

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

**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**

**DAY SCHOLARS SURVIVOR AND DESCENDANT CLASS  
SETTLEMENT AGREEMENT**

**WHEREAS:**

A. Canada and certain religious organizations operated Indian Residential Schools for the education of Indigenous children, in which children suffered harms.

B. On May 8, 2006, Canada entered into the Indian Residential Schools Settlement Agreement, which provided for compensation and other benefits, including the Common Experience Payment, in relation to attendance at Indian Residential Schools.

C. On August 15, 2012, the Plaintiffs filed a putative class action in the Federal Court of Canada bearing Court File No. T-1542-12, *Gottfriedson et al. v. Her Majesty*

*the Queen in Right of Canada* (the “Action”). An Amended Statement of Claim was filed on June 11, 2013, and a First Re-Amended Statement of Claim was filed on June 26, 2015.

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

E. 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.

F. Subject to the Settlement Approval Order, the claims of the Survivor Class Members and Descendant Class Members shall be settled on the terms contained in this Agreement.

G. The Parties intend that the claims of the Band Class shall continue, notwithstanding the settlement of the claims of the Survivor Class and Descendant Class, and intend that this Agreement shall not prejudice the rights of the Parties in the continued litigation of the Band Class Members’ claims in the Action.

**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. Her Majesty the Queen in Right of Canada*;

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

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

“**Approval Order**” means the order or orders of the **Court** approving this **Agreement**;

“**Band Class**” means the Tk'emlúps te Secwépmeč Indian Band and the Sechelt Indian Band and any other Indian Band(s) which:

- a. has or had some members who are or were members of the **Survivor Class**, or in whose community an **Indian Residential School** is located; and
- b. is specifically added to the **Action** with one or more **Indian Residential Schools**;

“**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 Her Majesty the Queen 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 of the **Court** dated June 18, 2015, certifying this **Action** under the *Federal Courts Rules*, attached as Schedule B;

“**Claim**” means an application/request for compensation made by a **Claimant** under this **Agreement** by submitting a **Claim Form**, including any related documentation, to the **Claims Administrator**;

“**Claim Form**” means the application for a **Day Scholar Compensation Payment** that must be submitted by a **Claimant** to the **Claims Administrator** by the **Claims Deadline**, the form and content of which will be approved by the **Court** prior to the **Implementation Date**;

“**Claimant**” means a **Day Scholar**, their **Personal Representative**, or, in the case of a Day Scholar who died on or after May 30, 2005, their **Designated Representative**, who makes or continues a **Claim**;

“**Claims Administrator**” means such entity as may be designated by the **Parties** from time to time and appointed by the **Court** to carry out the duties assigned to it in this **Agreement**;

“**Claims Deadline**” means the date which is twenty-one (21) months after the **Implementation Date**;

“**Claims Process**” means the process outlined in this **Agreement**, including Schedule C and related forms, for the submission of **Claims**, assessment of eligibility, and payment of **Day Scholar Compensation Payments** to **Claimants**;

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

“**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 Scholar**” means a **Survivor Class Member** who attended but did not simultaneously reside at an **Indian Residential School** that is listed in Schedule E, either on List 1 or List 2, during the time periods indicated therein, for any part of a **School Year**;

“**Day Scholar Compensation Payment**” means the ten thousand dollar (\$10,000) payment referred to in section 25.01 herein;

“**Day Scholars Revitalization Fund**” or “**Fund**” means the Fund established in section 21.01 herein, and as described in the **Fund Distribution Plan**;

“**Day Scholars Revitalization Society**” or “**Society**” means the not-for-profit society established pursuant to section 22.01 herein;

“**Descendant Class**” means 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;

“**Descendant Class Member**” means an individual who falls within the definition of the **Descendant Class**;

“**Designated Representative**” means the individual designated by the validly completed Designated Representative Form, the form and content of which will be approved by the **Court** prior to the **Implementation Date**;

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

“**Fund Distribution Plan**” is the plan for the distribution of funds allocated to the **Day Scholars Revitalization Fund**, attached as Schedule F;

“**Independent Reviewer**” means the individual(s) appointed by the **Court** to determine review reconsideration requests from **Claimants** whose **Claims** were denied by the **Claims Administrator**, in accordance with the **Claims Process**;

“**Indian Residential Schools**” means the institutions identified in the list of Indian Residential Schools attached as Schedule “A” to the **Certification Order**, as that list may be amended by further Order of the **Court**;

“**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**;

“**IRSSA**” means the Indian Residential Schools Settlement Agreement dated May 8, 2006;

“**McLean Settlement**” means the McLean Federal Indian Day Schools Settlement Agreement entered into on November 30, 2018, in the matter of *McLean et al. v. Her Majesty the Queen in Right of Canada*, bearing Court File No. T-2169-16;

“**Opt Out**” means any individual who would otherwise fall within the definition of a **Survivor Class Member** or **Descendant Class Member** who previously validly opted out of the **Action**;

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

“**Person Under Disability**” means

- a. a minor as defined by the legislation of that person's province or territory of residence; or
- b. a person who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity and for whom a **Personal Representative** has been appointed under the applicable legislation of that person's province or territory of residence;

“**Personal Representative**” means the person appointed under the applicable legislation of that person's province or territory of residence to manage or make reasonable judgments or decisions in respect of the affairs of a **Person Under Disability**;

“**Released Claims**” means those causes of action, liabilities, demands, and claims released pursuant to the **Approval Order**, as set out in section 42.01 herein;

**“School Year”** means from September 1 of one calendar year to August 31 of the subsequent calendar year;

**“Settlement Agreement Notice Plan”** means the Notice Plan advising **Survivor Class Members** and **Descendant Class Members** of the Agreement;

**“Settlement Approval Notice Plan”** means the Notice Plan advising **Survivor Class Members** and **Descendant Class Members** of the **Approval Order**.

**“Survivor Class”** means all **Aboriginal Persons** who attended as a student or for educational purposes for any period at an **Indian 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 **IRSSA**;

**“Survivor Class Member”** means an individual who falls within the definition of the **Survivor Class** and is not an **Opt Out**; and

**“Ultimate Claims Deadline”** means the date which is three (3) months after the **Claims Deadline**.

## **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 First Re-Amended Statement of Claim, were worded in previous versions, or may be worded in the future.

2.02 For greater certainty, and without limiting the foregoing, the Parties agree that, in the further litigation of the Band Class claims, the Parties will not argue that the existence of this Agreement or any terms herein are admissions by the Parties, or findings by the Court, of any fact or law, or an admission of liability by Canada, relevant to the claims asserted by the Band Class in the Action, or

a settlement or resolution of the Band Class claims in the Action. Nothing in the above, however, or anything found elsewhere in this Agreement prevents the Parties from referring to or otherwise relying on the existence of the Agreement and the compensation paid or payable under it in any proceeding, if relevant.

### **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 Survivor Class Members or Descendant 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: First Re-Amended Statement of Claim, filed June 26, 2015

Schedule B: Certification Order, dated June 18, 2015

Schedule C: Claims Process

Schedule D: Estate Claims Process

Schedule E: Lists of Indian Residential Schools for Claims Process

Schedule F: Day Scholars Revitalization Fund Distribution Plan

Schedule G: Draft Amended Certification Order (re: Band Class claims)

Schedule H: Draft Second Re-Amended Statement of Claim, draft without delineations of prior or currently proposed amendments (re: Band Class claims)

## **12. No Other Obligations**

12.01 All actions, causes of action, liabilities, claims, and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses, and interest which any Survivor Class Member or Descendant Class Member ever had, now has, or may hereafter have arising in relation to the Action against Canada, whether such claims were made or could have been made in any proceeding, will be finally settled based on the terms and conditions set out in this Agreement upon the date of the Approval Order, and Canada will have no further liability except as set out in this Agreement.

### **13. Entire Agreement**

13.01 This Agreement constitutes the entire agreement among the Parties with respect to the Survivor Class and Descendant 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.

### **14. Benefit of the Agreement**

14.01 This Agreement will enure to the benefit of and be binding upon the Parties, the Survivor Class Members, the Descendant Class Members, and their respective heirs, estates, Designated Representatives and Personal Representatives.

### **15. Band Class Claim**

15.01 Nothing in this Agreement is intended to, or does prejudice the rights of the Parties in the continued litigation of the Band Class claims in the Action.

15.02 The Band Class claims that will continue are set out in the Draft Amended Certification Order (re: Band Class claims), attached as Schedule G and the Draft Second Re-Amended Statement of Claim (re: Band Class claims), attached as Schedule H.

