source of long-term funding for programs and initiatives, rather than a one-time payment to Band Class Members;
- d. fourth, that the model empower Band Class Members to set their own priorities and make their own decisions regarding how to remedy harms caused to their own communities as a result of the Residential School system;
- e. fifth, that control over use of the funds lay in the hands of Indigenous people, rather than the Government of Canada.³⁵

31. It was a central concern of the Representative Plaintiffs that, in the past, to the extent that Canada has tried to address issues such as loss of language and culture, it has done so through a top-down approach, with Canada dictating priorities and determining what funding was available or how it was spent.³⁶ Not only is this approach deeply colonial, but, as seen in the case of shíshálh Nation, it often results in insufficient and unreliable funding and unfairness to bands with small populations and bands that contribute their own funds towards linguistic and cultural revitalization

³⁵ Grant Settlement Affidavit at para 80, **Settlement Approval MR, Tab 2**; Coon Come Affidavit at para 28, **Settlement Approval MR, Tab 3**.

³⁶ Grant Settlement Affidavit at para 81-82, **Settlement Approval MR, Tab 2**; Feschuk Affidavit at paras 47-48, **Settlement Approval MR, Tab 5**.

projects.³⁷ The Four Pillars is a complete rethink about how best to remediate historical wrongs by putting control back in the hands of Indigenous peoples.

32. In March 2017, the Representative Plaintiffs and the DSEC presented the Four Pillars Trust Model to resolve the Band Class Claims to the MSR. Former National Chief Matthew Coon Come explained in extensive detail the proposed Four Pillars Trust Model on behalf of the Plaintiffs.³⁸

The Four Pillars Trust Model presented to Canada involved the following:

- a. the settlement would be animated by the “**Four Pillars**” objectives established by the Representative Plaintiffs, namely:
 - (i) revival and protection of Indigenous languages;
 - (i) revival and protection of Indigenous cultures;
 - (ii) wellness for Indigenous communities and their members; and
 - (iii) protection and promotion of heritage.
- b. settlement funds earmarked for the Band Class would be put into a long-term trust designed to earn income for the benefit of the Class;
- c. annual income from the trust would be used to fund initiatives in furtherance of the Four Pillars for the benefit of the Class members; and
- d. the trust would be Indigenous controlled, and all decisions regarding which initiatives support of the Four Pillars to pursue would be made by the Band Class members themselves for their own communities.³⁹

³⁷ Feschuk Affidavit at para 52, **Settlement Approval MR, Tab 5**.

³⁸ Coon Come Affidavit at para 31, **Settlement Approval MR, Tab 3**.

³⁹ Coon Come Affidavit at para 32, **Settlement Approval MR, Tab 3**; Grant Settlement Affidavit at para 83, **Settlement Approval MR, Tab 2**.

33. The MSR took the Four Pillars Trust Model proposal with respect to each of the three Classes to the Government for consideration.⁴⁰ Negotiations continued throughout 2018. In early 2019, as a result of the breakdown in negotiations, the Parties returned to active litigation.⁴¹

34. In 2021, the Parties engaged in successful negotiations that were entirely focused on attempting to resolve the Survivor and Descendant Class claims. Time was of the essence, given that the Survivor Class was an aging population and Survivor Class Members continued to die. It was agreed that the claims of the Band Class would continue notwithstanding the Day Scholars Settlement.

(ii) 2022 Negotiations and the Band Class Settlement Agreement

35. Right up to the eve of the scheduled trial date, Class Counsel was operating under the assumption that the trial would proceed. As reflected in its trial brief, Canada continued to push to trial aggressively and had conceded little.⁴²

36. On September 2, 2022 – just over one week before the common issues trial was set to begin – Class Counsel received a call from the MSR, Mr. Isaac, advising that Canada had been working internally on resolving the Band Class action based on the proposal made by the Representative Plaintiffs in 2017.⁴³ Mr. Isaac advised that the Honourable Marc Miller, who was named the Minister of Crown-Indigenous Relations on September 19, 2021, and who he represented, wished

⁴⁰ Grant Settlement Affidavit at para 85, **Settlement Approval MR, Tab 2**.

⁴¹ Grant Settlement Affidavit at paras 88-91, **Settlement Approval MR, Tab 2**.

⁴² Grant Settlement Affidavit at paras 73 and 96, **Settlement Approval MR, Tab 2**; Affidavit of Peter Grant, sworn February 20, 2023 (“Grant Fee Affidavit”), at para 66, **Fee Approval MR, Tab 2**.

⁴³ Grant Settlement Affidavit at para 95, **Settlement Approval MR, Tab 2**; Feschuk Affidavit at para 30, **Settlement Approval MR, Tab 5**.

to resolve the Band Class claim on the basis of the Four Pillars Trust Model. He suggested a meeting on September 7, 2022 to discuss, and suggested a one-week adjournment of the trial.⁴⁴

37. Negotiations moved swiftly. On September 11, 2022, after a number of calls and meetings between Mr. Isaac and Class Counsel, Mr. Isaac orally presented Canada's full offer to the Representative Plaintiffs, the DESC, and Class Counsel. Canada confirmed the offer in writing on September 14, 2022, and sent a slightly revised offer in writing on September 17, 2022.⁴⁵

38. Canada's offer consisted of a \$2.8 billion payment to fund a Trust for the benefit of the Band Class in accordance with the Four Pillars Trust Model. During this meeting, Mr. Isaac made clear to Class Counsel that the amount in the offer was the maximum that Canada was willing to pay to resolve the lawsuit.⁴⁶ Minister Miller confirmed this at a subsequent meeting with hiwus Warren Paull, Kúkpi7 Rosanne Casimir, and Matthew Coon Come.⁴⁷

39. Class Counsel and the DSEC convened a series of meetings and discussions with Chiefs Feschuk and Gottfriedson, along with the current Chiefs and other Councillors of shíshálh Nation and Tk'emlúps te Secwépemc, to review the offer in detail.⁴⁸ There continued to be a strong reluctance to adjourn the trial, and the discussion was intense and passionate. The real question for the Representative Plaintiffs was whether Canada's proposal was sufficient to start addressing the

⁴⁴ Grant Settlement Affidavit at para 97, **Settlement Approval MR, Tab 2**.

⁴⁵ Grant Settlement Affidavit at paras 98-105, **Settlement Approval MR, Tab 2**; Grant Fee Affidavit at paras 14-15, **Fee Approval MR, Tab 2**.

⁴⁶ Grant Settlement Affidavit at para 105, **Settlement Approval MR, Tab 2**.

⁴⁷ Grant Settlement Affidavit at paras 109-110, **Settlement Approval MR, Tab 2**.

⁴⁸ Feschuk Affidavit at para 38, **Settlement Approval MR, Tab 5**.

legacy of Canada's IRS policies on their communities and on the communities of the other 323 Band Class Members.⁴⁹

40. In the meantime, the Representative Plaintiffs retained independent financial advisors to assess how the settlement amount could be invested over various time periods to ensure that the Band Class Members received ongoing funding over a period of time that was sufficient to implement the Four Pillars or those of the Four Pillars that were a priority to each Band Class Member.⁵⁰

41. Following receipt of Canada's revised offer on September 17, 2022, each member of the DSEC returned to their respective councils to review and decide whether the offer should be accepted. Class Counsel received instructions from the Three Nations to accept Canada's offer on September 18, 2022. Class Counsel accepted the offer on the Representative Plaintiffs' behalf on September 19, 2022.⁵¹

42. Between September 20, 2022 and January 18, 2023, the parties negotiated the text of the full Settlement Agreement. Key issues that remained to be negotiated included, amongst other things: the structure and framework of a Trust or similar legal entity, tax exempt status, distribution and investment policies, and the release.⁵²

⁴⁹ Grant Settlement Affidavit at para 107, **Settlement Approval MR, Tab 2.**

⁵⁰ Grant Settlement Affidavit at para 111, **Settlement Approval MR, Tab 2.**

⁵¹ Grant Settlement Affidavit at paras 112-113, **Settlement Approval MR, Tab 2.**

⁵² Grant Settlement Affidavit at para 118, **Settlement Approval MR, Tab 2.**

43. Negotiations regarding legal fees and disbursements were separate from negotiations regarding the Settlement Agreement, and did not commence in any form until after all key terms in the Settlement Agreement had been finalized.⁵³

H. The Band Class Settlement Agreement

44. If the Band Class Settlement Agreement is approved, the government of Canada will make a payment of \$2.8 billion to an Indigenous controlled, twenty-year Trust that will generate investment income that in turn would be used to fund initiatives and programming aimed at undoing the collective damages caused to First Nations as a result of Canada's Residential School policies.⁵⁴ It will empower Band Class Members to set their own priorities and make their own decisions with respect to the types of revitalization efforts will benefit their own communities.⁵⁵

(i) The Four Pillars

45. The Four Pillars are a central part of the settlement. The entire Settlement Agreement is animated by the Four Pillars as set out in the Preamble, s. 21.03, and explained more fully in Schedule F to the Settlement Agreement, namely:

- a. revival and protection of Indigenous languages of the Band Class Members;
- b. revival and protection of Indigenous cultures of the Band Class Members;
- c. wellness for Indigenous communities and their members;

⁵³ Grant Settlement Affidavit at para 120, **Settlement Approval MR, Tab 2**.

