

**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 shísháhlh 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.”<sup>1</sup>

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<sup>1</sup> 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](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.”<sup>2</sup>

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

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<sup>2</sup> 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:<sup>3</sup>

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.

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<sup>3</sup> TRC Summary Report, p. 1 (emphasis added).

Indeed, some sought, as it was infamously said, “to kill the Indian in the child”.<sup>4</sup> 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.”<sup>5</sup> 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.<sup>6</sup>

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<sup>5</sup> Final Report of the TRC, Vol 5, p. 112.

<sup>6</sup> 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.”<sup>7</sup> 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

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<sup>7</sup> 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”).<sup>8</sup> 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 12<sup>th</sup>.

102. Between September 7<sup>th</sup> meeting and September 11<sup>th</sup>, 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 11<sup>th</sup> 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 18<sup>th</sup> and I was instructed to send an acceptance of the offer to Canada, which I did on September 19<sup>th</sup>.

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 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 20<sup>th</sup> 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.

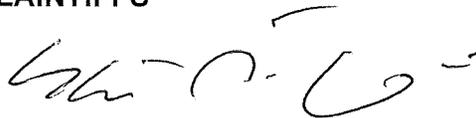
**34. Public Announcements**

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 18<sup>th</sup> 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

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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**

---

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

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of this 18<sup>th</sup> day of January, 2023.

**FOR THE REPRESENTATIVE PLAINTIFFS**

---

Tk'emlúps te Secwépemc, per  
Shane Gottfriedson  
Former Chief

---

Tk'emlúps te Secwépemc, per  
Kukpi7 Rosanne Casimir



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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**

---

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

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of this 18<sup>th</sup> day of January, 2023.

**FOR THE REPRESENTATIVE PLAINTIFFS**

---

Tk'emlúps te Secwépemc, per  
Shane Gottfriedson  
Former Chief

---

Tk'emlúps te Secwépemc, per  
Kukpi7 Rosanne Casimir

---

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'

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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

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



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



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A handwritten signature in cursive script, appearing to read "Diane Soroka", is written over a horizontal line.

Diane Soroka Avocate Inc., per  
Diane H. Soroka





## SCHEDULE A

**CLASS PROCEEDING****FORM 171A - Rule 171****FEDERAL COURT**

<b>Court File No. T-1542-12</b>	
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) 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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all Solicitors for the Plaintiffs

*Solicitors for the Plaintiffs*

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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”

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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.

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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](http://www.justicefordayscholars.ca) and [www.bandreparations.ca](http://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"

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Judge

**SCHEDULE C**  
**SCHEDULE "A"**

**List of Class Members**

September 2, 2022

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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)

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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)

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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)

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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)

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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

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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 (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)	IRS Located in Community; IRS Attended by Member(s)

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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

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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)

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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)

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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

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			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)

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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

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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

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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)

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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)

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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**

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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.”<sup>1</sup>

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<sup>1</sup> 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.”<sup>2</sup>

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

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<sup>2</sup> 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.<sup>3</sup>

A little over two decades later, on the 11<sup>th</sup> 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,”<sup>4</sup> 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.

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<sup>3</sup> Indian Affairs – A Survey, Department of Indian Affairs, 1980.

<sup>4</sup> 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.”<sup>5</sup>

*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

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<sup>5</sup> 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.<sup>6</sup>

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.”<sup>7</sup>

#### *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

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<sup>6</sup> 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.

<sup>7</sup> 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.<sup>8</sup>

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

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<sup>8</sup> 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.”<sup>9</sup>

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.”<sup>10</sup>

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.”<sup>11</sup> 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.”<sup>12</sup>

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.”<sup>13</sup>

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

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

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

<sup>11</sup> *Annual Report of the Department of Indian Affairs* 1891, p. x

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

<sup>13</sup> 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.”<sup>14</sup> 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.”<sup>15</sup>

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.”<sup>16</sup>

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

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

<sup>16</sup> 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”<sup>17</sup> 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

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<sup>17</sup> 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.”<sup>18</sup>

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.”<sup>19</sup>

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.”<sup>20</sup> 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

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<sup>18</sup> The Bagot Commission, section 2.

<sup>19</sup> Head Commission Report.

<sup>20</sup> NAC RG 10, Vol.209 Enoch Wood to Col.Bruce22 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.<sup>21</sup>

*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 ...”<sup>22</sup>

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:

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<sup>21</sup> The Statutes of Canada.1857, Vic., c.26 10 June 1857.

<sup>22</sup> 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.<sup>23</sup>

*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."<sup>24</sup>

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.<sup>25</sup> 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."<sup>26</sup> 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

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<sup>23</sup> 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)

<sup>24</sup> N.A.C. RG 10 Vol. 519, To Rev. A. Sickles from R.J. Pennefather, 11 November, 1858.

<sup>25</sup> NAC RG10, Part 1, Rev. T. Hurlburt to R.J. Pennefather, 22 December, 1857.

<sup>26</sup> 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.<sup>27</sup> 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.”<sup>28</sup>

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.<sup>29</sup>

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

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<sup>27</sup> Statutes of Canada, 32-33, Vict. C 6, 22 June 1869.

<sup>28</sup> 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.

<sup>29</sup> 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.<sup>30</sup> 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."<sup>31</sup>

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.<sup>32</sup> And Macdonald, perhaps indicating the importance of getting Canada's western

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<sup>30</sup> 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.

<sup>31</sup> 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.

<sup>32</sup> 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."<sup>33</sup>

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.<sup>34</sup>

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

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<sup>33</sup> Annual Report of the North West Mounted Police, 1878, in *Opening Up the West*, Appendix D, page 22, 23.

<sup>34</sup> 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.”<sup>35</sup> 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.<sup>36</sup>

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.”<sup>37</sup>

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

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<sup>35</sup> 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.

<sup>36</sup> NAC, 3RG10, Vol 3902 File 134858, J.A. Macrae to Superintendent General of Indian Affairs. 7 December 1900.