### **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 Survivor Class Member or Descendant Class Member resides and the laws of Canada applicable therein.

## **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 Canada will prepare a French translation of this Agreement for use at the settlement approval hearing before the Court. As soon as practicable after the execution of this Agreement, Canada will arrange for the preparation of an authoritative French version. 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 and after the Implementation Date on the Parties and all Survivor Class Members and Descendant Class Members. The Approval Order of the Court constitutes deemed approval of this Agreement by all Survivor Class Members and Descendant 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.

## **THE DAY SCHOLARS REVITALIZATION FUND**

### **21. The Day Scholars Revitalization Fund**

21.01 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.

21.02 The monies described in section 21.01 herein will be paid by Canada to the Day Scholars Revitalization Society within thirty (30) days after the Implementation Date.

## **THE DAY SCHOLARS REVITALIZATION SOCIETY**

### **22. Establishing the Day Scholars Revitalization Society**

22.01 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.

22.02 A draft Day Scholars Revitalization Fund Plan is attached as Schedule F.

22.03 The Fund is intended to benefit the Survivor Class Members and Descendant Class Members and to complement and not duplicate any federal government programs.

### **23. Directors**

23.01 The Society will have five first directors, to be appointed by the Parties.

23.02 The Board of the Society will have national representation and will include one director appointed by Canada. The representative appointed by Canada will not be an employee or public servant of Canada.

## **24. Responsibilities of Directors**

24.01 The Society's Directors shall manage and/or supervise the management of the activities and affairs of the Day Scholars Revitalization Society, which will receive, hold, invest, manage, and disburse the monies described in the Fund provisions of this Agreement and any other monies transferred to the Fund under this Agreement for the purposes of funding healing, wellness, education, language, culture, heritage and commemoration activities for the Survivor Class Members and Descendant Class Members.

## **COMPENSATION FOR INDIVIDUAL CLAIMANTS**

### **25. Day Scholar Compensation Payments**

25.01 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.

25.02 A Claimant is entitled to a Day Scholar Compensation Payment, and their Claim shall be approved, if the Claimant satisfies the following Eligibility Criteria:

- a. the Claim is made with respect to a Day Scholar who was alive on May 30, 2005;
- b. the Claim is delivered to the Claims Administrator prior to the Ultimate Claims Deadline;
- c. the Claim is made with respect to that Day Scholar's attendance at an Indian Residential School that is listed in Schedule E on either List 1 or List 2 during the time periods indicated therein, for any part of a specific School Year that meets all three of the following conditions, namely that it is a School Year for which the Day Scholar or their executor, representative, or heir who applied in place of the Day Scholar:

- i. has not received a Common Experience Payment under the IRSSA;
- ii. has not received and will not receive compensation under the McLean Settlement; and
- iii. has not received compensation under any other settlement with respect to a school listed on Schedule K to the McLean Settlement.

25.03 For greater clarity, for any School Year during which a Survivor Class Member was eligible for, but did not make a claim for the Common Experience Payment under the IRSSA, no Claim for a Day Scholar Compensation Payment under this Agreement may be made in regard to that Survivor Class Member for that School Year.

## **26. No Cap on Claims**

26.01 There is no limit or cap on Canada's total obligation to pay approved Claims. All approved Claims will be paid fully by Canada.

## **27. Transfer of Monies by Canada**

27.01 Canada will transfer monies directly to the Claims Administrator to provide for payment of approved Claims, in accordance with the Claims Process.

## **28. Social Benefits**

28.01 Canada will make its best efforts to obtain the agreement of the provinces and territories that the receipt of any payments pursuant to this Agreement will not affect the quantity, nature, or duration of any social benefits or social assistance benefits payable to a Claimant pursuant to any legislation of any province or territory of Canada.

28.02 Further, Canada will make its best efforts to obtain the agreement of the necessary Departments of the Government of Canada that the receipt of any

payments pursuant to this Agreement will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Claimant pursuant to any federal social benefit programs, including Old Age Security and Canada Pension Plan.

## **IMPLEMENTATION OF THIS AGREEMENT**

### **29. The Action**

29.01 The First Re-Amended Statement of Claim in the Action is attached as Schedule A.

29.02 The Parties agree that the Plaintiffs will seek leave of the Court, on consent and as part of the application for Court approval of this Agreement, to file the Draft Second Re-Amended Statement of Claim in the Action, which is attached as Schedule H.

### **30. Certification Order**

30.01 The Certification Order is attached as Schedule B.

30.02 The Parties 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, issuing the Amended Certification Order, which is attached as Schedule G.

### **31. Notice Plans**

31.01 The Parties agree that the Plaintiffs will seek an Order from the Court, on consent, approving a Settlement Agreement Notice Plan, whereby Survivor Class Members and Descendant 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.

31.02 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 Survivor Class Members and Descendant Class Members with notice of the Approval Order and how a Claim for compensation can be made.

31.03 Canada agrees to pay for the implementation of the Settlement Agreement Notice Plan and the Settlement Approval Notice Plan.

## **CLAIMS MADE BY PERSONAL REPRESENTATIVES AND DESIGNATED REPRESENTATIVES**

### **32. Compensation If Deceased**

32.01 Where a Day Scholar has died on or after May 30, 2005, a Claim may be brought on behalf of the deceased Day Scholar's estate or heirs in accordance with the Estate Claims Process set out in Schedule D.

### **33. Person Under Disability**

33.01 If a Day Scholar submits a Claim to the Claims Administrator prior to the Ultimate Claims Deadline and the Claim is approved but the Day Scholar is or becomes a Person Under Disability prior to their receipt of a Day Scholar Compensation Payment, that payment will be made to the Personal Representative of the Day Scholar.

### **34. Hold Harmless Agreement for Claims**

34.01 Canada, the Claims Administrator, Class Counsel, and the Independent Reviewer, shall not be liable for, and will in fact be held harmless by Claimants, from any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including without limitation legal fees, disbursements, and expenses)

or other liabilities of every character whatsoever by reason of or resulting from a payment or non-payment to a Personal Representative or Designated Representative pursuant to this Agreement and any order of the Court approving it.

## **CLAIMS PROCESS**

### **35. Principles Governing Claims Administration**

35.01 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.

### **36. Claims Process**

36.01 The Claims Process is set out in Schedule C.

## **CLAIMS ADMINISTRATOR**

### **37. Duties of the Claims Administrator**

37.01 The Claims Administrator's duties and responsibilities include the following:

- a. developing, installing, and implementing systems, forms, information, guidelines and procedures for processing Claims in hard or electronic copy, in accordance with this Agreement;

- b. developing, installing, and implementing systems and procedures for making payments of Day Scholar Compensation Payments in accordance with this Agreement;
- c. providing personnel in such reasonable numbers as are required for the performance of its duties, and training and instructing them;
- d. keeping or causing to be kept accurate accounts of its activities and its administration, including preparing such financial statements, reports, and records as are required by the Court;
- e. reporting to the Parties on a monthly basis respecting Claims received and determined, and to which Indian Residential Schools the Claims relate;
- f. responding to enquiries respecting Claims, reviewing Claims, making decisions in respect of Claims, giving notice of its decisions in accordance with this Agreement, and providing information to Claimants regarding the reconsideration process as set out in the Claims Process;
- g. communicating with Claimants in either English or French, as the Claimant elects, and, if a Claimant expresses the desire to communicate in a language other than English or French, making best efforts to accommodate them; and
- h. such other duties and responsibilities as the Court may from time to time direct.

### **38. Appointment of the Claims Administrator**

38.01 The Claims Administrator will be appointed by the Court on the recommendation of the Parties.

### **39. Duties of the Independent Reviewer**

39.01 The role of the Independent Reviewer is to determine any request for reconsideration brought by a Claimant pursuant to the Claims Process set out in Schedule C. The Independent Reviewer(s) will be appointed by the Court on the recommendation of the Parties.

### **40. Costs of Claims Process**

40.01 The costs of the Claims Process, including those of the Claims Administrator and the Independent Reviewer, will be paid by Canada.

### **41. Approval Order**

41.01 The Parties agree that an Approval Order of 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 Survivor Class Members and Descendant Class Members, including Persons Under Disability; and
- c. ordering and declaring that the Survivor Class and Descendant Class Claims set out in the First Re-Amended Statement of Claim, filed June 26, 2015, are dismissed, and giving effect to the releases and related clauses set out in sections 42.01 and 43.01 herein to ensure the conclusion of all Survivor Class and Descendant Class claims.

