

FEDERAL COURT
CLASS PROCEEDING

BETWEEN:

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

Plaintiffs

and

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

Defendant

AFFIDAVIT OF DR. MATTHEW COON COME

I, Dr. Matthew Coon Come, of the Town of Mistissini, on the Eeyou Istchee territory, AFFIRM:

1. I am a Cree from Mistissini First Nation. I am a former Chief of the Mistissini First Nation, a former Grand Chief of the Grand Council of the Crees (Eeyou Istchee) ("**Grand Council**"), and a former National Chief of the Assembly of First Nations. I am also a survivor of Residential Schools. As such, I have knowledge of the matters to which I depose in this affidavit. Where I include information that I have received from others, I have stated the source of the information, and believe such information to be true.

2. I have devoted my career to the promotion of the rights of Indigenous people at home and abroad.

3. I hold honorary doctorates from the University of Toronto and Trent University. I am the recipient of the 1994 Goldman Environmental Prize and the 1995

National Aboriginal Achievement Award. I am an Officer of the Order of Canada, and the recipient of a Queen Elizabeth II Diamond Jubilee Medal.

My career

4. In 1975, the James Bay and Northern Quebec Agreement was signed, and in 1978, the Cree School Board was set up under the Agreement.

5. I was a councillor in Mistissini at the time, and I joined the committee to set up Cree School Board.

6. One of the primary impetuses for setting up the School Board was our desire to bring children home to their communities. The loss of language and culture of people who attended residential schools resulted in their alienation from the land. Our parents lost communication and parenting skills and were accordingly less able to transfer their values to successive generations. In order to bring children home, we knew that we would have to rely on community support and develop a Cree curriculum, which we did in conjunction with McGill University.

7. I served two terms (5 years) as Chief of the Mistissini First Nation.

8. During these terms as Chief, I had many responsibilities because our resources were stretched.

9. In the course of discharging these responsibilities, I observed the challenges of integrating those who attended residential schools with those who did not. There were frequent conflicts because of the inability to communicate. This created dysfunctionality within families, and more broadly in the community as a whole.

10. Many students at residential schools did not graduate, with the effect that they could not function in the white man's world and were not raised to function in accordance with the Cree world view either.

11. In 1987, I was elected Grand Chief of the Grand Council , a regional council that now represents the approximately 20,000 Crees of Eeyou Istchee. Eeyou Istche is

our traditional territory, which consists of over ¼ of the total area of Quebec. I served in this position until 1999.

12. In 2000, I was elected as National Chief of the Assembly of First Nations. I served in this position until 2003.

13. During my tenure as National Chief, Indian Residential Schools were a focal policy issue. I began to develop a framework for what would become the Truth and Reconciliation Commission of Canada. To this end, I met with officials in Australia, and with Bishop Tutu, to learn more about their truth and reconciliation commissions. I also visited over 400 First Nations, including many in Northern and isolated communities.

14. After my term as National Chief ended in 2003, I became an advisor to the Grand Council on a number of issues, including Residential Schools.

15. I served again as Grand Chief of the Grand Council from 2009 to 2017.

16. In these roles, I witnessed the harmful legacy left by Residential Schools, and the damage done to Indigenous languages, cultures, wellness and heritage by Residential Schools, across Cree nations and beyond.

My involvement in this litigation

17. I was aware of this litigation for some time before the Grand Council became involved.

18. I believe that it was unfair for Canada to leave Day Scholars out of the Indian Residential School Settlement Agreement. I also believe that it is important to recognize that Bands each have collective rights to their languages and cultures, and that those rights were critically impaired by Residential Schools.

19. At the time that this Action was certified as a class proceeding, I was Grand Chief of the Grand Council.

20. The Grand Council believes in the importance of supporting litigation that fights for the rights of Indigenous people.

21. Believing in the importance of this action – both for the Survivor and Descendant Classes, and for the Band Class – I, on behalf of the Grand Council, looked for ways to get involved in and to support this litigation.

22. On July 5, 2016, I, on behalf of the Grand Council, entered into a participation agreement with Tk'emlúps te Secwépemc and shíshálh Nation (the “**Original Bands**”).

23. By virtue of this agreement, the Grand Council agreed to reimburse the Original Bands for one third of the cost of this litigation to that date, and to contribute one third toward subsequent costs of the litigation going forward. The Grand Council agreed to be bound by the retainer agreement between the Original Bands and Class Counsel.

24. In exchange, the Grand Council joined the Original Bands on the Day Scholars Executive Committee (“**DSEC**”), which advises and instructs legal counsel in the management of this litigation. The Grand Council and each of the Original Bands would have equal voice in the decision-making process.