<sup>37</sup> 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."<sup>38</sup>

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.<sup>39</sup>

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,"<sup>40</sup>, 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

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<sup>38</sup> 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.

<sup>39</sup> Indian Affairs School Files, RG 10 Vol. 6031, File 150-9, part 1.

<sup>40</sup> 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”<sup>41</sup> 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.”<sup>42</sup> 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,<sup>43</sup> 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.”<sup>44</sup>

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.”<sup>45</sup>

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<sup>41</sup> 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.

<sup>42</sup> Debates of the House of Commons, 22 May 1883, pages 1376-1377.

<sup>43</sup> 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.

<sup>44</sup> RG 10, Vol. 3674, File 8128, C 10113, J.A. Macrae to Indian Commissioner, Regina, 18 December 1886.

<sup>45</sup> 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.<sup>46</sup>

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..."<sup>47</sup>

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."<sup>48</sup>

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.

<sup>46</sup> See Superintendent General of Indian Affairs from L Vankoughnet, 29 December 1885. Note the marginal comment with Macdonald's initials dated 29 January 1886.]

<sup>47</sup> House of Commons Debates, 7 May 1886, page 1166

<sup>48</sup> 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.”<sup>49</sup>

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.<sup>50</sup>

#### *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.”<sup>51</sup> 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

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<sup>49</sup> E. Dewdney to Sir John A Macdonald, 21 September 1885 with attached memorandum written by Rev. A. Lacombe. MG 26A, Vol.107, C-1524

<sup>50</sup> 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.

<sup>51</sup> 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.”<sup>52</sup>

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.<sup>53</sup> 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.”<sup>54</sup>

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.”<sup>55</sup>

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<sup>52</sup> NAC RG10, Vol. 3674, File 11422-4, MR C 10118, Father A. Lacombe to Indian Commissioner 2 June 1885.

<sup>53</sup> John Jennings, *The North West Mounted Police and Indian Policy*, page 282

<sup>54</sup> 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.)

<sup>55</sup> 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.<sup>56</sup> 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”<sup>57</sup>

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.”<sup>58</sup>

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.<sup>59</sup>

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

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<sup>56</sup> N.A.C. RG 10 Vol. 6032, File 150-40A, MR C 8149, Regulations Relating to the Education of Indian Children, 1894.

<sup>57</sup> Statutes of Canada, 1919-20, c. 50. (10-11 Geo. V.).

<sup>58</sup> NAC RG10, Vol. 3674, File 11422-4 MR C 1018,

<sup>59</sup> 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 home<sup>60</sup>. 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."<sup>61</sup> 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.

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<sup>60</sup> J. Jennings *The North West Mounted Police and Indian Policy, 1874-1896*, p281.

<sup>61</sup> *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."*<sup>62</sup>

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.

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<sup>62</sup> 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."<sup>63</sup>

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.<sup>64</sup> 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."<sup>65</sup> 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."<sup>66</sup>

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.

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<sup>63</sup> NAC, RG 10, Vol. 6348 File 752-1 MR C 8705, D.C. Scott to Rev. J. Rioui O.M.I., 16 December 1921.

<sup>64</sup> 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.

<sup>65</sup> NAC RG 10, Vol. 6436, File 878—1 (1-3), MR C8762 M. Benson to Deputy Superintendent General of Indian Affairs, 23 October, 1907.

<sup>66</sup> 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,<sup>67</sup> 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.<sup>68</sup> 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."<sup>69</sup> 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."<sup>70</sup>

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

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<sup>67</sup> INAC File 600-1, Vol. 2 Report of the Honorable the Privy Council, approved by the Governor General in Council, on 22 October 1892.

<sup>68</sup> 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.

<sup>69</sup> INAC File 600-1, Vol. 2., Report of the Committee of the Honourable the Privy Council ... 22nd October, 1892.

<sup>70</sup> 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.”<sup>71</sup> 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,”<sup>72</sup>. 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

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<sup>71</sup> NAC RG 10 Vol. 6039, File 160-1 MR C 8152, Auditor General to Deputy Superintendent General of Indian Affairs, 19 March, 1904

<sup>72</sup> 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."<sup>73</sup>

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."<sup>74</sup> It was the Churches, however, who took the first step submitting a framework for discussions, the Winnipeg Resolutions<sup>75</sup>: 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."<sup>76</sup>

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<sup>73</sup> 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.

<sup>74</sup> NAC RG 10, Vol. 3927, File 116836-1A, MR C101631, D.C Scott to Deputy Superintendent General of Indian Affairs, 29 April, 1904

<sup>75</sup> 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.

<sup>76</sup> 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.”<sup>77</sup>

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.<sup>78</sup>

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

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<sup>77</sup> NAC, RG10, Vol.6039, File 160-1, MR C 8152, Memorandum on Conference in the Minister’s Office with the Churches, 8 Nov. 1910.

<sup>78</sup> 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"<sup>79</sup> - 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."<sup>80</sup> 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."<sup>81</sup>

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.<sup>82</sup> 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

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<sup>79</sup> NAC career RG 10, Vol.3947, File 123764 MR C 10166, L Vankoughnet to E. Dewdney, 13 April, 1892.

<sup>80</sup> NAC RG 10, Vol. 3818, File 57799, MR C 10143, H. Reed to Superintendent General of Indian Affairs, 14 May, 1889.

<sup>81</sup> NAC RG 10, Vol. 6039, , File 160-1, MR C F. Oliver to Reverend and Dear Sirs, 21 March 1908.

<sup>82</sup> Statutes of Canada, 1919-1920, c. 50. 10-11 Geo V. 7 July 1919.

enforced.”<sup>83</sup> 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.<sup>84</sup>

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 20<sup>th</sup> century. Almost immediately, by 1917, none of the Churches could live within the limits of their grants.<sup>85</sup> 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.<sup>86</sup>

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

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<sup>83</sup> NAC RG 10 Vol.6041, File 160-5, , Part 1, MR C 8153 D.C. Scott to Rev. J Guy, 17 April 1926.