⁵⁴ Grant Settlement Affidavit at paras 123, 125-126, **Settlement Approval MR, Tab 2**.

⁵⁵ Grant Settlement Affidavit at para 123, **Settlement Approval MR, Tab 2**; Coon Come Affidavit at para 42, **Settlement Approval MR, Tab 3**; Feschuk Affidavit at paras 45-46, **Settlement Approval MR, Tab 5**; Gottfriedson Affidavit at para 60, **Settlement Approval MR, Tab 4**.

d. protection and promotion of the heritage of the Band Class Members.⁵⁶

46. The Four Pillars are aimed at addressing the damage done to First Nations as collectives by the Canada's IRS policies.⁵⁷

(ii) The Fund and Distribution of the Fund to Band Class Members

47. The vision of the Four Pillars Trust Model was that a structure would be put in place that would provide continued funding for initiatives related to the Four Pillars for a generation.⁵⁸ The central premise of a trust model is that a majority of the settlement funds would be put into a long-term trust and be used to generate investment income, which in turn can be used as a long-term source of funding.⁵⁹ The Settlement Agreement provides for the creation of a Trust substantially in the form of the 2017 Four Pillars Trust Model.⁶⁰

48. As set out in the Investment Policy and Disbursement Policy, the Settlement Agreement includes the following key features regarding the \$2.8 billion fund (the "Fund") and the distribution of the Fund:

- a. Canada will make a payment of \$2.8 billion to an Indigenous-controlled Trust.
- b. The Trust is responsible for prudently investing the monies from the Fund for a period of twenty years, and for distributing investment income from the Fund and the Fund itself, in accordance with the Disbursement Policy.

⁵⁶ Settlement Agreement, **Settlement Approval MR, Tab 1A**; Grant Settlement Affidavit at para 124, **Settlement Approval MR, Tab 2**.

⁵⁷ Grant Settlement Affidavit at para 125, **Settlement Approval MR, Tab 2**; Coon Come Affidavit at para 28, **Settlement Approval MR, Tab 3**.

⁵⁸ Coon Come Affidavit at para 29, **Settlement Approval MR, Tab 3**.

⁵⁹ Coon Come Affidavit at paras 29-30, **Settlement Approval MR, Tab 3**; Grant Settlement Affidavit at para 83(b), **Settlement Approval MR, Tab 2**.

⁶⁰ Coon Come Affidavit at para 35, **Settlement Approval MR, Tab 3**.

- c. Canada will make best efforts to exempt any income earned by the Trust from federal taxation, including by using measures it has taken in other class action settlements through amendments to paragraph 81(1)(g.3) of the *Income Tax Act*. In other words, income earned by the Trust will be tax-free.
- d. At the outset, each Band Class Member will receive initial Planning Funds of \$200,000 for the purposes of developing a plan to carry out one or more of the objectives and purposes of the Four Pillars. Planning funds for the entire Band Class amounts to \$65 million withdrawn from the initial capital.
- e. \$325 million of the Fund will be earmarked for the purposes of providing Kick-Start Funds to each Band Class Member. Upon receipt and review of a ten-year plan, each Band Class Member will receive Initial Kick-Start Funds, which shall be equal to that Band's proportionate share of the \$325 million, with an adjustment for population, with 40% of the amount distributed being distributed equally to each Band and with the remaining 60% distributed proportional to each Band's population relative to the total population of opted-in Bands. The Board, once fully constituted, will then determine an appropriate adjustment for remoteness for the Initial Kick-Start Funds, with any such funds required to account for remoteness being in addition to the \$325 million and taken from capital.
- f. Funds remaining in Trust after the disbursement of Planning Funds and Kick-Start Funds (the "**Capital**"), which will equal \$2.41 billion less any amounts determined by the Board to be necessary to account for remoteness as part of the Kick-Start Funds, will be prudently invested for a period of twenty years.

- g. Each year, as part of the Band's Annual Entitlement, the Trust will disburse investment income earned from the Capital to the Band Class, while maintaining the Capital in Trust. Each Band will receive a share of annual investment income that is available for distribution. That share will be equal to the Band's proportionate share, adjusted for population and remoteness in accordance with the Disbursement Formula to be set by the Board.
- h. Throughout the twenty-year life of the Trust, the Capital will be preserved, meaning that at the end of twenty years, the Trust will consist of \$2.41 billion less any amounts determined by the board to be necessary to account for remoteness as part of the Kick-Start Funds, plus any investment income earned over the twenty years that has not been fully disbursed to the Band Class as part of the Annual Entitlement.
- i. At the end of twenty years, the Capital plus any undistributed investment income will be disbursed to Band Class members in an amount equal to the Band's proportionate share, adjusted for population and remoteness in accordance with a Disbursement Formula to be set by the Board subject to a further ten year or shorter plan provided to ensure that the funds are utilized in furtherance of one or more of the Four Pillars.⁶¹

(a) Bands' control over funds

49. It was a central premise of the Four Pillars Trust Model that control over funding and programs intended to repair the harm done by Residential Schools be taken out of the hands of

⁶¹ Grant Settlement Affidavit at para 126, **Settlement Approval MR, Tab 2**.

Government and put in the hands of Indigenous communities.⁶² Under the Settlement Agreement, Band Class Members retain complete control over use of the funds to which they are entitled, subject only to the requirement that the funds be used to advance one or more of the Four Pillars.⁶³

50. Band Class Members are responsible for meeting certain planning and reporting obligations including:

- a. Preparing a ten-year plan prior to receiving the Kick-Start Funds, again after ten years, and again prior to receipt of the final payout after twenty years. These ten-year plans set out the Band's plan for use of the Kick-Start Funds and Annual Entitlement in a manner that furthers the Four Pillars;
- b. Preparing yearly reports that provide updates regarding use of the funds, and progress towards achieving the objectives set out in the Band's ten-year plan;
- c. At the end of twenty years, preparing a final report setting out the Band's plan for use of its share of the remaining Fund. If it is for an ongoing project, to report on the progress of that project for up to the completion of the project or ten years, whichever is shorter, in order to ensure that the funds are used for the Four Pillars.⁶⁴

51. Band Class Members have the option of deferred distribution by requesting that the funds to which they are entitled be retained in Trust to accrue interest, and to be disbursed at a later date in accordance with that Band Class Member's plan.⁶⁵

⁶² Coon Come Affidavit at para 33, **Settlement Approval MR, Tab 3.**

⁶³ Grant Settlement Affidavit at para 127, **Settlement Approval MR, Tab 2.**

⁶⁴ Grant Settlement Affidavit at para 128, **Settlement Approval MR, Tab 2.**

⁶⁵ Grant Settlement Affidavit at para 129, **Settlement Approval MR, Tab 2.**

(b) Governance

52. The Settlement Agreement requires the creation of a not-for-profit entity (“**Not-For-Profit**”) in order to act as trustee for the Trust. The Not-For-Profit will be governed by nine directors, all of whom must be Indigenous, and cannot be elected officials of any of the Band Class Members. There will be three directors chosen by Tk’emlúps te Secwépemc, shíshálh Nation, and the Grand Council, five regional directors, and one director chosen by Canada.⁶⁶

53. In order to ensure that the Not-For-Profit and Trust are established quickly, the Settlement Agreement contemplates that the Not-For-Profit be governed by an interim board with a limited mandate focused on ensuring Not-For-Profit is ready to receive and start investing the Fund as soon as possible.⁶⁷

