

FEDERAL COURT

CLASS PROCEEDING

THE HONOURABLE) THE
)
JUSTICE ANN MARIE McDONALD) DAY OF, 2023

B E T W E E N:

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE
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

ORDER

(Settlement Approval)

THIS MOTION, made by the Plaintiffs, on consent, for an order approving the settlement of this action pursuant to Rule 334.29 of the *Federal Courts Rules*, SOR/98-106, in accordance with the terms of the settlement agreement between the Plaintiffs and the Defendant, dated January 18, 2023 (together with all schedules appended to the agreement, the “**Settlement Agreement**”), appended hereto as **Schedule “A”**, was heard commencing on February 27, 2023 at the Federal Court, Vancouver, British Columbia;

WHEREAS this Court certified this action as a class proceeding by Order dated June 3, 2015, which Order has been amended from time to time;

AND WHEREAS this Court approved the Day Scholars Survivor and Descendant Class Settlement Agreement with respect to the Survivor and Descendant Classes by Order dated September 24, 2021, without prejudice to the ongoing litigation of the Band Class’s claims;

AND WHEREAS the Plaintiffs and the Defendant entered into a framework to settle the Band Class claims and resolve this litigation in its entirety on September 17, 2022;

AND WHEREAS the Band Class consists of 325 Bands that either are named as Representative Plaintiffs or have opted in to this class proceeding (the “**Band Class Members**”);

AND WHEREAS the parties entered into the Settlement Agreement on January 18, 2023;

AND WHEREAS the Settlement Agreement provides for a not-for-profit entity incorporated pursuant to the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 or analogous federal legislation or legislation in any of the provinces or territories (the “**Not-For-Profit**”) to act as a Trustee of the Trust for the benefit of the Band Class and in furtherance of the Four Pillars set out in Schedule F to the Settlement Agreement (the “**Four Pillars**”);

AND WHEREAS this Court approved the form of notice and the plan for distribution of the Notice of Settlement and Settlement Approval Hearing by Order dated January 21, 2023 (the “**Notice Order**”), which constituted good and sufficient notice of the hearing of the motion for Settlement Approval;

AND WHEREAS the parties have adhered to and acted in accordance with the Notice Order and the procedures provided therein;

AND WHEREAS, in accordance with this Court's Advanced Costs Order dated January 21, 2023, the Defendant has paid \$500,000.00 to the Representative Plaintiffs to pay the costs associated with establishing the Not-For-Profit and Trust referred to in ss. 21 and 22 of the Settlement Agreement;

AND UPON BEING ADVISED that the parties consent to this Order;

AND WITHOUT ADMISSION OF LIABILITY on the part of the Defendant;

AND UPON READING the motion record of the Plaintiffs, filed, including the Settlement Agreement, and on hearing the submissions of Class Counsel and the lawyers for the Defendant, and certain Class Members;

THIS COURT ORDERS AND ADJUDGES that:

1. The Settlement Agreement, in its entirety and including all of its schedules, is incorporated by reference into this Order.
2. Any interpretation of the Orders below will be made by reading them in context with all of the clauses in the Settlement Agreement, and, unless otherwise defined in this Order, capitalized terms in this Order shall have the meanings set out in the Settlement Agreement.

SETTLEMENT APPROVAL

3. The Settlement Agreement is fair and reasonable and in the best interests of the Band Class, and is hereby approved pursuant to Rule 334.29(1) of the *Federal Court Rules*, SOR/98-106, and shall be implemented in accordance with its terms.

4. This Order, including the releases referred to in paragraph 6 below and the Settlement Agreement, is binding on Canada and on all Band Class Members.

5. The notice of approval of the Settlement Agreement (the “**Notice**”) shall be given to the Band Class in accordance with the Notice Plan attached as **Schedule “B”** to this Order, and the Notice shall be substantially the form of Notice attached as **Schedule “C”** to this Order.

