

**FEDERAL COURT**  
**CLASS PROCEEDING**

BETWEEN:

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

Plaintiffs

and

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

Defendant

**AFFIDAVIT OF CHIEF GARRY FESCHUK**

I, Chief Garry Feschuk, of the Municipality of ch'atlich, on the territory of the shíshálh Nation, AFFIRM:

1. I am the former elected Chief of shíshálh Nation, formerly known as the Sechelt Indian Band ("**shíshálh Nation**" or the "**Sechelt Indian Band**"), and one of the representatives for the Band Class in this action. As such, I have personal knowledge of the facts and matters to which I hereafter depose save and except those which are stated to be based on information and belief and where so stated I verily believe the same to be true, except where stated to be for another purpose.
2. This affidavit is sworn in support of the plaintiffs' motion for approval of the settlement agreement executed January 18, 2023 (the "**Settlement Agreement**"), which will, if approved, resolve the claims of the Band Class, and conclude this action in its entirety.
3. Unless otherwise indicated, the capitalized terms in this affidavit bear the same meanings as the defined terms set out in the Settlement Agreement.

**A. My background**

4. I am a member of shíshálh Nation and I bear the hereditary chief's name of ʔakista xaxanak for my Nation and I am an "Aboriginal Person" under the *Constitution Act, 1982*.
5. I grew up and continue to live on Sechelt Band Lands #2 in Sechelt, BC, on which the Sechelt Indian Residential School ("SIRS") was located.
6. My mother was First Nations, but my father was not, so I did not have status until 1989, when I finally obtained status and my membership in the Sechelt Indian Band.
7. I have been involved in the leadership at the Sechelt Indian Band since 1990. Since then, I have served three terms on Council and six terms as Chief. I was Chief of the Sechelt Indian Band when I started this litigation in 2012 with my co-representative plaintiff, Chief Shane Gottfriedson from Tk'emlúps te Secwépemc.
8. Because I was a non-status child, I attended local public schools during the day and I attended SIRS after school for catechism.
9. My maternal grandparents were both members of the Sechelt Indian Band and IRS survivors. I recall that they would only speak to one another in the shíshálh language, Sháshíshálhem, but they did not teach the language to me or my siblings.
10. Several key figures in my upbringing, including my aunt Violet Jackson and elders Diana Joe and Yvonne Joe, were forced by the Government of Canada to attend SIRS. Although Violet, Diane, and Yvonne knew Sháshíshálhem, they were afraid to teach the language to me.
11. I did not speak or understand Sháshíshálhem until, as an adult, I learned a small bit of the language at language classes.
12. While I learned some aspects of shíshálh history, traditions, and culture from my family and community members growing up, I learned most of my traditional knowledge as an adult.
13. I was taught by my grandparents, aunts, and uncles that, prior to the operation of SIRS, shíshálh elders passed on their traditions and cultural practices to the younger generations.

14. My wife was also forced to attend SIRS and told me about the traumas she personally suffered as a result. She does not share those experiences with other people.

15. Since I became involved in the leadership at the Sechelt Indian Band, I have had the chance to speak to many Band members about their experiences at SIRS. It was through these conversations that I learned about the extent to which SIRS harmed the Band culturally, physically, spiritually, and mentally.

16. Additional details of the devastating intergenerational impact of the IRS policy on my Band and my family – and in particular the community-wide loss of language and culture – are set out in my affidavit sworn in support of the motion for certification of this action as a class proceeding.

17. Prior to suffering a stroke, I travelled with Jo-Anne Gottfriedson of Tk'emlúps te Secwépemc to many Nations across Canada and attended Assembly of First Nations meetings to discuss this lawsuit and the impacts that Residential Schools had on other Nations. I learned that many Nations suffered the same issues as shíshálh Nation has regarding lateral violence and dysfunction arising from being separated from their Indigenous languages and cultures.

18. Based on my conversations with elders and chiefs of the other members of the Band Class and my conversations with my lawyers following their review of the evidence produced over the course of this litigation, I verily believe that each of the 325 Indigenous Bands represented in this action suffered comparable harms.

19. Indigenous languages and cultures are disappearing across Canada, and I have seen in shíshálh that this harm has manifested in broken families, mental health issues, alcohol and drug abuse, violence, and suicides. More Band-led interventions in our communities are the most effective way forward to revitalize the languages and cultures that were taken from us.

#### **B. Involvement in this Action**

20. The 2006 Indian Residential School Settlement Agreement (“IRSSA”) was intended to resolve outstanding litigation against the Government of Canada (“Canada”) for the physical, psychological, and sexual abuse and other harms suffered by Indigenous children who were forced

to attend Indian Residential Schools (“IRS”). The IRSSA compensation structure consisted of (1) a Common Experience Payment (“CEP”) for survivors who resided at an IRS, and (2) an Independent Assessment Process (“IAP”) for claims of sexual or serious physical abuse.

21. Under the IRSSA, survivors who attended IRS as Day Scholars (*i.e.*, did not reside at the IRS) were only eligible to apply for compensation through IAP and were excluded from the CEP.