<sup>84</sup> See, for example, NAC RG 10, Vol. 6475, File 918,-1 M R C 8791, R. Hoey to Dr.J. Riopel, 3 November 1941.

<sup>85</sup> 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.

<sup>86</sup> 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.<sup>87</sup> 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.”<sup>88</sup>

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.”<sup>89</sup> 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

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<sup>87</sup> NAC, RG 10, Vol. 6039, File 160-1 MR C 8152, J.D McLean to Sirs (Church representatives) 25 November, 1910.

<sup>88</sup> INAC File 501/25-13—065, Vol. 2, Memorandum of Agreement ... 22 June 1962.

<sup>89</sup> 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.<sup>90</sup>

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."<sup>91</sup>

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 doctor<sup>92</sup>) 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

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<sup>90</sup> [ NAC RG10, File 6039, , File, 160-1 MR C 8152 M. Benson, to J McLean, 15 July, 1897]

<sup>91</sup> 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*.

<sup>92</sup> 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.”<sup>93</sup>

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.<sup>94</sup>

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.”<sup>95</sup>

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

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<sup>93</sup> 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.

<sup>94</sup> 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.

<sup>95</sup> 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.<sup>96</sup>

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.<sup>97</sup>

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."<sup>98</sup>

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.

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<sup>96</sup> [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)

<sup>97</sup> N.A.C. RG 10 Vol. 7182, File 1/25-1-1-1, MR C 9695, To Sir from W. Ditchburn, 12 October, 1920.

<sup>98</sup> 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.”<sup>99</sup>

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.<sup>100</sup>

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.

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<sup>99</sup> 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.

<sup>100</sup> P. Bryce *The Story of a National Crime*. For further evidence of the disproportionate impact of the disease, see Wherrit, *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.<sup>101</sup>

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-20<sup>th</sup> 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.”<sup>102</sup>

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<sup>101</sup> 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.

<sup>102</sup> 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.”<sup>103</sup>*

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.<sup>104</sup> 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.”<sup>105</sup>

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.<sup>106</sup>

Continuously, similar reports reached headquarters from early days on through to the Second World War.<sup>107</sup> Ironically the war, which usually meant reduced school funding, as it did in this

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<sup>103</sup> 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.

<sup>104</sup> 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

<sup>105</sup> NAC. RG 10, Vol. 3674, File 11422 MR C 10118, Rev. J. Hugonard to E. Dewdney 5 May 1891.

<sup>106</sup> NAC RG 10, Vol. 6268 File 581-1 (1- 2) MR C 8657, J.R. Bunns to D.C. Scott, 24 September 1915

<sup>107</sup> 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."<sup>108</sup>

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."<sup>109</sup> 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.

<sup>108</sup> 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.

<sup>109</sup> 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.”<sup>110</sup> 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.<sup>111</sup> 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.

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<sup>110</sup> 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.

<sup>111</sup> 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.<sup>112</sup> 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.<sup>113</sup> The following spring, Marcoux inspected the school for a second time. Nothing had really improved and no corrective action was taken by the Department.<sup>114</sup>

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

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<sup>112</sup> 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.

<sup>113</sup> 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.

<sup>114</sup> 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.”<sup>115</sup>

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.<sup>116</sup> 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.”<sup>117</sup> 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.”<sup>118</sup> 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

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<sup>115</sup> 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.

<sup>116</sup> N.A.C. RG 10 Vol. 7194, File 511/25-1-015, MR C 9700, N. Chapman Report, 8 October, 1953.

<sup>117</sup> 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.

<sup>118</sup> 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.<sup>119</sup>

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.”<sup>120</sup>

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

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<sup>119</sup> 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.

<sup>120</sup> 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.<sup>121</sup>

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.<sup>122</sup> 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.<sup>123</sup>

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

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<sup>121</sup> 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.]

<sup>122</sup> 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.

<sup>123</sup> 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.<sup>124</sup>

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

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<sup>124</sup> 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.<sup>125</sup>

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.<sup>126</sup>

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.”<sup>127</sup> 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.”<sup>128</sup> Indeed, throughout the system poor nutrition had and continued to be a part of the suffering of generations of children.

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<sup>125</sup> INAC File 6-21-1, Vol. 4, Memorandum on the Brief - National Association of Principals, R.F. Davey, 11 January, 1968

<sup>126</sup> 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.

<sup>127</sup> 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.

<sup>128</sup> 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.<sup>129</sup>

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.”<sup>130</sup>

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.

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<sup>129</sup> 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.

<sup>130</sup> 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.<sup>131</sup>

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,”<sup>132</sup>

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.<sup>133</sup>

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”<sup>134</sup> 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.

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<sup>131</sup> 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.

<sup>132</sup> N.A.C. RG 10, Vol. 8757, File 673/25-1-010, MR C 9701, B. Neary to J. Card, 7 February 1950.

<sup>133</sup> 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.

<sup>134</sup> 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.”<sup>135</sup> 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.”<sup>136</sup>

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<sup>135</sup> 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.

<sup>136</sup> 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."<sup>137</sup> 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

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<sup>137</sup> 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.<sup>138</sup>

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.”<sup>139</sup> 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

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<sup>138</sup> 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.

<sup>139</sup> 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.”<sup>140</sup> 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.”<sup>141</sup> Canon S. Gould, the general secretary of the

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<sup>140</sup> 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.

<sup>141</sup> 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.<sup>142</sup>

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.”<sup>143</sup>

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

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<sup>142</sup> 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.

<sup>143</sup> 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.”<sup>144</sup> 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.”<sup>145</sup> 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.”<sup>146</sup> 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

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<sup>144</sup> 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*.

<sup>145</sup> Chinua Achebe, *Things Fall Apart*.

<sup>146</sup> “Chinua Achebe: “A life in writing” by Nicholas Wroe, [www.theguardian.com](http://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.”<sup>147</sup> 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.”<sup>148</sup> 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”<sup>149</sup> 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.”<sup>150</sup>

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.”<sup>151</sup> 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

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<sup>147</sup> D.A. Nock, *A Victorian Missionary and Canadian Indian Policy*, page 78.