### **42. Conclusion of Survivor Class and Descendant Class Claims**

42.01 The Approval Order sought from the Court will declare that:

- 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. For additional certainty, however, the above-noted releases and the 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.
- e. Each Survivor Releaser and Descendant Releaser 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 Releaser or Descendant Releaser will expressly limit their claim so as to exclude any portion of Canada's responsibility.
- f. Upon a final determination of a Claim made under and in accordance with the Claims Process, each Survivor Releaser and Descendant Releaser is also deemed to agree to release the Parties, Class Counsel, counsel for Canada, the Claims Administrator, the Independent Reviewer, and any other party involved in the Claims Process, with respect to any claims that arise or

could arise out of the application of the Claims Process, including but not limited to the sufficiency of the compensation received.

#### **43. Deemed Consideration by Canada**

43.01 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 Survivor Releasers and Descendant 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**

#### **44. Class Counsel Fees and Disbursements**

44.01 All legal fees and disbursements of Class Counsel, and the representative plaintiffs' proposed honoraria are the subject of the Fee Agreement, which is subject to review and approval by the Court.

44.02 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.

#### **45. No Other Fees or Disbursements to Be Charged**

45.01 The Parties agree that it is their intention that all payments to Survivor Class Members under this Agreement are to be made without any deductions on account of legal fees or disbursements.

## **TERMINATION AND OTHER CONDITIONS**

### **46. Termination of Agreement**

46.01 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.

### **47. Amendments**

47.01 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.

### **48. No Assignment**

48.01 No amount payable under this Agreement can be assigned and any such assignment is null and void except as expressly provided for in this Agreement. Where a Day Scholar is deceased or is a Person Under Disability, payment for an approved Claim will be made to their Designated Representative or Personal Representative, respectively.

## **CONFIDENTIALITY**

### **49. Confidentiality**

49.01 Any information provided, created or obtained in the course of this settlement, whether written or oral, will be kept confidential by the Parties and Class Counsel, all Claimants, the Claims Administrator, and the Independent Reviewer and will not be used for any purpose other than this settlement unless otherwise agreed by the Parties, authorized by this Agreement or applicable federal, provincial or territorial privacy legislation, or ordered by the Court.

## **50. Destruction of Claimant Information and Records**

50.01 Within two (2) years of completing the payments of compensation, the Claims Administrator will destroy all Claimant information and documentation in its possession, unless a Claimant, Designated Representative, or Personal Representative specifically requests the return of such information within the two (2) year period. Upon receipt of such request, the Claims Administrator will forward the Claimant information as directed.

50.02 Within two (2) years of rendering a reconsideration decision, the Independent Reviewer will destroy all Claimant information and documentation in their possession, unless a Claimant, Designated Representative, or Personal Representative specifically requests the return of such information within the two (2) year period. Upon receipt of such request, the Independent Reviewer will forward the Claimant information as directed.

50.03 Prior to destruction of the records, the Claims Administrator and Independent Reviewer shall create and provide to Canada a list showing the (i) Day Scholar, (ii) School Year(s) of attendance, and (iii) Indian Residential School(s), with respect to which each Day Scholar Compensation Payment was made. Notwithstanding anything else in this Agreement, this list must be retained by Canada in strict confidence and can only be used in a legal proceeding or settlement where it is relevant as demonstrating, which the Parties agree they will do without further proof, which individuals received the Day Scholar Compensation Payment for which School Year(s) and with regard to which Indian Residential School(s).

## **51. Confidentiality of Negotiations**

51.01 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, and this Agreement continues in force.

**CO-OPERATION**

**52. Co-operation With Canada**

52.01 Upon execution of this Agreement, the representative plaintiffs and Class Counsel will co-operate with Canada and make best efforts to obtain Court approval of this Agreement and make reasonable efforts to obtain the support and participation of Survivor Class Members and Descendant Class Members in all aspects of this Agreement.

**53. Public Announcements**

53.01 At the time agreed upon, the Parties will make public announcements in support of this Agreement and continue to speak publicly in favour of the Agreement.

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of this 4<sup>th</sup> day of June, 2021.

JKP

\_\_\_\_\_  
For the Plaintiffs **JOHN KINGMAN PHILLIPS**  
Waddell Phillips Professional Corporation, per **Barrister & Solicitor**  
John K. Phillips  
Class Counsel

\_\_\_\_\_  
For the Plaintiffs  
Peter R. Grant Law Corporation, per  
Peter R. Grant  
Class Counsel

## CO-OPERATION

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For the Plaintiffs

Waddell Phillips Professional Corporation, per  
John K. Phillips  
Class Counsel

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For the Plaintiffs

Peter R. Grant Law Corporation  
Peter R. Grant  
Class Counsel

**Peter R. Grant**  
**Peter Grant Law**  
**Box 2137**  
**#407-808 Nelson Street**  
**Vancouver B.C. V6Z 2H2**



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For the Plaintiffs

Diane Soroka Avocate Inc., per  
Diane H. Soroka  
Class Counsel

**Boudreau,  
Annie**

Digitally signed by  
Boudreau, Annie  
Date: 2021.06.03 08:32:16  
-04'00'

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For the Defendants

Annie Boudreau  
Chief Finances, Results and Delivery Officer  
Crown-Indigenous Relations and Northern  
Affairs Canada

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For the Plaintiffs

Diane Soroka Avocate Inc., per  
Diane H. Soroka  
Class Counsel

**Boudreau,  
Annie**

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Boudreau, Annie  
Date: 2021.06.03 08:32:16  
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For the Defendants

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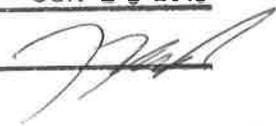
**Schedule A**

FEDERAL COURT  
COUR FÉDÉRALE  
Copy of Document  
Copie du document  
Filed / Déposé  
Received / Reçu

Amended Pursuant to the Order of Justice Harrington

Made June 3, 2015

Court File No. T-1542-13

Date JUN 26 2015  
Registrar   
Greffier \_\_\_\_\_

**PROPOSED CLASS PROCEEDING**

**FORM 171A - Rule 171**

**FEDERAL COURT**

**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, Schedule H - Amended SOC (Band Class)

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, ~~DOREEN LOUISE SEYMOUR,~~  
CHARLOTTE ANNE VICTORINE GILBERT, ~~VICTOR FRASER,~~ DIENA MARIE  
JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT,  
FREDERICK JOHNSON, ~~ABIGAIL MARGARET AUGUST, SHELLY NADINE  
HOEHNE,~~ DAPHNE PAUL, ~~AARON JOE~~ and RITA POULSEN

**PLAINTIFFS**

**and**

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by  
THE ATTORNEY GENERAL OF CANADA

**DEFENDANT**

**FIRST 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: \_\_\_\_\_

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

### The Survivor Class

1. The Representative Plaintiffs of the Survivor Class, on their own behalf, and on behalf of the members of the Survivor Class, claim:

- (a) ~~an Order certifying this proceeding as a Class Proceeding pursuant to the Federal Court Class Proceedings Rules (“CPR”) and appointing them as Representative Plaintiffs for the Survivor Class and any appropriate subgroup of that Class;~~
- (b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the 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 ~~Identified~~ Residential Schools;
- (c) 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;
- (d) a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) Aboriginal Rights of the Survivor Class;
- (e) a Declaration that the Residential Schools Policy and the ~~Identified~~ Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Survivor Class;
- (f) 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 ~~Identified~~ Residential Schools;
- (g) non-pecuniary general damages for breach of fiduciary, constitutionally-mandated, statutory and common law duties and Aboriginal Rights and intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law,, negligence and intentional infliction of mental distress for which Canada is liable;

- (h) pecuniary general 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 and Aboriginal Rights and and 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;
- (i) exemplary and punitive damages for which Canada is liable ;
- (j) prejudgment and post-judgment interest;
- (k) the costs of this action; and
- (l) such further and other relief as this Honourable Court may deem just.