6. The Band Class claims set out in the Second Re-Amended Statement of Claim, filed February 11, 2022, are dismissed without costs and with prejudice, and the following releases and related Orders are made and shall be interpreted as ensuring the conclusion of all Band Class claims, in accordance with section 27 of the Settlement Agreement:

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

- (b) For greater clarity, and without limiting the forgoing, the Claims do not relate to, or include any claims regarding, children who died or disappeared while in attendance at Residential School.
- (c) For greater clarity and without limiting the foregoing, the Release does not settle, compromise, release or limit in any way whatsoever any claims by the Releasers, in any other action, claim, lawsuit, or complaint regarding a declaration of Aboriginal or Treaty rights, a breach of Aboriginal rights, a breach of Treaty rights, a breach of fiduciary duty, or the constitutionality of any provision of the *Indian Act*, its predecessors or Regulations, other than claims related to the purpose, creation, planning, establishment, setting up, initiating, funding, operation, supervision, control and maintenance of Residential Schools, the obligatory attendance of Survivors at Residential Schools, the Residential School system, and/or any Residential Schools policy or policies as set out in Section 27.01 of the Settlement agreement and subparagraph 6(a) above.
- (d) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasers against any person other than Canada. For greater clarity, and without limiting the foregoing, the Release cannot be relied upon by any Third Party, including any religious organization that was involved in the creation and operation of Residential Schools.
- (e) If any Releaser makes any claim or demand or takes any actions or proceedings, or continues such claims, actions, or proceedings against other person(s) or entities in relation to the allegations, matters or the losses or injuries at issue in the Action,

including any claim against Provinces, Territories, other legal entities, or groups, including but not limited to religious or other institutions that were in any way involved with Residential Schools, the Releasor will expressly limit their claims so as to exclude any portion of loss for which Canada may be found at fault or legally responsible for, or that Canada otherwise would have been liable to pay but for this Release.

- (f) Canada may rely on this Release as a defence to any lawsuit by the Releasors that purports to seek compensation from Canada for anything released through this Agreement.
- (g) Each Releasor is deemed to have agreed, warranted, and represented that it is the holder of the collective rights to whom the duties are owed on behalf of their respective communities as asserted in the Second Re-Amended Statement of Claim.
- (h) Canada may rely on this Agreement as a defence in the event that any other individual, group, or entity (“**Third Party**”) pursues any action, claim, or demand for the claims or losses released by this Agreement and asserts that it, and not any Releasor, is the proper holder of the collective or community rights, is the community entity to whom the asserted duties were owed, or holds the authority to advance and release such claims, either because it is a sub-group within the Releasor entity or a larger entity to which the Releasor belongs, or is otherwise related, connected or derived.

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

7. This Order does not affect the rights of persons who are not Band Class Members.

8. Without in any way affecting the finality of this Order, this Court reserves exclusive and continuing jurisdiction over the Action, for the limited purpose of implementing the Settlement Agreement and enforcing the Settlement Agreement and this Approval Order.

THE FUND, THE NOT-FOR-PROFIT CORPORATION, AND THE TRUST

9. The not-for-profit entity incorporated by Plaintiffs shall act as the sole trustee of the Trust.

10. The not-for-profit entity shall have as its purposes the Four Pillars as defined by s. 21.03 and Schedule F of the Settlement Agreement.

11. Canada shall pay two billion eight hundred million Canadian dollars (\$2,800,000,000) (the “**Fund**”) no later than thirty (30) days after the Implementation Date to settle the Trust.

12. The Fund will be used in furtherance of the Four Pillars as defined by s. 21.03 and Schedule F of the Settlement Agreement;

13. The Not-For-Profit, as sole trustee of the Trust, shall receive, hold, invest, manage and disburse the Trust for the benefit of the Band Class Members in accordance with the Settlement Agreement, the terms of the Trust as set out in a written trust agreement signed by the not-for-profit entity to indicate its acceptance of the Trust and the duties and obligations of trustee, and in

accordance with the Investment Policy and Disbursement Policy attached as Schedules D and E to the Settlement Agreement.

14. Canada shall make best efforts to exempt any income earned by the Trust from federal taxation, and Canada shall have regard to the measures that it took in similar circumstances for the class action settlements addressed in paragraph 81(1)(g.3) of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp.).

15. Neither the Fund nor income earned on the Fund can be used:

- (a) to fund individuals;
- (b) to fund commercial ventures;
- (c) as collateral or to secure loans; or
- (d) as a guarantee.

16. No monies paid out from the Trust to a Band Class Member may be subject to redirection, execution, or seizure by third parties, including third party managers.

REPORTING TO THE COURT

17. Class Counsel shall report to the Court on the implementation of the Settlement Agreement six (6) months after the Implementation Date subject to the Court requiring earlier or additional reports, and subject to Class Counsel's overriding obligation to report as soon as reasonable on any matter which has materially impacted the implementation of the terms of the Settlement Agreement.

COSTS

18. **THIS COURT ORDERS** that there will be no costs of this motion.

Justice McDonald