22. On August 15, 2012, Shane Gottfriedson, then-Chief of Tk'emlúps te Secwépemc, the representative plaintiffs for the Day Scholars Survivor and Descendant Classes, and I commenced these proceedings as a class action against the Canada for individual and collective damages suffered as a result of the IRS policy. We commenced this action because we were hurt and disappointed that the deep and lasting harms suffered by Day Scholars went unrecognized and uncompensated by Canada, and we believed that the Bands themselves, as collectives, suffered a compensable loss of language and culture as a result of Residential Schools.

23. Since 2012, I have been actively involved in all aspects of this litigation – including instructing counsel, consulting with stakeholders, public advocacy on behalf of the class members, being cross-examined and examined for discovery, and cooperating with opposing counsel’s many requests at discovery. I never stopped leading this lawsuit, even as I retired as Chief of shishálh Nation.

24. On June 4, 2021, we reached a settlement with Canada with respect to the Day Scholars Survivor and Descendant Classes. The Court approved the settlement on September 24, 2021 but the Band Class claims for our collective losses of language and culture remained unresolved and were scheduled to proceed to trial in September 2022.

### **C. The Band Class Trial**

25. From September 2021 onwards, I was in frequent communication with members and fellow leaders from my Band, Class Counsel, Chief Gottfriedson, and the Day Scholars Executive Committee, as we dedicated significant time and resources to prepare for the first phase of the common issues trial.

26. As one of the representative plaintiffs, I was subject to examinations for discovery by lawyers from Canada on April 12 and 13, 2022 for a total of approximately 7 hours. The Canada's lawyers demanded that I review several thick binders of documents in preparation for the examinations.

27. During the examinations, the Canada's lawyers extensively questioned me on a number of challenging topics, including:

- (a) alcoholism, drug abuse, physical abuse, and sexual abuse in my community;
- (b) the complex intergenerational traumas suffered by my family as a result of SIRS;
- (c) specifics of the cultural genocide that my people have suffered at the hands of the Canadian government, including the public burning of our culturally and spiritually significant artifacts; and
- (d) mass deaths in my community resulting from epidemics and the legacy of SIRS.

28. Counsel for Canada demanded that I dig deep into the history of shíshálh Nation, specifics about my Band's customs, and my Band's history dating back hundreds of years to answer the questions. For example, I was asked to give comprehensive accounts of individual shíshálh cultural practices and the language revitalization efforts my community has taken to date.

29. The examination was particularly difficult when the Canada's lawyers repeatedly insinuated that my Band wanted a residential school to be built in our community, even though SIRS inflicted great pain onto my community, which endures to this day.

30. At the beginning of September 2022, Chief Gottfriedson, our lawyers, and I were ready to go to trial. There was no indication from Canada that they would agree to resolve the Band Class Claim. To the contrary, based on the Canada's legal position and conduct, we expected to be challenged on all of the evidence – including all of our expert and elder testimonies – and legal arguments that we relied upon to make our case.

31. I believe we had a strong case going into the trial, but I understood that we still faced many litigation risks that could lengthen the trial, make the process more onerous, or result in a series of appeals. Success was never guaranteed.

32. In addition to the legal risks of which we were advised by Class Counsel, I was specifically concerned about the cross-examinations and the likely delays. I expected to be cross-examined at trial, potentially even more intrusively than I had been at my cross-examination in advance of the certification motion or my examination for discovery. I expected that Canada's lawyers would treat me the same way they would treat the other plaintiff-side witnesses, Chief Gottfriedson, Chief Matthew Coon Come, and Chief Phil Fontaine. We were all prepared to tell the Court our stories, and to explain the many harms that the Residential Schools inflicted on the Band Class, but we knew that this would mean being forced to relive the traumas that we, our families, and our communities experienced.

33. As it turned out, this re-traumatization was inevitable, as I was required to prepare for cross-examinations under the expectation that the trial was to commence imminently.

34. With respect to delays, neither I, nor our legal team, had a clear idea of when we would receive a final ruling on the Band Class claims. We anticipated Phase One of the trial to take about two months, but key issues, including damages, would remain to be determined at Phase Two of the trial, which was not yet scheduled. I was also advised by my lawyers that the outcome of the trial, whether we were successful or not, would very likely be appealed, potentially all the way to the Supreme Court of Canada. I understand that this process can take years.

35. After having already spent over twelve years on this litigation, we believed that continued delays would cause irreversible harm to Band Class. Our languages and cultures are at risk of going extinct, as our elders passed away. Very recently, my band lost key people who had been leading revitalization efforts, including the last two remaining members of the Sechelt Indian Band Language Committee, Yvonne Joe and Ann Quinn, and the master carver who had been working on a reconciliation totem pole when he suddenly passed.

**D. The proposed Band Class settlement**

36. Despite Canada's aggressive positions on the Band Class claims from the start of this litigation to the eve of trial, and its refusal to admit almost any of our allegations, the Government of Canada surprised us in early September by responding to our proposal for a settlement of the Band Class claim for the first time since we made the proposal in 2017.