### The Descendant Class

2. The Representative Plaintiffs of the Descendant Class, on their own behalf and on behalf of the members of the Descendant Class, claim:

- (a) ~~an Order certifying this proceeding as a Class Proceeding pursuant to the CPR and appointing them as Representative Plaintiffs for the Descendant Class and any appropriate subgroup of that Class;~~
- (b) a Declaration that Canada owed and was in breach of fiduciary, constitutionally-mandated, statutory and common law duties to the 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 ~~Identified~~ Residential Schools;
- (c) 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;
- (d) a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) Aboriginal Rights of the Descendant Class;
- (e) a Declaration that the Residential Schools Policy and the ~~Identified~~ Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Descendant Class;
- (f) a Declaration that Canada is liable to the Plaintiffs and other Descendant 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 Survivor Class members at and support of the ~~Identified~~ Residential Schools;

- (g) non-pecuniary general 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, for which Canada is liable;
- (h) 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 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;
- (i) exemplary and punitive damages for which Canada is liable;
- (j) pre-judgment and post-judgment interest;
- (k) the costs of this action; and
- (l) such further and other relief as this Honourable Court may deem just;

### **The Band Class**

3. The Representative Plaintiffs of the Band Class claim:

- (a) ~~an Order certifying this proceeding as a Class Proceeding pursuant to the CPR and appointing them as Representative Plaintiffs for the Band Class;~~
- (b) a Declaration that the Sechelt Indian Band (referred to as the shíshálh or shíshálh band) and Tk'emlúps Band, and all members of the Band Class, have ~~existing~~ Aboriginal Rights ~~within the meaning of s. 35(1) of the Constitution Act, 1982~~ to speak their traditional languages and engage in their traditional customs and religious practices and to govern themselves in their traditional manner;
- (c) 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 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;

- (d) 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;
- (e) 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; Aboriginal Rights;
- (f) a Declaration that Canada is liable to the Band 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 Survivor Class members at and support of the Identified Residential Schools;
- (g) 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 bands in the Band Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Bands for which Canada is liable;
- (h) the construction of healing centres in the Band Class communities by Canada;
- (i) exemplary and punitive damages for which Canada is liable;
- (j) pre-judgment and post-judgment interest;
- (k) the costs of this action; and
- (l) such further and other relief as this Honourable Court may deem just.

## DEFINITIONS

4. The following definitions apply for the purposes of this Claim:

- (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;
- (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) "Band Class" means the Tk'emlúps te Secwépemc Indian Band and the shishálh band and any other Aboriginal 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.
- (g) "Canada" means the Defendant, Her Majesty the Queen in right of Canada as represented by the Attorney General of Canada;
- (h) "Class" or "Class members" means all members of the Survivor Class, Descendant Class and Band Class as defined herein;
- (i) "Class Period" means 1920 to ~~1979~~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) "Descendant Class" means the first generation of all persons who are descended from Survivor Class members or persons who were legally or traditionally adopted by a Survivor Class Member or their spouse;
- (l) "Identified Residential School(s)" means the KIRS or the SIRS ~~or any other Residential School specifically identified by a member of the Band Class~~;
- (m) "KIRS" means the Kamloops Indian Residential School;
- (n) "Residential Schools" means all Indian Residential Schools recognized under the Agreement;

- (o) "Residential Schools Policy" means the policy of Canada with respect to the implementation of Indian Residential Schools;
- (p) "SIRS" means the Sechelt Indian Residential School;
- (q) "Survivor Class" means all Aboriginal persons who attended as a student or for educational purposes for any period at an Identified 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.

## THE PARTIES

### The Plaintiffs

5. The Plaintiff, Darlene Matilda Bulpit (nee Joe) resides on shíshálh band lands in British Columbia. Darlene Matilda Bulpit was born on August 23, 1948 and attended the SIRS for nine years, between the years 1954 and 1963. Darlene Matilda Bulpit is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

6. The Plaintiff, Frederick Johnson resides on shíshálh band lands in British Columbia. Frederick Johnson was born on July 21, 1960 and attended the SIRS for ten years, between the years 1966 and 1976. Frederick Johnson is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~7. The Plaintiff, Abigail Margaret August (nee Joe) resides on shíshálh band lands in British Columbia. Abigail Margaret August was born on August 21, 1954 and attended the SIRS for eight years, between the years 1959 and 1967. Abigail Margaret August is a proposed Representative Plaintiff for the Survivor Class.~~

~~8. The Plaintiff, Shelly Nadine Hoehne (nee Joe) resides on shíshálh band lands in British Columbia. Shelly Nadine Hoehne was born on June 23, 1952 and attended the SIRS for eight years, between the years 1958 and 1966. Shelly Nadine Hoehne is a proposed Representative Plaintiff for the Survivor Class.~~

9. The Plaintiff, Daphne Paul resides on shíshálh band lands in British Columbia. Daphne Paul was born on January 13, 1948 and attended the SIRS for eight years, between the years 1953 and 1961. Daphne Paul is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

10. The Plaintiff, Violet Catherine Gottfriedson resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Violet Catherine Gottfriedson was born on March 30, 1945 and attended the KIRS for four years, between the years 1958 and 1962. Violet Catherine Gottfriedson is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~11. The Plaintiff, Doreen Louise Seymour resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Doreen Louise Seymour was born on September 7, 1955 and attended the KIRS for five years, between the years 1961 and 1966. Doreen Louise Seymour is a proposed Representative Plaintiff for the Survivor Class.~~

12. The Plaintiff, Charlotte Anne Victorine Gilbert (nee Larue) resides in Williams Lake in British Columbia. Charlotte Anne Victorine Gilbert was born on May 24, 1952 and attended the KIRS for seven years, between the years 1959 and 1966. Charlotte Anne Victorine Gilbert is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~13. The Plaintiff, Victor Fraser (also known as Victor Frieze) resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Victor Fraser was born on June 11, 1957~~

~~and attended the KIRS for six years, between the years 1962 and 1968. Victor Fraser is a proposed Representative Plaintiff for the Survivor Class.~~

14. The Plaintiff, Diena Marie Jules resides on the Tk'emlúps te Secwépemc Indian Band reserve in British Columbia. Diena Marie Jules was born on September 12, 1955 and attended the KIRS for six years, between the years 1962 and 1968. Diena Marie Jules is a ~~proposed~~ Representative Plaintiff for the Survivor Class.

~~15. The Plaintiff, Aaron Joe, resides on shíshálh band lands. Aaron Joe was born on January 19, 1972 and is the son of Valerie Joe, who attended the SIRS as a day scholar. Aaron Joe is a proposed Representative Plaintiff for the Descendant Class.~~

16. The Plaintiff, Rita Poulsen, resides on shíshálh band lands. Rita Poulsen was born on March 8, 1974 and is the daughter of Randy Joe, who attended the SIRS as a day scholar. Rita Poulsen is a ~~proposed~~ Representative Plaintiff for the Descendant Class.

17. The Plaintiff, Amanda Deanne Big Sorrel Horse resides on the Tk'emlúps te Secwépemc Indian Band reserve. Amanda Deanne Big Sorrel Horse was born on December 26, 1974 and is the daughter of Jo-Anne Gottfriedson who attended the KIRS for six years between the years 1961 and 1967. Amanda Deanne Big Sorrel Horse is a ~~proposed~~ Representative Plaintiff for the Descendant Class.

18. The Tk'emlúps te Secwépemc Indian Band and the shíshálh band are "bands" as defined by the Act and they both ~~propose to~~ act as Representative Plaintiffs for the Band Class. The Band Class members represent the collective interests and authority of each of their respective communities.

19. The individual Plaintiffs and the proposed Survivor and Descendant Class members are largely members of the shísháhlh band and Tk'emlúps Indian Band, and members of Canada's First Nations and/or are the sons and daughters of members of these Aboriginal collectives. The individual Plaintiffs and Survivor and Descendant Class members are Aboriginal Persons within the meaning of the *Constitution Act, 1982*, s. 35.

### **The Defendant**

20. 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 the KIRS and the SIRS.

### **STATEMENT OF FACTS**

21. 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.

22. 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

{01447063.2}

under the Act and Canada's fiduciary, constitutionally-mandated, statutory and common law duties.

23. 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.

24. 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 who *resided at* Canada's Residential Schools by way of the Agreement implemented in 2007. Notwithstanding the truth and acknowledgement of the wrong and the damages caused, many members of Canada's Aboriginal communities were excluded from the Agreement, not because they did not *attend* Residential Schools and suffer Cultural, Linguistic and Social Damage, but simply because they did not *reside at* Residential Schools.

25. This claim is on behalf of the members of the Survivor Class, namely those who attended ~~an Identified~~ Residential School for the Cultural, Linguistic and Social Damage occasioned by that attendance, as well as on behalf of the Descendant Class, who are the first generation descendants of those within the Survivor Class, and the Band Class, consisting of the Aboriginal communities within which the ~~Identified~~ Residential Schools were situated, or whose members belong to and within which the majority of the Survivor and Descendant Class members live.

26. The claims of the ~~proposed~~ Representative Plaintiffs are for the harm done to the Representative Plaintiffs as a result of members of the Survivor Class *attending* the KIRS and the SIRS and being exposed to the operation of the Residential Schools Policy and do not include the claims arising from residing at the KIRS or the SIRS for which specific compensation has been paid under the Agreement. This claim seeks compensation for the victims of that policy whose claims have been ignored by Canada and were excluded from the compensation in the Agreement.