Settlement Negotiations

25. As a result of my participation on the DSEC, I have played a key role, along with the Representative Plaintiffs and Class counsel, in negotiations with Canada since at least 2016 to resolve the Band Class’s claim.

26. On October 20, 2016, the Honourable Carolyn Bennett, then Minister of Indigenous and Northern Affairs, appointed Thomas Isaac, a lawyer at Cassels, Brock & Blackwell LLP, to be the Minister’s Special Representative (“**MSR**”) to conduct exploratory discussions with the DSEC and Class Counsel.

27. Between January and July 2017, the MSR met with Representative Plaintiffs and Class Counsel ten times. I participated in these discussions. The discussions pertained to each of the Classes’ claims, though negotiations in respect of each Class were somewhat distinct.

28. I was intimately involved in developing our proposed framework to resolve the Band Class claim, which the members of the DSEC developed and proposed to Canada in the first half of 2017, and which became known as the Four Pillars Trust Model. That framework was based on the following central considerations:

- (a) first, because of the longstanding and intergenerational effects of Residential Schools, the Representative Plaintiffs considered it essential that the model offer a generational solution to the Band Class;
- (b) second, that the model was directed at remedying the central harms caused by Residential Schools to communities, namely loss of language, loss of culture, loss of heritage, and damage to the social fabric;
- (c) third, that the model included a source of long-term funding for programs and initiatives, rather than a one-time payment to Band Class Members;
- (d) fourth, that the model empower Band Class Members to set their own priorities and make their own decisions regarding how to remedy harms caused to their communities as a result of the Residential School system;
- (e) fifth, that control over use of the funds lay in the hands of Indigenous people, rather than the Government of Canada.

29. Because of breadth and scope of the damage done by a Residential School system that was imposed on us for over a century, we knew that it was going to take a generational effort to start to repair this damage. As a result, the vision of the Four Pillars Trust Model was that a structure be put in place that would allow for continued funding for initiatives related to the Four Pillars for a generation, rather than a one-time payment to Class Members.

30. The central premise of a trust model is that a majority of the settlement funds be put in a long-term trust and be used to generate investment income, which in turn can be used as a long-term source of funding. The Grand Council has successfully used the trust model in the past. I believe the trust model is one of the best approaches for ensuring long term benefits.

31. In or around April to June 2017, we had a series of meetings with the MSR, Mr. Isaac. At these meetings, I was the spokesperson in discussions about the framework for resolving the Band Class claim. We gave a full presentation on our models for the proposed Trust, which I am advised by Peter Grant, was made into a comprehensive report by Mr. Isaac to take to the defendant for its consideration.

32. The Four Pillars Trust Model that I presented involved the following:

- (a) the settlement would be animated by the Four Pillar principles established by the Representative Plaintiffs, namely:
 - (i) revival and protection of Indigenous languages;
 - (ii) revival and protection of Indigenous cultures;
 - (iii) wellness for Indigenous communities and their members; and
 - (iv) heritage.
- (b) settlement funds earmarked for the Band Class would be put into a long-term trust designed to earn income for the benefit of the Class;
- (c) annual income from the trust would be used to fund initiatives in furtherance of the Four Pillar principles for the benefit of the Class members; and
- (d) the trust would be Indigenous controlled, and all decisions regarding which initiatives to pursue in support of the Four Pillar principles would be made by the Band Class members themselves.

33. To the Representative Plaintiffs and the DSEC, it was a fundamental requirement that the Trust be led by Indigenous people. It was a central premise of the Four Pillars Trust Model, that control over funding and programs intended to repair the harm done by Residential Schools be taken out of the hands of Government and put in the hands of Indigenous peoples.

34. I am advised further by Mr. Grant that it was not until September 2022, on the eve of the Band Class claim common issues trial, that Mr. Isaac communicated Canada's willingness to accept our proposed framework for resolving the Band Class claim.

35. Canada has, in effect, agreed to the creation of a Trust substantially in the form of the Four Pillars Trust Model.

The proposed Band Class settlement

36. I participated fully in the negotiation process. I attended meetings with Class Counsel along with representatives from Tk'emlúps te Secwépemc and shíshálh Nation at each stage of the settlement process. I, along with representatives from Tk'emlúps te Secwépemc and shíshálh Nation, played an active role in negotiations. I reviewed several versions of the Settlement Agreement. At each meeting, Class Counsel explained the status of the negotiations, and what portion of the settlement agreement remained to be negotiated. Class Counsel met with me and representatives from Tk'emlúps te Secwépemc and shíshálh Nation and informed us about the terms of the proposed Settlement Agreement before it was signed, and they answered our questions.

37. I have also reviewed the Settlement Agreement myself, and I understand it, and what it will mean for Band Class Members if it is approved by the Court.