(c) Tax exemption

54. As part of the Settlement, Canada will make best efforts to exempt any income earned by the Trust from federal taxation, including by using measures it has taken in other class action settlements through amendments to paragraph 81(1)(g.3) of the *Income Tax Act*. In other words, income earned by the Trust will be tax-free.⁶⁸

(d) Legal fees separate

55. The Fee Agreement, which was separately negotiated and will be the subject of a separate motion to be heard before this Court, precludes any possibility that the legal fees and disbursements

⁶⁶ Grant Settlement Affidavit at para 130, **Settlement Approval MR, Tab 2.**

⁶⁷ Grant Settlement Affidavit at para 131, **Settlement Approval MR, Tab 2.**

⁶⁸ Grant Settlement Affidavit at para 126(c), **Settlement Approval MR, Tab 2.**

to be paid to Class Counsel and the Three Nations would come from the Settlement Amount, or reduce the compensation for the Class Members.⁶⁹

(iii) Release

56. The terms of the release were of paramount importance for all parties, and were the subject of extensive and prolonged negotiations.⁷⁰ Three central concerns animated negotiations from the perspective of the Band Class:

- a. ensuring that the release did not release any potential legal claims that Band Class Members may have regarding children from their Bands who died or disappeared while attending IRSs;
- b. ensuring that the release was limited in scope to the subject matter of the litigation, and that it did not impact any Aboriginal or Treaty Rights of the Band Class Members or any potential claims related to loss of language and culture that was not related to the IRS policies; and
- c. ensuring that the release did not cover the religious institutions who participated in the operation of Residential Schools.⁷¹

57. The deaths and disappearances of children from their Bands at IRSs were at the forefront of Class Counsel's and the Representative Plaintiffs' considerations throughout the negotiations in the lead-up to the Settlement Agreement.⁷² This was especially so because in May 2021, Representative Plaintiff Tk'emlúps te Secwépemc announced the discovery of the remains of 215

⁶⁹ Grant Fee Affidavit at paras 7, 11-12, 16, **Fee Approval MR, Tab 2**; Grant Settlement Affidavit at para 120, **Settlement Approval MR, Tab 2**.

⁷⁰ Grant Settlement Affidavit at para 134, **Settlement Approval MR, Tab 2**.

⁷¹ Grant Settlement Affidavit at paras 134-139, **Settlement Approval MR, Tab 2**.

⁷² Grant Settlement Affidavit at para 134, **Settlement Approval MR, Tab 2**.

children on the grounds of the Kamloops Indian Residential School. This announcement had a deep and profound impact on the Band Class Members and on the Canadian public as a whole. Several more of announcements of similar findings at Residential Schools sites across the country followed, and the full extent of this tragedy and its impacts on the Class Members remain to be seen.⁷³

58. The release was negotiated with these serious concerns in mind. The result is a general release found at subsection 27.01, with a scope that is closely tailored to the subject-matter of the lawsuit, followed by a number of subsections that provide additional clarification about what the Settlement Agreement does not release. Subsection 27.01 states that the release applies to claims:

... available against Canada that were asserted or could have been asserted in relation to those asserted in the Second Re-Amended Statement of Claim regarding the purpose, creation, planning, establishment, setting up, initiating, funding, operation, supervision, control and maintenance of Residential Schools, the obligatory attendance of Survivors at Residential Schools, the Residential Schools system, and/or any Residential Schools policy or policies.⁷⁴

59. Subsection 27.02 clarifies that the released Claims do not relate to, or include, any claims regarding children who died or disappeared while in attendance at Residential School. Thus, any and all potential claims relating to children who died or disappeared while in attendance at Residential School are unaffected by the Settlement Agreement.⁷⁵

⁷³ Grant Settlement Affidavit at para 137, **Settlement Approval MR, Tab 2.**

⁷⁴ Grant Settlement Affidavit at para 140, **Settlement Approval MR, Tab 2.**

⁷⁵ Grant Settlement Affidavit at para 141, **Settlement Approval MR, Tab 2.**

60. Subsection 27.03 clarifies that the Settlement Agreement does not release any claims that any Band Class Member has regarding Aboriginal or Treaty rights other than claims related to the IRS system.⁷⁶

61. Subsection 27.04 clarifies that the release is provided for the benefit of Canada only, and cannot be relied on by any third party, including any religious organization that was involved in the creation and operation of Residential Schools.⁷⁷

PART III -ISSUES

62. The sole issue on this motion is whether the Court should approve the Settlement Agreement as fair, reasonable, and in the best interests of the Class.

PART IV - THE LAW

A. General principles of settlement approval

63. Rule 334.29 of the *Federal Courts Rules* provides that “a class proceeding may be settled only with the approval of a judge.”⁷⁸

64. The test for court approval of a settlement of a class action is whether the settlement is “fair, reasonable and in the best interests of the class as a whole”.⁷⁹ Whether a settlement is fair, reasonable and in the best interests of the class as a whole is not judged against a standard of perfection or what the Court considers ideal.⁸⁰

⁷⁶ Grant Settlement Affidavit at para 142, **Settlement Approval MR, Tab 2**.

⁷⁷ Grant Settlement Affidavit at para 143, **Settlement Approval MR, Tab 2**.

⁷⁸ *Federal Courts Rules*, SOR/98-106, rule 334.29(1).

⁷⁹ *Wenham v Canada (Attorney General)*, [2020 FC 588](#) at para. 48, Tab 2 of BoA.

⁸⁰ *Toronto Standard Condominium Corporation No 1654 v Tri-Can Contract Incorporated*, [2022 FC 1796](#) at para. 16, Tab 3 of BoA.

65. 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”.⁸¹

66. To be approved, the proposed settlement must fall within a “zone or range of reasonableness”.⁸² This approach recognizes that resolution of litigation is not an exact science. A zone of reasonableness allows for a spectrum of possible resolutions, including a mix of terms negotiated between parties at arm’s length.

67. The idea of a zone of reasonableness 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.⁸³

68. Not every provision in a proposed settlement must meet the test of reasonableness – some will, and some may not. This result reflects inherent compromises required to negotiate settlements.⁸⁴

69. In assessing whether a settlement is reasonable and in the best interests of the class, the court may consider the following non-exhaustive list of factors:⁸⁵

⁸¹ *Brown v Canada (Attorney General)*, [2018 ONSC 3429](#) at para. 12, Tab 4 of BoA; see also *Hodge v Neinstein*, [2019 ONSC 439](#) at para. 42, Tab 5 of BoA.

⁸² *Toronto Standard Condominium Corporation No 1654 v Tri-Can Contract Incorporated*, [2022 FC 1796](#) at para. 16, Tab 3 of BoA.

⁸³ *Condon v Canada*, [2018 FC 522](#) at para. 78, Tab 6 of BoA.

⁸⁴ *McLean v Canada*, [2019 FC 1075](#) at para. 77, Tab 7 of BoA.

⁸⁵ *Lin v Airbnb, Inc.*, [2021 FC 1260](#) at para. 22, Tab 8 of BoA.

- a. the terms and conditions of the settlement;
- b. the likelihood of recovery or success;
- c. the expressions of support, and the number and nature of objections;
- d. the degree and nature of communications between class counsel and class members;
- e. the amount and nature of pre-trial activities including investigation, assessment of evidence and discovery;
- f. the future expense and likely duration of litigation;
- g. the presence of arm's length bargaining between the parties and the absence of collusion during negotiations;
- h. the recommendation and experience of class counsel; and
- i. any other relevant factor or circumstance.

70. These factors are not applied mechanically. Not all factors need to be present, nor must they be given equal weight in a given case. Their weight will vary according to the circumstances and to the factual matrix of each proceeding.⁸⁶

71. 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.⁸⁷

⁸⁶ *Toronto Standard Condominium Corporation No 1654 v Tri-Can Contract Incorporated*, [2022 FC 1796](#) at para. 15, Tab 3 of BoA.

⁸⁷ *Hollick v Toronto (City)*, [2001 SCC 68](#), [2001] 3 SCR 158 at para. 15, Tab 9 of BoA.

72. While the court must seriously scrutinize a settlement and ensure that “class members’ interests are not being sacrificed”,⁸⁸ settlement through compromise furthers the important objective of judicial economy,⁸⁹ and has the practical effect of expediting the compensation of class members, which furthers the objective of access to justice.