<sup>148</sup> Annual Report 1896, page 398-399.

<sup>149</sup> Annual Report 1895, page xxii-xxiii.

<sup>150</sup> As quoted in M. Montgomery “The Six Nations and the Macdonald Franchise” *Ontario History* 57 (March 1965) p. 13

<sup>151</sup> 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.”<sup>152</sup> 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.”<sup>153</sup> 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.”<sup>154</sup> 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

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<sup>152</sup> Annual Report 1900, page xxix.

<sup>153</sup> N.A.C. RG 10 Vol. 3818, File 57799, MR C 10143, To Superintendent General of Indian Affairs from H. Reed, 14 May 1889.

<sup>154</sup> 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.”<sup>155</sup> 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.”<sup>156</sup> 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.<sup>157</sup>

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”<sup>158</sup> 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.”<sup>159</sup>

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<sup>155</sup> N.A.C. RG 10 Vol. 3647, File 8128, MR C 10113, To Indian Commissioner, Regina, from J. A. Macrae, 18 December, 1886.

<sup>156</sup> N.A.C. RG 10 Vol. 3674, File 11422-1, MR C 10118, To Lieutenant Governor from Rev. J. Hugonard, 18 October, 1884.

<sup>157</sup> 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.

<sup>158</sup> 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.

<sup>159</sup> 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.<sup>160</sup>

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

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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.

<sup>160</sup> 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.<sup>161</sup>

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.<sup>162</sup>

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

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<sup>161</sup> N.A.C. RG 10 Vol. 6039, File 160-1, MR C 8152, To D.C. Scott from W. Graham, 23 March, 1923.

<sup>162</sup> 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.”<sup>163</sup>

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”<sup>164</sup> 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

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<sup>163</sup> N.A.C. RG 10 Vol. 6476, File 919-1, MR C 8792, To Hon. I. MacKenzie from Miss E. Corbett, 18 March, 1944.

<sup>164</sup> 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.”<sup>165</sup>

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.<sup>166</sup>

#### *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.”<sup>167</sup> They were “not as a rule well fitted to the work” Benson charged<sup>168</sup> 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.”<sup>169</sup> 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.”<sup>170</sup> 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

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<sup>165</sup> 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.

<sup>166</sup> 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.

<sup>167</sup> N.A.C. RG 10 Vol. 3647, File 8128, MR C 10113, To Indian Commissioner from J.A. Macrae, 18 December, 1886.

<sup>168</sup> N.A.C. RG 10 Vol. 6039, File 160-1, MR C 8152, Memorandum for the Minister from M. Benson, 3 July, 1897.

<sup>169</sup> N.A.C. RG 10 Vol. 4041, File 334503, MR C 10178, To F. Pedley from F.H. Paget, 25 November, 1908.

<sup>170</sup> 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.”<sup>171</sup> 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.”<sup>172</sup> 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.”<sup>173</sup>

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.<sup>174</sup>

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.”<sup>175</sup>

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.”<sup>176</sup> If that was

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<sup>171</sup> N.A.C. RG 10 Vol. 7185, File 1/25-1-7-1, To C.E. Silcox from R.T. Ferrier, 7 April, 1932.

<sup>172</sup> 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.

<sup>173</sup> 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.

<sup>174</sup> 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.

<sup>175</sup> N.A.C. RG 10 Vol. 6348, File 752-1, MR C 8705, Extract of a Report by W. Graham, 16 April, 1923.

<sup>176</sup> 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."<sup>177</sup> 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."<sup>178</sup>

### *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."<sup>179</sup> 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.<sup>180</sup> 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

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<sup>177</sup> 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.

<sup>178</sup> 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.

<sup>179</sup> 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.

<sup>180</sup> 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.”<sup>181</sup>

Significantly, two statements, both made by Reed - it would “be found best to rigorously exclude the use of Indian dialects”<sup>182</sup> 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.”<sup>183</sup> – 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.<sup>184</sup> 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

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<sup>181</sup> 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.

<sup>182</sup> N.A.C. RG 10 Vol. 3818, File 57799, MR C 10143, To Superintendent General of Indian Affairs from H. Reed, 14 May 1889.

<sup>183</sup> 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.

<sup>184</sup> 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”<sup>185</sup> 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.<sup>186</sup>

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,

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<sup>185</sup> INAC File 501/23-5-076, Vol. 1, To ... from J.D. Sutherland, 13 May, 1936.

<sup>186</sup> 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.<sup>187</sup> 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.”<sup>188</sup>

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.”<sup>189</sup> Thereafter, Departmental efforts and resources were redirected

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<sup>187</sup> INAC File 1/25-1, Vol. 22, To Mr. Bergevin from R.F. Davey, 15 September, 1969.

<sup>188</sup> E. Graham, *The Mush Hole. Life at Two Residential Schools*, Hefle Publishing Waterloo, 1997, page 379

<sup>189</sup> 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.”<sup>190</sup>

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.”<sup>191</sup>

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.”<sup>192</sup>

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

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<sup>190</sup> INAC File 1/25-1, Vol. 35, Educational Services for Indians, 24 March, 1969, p1.

<sup>191</sup> N.A.C. RG 10 Vol. 6479, File 940-1 (1-2), MR C 8794, To Deputy Minister from H. McGill, 25 November, 1942.

<sup>192</sup> 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”<sup>193</sup>

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”<sup>194</sup> 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.”<sup>195</sup> 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.”<sup>196</sup>

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<sup>193</sup> INAC File 601,25-2 Vol. 2, R.F Davey, Residential Schools – Past and Future, 8 March, 1968

<sup>194</sup> INAC File 6-21-7, Vol.1 H. Jones, Memorandum to the Minister, 7 May 1963.

<sup>195</sup> INAC File 601/1 Vol. 4, Memorandum of Agreement, 15 December 1969.

<sup>196</sup> 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”<sup>197</sup>

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 ...”<sup>198</sup> 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.”<sup>199</sup> 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

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<sup>197</sup> 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.