### **The Residential School System**

27. 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.

28. 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.

29. 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 Nations. ~~In addition to the inherent cruelty of the~~ As a result of Canada's requirements for the forced attendance of the Survivor Class members under the Residential Schools Policy itself, many children attending Residential Schools were also subject to spiritual, physical, sexual and emotional abuse, all of which continued until the year 1997, when the last Residential School was closed.

30. 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 Aboriginal Persons to whom Canada owed fiduciary and constitutionally-mandated duties. The intended eradication of Aboriginal identity, culture, language, and spiritual practices and religion, to the extent successful, results in the reduction of the obligations owed by Canada in proportion to the number of individuals, over generations, who would no longer identify as Aboriginal and who would be less likely to make claims to their rights as Aboriginal Persons.

### **The Effects of the Residential Schools Policy on the Class Members**

#### ***Tk'emlúps Indian Band***

31. 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. Most, if not all, of the students who *attended*, but did not *reside at* the KIRS were or are members of the Tk'emlúps Indian Band, resident or formerly resident on the reserve.

32. 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.

33. 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.

34. 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.

35. 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***

36. 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.

37. 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.

38. 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 ~~Identified~~ Residential schools***

39. For all of the Aboriginal Children who were compelled to attend the ~~Identified~~ 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.

40. 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, ~~converts to Catholicism~~ members of shishalh 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.

41. Because the SIRS was physically located in the shishálh community, ~~the church~~ and Canada's government 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, the Class members struggled, often unsuccessfully, to practice, protect and preserve their songs, masks, dancing or other cultural practices

42. The Tk'emlúps te Secwépemc suffered a similar fate due to their proximity to the KIRS.

43. The children at the ~~Identified~~ Residential Schools were ~~indoctrinated into Christianity~~, and 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.

44. This implementation of the Residential Schools Policy further damaged the Survivor Class members of the ~~Identified~~ Residential Schools, who returned to their homes at the end of the school day and, having been taught in the school that the traditional teachings of their parents, grandparents and elders were of no value and, in some cases, “heathen” practices and beliefs, would dismiss the teachings of their parents, grandparents and elders.

45. The assault on their traditions, laws, language and culture through the implementation of the Residential Schools Policy by Canada, directly and through its

Agents, has continued to undermine the individual Survivor Class members, causing a loss of self-esteem, depression, anxiety, suicidal ideation, suicide, physical illnesses without clear causes, difficulties in parenting, difficulties in maintaining positive relationships, substance abuse and violence, among other harms and losses, all of which has impacted the Descendant Class.

46. The Band 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.

47. The Residential Schools Policy, delivered through the ~~Identified~~ Residential Schools, wrought cultural, linguistic and social devastation on the communities of the Band Class and altered their traditional way of life.

### **Canada's Settlement with Former Residential School Residents**

48. From the closure of the ~~Identified~~ Residential Schools ~~in the 1970's~~ 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 not only the members of the Survivor Class and the Descendant Class, but also the life and stability of the communities represented by the Band Class.

49. 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.

50. 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...*

*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...*

51. On or about May 10, 2006, Canada entered into the Agreement to provide compensation primarily to those who *resided* at Residential Schools.

52. The Agreement provides for two types of individualized compensation: the Common Experience Payment ("CEP") for the fact of having resided at a Residential School, and compensation based upon an Independent Assessment Process ("IAP"), to provide compensation for certain abuses suffered and harms these abuses caused.

53. The CEP consisted of compensation for former *residents* of a Residential School in the amount of \$10,000 for the first school year or part of a school year and a further \$3,000 for each subsequent school year or part of a school year of *residence* at a Residential School. The CEP was payable based upon residence at a Residential School out of a recognition that the experience of assimilation was damaging and worthy of compensation, regardless of whether a student experienced physical, sexual or other abuse while at the Residential School. Compensation for the latter was payable through the IAP. The CEP was available only to former  
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*residents* of a Residential School while, in some cases, the IAP was available not only to former residents but also other young people who were lawfully on the premises of a Residential School, including former day students.

54. The implementation of the Agreement represented the first time Canada agreed to pay compensation for Cultural, Linguistic and Social Damage. Canada refused to incorporate compensation for members of the Survivor Class, namely, those students who *attended* the ~~Identified Residential Schools, or other~~ Residential Schools, but who did not *reside* there.

55. The Agreement was approved by provincial and territorial superior courts from British Columbia to Quebec, and including the Northwest Territories, Yukon Territory and Nunavut, and the Agreement was implemented beginning on September 20, 2007.

56. 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]*

57. 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.*

58. Notwithstanding the Apology and the acknowledgment of wrongful conduct by Canada, as well as the call for recognition from Canada's Aboriginal communities and from the *Truth and Reconciliation Commission* in its Interim Report of February 2012, the exclusion of

the Survivor Class from the Agreement by Canada reflects Canada's continued failure to members of the Survivor Class. Canada continues, as it did from the 1970s until 2006 with respect to 'residential students', to deny the damage suffered by the individual Plaintiffs and the members of the Survivor, Descendant and Band Classes.

### **Canada's Breach of Duties to the Class Members**

59. From the formation of the Residential Schools Policy to its execution in the form of forced attendance at the ~~Identified~~ Residential Schools, Canada utterly failed the Survivor Class members, and in so doing, destroyed the foundations of the individual identities of the Survivor Class members, stole the heritage of the Descendant Class members and caused incalculable losses to the Band Class members.

60. The Survivor Class members, Descendant Class members and Band Class members have all been affected by family dysfunction, a crippling or elimination of traditional ceremonies, and a loss of the hereditary governance structure which allowed for the ability to govern their peoples and their lands.

61. While attending the ~~Identified~~ Residential School the Survivor Class members were utterly vulnerable, and Canada owed them the highest fiduciary, moral, statutory, constitutionally-mandated and common law duties, which included, but were not limited to, the duty to protect Aboriginal Rights and prevent Cultural, Linguistic and Social Damage. Canada breached these duties, and failed in its special responsibility to ensure the safety and well-being of the Survivor Class while at the ~~Identified~~ Residential Schools.

### **Canada's Duties**

62. 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 often 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 ~~Identified~~ 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 ~~Identified~~ Residential Schools, including their employees, servants, officers and agents, and for the care and education, control and well being of Aboriginal Persons attending the ~~Identified~~ 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 members of the Survivor Class while they were in attendance at the ~~Identified~~ Residential Schools during the Class Period.

63. 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 Survivor, Descendant and Band Classes, 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, psychological, emotional and physical 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, and in particular article 8, 2(d), which commits to the provision of effective mechanisms for redress for forced assimilation.

64. 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*

65. Canada has constitutional obligations to, and a fiduciary relationship with, Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated the ~~Identified~~ Residential Schools and established the Residential Schools Policy. Through these acts, and by virtue of the *Constitution Act 1867*, the *Constitution Act, 1982*, and the provisions of the Act, as amended, Canada assumed the power and obligation to act in a fiduciary capacity with respect to the education and welfare of Class members.

66. 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.

67. 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 included the duty not to deliberately reduce the number of the beneficiaries to whom Canada owed its duties.

68. Canada's fiduciary duties and the duties otherwise imposed by the constitutional mandate assumed by Canada extend to the Descendant Class because the purpose of the assumption of control over the Survivor Class education was to eradicate from those Aboriginal Children their culture and identity, thereby removing their ability, as adults, to pass on to succeeding generations the linguistic, spiritual, cultural and behavioural bases of their people, as well as to relate to their families and communities and, ultimately, their ability to identify themselves as Aboriginal Persons to whom Canada owed its duties.

69. The fiduciary and constitutional duties owed by Canada extend to the Band Class because the Residential Schools Policy was intended to, and did, undermine and seek to destroy the way of life established and enjoyed by these Nations whose identities were and are viewed as collective.

70. Canada acted in its own self-interest and contrary to the interests of Aboriginal Children, not only by being disloyal to, but by actually betraying the Aboriginal Children and communities whom it had a duty to protect. Canada wrongfully exercised its discretion and power over Aboriginal People, 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, 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.

71. In breach of its ongoing fiduciary, constitutionally-mandated, statutory and common law duties to the Survivor, Descendant and Band Classes, 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 Survivor, Descendant and Band Classes, notwithstanding Canada's admission of the wrongfulness of the Residential Schools Policy since 1998.

***Breach of Aboriginal Rights***

72. The shíshálh and Tk'emlúps people, and indeed all members of the Band Class, from whom the individual Plaintiffs have descended 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 Nations have sustained their individual members, communities and distinctive cultures by speaking their languages and practicing their customs and traditions.