73. The purpose of settlement is to avoid the risks of a trial.⁹⁰ Accordingly, a proposed settlement must be looked at as a whole, and compared against the alternative of there being no settlement at all, with the parties being forced to resume litigation.⁹¹

74. It is always necessary to consider that a proposed settlement represents the parties’ desire to settle the matter out of court without any admission by either party regarding the facts or regarding the law.⁹²

75. 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.”⁹³ There is thus a strong presumption that an arm’s-length settlement negotiated in good faith should not be readily rejected:⁹⁴

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.

⁸⁸ *Hodge v Neinstein*, [2019 ONSC 439](#) at para. 40, Tab 5 of BoA.

⁸⁹ *Bancroft-Snell v Visa Canada Corporation*, [2015 ONSC 7275](#) at para. 49, Tab 10 of BoA.

⁹⁰ *Châteauneuf v Canada*, [2006 FC 286](#) at para. 7, Tab 11 of BoA.

⁹¹ *Riddle v Canada*, [2018 FC 641](#) at para. 33, Tab 12 of BoA.

⁹² *Châteauneuf v Canada*, [2006 FC 286](#) at para. 7, Tab 11 of BoA.

⁹³ *Seed v Ontario*, [2017 ONSC 3534](#) at para. 14, Tab 13 of BoA.

⁹⁴ *Manuge v Canada*, [2013 FC 341](#) at para. 6, Tab 14 of BoA; *Toronto Standard Condominium Corporation No 1654 v Tri-Can Contract Incorporated*, [2022 FC 1796](#) at para. 17, Tab 3 of BoA.

76. Importantly, the Court's role in assessing a proposed settlement is to accept or reject the settlement as a whole; the Court does not have authority to modify the substantive terms of a settlement. The Court is not permitted to reopen negotiations between the litigants in the hope of improving particular terms of the agreement.⁹⁵

77. 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.⁹⁶

78. There is a strong presumption of fairness where a settlement has been negotiated at arm's length by experienced counsel.⁹⁷ As Horkins J noted, in *Serhan v Johnson & Johnson*:⁹⁸

[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 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.

B. Terms and conditions of the settlement

79. The Band Class Settlement Agreement is an historic settlement, notable both in terms of the quantum of the settlement fund, and its unique structure.

80. The key terms and conditions of the settlement are described in detail at paragraph 48 above. The Settlement Agreement is based on the Four Pillars Trust Model first proposed by the

⁹⁵ *Manuge v Canada*, [2013 FC 341](#) at para. 5, Tab 14 of BoA; *Lin v Airbnb, Inc.*, [2021 FC 1260](#) at para. 23, Tab 8 of BoA.

⁹⁶ *McLean v Canada*, [2019 FC 1075](#) at para. 68, Tab 7 of BoA.

⁹⁷ *Tiller v Canada*, [2020 FC 321](#) at para. 53, Tab 15 of BoA.

⁹⁸ *Serhan v Johnson & Johnson*, [2011 ONSC 128](#) at para. 55, Tab 16 of BoA, as cited in *Heyder v Canada (Attorney General)*, [2019 FC 1477](#) at para. 64, Tab 17 of BoA.

Representative Plaintiffs in negotiations with Canada in 2017.⁹⁹ The proposal put forward by the Representative Plaintiffs was unique, visionary and forward thinking. The collective damage caused by Canada's Residential School policies is deep, complex and intergenerational. Any solution with any chance of success was going to necessarily involve sustained effort by members of the Band Class over many years.¹⁰⁰ The Settlement Agreement is intended to give the Band Class Members the tools and the resources necessary to engage in the difficult and important task of reviving and protecting Indigenous languages and cultures, engaging in community healing, and protecting heritage based upon their own assessment of priorities. The Settlement Agreement also reflects and respects that different Class Members may have different priorities within the Four Pillars and different timelines to achieve their goals, and empowers them to move forward as they see best for their respective communities.¹⁰¹

(i) The Settlement Amount

81. The \$2.8 billion Fund is the key benefit of the settlement and an appropriate way to resolve the claims of the Band Class. While no amount of money can sufficiently compensate Class Members for their collective losses of languages and cultures, the Fund is large enough to both allow for a significant initial kick-start payment to each of the Class Members, while still preserving a significant amount which can then be invested to generate income for twenty years to fund meaningful language, culture, and heritage initiatives for Class Members.

⁹⁹ Grant Settlement Affidavit at para 83, **Settlement Approval MR, Tab 2**; Coon Come Affidavit at para 28, **Settlement Approval MR, Tab 3**.

¹⁰⁰ Grant Settlement Affidavit at para 122, **Settlement Approval MR, Tab 2**.

¹⁰¹ Grant Settlement Affidavit at para 122, **Settlement Approval MR, Tab 2**.

(ii) The Trust Model

82. The structure of the Trust, led by regionally representative Indigenous directors appointed collectively by the Class Members and given a mandate to prudently invest the Funds over a twenty-year period, is consistent with the Representative Plaintiffs' vision of the Four Pillars Trust Model originally proposed in 2017. The Four Pillars principles that animate the Settlement Agreement and the resulting Trust are articulated broadly and give Band Class Members control over how to address the particular circumstances of their communities and the unique ways in which the IRS system has harmed them.¹⁰² Such a structure has not been available through existing funding arrangements (such as federal government block grants that have been available to the Bands),¹⁰³ cannot be ordered by the Court, and was only achievable through this settlement.

83. The proposed structure of the Trust 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 of the income to taxes.¹⁰⁴ This feature was included in the Settlement Agreement at the insistence of the Representative Plaintiffs.¹⁰⁵

(iii) Release provisions

84. The release of liability, which is the key consideration to be given by the Class Members in exchange for the benefits of the Settlement Agreement, was the subject of careful deliberation and extensive negotiation. The Representative Plaintiffs and Class Counsel carefully crafted the release language to release only the claims set out in the Second Re-Amended Statement of Claim,

¹⁰² Grant Settlement Affidavit at para 126(c), **Settlement Approval MR, Tab 2**.

¹⁰³ Feschuk Affidavit, at paras 48-49, **Settlement Approval MR, Tab 5**.

¹⁰⁴ Grant Settlement Affidavit at para 122, **Settlement Approval MR, Tab 2**.

¹⁰⁵ Settlement Agreement at section 24.05, **Settlement Approval MR, Tab 1A**.

while clarifying specific terms that preserve the Class Member's rights of action outside the subject matter of the present claim.

85. It was the announcement made by Representative Plaintiff Tk'emlúps te Secwépemc regarding the unmarked graves of 215 children that brought the issue of the deaths of children while in attendance at Residential Schools back into the public consciousness in May 2021.¹⁰⁶ With the tragedy striking so close to home, the Representative Plaintiffs and Class Counsel were especially sensitive to the potential implications of any release provision on the Band Class Members' ability to bring future actions against Canada regarding unmarked graves at the sites of former IRSs throughout the country. In negotiations, the Representative Plaintiffs and Class Counsel insisted on including an explicit clarification that the release does not apply to any claims arising from children who died or disappeared while in attendance at IRS.¹⁰⁷

86. Overall, the proposed settlement, "considered in its overall context, provides significant advantages to Class Members which continued litigation might not have achieved."¹⁰⁸

C. Likelihood of success/recovery

87. 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 this Court observed in approving the *McLean* settlement, "[w]hile there

¹⁰⁶ Grant Settlement Affidavit at para 137, **Settlement Approval MR, Tab 2**.

¹⁰⁷ Settlement Agreement at section 27.02, **Settlement Approval MR, Tab 1A**.

¹⁰⁸ *Wenham v Canada (Attorney General)*, [2020 FC 588](#) at para. 60, Tab 18 of BoA.

may be some assurance of some success, its nature and breadth is clearly uncertain.”¹⁰⁹ This type of case “cries out for settlement.”¹¹⁰

(i) Litigation risks

88. The Band Class claims faced a number of significant litigation risks, as detailed below, that helped to inform the ultimate decision to accept Canada’s settlement offer. At certification, Justice Harrington noted that the fact that the action was proceeding on a no-cost basis was a “clear advantage to the plaintiffs” as it pertained to the Band Class claim, because the “outcome of the case is far from certain.”¹¹¹

(a) Novelty of the claim

89. The novelty of the claim introduced substantial risk. Although such claims have been previously made, Class Counsel is unaware of any court ruling in Canada on a claim brought against a government for collective loss of language and culture suffered by Indigenous groups, and certainly not as a class proceeding.¹¹²

90. The novelty of the legal claim added substantial risk, which is a factor that has previously been recognized by this Court when approving the Sixties Scoop settlement, the Day Scholars settlement, and the Clean Drinking Water settlement.¹¹³

¹⁰⁹ *McLean v Canada*, [2019 FC 1075](#) at para. 79, Tab 7 of BoA.