<sup>198</sup> NAC, RG10, Vol. 6479, File 940-1 (1-2), MR C 8794, H. McGill to Deputy Minister, 25 November, 1942.

<sup>199</sup> 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.<sup>200</sup>

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."<sup>201</sup>

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."<sup>202</sup>

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

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<sup>200</sup> "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.

<sup>201</sup> 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.

<sup>202</sup> 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.”<sup>203</sup>

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”.<sup>204</sup>

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

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<sup>203</sup> 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.

<sup>204</sup> 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.<sup>205</sup>

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”<sup>206</sup>

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

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<sup>205</sup> 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.

<sup>206</sup> 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.<sup>207</sup>

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.”<sup>208</sup>

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

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<sup>207</sup> [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]

<sup>208</sup> 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."<sup>209</sup>

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.<sup>210</sup>

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."<sup>211</sup>

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<sup>209</sup> 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.

<sup>210</sup> INAC File E6575-18-2, Vol. 4, To the Honourable Tom Siddon from [a chief], 15 November, 1990.

<sup>211</sup> 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,<sup>212</sup> 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 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.<sup>213</sup>

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<sup>212</sup> 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* ...

<sup>213</sup> 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.<sup>213</sup> 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.”<sup>214</sup>

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.”<sup>215</sup>

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

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<sup>214</sup> 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.

<sup>215</sup> 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 them<sup>216</sup> 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.”

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<sup>216</sup> 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.”<sup>217</sup> 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 20<sup>th</sup> 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

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<sup>217</sup> 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.<sup>218</sup>

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.<sup>219</sup>

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.<sup>220</sup>

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

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<sup>218</sup> 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.

<sup>219</sup> J. Sluman and N. Goodwill Biography of a Cree Leader Golden Dog Press, 1982.

<sup>220</sup> 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.<sup>221</sup>

Parallel to the Caldwell study, the Department adopted an on-going study<sup>222</sup> 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

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<sup>221</sup> 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.

<sup>222</sup> 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.”<sup>223</sup>

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.<sup>224</sup>

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<sup>223</sup> Charles Hobart “Some Consequences of Residential Schooling” in *American Indian Education* eds R. Merwin et al. Arizona State University. Tempe, 1974.

<sup>224</sup> 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.”<sup>225</sup>

However, while there is little mention of sexual abuse in the files, that is not necessarily an indication the Department “did not know.”<sup>226</sup> 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.”<sup>227</sup> 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.”<sup>228</sup> 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

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<sup>225</sup> INAC File E6575-18, Vol. 10, To J. Fleury, Jr. from J. Tupper, 19 June, 1990.

<sup>226</sup> 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.

<sup>227</sup> 217 N.A.C. RG 10 Vol. 6455, File 885-1 (1-2), MR C 8777, To Secretary from W. Ditchburn, 31 October, 1912.

<sup>228</sup> 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.”<sup>229</sup>

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.”<sup>230</sup>

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.”<sup>231</sup>

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

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<sup>229</sup> INAC File E6575-18, Vol. 13, House Response, 24 April, 1992. This was a Departmental estimate.

<sup>230</sup> L. Jaine ed. *Residential Schools: The Stolen Years*. Saskatoon: University Extension Press, 1993. p 6 and 37

<sup>231</sup> “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.<sup>232</sup>

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."<sup>233</sup>

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.<sup>234</sup>

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.<sup>235</sup>

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<sup>232</sup> The report is noted in INAC File E6575-18, Vol. 10, Communications Strategy, Child Sexual Abuse in Residential Schools n.d.

<sup>233</sup> INAC File E6757-18, Vol. 13, A New Justice for Indian Children, Child Advocacy Project, Children's Hospital, Winnipeg, 1987, pa

<sup>234</sup> 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.

<sup>235</sup> 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.”<sup>236</sup>

*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.”<sup>237</sup>

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<sup>236</sup> L. Jaine ed. *Residential Schools: The Stolen Years*. Saskatoon: University Extension Press, 1993. P. 32.

<sup>237</sup> 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.”<sup>238</sup>

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.

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<sup>238</sup> 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.”<sup>239</sup>

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.<sup>240</sup>

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.”<sup>241</sup>

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<sup>239</sup> 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.

<sup>240</sup> Mary Carpenter, “Recollections and Comments: No More Denials Please”, *Inuktitut* (74: 56-61, 1991).

<sup>241</sup> 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.”<sup>242</sup> 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.”<sup>243</sup>

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.”<sup>244</sup> Such tragic examples are seemingly unending.<sup>245</sup> 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

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<sup>242</sup> 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.

<sup>243</sup> 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.

<sup>244</sup> 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.

<sup>245</sup> 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.”<sup>246</sup> 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”<sup>247</sup> 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.<sup>248</sup>

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<sup>246</sup> D.A. Nock, *A Victorian Missionary and Canadian Indian Policy*, page 4.

<sup>247</sup> N.A.C. RG 10 Vol. 3818, File 57799, MR C 10143, To Superintendent General of Indian Affairs from H. Reed, 14 May, 1889 .

<sup>248</sup> 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.”<sup>249</sup>

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.”<sup>250</sup> 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.<sup>251</sup>

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

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<sup>249</sup> L. Jaine ed. *Residential Schools: The Stolen Years*. Saskatoon: University Extension Press, 1993. P. 64

<sup>250</sup> 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.

<sup>251</sup> 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.”<sup>252</sup>

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.”<sup>253</sup>

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.<sup>254</sup> 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,<sup>255</sup> 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.”

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<sup>252</sup> 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.

<sup>253</sup> 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.

<sup>254</sup> See section 88 of the Indian Act of 1951.

<sup>255</sup> 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 Scoop<sup>256</sup> - 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.<sup>257</sup>

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.<sup>258</sup>

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

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<sup>256</sup> See, Patrick Johnston, *Native Child Welfare System*, James Lorimer & Company, Toronto, 1983.

<sup>257</sup> 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.