73. During the time when Survivor Class members attended the ~~Identified~~ Residential Schools, in compliance with the Residential Schools Policy, they were taught to speak English, were punished for using their traditional languages and were made ashamed of their traditional language and way of life. Consequently, by reason of the attendance at the ~~Identified~~ Residential Schools, the Survivor Class members' ability to speak their traditional languages and practice their shíshálh, Tk'emlúps, and other, spiritual, religious and cultural activities was seriously impaired and, in some cases, lost entirely. These Class members were denied the ability to exercise and enjoy their Aboriginal Rights, both individually and in the context of their collective expression within the Bands, some particulars of which include, but are not limited to:

- (a) shíshálh, Tk'emlúps and other Aboriginal cultural, spiritual and traditional activities have been lost or impaired;

- (b) the traditional social structures, including the equal authority of male and female leaders have been lost or impaired;
- (c) the shíshálh, Tk'emlúps and other Aboriginal languages have been lost or impaired;
- (d) traditional shíshálh, Tk'emlúps and Aboriginal parenting skills have been lost or impaired;
- (e) shíshálh, Tk'emlúps and other Aboriginal skills for gathering, harvesting, hunting and preparing traditional foods have been lost or impaired; and,
- (f) shíshálh, Tk'emlúps and Aboriginal spiritual beliefs have been lost or impaired.

74. The interference in the Aboriginal Rights of the Survivor Class has resulted in that same loss being suffered by their descendants and communities, namely the Descendant and Band Classes, all of which was the result sought by Canada.

75. Canada had at all material times and continues to have a duty to 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 individual Plaintiffs' and Class members' Aboriginal Rights. Canada has failed in these duties, without justification, through its Residential Schools Policy.

***Intentional Infliction of Mental Distress***

76. The design and implementation of the Residential Schools Policy as a program of assimilation to eradicate Aboriginal culture constituted flagrant, extreme and outrageous conduct which was plainly calculated to result in the Cultural, Social and Linguistic Damage, and the mental distress arising from that damage, which was actually suffered by the members of the Survivor and Descendant Classes.

***Negligence giving rise to Spiritual, ~~Physical, Sexual,~~ Emotional and Mental Abuse***

77. Through its Agents, Canada was negligent and in breach of its duties of care to the Survivor Class, particulars of which include, but are not limited to, the following:

- (a) it failed to adequately screen and select the individuals ~~to whom it delegated~~ who it hired either directly or through its Agents for the operation of the ~~Identified~~ Residential Schools, to adequately supervise and control the operations of the ~~Identified~~ Residential Schools, and to protect Aboriginal children from spiritual, ~~physical, sexual,~~ emotional and mental abuse at the ~~Identified~~ Residential Schools, and as a result, such abuses did occur to Survivor Class members and Canada is liable for such abuses;
- (b) it failed to respond appropriately or at all to disclosure of abuses in the ~~Identified~~ Residential Schools, and in fact, covered up such abuse and suppressed information relating to those abuses; and
- (c) it failed to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed.

*Vicarious Liability*

78. Through its Agents, Canada breached its duty of care to the Survivor Class resulting in damages to the Survivor Class and is vicariously liable for all of the breaches and abuses committed on its behalf.

79. Further, or in the alternative, Canada is vicariously liable for the negligent performance of the fiduciary, constitutionally-mandated, statutory and common law duties of its Agents.

80. 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**

81. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of mental distress and the breaches of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Survivor Class members, including the Representative Plaintiffs, suffered injury and damages including:

- (a) loss of language, culture, spirituality, and Aboriginal identity;
- (b) emotional and psychological harm;
- (c) isolation from their family, community and Nation;
- (d) deprivation of the fundamental elements of an education, including basic literacy;
- (e) an impairment of mental and emotional health, in some cases amounting to a permanent disability;
- (f) an impaired ability to trust other people, to form or sustain intimate relationships, to participate in normal family life, or to control anger;
- (g) a propensity to addiction;
- (h) alienation from community, family, spouses and children;
- (i) an impaired ability to enjoy and participate in recreational, social, cultural, athletic and employment activities;
- (j) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
- (k) deprivation of education and skills necessary to obtain gainfully employment;
- (l) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the Residential School experience;
- (m) sexual dysfunction;

- (n) depression, anxiety and emotional dysfunction;
- (o) suicidal tendencies;
- (p) pain and suffering;
- (q) loss of self-esteem and feelings of degradation, shame, fear and loneliness,;
- (r) nightmares, flashbacks and sleeping problems;
- (s) fear, humiliation and embarrassment as a child and adult;
- (t) sexual confusion and disorientation as a child and young adult;
- (u) impaired ability to express emotions in a normal and healthy manner;
- (v) loss of ability to participate in, or fulfill, cultural practices and duties;
- (w) loss of ability to live in their community and Nation; and
- (x) constant and intense emotional, psychological pain and suffering.

82. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of harm and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Descendant Class members, including the Representative Plaintiffs, suffered injury and damages including:

- (a) their relationships with Survivor Class members were impaired, damaged and distorted as a result of the experiences of Survivor Class members in the ~~Identified~~ Residential Schools; and,
- (b) their culture and languages were undermined and in some cases eradicated by, amongst other things, as pleaded, the forced assimilation of Survivor Class members into Euro-Canadian culture through the operation of the ~~Identified~~ Residential Schools.

83. As a consequence of the breach of fiduciary, constitutionally-mandated, statutory and common law duties, and the intentional infliction of harm and breach of Aboriginal Rights by Canada and its Agents, for whom Canada is vicariously liable, the Band Class has 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

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and practices and to have those traditions fully respected by the members of the Survivor and Descendant Classes and subsequent generations, all of which flowed directly from the individual losses of the Survivor Class and Descendant Class members' Cultural, Linguistic and Social Damage.

### **Grounds for Punitive and Aggravated Damages**

84. Canada deliberately planned the eradication of the language, religion and culture of Survivor Class members and Descendant Class members, and the destruction of the Band Class. The actions were malicious and intended to cause harm, and in the circumstances punitive and aggravated damages are appropriate and necessary.

85. The Class members plead that Canada and its Agents had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses of Survivor Class members that were occurring at the ~~Identified~~ Residential Schools.

86. Despite this knowledge, Canada continued to operate the Residential Schools and took no steps, or in the alternative no reasonable steps, to protect the Survivor Class members from these abuses and the grievous harms that arose as a result. In the circumstances, the failure to act on that knowledge to protect vulnerable children in Canada's care amounts to a wanton and reckless disregard for their safety and renders punitive and aggravated damages both appropriate and necessary.

### **Legal Basis of Claim**

87. The Survivor and Descendant Class members are Indians as defined by the *Indian Act*, R.S.C. 1985, c. 1-5. The Band Class members are bands made up of Indians so defined.

88. 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.

89. 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 People and especially Aboriginal Children who were particularly vulnerable. Canada breached those duties, causing harm.

90. The Class members descend from 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 from whom the Plaintiffs and Class members descend 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.

#### **Constitutionality of Sections of the *Indian Act***

91. 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.

92. Canada deliberately planned the eradication of the language, spirituality and culture of the Plaintiffs and Class members.

93. Canada's actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

94. 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*, ss. 7, 15 and 24;

*Constitution Act, 1982*, ss. 25 and 35(1),

*Negligence Act (British Columbia)*, R.S.B.C. 1996, c. 333;

*The Canadian Bill of Rights*, R.S.C. 1985, App. III, Preamble, ss. 1 and 2;

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

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;

*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;

*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);

*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;

*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

*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.

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

June 11<sup>th</sup>, 2013



Peter R. Grant, on behalf of  
all Solicitors for the Plaintiffs

*Solicitors for the Plaintiffs*

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**Schedule B**

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

## SCHEDULE C

### CLAIMS PROCESS FOR DAY SCHOLAR COMPENSATION PAYMENT

#### *Principles Governing Claims Administration*

1. The following principles shall govern the Claims administration (“Claims Process Principles”):
  - a. the Claims Process shall be expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed;
  - b. the Claims Process shall minimize the burden on the Claimants in pursuing their Claims;
  - c. the Claims Process shall mitigate any likelihood of re-traumatization through the Claims Process;
  - d. the Claims Administrator and Independent Reviewer shall assume that a Claimant is acting honestly and in good faith unless there is reasonable evidence to the contrary;
  - e. the Claims Administrator and Independent Reviewer shall draw all reasonable and favourable inferences that can be drawn in favour of the Claimant.
2. The above Claims Process Principles shall be applied throughout the Claims Process, including in any reconsideration.