¹¹⁰ *McLean v Canada*, [2019 FC 1075](#) at para. 79, Tab 7 of BoA.

¹¹¹ *Gottfriedson v Canada*, [2015 FC 706](#) at para. 80, Tab 1 of BoA.

¹¹² Grant Settlement Affidavit at para 165, **Settlement Approval MR, Tab 2.**

¹¹³ *Riddle v Canada*, [2018 FC 641](#) at para. 47, Tab 12 of BoA; *Tk'emlúps te Secwépemc First Nation v Canada*, [2021 FC 988](#) at para. 41, Tab 19 of BoA; *Tataskweyak Cree Nation v Canada (Attorney General)*, [2021 FC 1415](#) at para. 68, Tab 20 of BoA.

91. This Court would have had to grapple with a large number of novel and complex issues never considered by a Canadian court before. Those questions included (amongst many others):¹¹⁴

- a. Is loss of language and culture a compensable harm?
- b. Is there a generic right to Indigenous language and culture under s. 35 of the Constitution? Can the Quebec Court of Appeal's decision in *Reference re First Nations Children*¹¹⁵ (leave to the Supreme Court of Canada granted) be relied upon as an authority for the existence of generic rights common to all Aboriginal peoples without requiring evidence of activities, practices or customs of a specific group?
- c. Can First Nations and other Indigenous groups claim for loss of language and culture of the collective as a whole?
- d. What entity is the proper rights holder for collective rights like language and culture?
- e. Can a court quantify damages for a claim of collective loss of language and culture? If so, how?

92. A loss on any one of these key questions could have been catastrophic to the entire claim.¹¹⁶

¹¹⁴ Grant Settlement Affidavit at para 166, **Settlement Approval MR, Tab 2**.

¹¹⁵ *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, [2022 QCCA 185](#), Tab 21 of BoA.

¹¹⁶ Grant Settlement Affidavit at para 167, **Settlement Approval MR, Tab 2**.

(b) Challenges to commonality

93. As indicated throughout its statement of defence and Trial Brief, Canada has never wavered from its position that there was no policy or pattern of conduct that was applied consistently across all IRSs throughout the entire class period.¹¹⁷

94. The Representative Plaintiffs successfully established at certification, on the some-basis-in-fact standard, that there were issues of fact and law capable of common determination. At trial, however, the Representative Plaintiffs faced the more onerous task of proving, on a balance of probabilities, that Canada's liability extended to the entire class throughout the 77-year Class Period by leading evidence of systemic or policy-level wrongdoing by Canada (*i.e.*, that a breach was occasioned through Canada's "purpose, operation, and/or management of the IRS").¹¹⁸

(c) Justiciability and compensation

95. There are few Canadian cases in which the loss of language and culture is specifically recognized as grounds for recovery of damages, and there are no precedents in Canada where a Court ordered compensation to an Indigenous government for a collective loss of language and culture.¹¹⁹ Class Counsel was prepared to make innovative yet principled arguments, but success was not a given.

96. Canada made clear that it would hotly contest whether or not the loss of Indigenous languages and cultures was compensable.¹²⁰ Moreover, it intended to argue that damages caused by the IRS have already been significantly compensated under the IRSSA and other IRS class

¹¹⁷ Grant Settlement Affidavit at para 169, **Settlement Approval MR, Tab 2.**

¹¹⁸ Grant Settlement Affidavit at para 170, **Settlement Approval MR, Tab 2.**

¹¹⁹ Grant Settlement Affidavit at para 173, **Settlement Approval MR, Tab 2.**

¹²⁰ Grant Settlement Affidavit at para 174, **Settlement Approval MR, Tab 2.**

action settlement agreements, and that the individual IRS survivors have released Canada from any further IRS-related liability by being class members in these other settlements.

97. Further, Canada intended to argue that any compensation to the Class Members should be reduced to account for the programs established and funded by Canada with the purported goal of supporting Indigenous languages and cultures.¹²¹ While the Representative Plaintiffs disagreed with this approach, it was an argument that the Representative Plaintiffs would have to deal with during the second phase of the common issues trial.

(d) Scope and test for s. 35 Aboriginal rights

98. The Representative Plaintiffs allege that Canada breached the Class Members' section 35 Aboriginal rights to culture and language through the purpose, operation, and/or management of the IRSs. There is significant uncertainty in how a court would deal with this claim in the context of a class action.

99. Recently, in *Reference re First Nations Children*,¹²² the Quebec Court of Appeal affirmed a generic right (a right to self-government) finding the right to be common to all Aboriginal peoples without requiring evidence of activities, practices or customs of a specific group, the test initially established in *Van der Peet*, and later modified in *Delgamuukw* to suit claims to title. Class Counsel intended to argue for an application of the approach adopted by the Quebec Court of Appeal, namely that the Aboriginal rights to language and culture were generic rights that were held in common by all Indigenous peoples without requiring evidence of activities, practices or customs

¹²¹ Grant Settlement Affidavit at para 174, **Settlement Approval MR, Tab 2**.

¹²² *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, [2022 QCCA 185](#), Tab 21 of BoA.

of a specific group.¹²³ Canada, on the other hand, argued that the correct approach to recognizing Aboriginal rights remained the *Van der Peet* test, which would require the Representative Plaintiffs to lead evidence regarding the languages and cultural practices of each Band Class Member in order to establish the existence of an Aboriginal right.¹²⁴

100. The Representative Plaintiffs' position relied significantly on the Quebec Court of Appeal's decision in *Reference re First Nations Children*. The Supreme Court of Canada heard an appeal of that decision in December 2022. The Supreme Court's judgment remains under reserve. If the Supreme Court overturns the Quebec Court of Appeal's decision, the Representative Plaintiffs' strategy regarding the commonality of the determination of the Class's s. 35 rights could be undermined.

(e) Uncertainty regarding damages

101. Perhaps the biggest area of uncertainty and risk, lay in the issue of damages, and how to quantify those damages.¹²⁵ The issue of damages would not be determined at the first phase of the common issues trial. Instead, it had been deferred by the bifurcation order to be determined at a later date at the second phase of a common issues trial (if aggregate damages could be assessed) or at individual damages trials for each of the 325 Band Class Members (if aggregate damages could not be assessed).

102. The first issue is whether the collective loss of language and culture by a Band was a compensable harm.¹²⁶

¹²³ Grant Settlement Affidavit at para 177, **Settlement Approval MR, Tab 2.**

¹²⁴ Grant Settlement Affidavit at para 177, **Settlement Approval MR, Tab 2.**

¹²⁵ Grant Settlement Affidavit at para 180, **Settlement Approval MR, Tab 2.**

¹²⁶ Grant Settlement Affidavit at para 181, **Settlement Approval MR, Tab 2.**

103. The second issue is how to measure the collective loss of language and culture for purposes of quantifying damages.¹²⁷ There are no known precedents in Canada that assist, and accordingly the range of potential damages was very large.¹²⁸

104. The third issue was how to deal with the responsibility of the religious entities that participated in the operation of IRSs. To avoid the complications associated with third-party proceedings, the Representative Plaintiffs abandoned claims for damages for any losses “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*, RSBC 1996, c 333, as amended.”¹²⁹

105. Canada intended to argue that any damages award should be apportioned between it, and the religious entities, and that Canada should only be required to pay damages that are proportionate to its fault.¹³⁰ This would involve a court having to determine the relative levels of responsibility as between Canada and the religious entities, and to apportion damages accordingly. This potential apportionment could have a very significant impact on damages actually awarded to, and recoverable by, the Class as well as extensive delay while apportionment was argued and appealed.