<sup>258</sup> *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.<sup>259</sup>

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.<sup>260</sup>

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

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<sup>259</sup> 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.

<sup>260</sup> 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.<sup>261</sup>

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."<sup>262</sup>

## 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.**

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<sup>261</sup> 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.

<sup>262</sup> 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

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[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) (<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	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 Secwépehc Indian Band are members of the northernmost of the Plateau People and of the Interior-Salish Secwépehc (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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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”

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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**

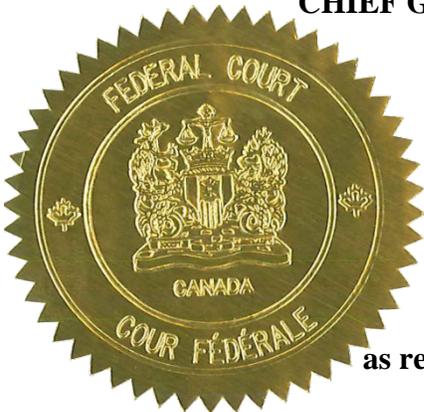
**HIS MAJESTY THE KING IN RIGHT OF CANADA  
as represented by THE ATTORNEY GENERAL OF CANADA**

**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"

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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)

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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)

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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)

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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)

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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)

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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

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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's)	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)

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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)

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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)

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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)

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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)

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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)

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266	ON	Kitchenuhmaykoosib Inninuwug	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)

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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)

	<b>Province / Territory</b>	<b>Indian Band/ FN</b>	<b>Identified Indian Residential School(s)</b>	<b>Opt In Basis</b>
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](mailto: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](http://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](http://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	<a href="mailto:bandclass@waddellphillips.ca">bandclass@waddellphillips.ca</a>  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](mailto: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](http://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](mailto:bandclass@waddellphillips.ca)

Att'n: Band Reparations 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.bandreparations.ca](http://www.bandreparations.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.bandreparations.ca](http://www.bandreparations.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**

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**SECOND AMENDED STATEMENT OF DEFENCE**

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**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 was 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-contact 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-contact 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.

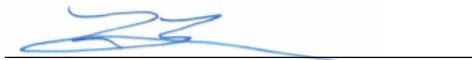
### **CROWN IMMUNITY AND PREJUDGMENT INTEREST**

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**

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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**

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**TRIAL BRIEF OF THE DEFENDANT**

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## 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 conduct<sup>1</sup> 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.<sup>2</sup>
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.

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<sup>1</sup> 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).

<sup>2</sup> 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 rights<sup>3</sup> or alter the rules of evidence.<sup>4</sup> 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.<sup>5</sup> 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.

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<sup>3</sup> [Bou Malhab v Diffusion Métromédia CMR inc.](#), 2011 SCC 9 para 52, cited in [Canadian Imperial Bank of Commerce v Green](#) 2015 SCC 60; [Bisailon v Concordia University](#), 2006 SCC 19 at para 17 [[Bisailon](#)]; [Sivak v Canada](#), 2012 FC 271 at para 17.

<sup>4</sup> [Bisailon](#), at para 18.

<sup>5</sup> [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.<sup>6</sup> 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.

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<sup>6</sup> [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”.<sup>7</sup>

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

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<sup>7</sup> [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.<sup>8</sup> 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.*<sup>9</sup> [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.*<sup>10</sup> [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.<sup>11</sup> 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

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<sup>8</sup> Plaintiffs’ Trial Brief, dated September 2, 2022 [PTB] at 18, 19: Admissions 22, 24-29.

<sup>9</sup> Canada’s Second Amended Statement of Defence, filed March 14, 2022 [2<sup>nd</sup> ASOD] at para 3 (TR, Tab 31, p 1411).

<sup>10</sup> 2<sup>nd</sup> ASOD at para 32 (TR, Tab 31, p 1418).

<sup>11</sup> 2<sup>nd</sup> 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."<sup>12</sup> 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.<sup>13</sup> 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".<sup>14</sup> 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.<sup>15</sup>

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<sup>12</sup> Plaintiffs' Trial Plan, dated March 30, 2020 at 3-4 (TR, Tab 21, pp 408-409).

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> [\*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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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.

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<sup>16</sup> [Certification Reasons](#), at para 95.

<sup>17</sup> [Certification Reasons](#) at para 97; [Canada \(Attorney General\) v Gottfriedson, 2014 FCA 55](#) at para 35.

<sup>18</sup> [Wewaykum Indian Band v Canada, 2002 SCC 79](#) at paras 81, 83 [*Wewaykum*].

<sup>19</sup> [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.<sup>20</sup> 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".<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup> 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.<sup>24</sup> 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*.

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<sup>20</sup> [Certification Reasons](#) at paras 42 and 43.

<sup>21</sup> 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).

<sup>22</sup> Second Re-Amended Statement of Claim, filed February 11, 2022 [2<sup>nd</sup> Re-Amended SOC] at para 1 (a), under Relief Sought (TR, Tab 30, p 1387).

<sup>23</sup> [Kwicksutaineuk/Ah-Kwa-Mish First Nation v Canada \(AG\)](#), 2012 BCCA 193 at para 62.

<sup>24</sup> 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.<sup>25</sup> For example, in *Tsilhqot’in Nation*,<sup>26</sup> 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.<sup>27</sup> [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.

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<sup>25</sup> [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.

<sup>26</sup> [Tsilhqot’in Nation v British Columbia, 2007 BCSC 1700](#) at para 470.

<sup>27</sup> 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*,<sup>28</sup> 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.

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<sup>28</sup> [\*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.<sup>29</sup>

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.

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<sup>29</sup> [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.<sup>30</sup> 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.<sup>31</sup>

### **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 test<sup>32</sup> 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.”<sup>33</sup>

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<sup>30</sup> [Whiten v Pilot Insurance Co., 2022 SCC 18](#), at para 94.

<sup>31</sup> [Eurocopter c. Bell Helicopter Textron Canada Ltée, 2013 FCA 219](#) at paras 173-179.