#### *Eligibility Criteria*

3. Pursuant to the Settlement Agreement, a Claimant is entitled to a Day Scholar Compensation Payment, and their Claim shall be approved, if the Claimant satisfies the following eligibility criteria:
  - a. the Claim is made with respect to a Day Scholar who was alive on May 30, 2005;

- b. the Claim is made with respect to that Day Scholar's attendance at an Indian Residential School listed in Schedule E during all or part of a School Year for which the Day Scholar has not received a Common Experience Payment under the IRSSA, has not and will not receive compensation under the McLean Settlement, and has not received compensation under any other settlement with respect to a school listed in Schedule K to the McLean Settlement; and
- c. the Claim is delivered to the Claims Administrator prior to the Ultimate Claims Deadline.

### ***Intake***

- 4. To apply for a Day Scholar Compensation Payment, a Claimant must complete a Claim Form and deliver it to the Claims Administrator prior to the Claims Deadline, through either the electronic or hard copy processes established by the Claims Administrator.
- 5. Notwithstanding the Claims Deadline, a Claimant may submit a Claim Form along with a request for a Claims Deadline extension to the Claims Administrator after the Claims Deadline but before the Ultimate Claims Deadline. Under no circumstances will the Claims Administrator accept any Claim Forms after the Ultimate Claims Deadline, except as specifically provided for herein and in the Estate Claims Process set out in Schedule D.
- 6. The Claims Administrator will provide the Claimant with confirmation of receipt of the Claim.
- 7. The Claims Administrator will digitize all paper applications and maintain electronic copies for use only as provided for by this Agreement.
- 8. The Claims Administrator will review each Claim for completeness. If any required information is missing from the Claim Form that renders it incomplete, including a request for a Claims Deadline extension, the Claims Administrator will contact the

Claimant and request that the Claimant provide the missing information or resubmit the Claim Form. The Claimant will have 60 days from the date of the resubmission request to resubmit their Claim Form, notwithstanding that the Ultimate Claims Deadline may have elapsed.

9. The Claims Administrator shall, without taking any further action, dismiss any Claim made with respect to an individual who died on or before May 29, 2005.

***Information Provided by Canada***

10. The Claims Administrator will provide a copy of each Claim made with respect to an individual alive on May 30, 2005, to Canada for use only as provided for by this Agreement.
11. Canada will review the Claim against any information in its possession for the purposes of:
  - a. determining whether the individual at issue in the Claim or their executor, representative, or heir who applied in place of the individual received a Common Experience Payment pursuant to the IRSSA for any of the same School Years set out in the Claim;
  - b. determining whether the individual at issue in the Claim or their executor, representative, or heir who applied in place of the individual was denied a Common Experience Payment claim pursuant to the IRSSA for any of the same School Years set out in the Claim;
  - c. determining whether the individual at issue or their executor, representative, or heir who applied in place of the individual received compensation under any other settlement with respect to a school listed in Schedule K to the McLean Settlement, for any of the same School Years set out in the Claim;
  - d. determining whether the individual at issue attended a school not listed in List 1 or List 2 as set out in Schedule E for any of the same School Years set out in the Claim; and

- e. any other information that may be relevant to a Claim with respect to a school listed in List 2 of Schedule E.
12. In order to ensure that the Claim is not denied by reason only of the Claimant having been mistaken as to the School Year(s) of attendance as a Day Scholar, Canada will review the attendance records at the identified Indian Residential School(s) with respect to which the Claim was made for the five School Years before and after the School Year(s) identified in the Claim. If, as a result of this process, it is found that the individual at issue was a Day Scholar in (a) School Year(s) not claimed, this information shall be provided to the Claims Administrator and the Claim will be assessed as if it included that/those School Year(s).
13. Canada may forward to the Claims Administrator any information/documentation that supports or contradicts the individual at issue's attendance as a Day Scholar within 45 days of its receipt of a Claim from the Claims Administrator but will endeavour to do so as quickly as possible so as not to delay the determination of any Claim.

***Assessment by the Claims Administrator***

14. Where the Claim is with respect to an individual who was denied a Common Experience Payment claim pursuant to the IRSSA for any of the same School Years set out in the Claim on the grounds that they attended but did not reside at the Indian Residential School(s), regardless of which Indian Residential School(s) are named in the Claim, the Claims Administrator will consider the Claim to be presumptively valid, subject to the provisions below.
15. For all other Claims, the Claims Administrator will first make a determination whether the Claim is made with respect to a Day Scholar, in accordance with the following protocol:
  - a. where the Claim is with respect to one or more Indian Residential Schools listed in List 1 of Schedule E within any time periods specified in that list, and the Claim Form states positively that the Claim is with respect to an

individual who attended the School as a Day Scholar, the Claims Administrator will consider the Claim to be presumptively valid, subject to the provisions below;

- b. where the Claim is with respect only to one or more Indian Residential Schools listed in List 2 of Schedule E within any time periods specified in that list, and the Claimant provides a statutory declaration stating that the individual with respect to whom the Claim is made was a Day Scholar and identifying where the individual resided during the time they were a Day Scholar, the Claims Administrator will review the Claim and any information provided by Canada under ss. 11 – 13 above. Unless Canada has provided positive evidence demonstrating on a balance of probabilities that the individual was not a Day Scholar, the Claim will be considered presumptively valid, subject to the provisions below; and
  - c. where the Claim does not name any Indian Residential School listed in Schedule E, the Claims Administrator shall make best efforts to determine if there is any possibility of mistake or misnomer in the name of an Indian Residential School, including, where necessary, by contacting the Claimant. The Claims Administrator shall correct any such mistakes or misnomers. Where the Claims Administrator is satisfied that the Claim is not regarding any Indian Residential School listed in Schedule E, the Claims Administrator shall dismiss the Claim.
16. The Claims Administrator will review any information provided by Canada pursuant to ss. 11 - 13 above and any information in its possession as part of the McLean Settlement. If the Claims Administrator finds that there is positive evidence demonstrating on a balance of probabilities that, for all of the School Years set out in the Claim Form, the individual at issue or her/his executor, representative, or heir who applied in place of the individual:
- a. Received a Common Experience Payment under the IRSSA;

- b. Received compensation under the McLean Settlement;
- c. Received compensation as part of any other settlement with respect to a school listed in Schedule K to the McLean Settlement;
- d. attended a school not listed in Schedule E; or
- e. any combination of (a), (b), (c), or (d).

the Claims Administrator shall dismiss the Claim.

17. The Claims Administrator shall inform any Claimant whose Claim is dismissed by delivering a letter to them, via the Claimant's preferred method of communication:
- a. providing clear reasons why the Claim has been dismissed;
  - b. in cases where the Claimant has a right to seek reconsideration:
    - i. informing the Claimant of their right to seek reconsideration, the process for seeking reconsideration, and any applicable deadlines;
    - ii. informing the Claimant of their right to assistance from Class Counsel at no cost and their right to assistance from another counsel of their choice at their own expense; and
    - iii. attaching copies of any information and documents that were considered as part of the Claims Administrator's decision to dismiss the Claim.

### ***Reconsideration***

18. A Claimant whose Claim is dismissed because:
- a. it is in relation to a school that the Claims Administrator is satisfied is not an Indian Residential School listed in Schedule E; or
  - b. it is on behalf of an individual who died on or before May 29, 2005,

has no right to seek reconsideration.

19. A Claimant whose Claim is denied for any other reason has a right to seek reconsideration before the Independent Reviewer. Notice of intent to seek reconsideration must be delivered to the Independent Reviewer within 60 days of the date of the Claims Administrator's decision.
20. Canada has no right to seek reconsideration under any circumstances.
21. Claimants seeking reconsideration have the right to be represented by Class Counsel for the purposes of reconsideration at no cost to them or to retain another counsel of their choice at their own expense.
22. The Independent Reviewer will provide the Claimant with confirmation of receipt of the notice of intent to seek reconsideration and will provide Canada with a copy of the notice of intent to seek reconsideration.
23. The Independent Reviewer will advise the Claimant that they have a right to submit new evidence on reconsideration. The Claimant shall have 60 days to submit any new evidence on reconsideration, with such further reasonable extensions as the Claimant may request and the Independent Reviewer may grant.
24. The Independent Reviewer will provide Canada with any new evidence submitted by the Claimant and Canada will have the right to provide additional information to the Independent Reviewer that responds to any new evidence provided within 60 days.
25. The Independent Reviewer shall then consider each Claim, including its supporting documentation, *de novo*, and render a decision in accordance with the Claims Process Principles set out above. In particular, the Independent Reviewer shall:
  - a. assume that a Claimant is acting honestly and in good faith, in the absence of reasonable grounds to the contrary; and

- b. draw all reasonable and favourable inferences that can be drawn in favour of the Claimant.
26. If the Independent Reviewer decides the Claim should be accepted, the Claims Administrator and the Claimant will be informed, and the Claims Administrator will pay the Claimant forthwith.
27. If the Independent Reviewer decides the Claim should be dismissed, they will inform the Claimant by delivering a letter to them, via the Claimant's preferred method of communication:
  - a. providing clear reasons why the Claim has been dismissed; and
  - b. attaching copies of any information and documents that were considered as part of the Independent Reviewer's decision to dismiss the Claim.
28. All requests for reconsideration shall be resolved by the Independent Reviewer within 30 days of the receipt of any responding material provided by Canada or the expiry of time for Canada to provide responding material, whichever is sooner. If the Claimant does not file any new evidence on reconsideration, the Independent Reviewer shall resolve the reconsideration within 30 days of the expiry of time for the Claimant to provide new evidence. The timelines within this section may be modified by agreement between Class Counsel and Canada in consultation with the Independent Reviewer.
29. The decision of the Independent Reviewer is final without any further right of appeal or judicial review.