106. The fourth issue is the potential impact of causes of loss of languages and culture other than the IRS system. We expected to contend with arguments that any losses of language and

¹²⁷ Grant Settlement Affidavit at para 182, **Settlement Approval MR, Tab 2.**

¹²⁸ Grant Settlement Affidavit at para 182, **Settlement Approval MR, Tab 2.**

¹²⁹ Grant Settlement Affidavit at para 183, **Settlement Approval MR, Tab 2.**

¹³⁰ Grant Settlement Affidavit at para 184, **Settlement Approval MR, Tab 2.**

culture suffered by the Class Members were the result of assimilative forces and would have occurred even without Canada's wrongdoing.¹³¹ While the Representative Plaintiffs' language and culture experts concluded that the IRS system was a major cause of loss of language and culture, they also acknowledged that the IRS system was not the only cause of that loss. The Representative Plaintiffs would need to prove that the damages sought were caused by IRSs and not by other factors.¹³² Canada intended to argue that damages should be reduced significantly in light of other potential causes of the harms at issue.

107. A further key outstanding issue is whether it was possible for a court to award aggregate damages to the Band Class.¹³³ We fully expected that Canada would argue that the variation between, and unique circumstances of, each Band Class Member made it impossible to determine damages in common or in aggregate. We anticipated that Canada would argue that the damages suffered by each Band Class Member as a result of the IRS system had to vary based on the conditions, standards and practices in the IRS in question; how many children from the Band Class Member attended IRSs; the location of the IRS (*i.e.*, in or outside of the community); the size of the Band; and the location of the IRS (*i.e.*, whether it was located remotely, or in proximity to other populations).¹³⁴

108. If a court concluded that it was not possible to determine aggregate damages, then the damages would need to be determined on a Class Member-by-Class Member basis through expensive and protracted individual trials in order to prove the damages specifically suffered by each Band.¹³⁵ Even if aggregate damages were awarded, it was possible that the court may

¹³¹ Grant Settlement Affidavit at para 185, **Settlement Approval MR, Tab 2.**

¹³² Grant Settlement Affidavit at para 186, **Settlement Approval MR, Tab 2.**

¹³³ Grant Settlement Affidavit at para 187, **Settlement Approval MR, Tab 2.**

¹³⁴ Grant Settlement Affidavit at para 187, **Settlement Approval MR, Tab 2.**

¹³⁵ Grant Settlement Affidavit at para 188, **Settlement Approval MR, Tab 2.**

determine that there remained individual damages that would need to be assessed on an individual basis. These individual damages inquiries would necessitate hundreds of individual hearings, on complex historical evidence, thereby further delaying compensation for years if not decades.¹³⁶ It would also likely require a staggering amount of court resources to manage.

109. 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 is a good result for the Class, and which therefore should receive court approval.

D. Communication with Class Members

110. Since the action was certified in 2015, Class Counsel and the Representative Plaintiffs have been in regular and active communication with prospective and opted-in members of the Band Class. Significant events such as certification, the reopening and extension of the opt-in period, the start of trial, and the conclusion of a settlement-in-principle prompted more intensive communication efforts.¹³⁷

111. Between the execution of the Settlement Agreement and the scheduled Settlement Approval Hearing, Class Counsel led a notice campaign that has been “robust, clear and accessible”.¹³⁸ Notice of the proposed settlement was distributed to the Class Members in accordance with Notice Plan approved by this Court’s January 20, 2023 order.¹³⁹ Class Counsel disseminated notice directly to all 325 Class Members by mail, email, fax and, if necessary, phone,

¹³⁶ Grant Settlement Affidavit at para 188, **Settlement Approval MR, Tab 2**.

¹³⁷ Affidavit of Jeanine Alphonse, sworn February 22, 2023 (“Alphonse Affidavit”), at paras 3-5, 7-15, 16-19, **Settlement Approval MR, Tab 6**.

¹³⁸ *Tk'emlúps te Secwépemc First Nation v Canada*, [2021 FC 988](#) at para. 72, Tab 19 of BoA.

¹³⁹ Alphonse Affidavit at para 23, **Settlement Approval MR, Tab 6**.

and answered the questions of all representatives and legal counsel for Class Members who posed questions.¹⁴⁰

E. Class Members' expressions of support or objection

112. In total, as of February 21, 2023, Class Counsel has received five written statements from Class Members regarding the Settlement Agreement, four of which were statements of support, and one of which was a statement of objection.¹⁴¹

(i) Elsipogtog First Nation

113. In supporting the Settlement Agreement, Elsipogtog First Nation, located in New Brunswick, describes the damage done to Mi'kmaq language, and to Mi'kmaq culture, spirituality and traditions by attendance of its members at Shubenacadie Indian Residential School in Nova Scotia. Sagamao Arren Sock, Chief of Elsipogtog First Nation states:

Elsipogtog supports the Band Class Reparations Settlement and believes that the four pillars named in Schedule F, namely, the revival and protection of Indigenous language, the revival and protection of Indigenous language culture, protection and promotion of heritage and wellness for Indigenous communities and people will give rise to a measure of needed repair over time.

Language revitalization and the establishment of Mi'kmaq language and cultural programs are very important to the essence of Elsipogtog in current times, and to our future. Elsipogtog First Nation sees the Band Class Reparations Settlement as a set of instruments to commence collectively healing harms done to the community and to revitalize the deeply affected cultural knowledge base.

¹⁴⁰ Alphonse Affidavit at paras 24-27, **Settlement Approval MR, Tab 6**.

¹⁴¹ Band Class Members' Written Statements, Exhibit "K" to the Alphonse Affidavit at para 23, **Settlement Approval MR, Tab 6**.

(ii) Star Blanket Cree Nation

114. Chief Michael Starr submitted a statement of support on behalf of Star Blanket Cree Nation, located in Saskatchewan, which states in part:

The Star Blanket Cree Nation is looking forward to developing a long-term strategic plan utilizing the four pillars of this class action settlement. This longterm funding will enhance and support on going Plains Cree Language revitalization and sustainability into the future. With only one fluent Cree speaker remaining in our nation, this work will be vitally important.

(iii) Taku River Tlingit First Nation

115. Taku River Tlingit First Nation's statement emphasizes deep hurt and devastation caused by imposition of Residential Schools. It speaks of the social harm felt by Taku River Tlingit First Nation in the form of crumbling families and addiction. Spokesperson Thom writes:

While these settlement funds serve as a first step towards reconciling the dark history between First Nations people and non-First Nations people in Canada, we must remember that reconciliation is not about forgetting the lasting impact of these schools on our community and our people, but about acknowledging the true extent of the wrongfulness of what occurred at these schools without using euphemisms and soft language to minimize what happened. True reconciliation can only occur without censoring our history so that present and future generations can learn from the past and break the cycle of historical trauma, violence and cultural suppression so that the evil inflicted on First Nations people is never again repeated.

(iv) Tootinaowaziibeeng Treaty Reserve #292

116. Tootinaowaziibeeng Treaty Reserve #292 "fully supports the proposed settlement between the Representative Plaintiff Bands and the Government of Canada". Like the other bands that submitted statements in support, Tootinaowaziibeeng Treaty Reserve #292 notes the irreparable harm caused by Residential Schools: "There is not a corner of our community that has not been touched with the awfulness that Residential School was and remains to this day".

117. As Jessica Ironstand-Nelson writes on behalf of her Nation:

With funding meant for Cultural and Language revival and protection, wellness for our community and its members, and promotion of Heritage, there can be great change achieved. Our people can begin to revert to the old ways that were stolen from us and we can make a better community for our children and the future generations.

(v) Wauzhushk Onigum Nation (Rat Portage) #153

118. The sole statement in opposition to the settlement is from Wauzhushk Onigum Nation. Wauzhushk Onigum has also filed a motion with the Federal Court seeking an order amending the Certification Order allowing Wauzhushk Onigum a period of up to one year in which to opt-out of the Action.

119. Wauzhushk Onigum's primary position is that Canada should clarify in a legally binding way that the Release will in no way affect Wauzhushk Onigum's ability to bring a claim arising out of the discovery of 171 potential burial sites in the vicinity of St. Mary's Indian Residential School. If Canada can provide certainty in a legally binding form on this point, Wauzhushk Onigum will not oppose the settlement. If such clarification is not provided, Wauzhushk Onigum opposes the settlement on the grounds that:

- a. the release provided in the Settlement Agreement unreasonably covers claims that are outside the scope of the Second Re-Amended Statement of Claim, namely by barring a claim that may be brought by Wauzhushk Onigum against Canada as a result of the discovery of the 171 potential graves at St. Mary's IRS; or
- b. in the alternative, it does not permit Wauzhushk Onigum a period in which to rescind its decision to opt in.