<sup>32</sup> [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.

<sup>33</sup> 2<sup>nd</sup> 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.<sup>34</sup> 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.

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<sup>34</sup> 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"

**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**

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**PLAINTIFFS' TRIAL BRIEF**

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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 Policy<sup>1</sup> 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.<sup>2</sup>*

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 bands<sup>3</sup> 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,

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<sup>1</sup> 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.

<sup>2</sup> Stephen Harper, Statement of apology to former students of Indian Residential Schools, June 11, 2008

<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>4</sup> 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 19<sup>th</sup> 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".<sup>5</sup>
- 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.

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<sup>5</sup> 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:<sup>6</sup>

*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:<sup>7</sup>

- 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?

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<sup>6</sup> Amended Certification Order, para 1(c).

<sup>7</sup> 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.<sup>8</sup>*

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.<sup>9</sup>*

#### ***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.<sup>10</sup>*

23. Section 35 (1) of the Constitution did not create rights, but rather, it constitutionalized those common law aboriginal rights that existed in 1982.<sup>11</sup>

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<sup>8</sup> *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para 16, [2004] 3 SCR 511 <<https://canlii.ca/t/1j4tq#par16>>

<sup>9</sup> *Haida Nation v. British Columbia (Minister of Forests)* at para 53 <<https://canlii.ca/t/1j4tq#par53>>

<sup>10</sup> *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11, s. 35 <<https://canlii.ca/t/ldsx>>.

<sup>11</sup> *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.*<sup>12</sup>

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.*<sup>13</sup>

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.<sup>14</sup>

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 subjects<sup>15</sup>—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.*<sup>16</sup>

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<sup>12</sup> *Calder et al. v. Attorney-General of British Columbia* (1973), [1973] SCR 313 <<https://canlii.ca/t/1nfn4>>

<sup>13</sup> *R. v. Van der Peet* (1996), [1996] 2 SCR 507 at para 30 <<https://canlii.ca/t/1fr8r#par30>>

<sup>14</sup> *Mitchell v. Canada (M.N.R.)* [2001] 1 SCR 911 <<https://canlii.ca/t/521d#par9>>

<sup>15</sup> In fact, Canada continued to make treaties with Aboriginal peoples even after 1867, thereby recognizing their status as self-governing peoples.

<sup>16</sup> *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.<sup>17</sup>

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*<sup>18</sup>, and later modified in *Delgamuukw*<sup>19</sup> 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",<sup>20</sup> it significantly nuanced this statement in Delgamuukw, concluding that Aboriginal title is a right identical in scope for all holders of that title.<sup>21</sup>*

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.<sup>22</sup>*

It is a generic right to language and culture that the Plaintiffs will ask this court to recognize.

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<sup>17</sup> *R. v. Lefthand*, 2007 ABCA 206 at para 125.

<sup>18</sup> *R. v. Van der Peet* at para 46 <<https://canlii.ca/t/1fr8r#par46>>

<sup>19</sup> *Delgamuukw v. British Columbia* at paras 140-142 <<https://canlii.ca/t/1fqz8#par140>>

<sup>20</sup> *R. v. Van der Peet* at para 69 <<https://canlii.ca/t/1fr8r#par69>>

<sup>21</sup> *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>>

<sup>22</sup> *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.*<sup>23</sup>

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.*<sup>24</sup>

### ***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.*<sup>25</sup>

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.<sup>26</sup>

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.

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<sup>23</sup> *R. v. Côté* (1996), [1996] 3 SCR 139 at para 56 <<https://canlii.ca/t/1fr7d#par56>>

<sup>24</sup> *R. v. Sappier; R. v. Gray*, 2006 SCC 54 at paras 26, 34, [2006] 2 SCR 686 <<https://canlii.ca/t/1q3tv#par26>>

<sup>25</sup> *R. v. Sparrow* (1990), [1990] 1 SCR 1075 <<https://canlii.ca/t/1fsvj>>

<sup>26</sup> *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.<sup>27</sup>

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.<sup>28</sup>

### ***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.*<sup>29</sup>

### ***Plaintiffs are Entitled to a Remedy***

40. Where there is a right, there must be a remedy for the breach of that right:

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<sup>27</sup> *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>>

<sup>28</sup> *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](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf)

<sup>29</sup> *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.*<sup>30</sup>

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<sup>30</sup> *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**

	<b>Witness</b>	<b>Disputes / Direct Exam / Cross Exam</b>	<b>Anticipated Total Length in Days</b>	<b>Anticipated Date</b>
	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
	<b>End of Plaintiffs' Case</b>			
15.	Dr. Petrusic	1 / 1 / 1	3	Oct 25, 26, 27 *date of disqualification hearing to be addressed
	<b>End of Canada's Case</b>			
	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.<sup>31</sup>
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.<sup>32</sup>
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.<sup>33</sup>
4. Canada admits that Aboriginal peoples have distinctive cultures that consist of practices, customs, traditions, spiritual beliefs and governance systems.<sup>34</sup>
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.<sup>35</sup>
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.<sup>36</sup>
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.<sup>37</sup>

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<sup>31</sup> Defendant’s Response to Request to Admit dated February 12, 2021, (“Response 2<sup>nd</sup> RTA”) at General Statement # III referencing Related Request R.20 [Trial Record, Tab 29]

<sup>32</sup> Response 2<sup>nd</sup> RTA at General Statement # III referencing Related Request R.21 [Trial Record, Tab 29]

<sup>33</sup> Response 2<sup>nd</sup> RTA at General Statement # III referencing Related Request R.22 [Trial Record, Tab 29]

<sup>34</sup> Response 2<sup>nd</sup> RTA at para 1 [Trial Record, Tab 29]

<sup>35</sup> Response 2<sup>nd</sup> RTA at General Statement # III referencing Related Request R.16 [Trial Record, Tab 29]

<sup>36</sup> Response 2<sup>nd</sup> RTA at General Statement # III referencing Related Request R.17 [Trial Record, Tab 29]