38. In the course of negotiating the settlement, we were motivated by the Four Pillars.

39. I understand the major terms of the Settlement Agreement to be as follows:

- (a) the government of Canada will make a payment of \$2.8 billion (the “**Fund**”) to a Trust (the “**Trust**”) to fully and finally resolve the Band Class claim;
- (b) the Trust will be responsible for prudently investing the Fund, and for distributing the Fund to the 325 class members to support the Four Pillar principles in accordance with a distribution policy (the “**Disbursement Policy**”);
- (c) the Disbursement Policy will include the following:
 - (i) **Planning funds:** Each Band Class member will receive an initial one-time payment of \$200,000 for the purposes of developing a plan to carry out one or more of the objectives and purposes of the Four Pillars;
 - (ii) **Initial Kick-Start Funds:** Upon receipt and review of a plan from a band, the Fund shall disburse the Initial Kick-Start Funds, which shall be equal to the Band’s proportionate share of \$325 million, adjusted for population and remoteness;
 - (iii) **Annual Entitlement:** Each Band will receive a share of annual investment income that is available for distribution, which will be equal to the Band’s proportionate share, adjusted for population and remoteness.
- (d) all monies that remain in the Fund after the payment of the Planning Funds and the Kick-Start Funds will be prudently invested by the Trust in accordance with professional investment advice;
- (e) the Trust will operate for a period of 20 years;
- (f) for the 20-year life of the Trust, the Annual Entitlement payments will be made from the investment income earned from the Fund, and the capital of the fund will be maintained;

- (g) at the end the 20-year life of the Trust, the remaining Fund consisting of the capital of the fund and any undisbursed investment income shall be disbursed to the Class, with each Band's share being equal to the Band's proportionate share of the remaining Funds;
- (h) the Trust will be responsible for determining the Disbursement Policy, which will consist of a 40% base rate to each band, and 60% for a per capita adjustment and a remoteness adjustment;
- (i) the Trust will be governed by a board of nine Indigenous directors, eight of which are chosen by the Representative Plaintiff Bands and by the Class members, and one of which is chosen by Canada;
- (j) the Trust will have regional representation;
- (k) in exchange for the benefits of the agreement, the Band Class members are deemed to agree to a release which will prevent them from bringing any legal claims in future against Canada regarding the collective harms caused to the Bands by the creation and operation of Indian Residential Schools. This release, however, will not release Canada from potential claims regarding children who died or disappeared while at Residential Schools;
- (l) lawyers' fees and expenses incurred over the course of the lawsuit will, subject to Court approval, be paid by the Government of Canada and will not be deducted from the compensation paid to the Band Class.

40. This settlement, like any settlement in a lawsuit, is not a "victory" for the Class Members; rather, it is a compromise. I believe that it is a fair and reasonable compromise, and I ask the Court to approve the settlement because I believe that it is in the best interests of the Band Class Members.

41. I believe that no amount of money could make right what has happened to our Nations as a result of the Residential School system. These schools were designed to

take language and culture away from Indigenous children and their communities, and to weaken the bonds of members of our community with their family, and their Indigenous identity. Our communities continue to live with the impacts of these experiences every day.

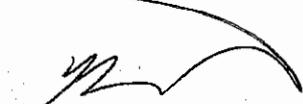
42. Money cannot undo that. Still, the benefits in the proposed settlement will give Bands the tools and resources necessary to continue the process of revitalizing and protecting our languages and cultures, and for starting to address the harmful legacy left by the Residential School system. The Settlement Agreement also removes the many risks and delays that would be involved in a time-consuming trial and potential appeals.

43. As a former leader of the Grand Council and the AFN, I also particularly appreciate the importance of the funding that the Fund will provide for meaningful projects to promote healing, wellness, education, language, culture, and heritage, in accordance with the Four Pillars.

44. Again, although money by itself cannot restore our language, culture and heritage to its pre-Residential Schools level, I believe that putting this money in the hands of Indigenous people to support Bands' revitalization and commemoration efforts is an important step towards reconciliation and will help all Band Class Members.

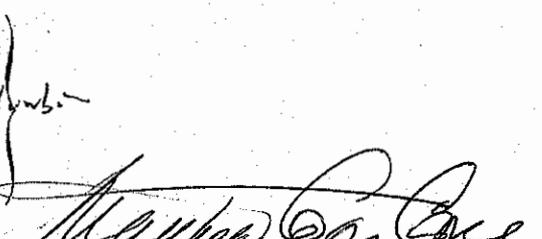
45. This affidavit is sworn in support of the plaintiffs' motion for approval of the Settlement Agreement, and for no other or improper purpose.

Vancouver
AFFIRMED before me at the City of
Montreal in the Province of Quebec, on
February 20, 2023 *British Columbia*



Commissioner for Taking Affidavits

(or as near by)
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DR. MATTHEW COON COME