120. Class Counsel, and the Representative Plaintiffs, were alive to Class Member concerns surrounding the announcement of findings of unmarked graves at IRS, and the importance of negotiating a release that did not impact the rights of the Class Members regarding those unmarked graves.¹⁴²

121. In fact, the 2021 discovery – by the Representative Plaintiff Tk’emlúps te Secwépemc – of the remains of 215 children on the grounds of the Kamloops Indian Residential School first brought the issue of unmarked graves at Residential Schools back into the national spotlight.¹⁴³ As a result, Class Counsel steadfastly negotiated for a specific clarification in the release to ensure that it did not release “any claims regarding, children who died or disappeared while in attendance at Residential School”.¹⁴⁴ In Class Counsel’s view, and in accordance with the intentions of the parties to the Settlement Agreement, this exclusion from the release means that no claim brought by a Class Member in respect of the unmarked graves of children who died while attending an IRS is released by the Settlement Agreement.

F. Amount and nature of pre-trial activities

122. The proposed settlement was concluded literally on the eve of the first phase of the common issues trial after over ten years of litigation. Certification was hard fought between the parties in 2015. Over 120,000 documents had been exchanged and reviewed as part of the discovery process, witnesses had been identified and prepared for direct and cross-examination, and the Plaintiffs had substantially drafted their closing arguments by the commencement date of the trial.¹⁴⁵ Thousands of hours of substantive legal work had been done, on both sides, in order to

¹⁴² Grant Settlement Affidavit at paras 136-138, **Settlement Approval MR, Tab 2.**

¹⁴³ Grant Settlement Affidavit at paras 137, **Settlement Approval MR, Tab 2.**

¹⁴⁴ Settlement Agreement at section 27.02, **Settlement Approval MR, Tab 1A.**

¹⁴⁵ Grant Fee Affidavit at paras 60-61, **Fee Approval MR, Tab 2.**

ready this litigation for trial. Up until September 2, 2023, Class Counsel, the Representative Plaintiffs, and DSEC had little reason to believe that Canada intended to do anything other than to vigorously defend the action for the full ten weeks that were scheduled for the first phase of the trial, and beyond.¹⁴⁶

123. The amount of preparatory work that had already been done in the present action is remarkable, as common issues trials are uncommon in Canada. The amount and nature of pre-trial activities completed especially stands in contrast to recent class action settlements that have been approved by this Court, including the ones listed in the chart below.

Case	Statement of Claim	Certification	Year / Stage at Settlement
<i>Tataskweyak Cree Nation</i> ¹⁴⁷	2019	2020 (on consent)	2021 (prior to scheduled summary judgment motion)
<i>Tiller</i> ¹⁴⁸	2017	2019 (concurrent with settlement)	2019 (prior to discovery)
<i>Heyder</i> ¹⁴⁹	2016	2019 (concurrent with settlement)	2019 (prior to discovery)
<i>Toth</i> ¹⁵⁰	2014	2016 (on consent)	2018 (mid-discovery)
<i>McCrea</i> ¹⁵¹	2012	2014 (contested)	2018 (prior to discovery)
<i>McLean</i> ¹⁵²	2016	2018 (on consent)	2019 (prior to discovery)

¹⁴⁶ Grant Settlement Affidavit at para 72, **Settlement Approval MR, Tab 2**.

¹⁴⁷ *Tataskweyak Cree Nation v Canada (Attorney General)*, [2021 FC 1415](#), Tab 20 of BoA.

¹⁴⁸ *Tiller v Canada*, [2020 FC 321](#), Tab 15 of BoA.

¹⁴⁹ *Heyder v Canada (Attorney General)*, [2019 FC 1477](#), Tab 17 of BoA.

¹⁵⁰ *Toth v Canada*, [2019 FC 125](#), Tab 22 of BoA.

¹⁵¹ *McCrea v Canada*, [2019 FC 122](#), Tab 23 of BoA.

¹⁵² *McLean v Canada*, [2019 FC 1075](#), Tab 7 of BoA.

124. At the time of settlement, the parties were already completely immersed in the issues. Class Counsel had already reviewed all of the available evidence and had the opportunity to review Canada's trial brief and knew the strengths and weaknesses of their respective cases well as possible.¹⁵³

G. Future expense and likely duration of litigation

125. Accepting Canada's offer will mean that if the settlement is approved, the \$2.8 billion fund could be transferred as soon as 90 days after the Implementation Date. This could be as soon as Spring 2023. Distribution of the Planning Funds would follow shortly thereafter, allowing the Band Class to start the process of revitalization in 2023.¹⁵⁴

126. On the other hand, continuing with litigation would mean that it would be another several years and possibly even another decade at great cost before Band Class Members would receive any compensation, even if fully successful.¹⁵⁵ The Band Class Members would have to await the uncertain result of a lengthy, vigorously-contested first phase of the common issues trial, followed by a similarly lengthy second phase of the common issues trial, likely each followed by appeals, and then likely by individual assessments of each Band Class Member's damages – a process that in total would take many years.¹⁵⁶

127. After having already spent over a decade on this litigation, further delays may cause irreversible harm to some members of the Band Class. Since this litigation began, the Band Class has lost important leaders and elders in their respective communities.¹⁵⁷ Further delays would

¹⁵³ See *Silver v Imax Corp*, [2016 ONSC 403](#) at para. 24, Tab 24 of BoA.

¹⁵⁴ Grant Settlement Affidavit at para 192, **Settlement Approval MR, Tab 2.**

¹⁵⁵ Feschuk Affidavit at para 34, **Settlement Approval MR, Tab 5.**

¹⁵⁶ Grant Settlement Affidavit at para 193-198, **Settlement Approval MR, Tab 2.**

¹⁵⁷ Feschuk Affidavit at para 35, **Settlement Approval MR, Tab 5.**

mean continuing to lose language speakers and knowledge keepers whose knowledge will be key to the revitalization efforts that the Settlement will help fund. Additionally, there is the time-value of money. Delays in transferring the \$2.8 billion settlement fund to the Trust would also cost the Class Members approximately half a million dollars a day in foregone investment income that could have otherwise gone towards revitalization projects.¹⁵⁸ A \$2.8 billion settlement now is significantly more valuable to the Class than a \$2.8 billion judgment several years from now.

128. In circumstances like these, “it is in the interests of the class members to have a timely and prompt payment.”¹⁵⁹ The likely duration of the litigation strongly favours settlement approval.

H. Arm’s-length bargaining/dynamics of negotiations

129. A detailed description of the vigorous negotiations with Canada that took place over the span of six years is found in the Settlement Approval Affidavit of Peter Grant at paragraphs 77-79 and 95. Those negotiations started in 2016, and continued up until after the scheduled start of the common issues trial. At various points during that long negotiation history, negotiations broke down and the Parties returned to active litigation and preparation for a very adversarial trial.

130. At every step from certification to the trial scheduled for September 2022, Canada took aggressive legal positions, denying virtually everything and making virtually no concessions or admissions. Even as settlement negotiations were ongoing, Canada delivered a trial brief that reflected its entrenched positions on the common issues.¹⁶⁰

¹⁵⁸ Grant Settlement Affidavit at para 192, **Settlement Approval MR, Tab 2**.

¹⁵⁹ *McCarthy v Canadian Red Cross Society*, [\[2001\] OJ No 2474](#) at para. 18, Tab 25 of BoA.

¹⁶⁰ Grant Settlement Affidavit at para 73, **Settlement Approval MR, Tab 2**.

131. “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.¹⁶¹ The circumstances around the negotiations make it such that the settlement benefits from a strong presumption of fairness.¹⁶²

I. Recommendation of Class Counsel

132. Class Counsel’s recommendations are given substantial weight in the process of approving a class action settlement.¹⁶³

133. 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,¹⁶⁴ the most closely related precedential case that directly gave rise to this litigation.

134. Peter Grant has been almost exclusively practising Aboriginal law since 1976, with a focus on litigation and negotiation on behalf of Indigenous clients. He has litigated numerous and often precedent-setting cases related to Aboriginal title, Aboriginal rights, and treaty rights, including eleven Supreme Court of Canada appearances in seminal cases such as *Delgamuukw v British Columbia* and *Blackwater v Plint et al*, *FSM v Clarke* and *Aleck v Clarke*.