<sup>37</sup> Response 2<sup>nd</sup> 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.<sup>38</sup>
9. Canada admits that language is an important element of culture and identity.<sup>39</sup>
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.<sup>40</sup>
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.<sup>41</sup>
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.<sup>42</sup>
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.<sup>43</sup>

***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*.<sup>44</sup>
15. Canada admits that the relationship between the federal Crown and Aboriginal peoples is fiduciary in nature.<sup>45</sup>
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.<sup>46</sup>

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<sup>38</sup> Response 2<sup>nd</sup> RTA at General Statement # III referencing Related Request R.19 [Trial Record, Tab 29]

<sup>39</sup> Response 2<sup>nd</sup> RTA at General Statement # III referencing Related Request R.23 [Trial Record, Tab 29]

<sup>40</sup> Response 2<sup>nd</sup> RTA at General Statement #I [Trial Record, Tab 29]

<sup>41</sup> Response 2<sup>nd</sup> RTA at General Statement #I [Trial Record, Tab 29]

<sup>42</sup> Response 2<sup>nd</sup> RTA at General Statement #I [Trial Record, Tab 29]

<sup>43</sup> Response 2<sup>nd</sup> RTA at General Statement #I [Trial Record, Tab 29]

<sup>44</sup> Response 2<sup>nd</sup> RTA at para 1 [Trial Record, Tab 29]

<sup>45</sup> Response 2<sup>nd</sup> RTA at para 1 [Trial Record, Tab 29]

<sup>46</sup> Second Amended Statement of Defence, dated March 14, 2022 (“2<sup>nd</sup> 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.<sup>47</sup>
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.<sup>48</sup>
19. Canada admits that during the Class Period it was responsible for the administration of the *Indian Act*.<sup>49</sup>
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.<sup>50</sup>
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.<sup>51</sup>
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.<sup>52</sup>
23. Canada admits that the actions of federal government officials or their agents regarding residential schools were, in hindsight, utterly and entirely inappropriate.<sup>53</sup>
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

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<sup>47</sup> 2<sup>nd</sup> ASOD at para 126 [Trial Record, Tab 31]

<sup>48</sup> Response 1<sup>st</sup> RTA at para 9 [Trial Record, Tab 20]

<sup>49</sup> Response 1<sup>st</sup> RTA at para 12a [Trial Record, Tab 20]

<sup>50</sup> Response 1<sup>st</sup> RTA at para 12b [Trial Record, Tab 20]

<sup>51</sup> Response 1<sup>st</sup> RTA at para 12c [Trial Record, Tab 20]

<sup>52</sup> Response 1<sup>st</sup> RTA at para 22 [Trial Record, Tab 20]

<sup>53</sup> 2<sup>nd</sup> ASOD at para 8 [Trial Record, Tab 31]

communities, and discouraging or inhibiting them from using their respective Indigenous languages, customs or traditions.<sup>54</sup>

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.<sup>55</sup>
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.<sup>56</sup>
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.<sup>57</sup>
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.<sup>58</sup>
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.<sup>59</sup>
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."<sup>60</sup>
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.<sup>61</sup>

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<sup>54</sup> 2<sup>nd</sup> ASOD at para 26 [Trial Record, Tab 31]

<sup>55</sup> Response 2<sup>nd</sup> RTA at General Statement # III referencing Related Request R.93 [Trial Record, Tab 29]

<sup>56</sup> Response 2<sup>nd</sup> RTA at General Statement # III [Trial Record, Tab 29]

<sup>57</sup> Response 2<sup>nd</sup> RTA at General Statement # III [Trial Record, Tab 29]

<sup>58</sup> Response 2<sup>nd</sup> RTA at General Statement # III [Trial Record, Tab 29]

<sup>59</sup> Response 1<sup>st</sup> RTA at para 23 [Trial Record, Tab 20]

<sup>60</sup> Response 2<sup>nd</sup> RTA at General Statement # III referencing Related Request R.69 [Trial Record, Tab 29]

<sup>61</sup> Response 2<sup>nd</sup> 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.<sup>62</sup>
33. Canada admits that Secwepemctsin is the traditional language of the Secwépemc people.<sup>63</sup>
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.<sup>64</sup>
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.<sup>65</sup>
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".<sup>66</sup>

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<sup>62</sup> Response 2<sup>nd</sup> RTA at para 1 [Trial Record, Tab 29]

<sup>63</sup> Response 2<sup>nd</sup> RTA at para 1 [Trial Record, Tab 29]

<sup>64</sup> Response 2<sup>nd</sup> RTA at General Statement # III referencing Related Request R.120 [Trial Record, Tab 29]

<sup>65</sup> Response 2<sup>nd</sup> RTA at General Statement # III referencing Related Request R.112 [Trial Record, Tab 29]

<sup>66</sup> Response 2<sup>nd</sup> 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.



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A Commissioner for Taking Affidavits

# EXHIBIT

# "L"



September 17, 2022

Chief Shane Gottfriedson  
[regionalchief1965@gmail.com](mailto:regionalchief1965@gmail.com)

Chief Garry Feschuk  
[gfeschk@shishalh.com](mailto:gfeschk@shishalh.com)

Kúkpi7 Rosanne Casimir  
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hiwus Henry Warren Paull  
[wpaul@shishalh.com](mailto:wpaul@shishalh.com)

Matthew Coon Come  
[mcc@cooncome.ca](mailto: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



-3-

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](mailto: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 17<sup>th</sup>, 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*

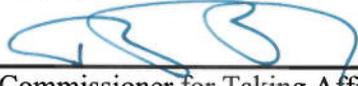
He is a member of the Law Societies of Alberta (1990), Ontario (2002) and pending in Nunavut. John frequently appears in all levels of Provincial Superior Courts and Federal court, as well as before Provincial Securities Regulators. John has a wide range of experience in corporate/commercial litigation, 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  
Cell: (514) 219-7221  
Email: dhs@dsoroka.com

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

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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](http://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

For more information, media may contact:

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Minister of Crown–Indigenous Relations

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