37. On September 19, 2022, Chief Gottfriedson and I reached an agreement in principle with Canada that would, if approved by the Court, fully and finally resolve the Band Class claims and end this litigation. A final Settlement Agreement was signed by all the parties on January 18, 2023.

38. I participated in the negotiation process. I attended meetings with Class Counsel along with representatives from Tk'emlúps te Secwépemc and the Grand Council during the settlement process and consulted with our shíshálh representatives on the DSEC, Jasmine Paul and Selina August. At each meeting, Class Counsel explained the status of the negotiations, and what portion of the settlement agreement remained to be negotiated. Class Counsel met with me and representatives from Tk'emlúps te Secwépemc and the Grand Council, and informed us about the terms of the proposed Settlement Agreement before it was signed, and they answered our questions.

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

40. In the course of negotiating the settlement, we were motivated by four core principles (the "Four Pillars"):

- (i) Revival and protection of Indigenous languages;
- (ii) Revival and protection of Indigenous cultures;
- (iii) Wellness for Indigenous communities and their members;
- (iv) Protection of heritage.

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

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



with each Band's share being equal to the Band's proportionate share of the remaining Funds;

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

42. I also understand that, should the Court order that Canada pay a sum in respect of legal fees and expenses incurred by Class Counsel and the Funding Nations, the sum will not be deducted from the settlement Fund.

**E. My approval of the proposed settlement**

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

44. No amount of money could make right what has happened to Nations as a result of the Residential School system. SIRS was an institution designed to take away our language and culture, and to weaken the bonds of members of our community with their family, and their Indigenous identity. In short, SIRS was created with the intention of committing genocide against our people through the attempted destruction our language and culture. Our community continues to live with the impacts of these experiences every day.

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

46. As a former elected leader of our community and an hereditary chief of our Nation, I particularly appreciate the importance of the funding that the Fund will provide for meaningful and Indigenous-designed projects to promote healing, wellness, education, language, culture, and heritage, in accordance with the Four Pillars.

47. For decades, my Band has attempted to develop resources and programs to teach and promote Sháshíshálhem and distinctive shíshálh practices, such as traditional drumming, woodcarving, and crocheting. While there have been very dedicated elders and scholars that have made extraordinary efforts to revitalize our language and culture that had been harmed by SIRS and its legacy, the existing funding for those initiatives have been irregular, uncertain and unreliable. Most significantly, the funding has been controlled by an outside government.

48. Each *Indian Act* band receives block funding from the Government of Canada in support of language and culture projects, but any money that our Band contributes towards these same projects are treated as “own-source revenue” and result in a corresponding deduction in the block funding. For shíshálh Nation, this means we would only receive an average of about \$25,000 in block funding every even though Sháshíshálhem is one of the most critically endangered Indigenous languages in Canada. Further, the funding that we receive is often subject to close auditing

49. In order to build robust language and culture revitalization programs that suit our Band's short- and long-term needs, we need to have an adequate, predictable flow of funds and independence over how we use those funds. We also need those funds to be available as soon as possible so that we can begin to plan and implement our programs immediately.

50. The Planning Funds and Initial Kickstart Funds will provide readily available sources of funding so that the Band Class Members can begin to address their priority areas, while the Annual Entitlement will provide each Band with reliable funds each year, over a 20-year period, to support their long-term goals.

51. For greater self-determination, the Fund will be managed by a Board composed entirely of Indigenous directors, all of whom except one will be appointed by the Band Class Members.

52. The sizes of block grants from the government are calculated purely based on a band's population. The Representative Plaintiffs believe that we have come up with a more equitable model that consists of a base amount for each Band with adjustments based on the Band's population and remoteness. This is intended to ensure that Bands with smaller populations are provided with sufficient funds to develop meaningful programs, and so that remote Bands who face higher costs in order to deliver programs have the funds to do so.

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

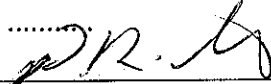
54. When I heard the statement of Minister Marc Miller when this settlement was announced on January 21 2023, I said to our Nation and our legal team that I was very happy as this was the end to the genocide that Canada had engaged in with our people.

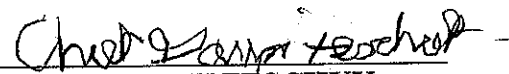
55. Based upon the advice of our lawyers, my understanding of many Class Members' experiences, and my understanding of what would be involved if this action did not settle, I believe that the proposed settlement is fair and reasonable.

56. Resolution to the litigation now also means that I can also embark on my journey of personal healing at long last, after having been at the helm of this litigation for over 12 years.

57. This affidavit is affirmed in support of the plaintiffs' motion for settlement approval and for no other or improper purpose.

**AFFIRMED BEFORE ME** at the Municipality of ch'atlich, on the territory of the shishálh Nation, on .February 20, 2023.....

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Commissioner for Taking Affidavits  
*(or as may be)*

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**CHIEF GARRY FESCHUK**

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