135. Diane Soroka has practiced for over 45 years as a lawyer for various First Nations and Indigenous organizations in Quebec and British Columbia on issues related to the recognition of Aboriginal and Treaty rights. She has represented First Nations individuals as plaintiffs and

¹⁶¹ *Wenham v Canada (Attorney General)*, [2020 FC 588](#) at paras. 73, 75, Tab 18 of BoA.

¹⁶² *Tiller v Canada*, [2020 FC 321](#) at para. 53, Tab 15 of BoA.

¹⁶³ *Lin v Airbnb, Inc*, [2021 FC 1260](#) at para. 62, Tab 8 of BoA.

¹⁶⁴ Grant Settlement Affidavit at paras 19, 148-149, **Settlement Approval MR, Tab 2.**

interveners in litigation related to abuses at Indian Residential Schools since the 1990s. She has acted for the Grand Council of the Crees since 1975, and joined the Class Counsel team when the Grand Council of the Crees began supporting the prosecution of the Action in 2016.¹⁶⁵

136. John Kingman Phillips, K.C. is a trial lawyer with a broad legal practice that includes class actions, corporate/commercial litigation, administrative law, and criminal law. He frequently appears in superior courts, Federal Court and courts of appeal across Canada, and has appeared at the Supreme Court of Canada. Mr. Phillips was counsel to the then National Chief Phil Fontaine and the Assembly of First Nations in *Fontaine v Canada*, a multi-jurisdictional class action brought on behalf of Indian Residential School survivors, that culminated in the IRSSA.¹⁶⁶

137. Class Counsel strongly recommend the Settlement Agreement as being in the best interests of the Band Class based on their collective expertise and knowledge after litigating this case for more than a decade, as well as their extensive experience in class action litigation and Aboriginal law litigation in general.¹⁶⁷ Class Counsel's recommendation is based on a full appreciation of the litigation and the risks of trial.

138. The Settlement Agreement was ultimately the result of lengthy, good faith, arm's-length, and tough bargaining that took place between 2016 and 2023. By the time of the most recent round of negotiations, Class Counsel team had established a good and forthright relationship with Mr. Isaac, which allowed the parties to get straight to the heart of the key terms of a settlement.¹⁶⁸

¹⁶⁵ Grant Settlement Affidavit at para 148, **Settlement Approval MR, Tab 2.**

¹⁶⁶ Grant Settlement Affidavit at para 149, **Settlement Approval MR, Tab 2.**

¹⁶⁷ Grant Settlement Affidavit at para 156, **Settlement Approval MR, Tab 2.**

¹⁶⁸ Grant Settlement Affidavit at para 153, **Settlement Approval MR, Tab 2.**

139. Class Counsel's recommendation benefited from very involved Representative Plaintiffs. Unlike in a typical class action, the Representative Plaintiffs in the ongoing Band Class action were the First Nations themselves. These Representative Plaintiffs were also assisted by the involvement of the GCC through its participation on the DSEC. Accordingly, the Band Class Representative Plaintiffs brought with them a level of professionalism, institutional knowledge, and understanding that is not typical of representative plaintiffs in most class actions.¹⁶⁹

140. The Representative Plaintiffs and the DSEC actively participated in all negotiations from 2016 to 2022, with strong views regarding what must and must not be included in the ultimate agreement.¹⁷⁰ The Settlement Agreement fully incorporated the Four Pillars Trust Model that had been developed and proposed by the Representative Plaintiff and DSEC in 2017. All terms of the Settlement Agreement that deal with the proposed structure, including the Trust and its length, the Four Pillars, the Disbursement Policy, the Investment Policy, governance of the Not-For-Profit and restrictions on use of the fund were proposed by Class Counsel on instruction from the Representative Plaintiffs, and accepted by Canada.¹⁷¹

141. The Settlement Agreement is signed by former Chief Shane Gottfriedson and acting Kúkpi7 Joshua Gottfriedson on behalf of Tk'emlúps te Secwépemc, and by former Chief Garry Feschuk and hiwus Warren Paull from shíshálh Nation.¹⁷² The Settlement Agreement was signed by the Representative Plaintiffs after full consideration of the Settlement Agreement and the

¹⁶⁹ Grant Settlement Affidavit at para 160, **Settlement Approval MR, Tab 2**.

¹⁷⁰ Grant Settlement Affidavit at para 161, **Settlement Approval MR, Tab 2**; Coon Come Affidavit at para 36, **Settlement Approval MR, Tab 3**; Feschuk Affidavit at para 38, **Settlement Approval MR, Tab 5**; Gottfriedson Affidavit at para 54, **Settlement Approval MR, Tab 4**.

¹⁷¹ Grant Settlement Affidavit at para 154, **Settlement Approval MR, Tab 2**.

¹⁷² Grant Settlement Affidavit at para 162, **Settlement Approval MR, Tab 2**.

recommendations of Class Counsel, by Chief and Council of both Tk'emlúps te Secwépemc and shíshálh Nation.¹⁷³

J. Conclusion

142. The Settlement Agreement, through the incorporation of the Four Pillars as its foundation, acknowledges the harm done to the Band Class by the IRS system and allows the Band Class Members to determine their own projects to address the collective damage to their languages and cultures as a result of the IRS policy within their own communities.

143. The alternative to approving this settlement would be that the Band Class Members go on to trial, and then possible appeals. Not only would further years of litigation delay compensation, it would result in a judgment that could not possibly achieve the key benefits of the proposed – the establishment of an Indigenous-directed trust to fund meaningful language, culture and heritage initiatives for the benefit of the Class Members.

144. The Band Class claim has 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.

145. After over a decade of fighting, it is time for the Band Class to receive its due compensation.

¹⁷³ Coon Come Affidavit at paras 36-37, **Settlement Approval MR, Tab 3**; Feschuk Affidavit at paras 37-39, **Settlement Approval MR, Tab 5**; Gottfriedson Affidavit at para 54, **Settlement Approval MR, Tab 4**.

PART V - ORDER SOUGHT

146. The Plaintiffs respectfully request that this Court make an Order in accordance with the relief set out in the Draft Order at Tab 7 of the Plaintiffs' Motion Record for Settlement Approval.

147. In the event that the Settlement Agreement is not approved, the Plaintiffs respectfully request that this Court make an Order declaring that the parties are all restored, without prejudice, to their respective positions as such existed on September 1, 2023, prior to commencement of settlement negotiations.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of February, 2023.



John Kingman Phillips, K.C.

Peter R. Grant

Diane Soroka

W. Cory Wanless

Jonathan Schachter

Flora Yu

SCHEDULE “A” – JURISPRUDENCE

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3	<u><i>Toronto Standard Condominium Corporation No 1654 v Tri-Can Contract Incorporated</i>, 2022 FC 1796</u>	15-17
4	<u><i>Brown v Canada (Attorney General)</i>, 2018 ONSC 3429</u>	12
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13	<u><i>Seed v Ontario</i>, 2017 ONSC 3534</u>	14
14	<u><i>Manuge v Canada</i>, 2013 FC 341</u>	5-6
15	<u><i>Tiller v Canada</i>, 2020 FC 321</u>	53
16	<u><i>Serhan v Johnson & Johnson</i>, 2011 ONSC 128</u>	55
17	<u><i>Heyder v Canada (Attorney General)</i>, 2019 FC 1477</u>	64
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19	<u><i>Tk'emlúps te Secwépemc First Nation v Canada</i>, 2021 FC 988</u>	41, 72
20	<u><i>Tataskweyak Cree Nation v Canada (Attorney General)</i>, 2021 FC 1415</u>	68
21	<u><i>Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis</i>, 2022 QCCA 185</u>	
22	<u><i>Toth v Canada</i>, 2019 FC 125</u>	
23	<u><i>McCrea v Canada</i>, 2019 FC 122</u>	
24	<u><i>Silver v Imax Corp.</i>, 2016 ONSC 403</u>	24
25	<u><i>McCarthy v Canadian Red Cross Society</i>, [2001] OJ No 2474</u>	18

SCHEDULE “B” – LEGISLATION***Federal Courts Rules, SOR/98-106*****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.

Règlement**Approbation**

334.29 (1) Le règlement d'un recours collectif ne prend effet que s'il est approuvé par un juge.

Effet du règlement

(2) Il lie alors tous les membres du groupe ou du sous-groupe, selon le cas, à l'exception de ceux exclus du recours collectif.