## SCHEDULE D

### ESTATE CLAIMS PROCESS FOR DAY SCHOLAR COMPENSATION PAYMENT

#### *Where There is an Executor/Administrator/Trustee/Liquidator*

1. The Claimant shall:
  - a. complete the appropriate Claim Form;
  - b. provide evidence that the Day Scholar is deceased;
  - c. provide evidence of when the Day Scholar died; and
  - d. provide evidence that they have been appointed as the executor, administrator, trustee, or liquidator.
2. The Claim Form will contain release, indemnity, and hold harmless provisions in favour of Canada, the representative plaintiffs, Class Counsel, the Claims Administrator, and the Independent Reviewer.
3. The Claims Administrator will assess the Claim in accordance with the Claims Process.
4. Payment of any approved Claim will be made payable to “the estate of” the deceased Day Scholar.

#### *Where There is no Executor/Administrator/Trustee/Liquidator*

5. The Claimant shall:
  - a. complete the appropriate Claim Form;
  - b. provide evidence that the Day Scholar is deceased;
  - c. provide evidence of when the Day Scholar died;
  - d. provide an attestation/declaration that the Day Scholar did not have a will and that no executor, administrator, trustee, or liquidator has been appointed by the court;

- e. provide proof of their relationship to the Day Scholar, which may take the form of an attestation/declaration from a third party;
  - f. provide an attestation/declaration from the Claimant that there is/are no higher priority heir(s);
  - g. list all individuals (if any) at the same priority level of heirs as the Claimant; and
  - h. provide the written consent of all individuals (if any) at the same priority level of heirs as the Claimant for the Claimant to submit a claim on behalf of the deceased Day Scholar.
6. The Claim Form will contain release, indemnity, and hold harmless provisions in favour of Canada, the representative plaintiffs, class counsel, the Claims Administrator, and the Independent Reviewer.
7. The Claims Administrator will assess the Claim in accordance with the Claims Process but will only make a payment for an approved Claim or communicate a dismissed Claim with a right of reconsideration in accordance with the provisions below. In cases where the Claim is dismissed with no right of reconsideration, the Claims Administrator will inform the Claimant in accordance with the Claims Administrator's normal process.
8. If no additional Claims with respect to the same deceased Day Scholar are received by the Claims Administrator before the Ultimate Claims Deadline, the Claims Administrator shall:
  - a. in the case of a Claim that is approved, pay the Claimant; and
  - b. in the case of a Claim that is dismissed, advise the Claimant of the dismissal in accordance with paragraph 17 of the Claims Process. The Claimant is able to seek reconsideration in accordance with the Claims Process.

9. If the Claims Administrator receives another Claim with respect to the same deceased Day Scholar before the Ultimate Claims Deadline, where the Claimant is the estate executor, administrator, trustee, or liquidator, the Claims Administrator shall dismiss the Claim from the non-executor, administrator, trustee, or liquidator Claimant, without any right of reconsideration.
10. If any additional Claim(s) with respect to the same deceased Day Scholar is/are received by the Claims Administrator before the Ultimate Claims Deadline, from a Claimant who is not the estate executor, administrator, trustee, or liquidator, and who is of a different priority level of heirs than the previous Claimant(s), the Claims Administrator shall contact the Claimant with the lower priority to inquire as to whether that Claimant disputes the existence of the higher priority level heir. If the existence of a higher priority level heir is disputed, the matter shall be referred to the Independent Reviewer for a determination regarding which Claimant has the highest valid priority level and deem them to be the Designated Representative of the deceased Day Scholar. The decision of the Independent Reviewer is final without any right of appeal or judicial review. The Independent Reviewer shall inform the Claims Administrator of their decision, and the Claims Administrator shall:
  - a. in the case of a Claim that is approved, pay the Designated Representative; and
  - b. in the case of a Claim that is dismissed, advise the Claimant of the dismissal in accordance with paragraph 17 of the Claims Process. The Designated Representative is able to seek reconsideration in accordance with the Claims Process.
11. If any additional Claim(s) with respect to the same deceased Day Scholar is/are received by the Claims Administrator before the Ultimate Claims Deadline, from a Claimant who is not the estate executor, administrator, trustee, or liquidator and who is of the same priority level of heirs as the previous Claimant(s), the Claims Administrator shall reject all of the Claims and notify each Claimant accordingly.

Notwithstanding the Ultimate Claims Deadline, the Claimants who submitted competing Claims will then have three months to submit one new Claim signed by all previously competing Claimants designating one Designated Representative on behalf of all of them and any other heirs. Upon receipt of the new Claim, the Claims Administrator shall:

- a. in the case of a Claim that is approved, pay the Designated Representative;
- b. in the case of a Claim that is dismissed, advise the Claimant of the dismissal in accordance with paragraph 17 of the Claims Process. The Designated Representative is able to seek reconsideration in accordance with the Claims Process.

***Priority Level of Heirs***

12. The priority level of heirs follows the distribution of property intestacy provisions of the *Indian Act* and all terms have the definitions as set out in the *Indian Act*.
13. The priority level of heirs from highest to lowest priority are as follows:
  - a. surviving spouse or common-law partner;
  - b. children;
  - c. grandchildren;
  - d. parents;
  - e. siblings; and
  - f. children of siblings.

**SCHEDULE E – Lists of Indian Residential Schools for Claims Process**

**List 1 – Schools with Confirmed Day Scholars**

<b>School</b>	<b>Location</b>	<b>Opening Date (January 1, 1920 as per the Class Period or later, as applicable)</b>	<b>School Closing or Transfer Date</b>
<b>British Columbia Residential Schools</b>			
Alberni	Port Alberni (Tseshaht Reserve)	January 1, 1920  <b>Interim Closures:</b> June 2, 1917, to December 1, 1920 February 21, 1937 to September 23, 1940	August 31, 1965
Cariboo (St. Joseph's, William's Lake)	Williams Lake	January 1, 1920	February 28, 1968
Christie (Clayoquot, Kakawis)	Tofino	January 1, 1920	June 30, 1983
Kamloops	Kamloops (Kamloops Indian Reserve)	January 1, 1920	August 31, 1969
Kuper Island	Kuper Island	January 1, 1920	August 31, 1968
Lejac (Fraser Lake)	Fraser Lake (on reserve)	January 1, 1920	August 31, 1976
Lower Post	Lower Post (on reserve)	September 1, 1951	August 31, 1968
St. George's (Lytton)	Lytton	January 1, 1920	August 31, 1972
St. Mary's (Mission)	Mission	January 1, 1920	August 31, 1973
Sechelt	Sechelt (on reserve)	January 1, 1920	August 31, 1969
St. Paul's (Squamish, North Vancouver)	Squamish, North Vancouver	January 1, 1920	August 31, 1959
<b>Alberta Residential Schools</b>			
Assumption (Hay Lake)	Assumption (Hay Lakes)	February 1, 1951	September 8, 1968

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Blue Quills	Saddle Lake Indian Reserve (1898 to 1931) St. Paul (1931 to 1990)	January 1, 1920	January 31, 1971
Crowfoot (Blackfoot, St. Joseph's, Ste. Trinité)	Cluny	January 1, 1920	December 31, 1968
Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic)	Desmarais, Wabasca / Wabisca	January 1, 1920	August 31, 1964
Ermineskin (Hobbema)	Hobbema (Ermineskin Indian Reserve)	January 1, 1920	March 31, 1969
Holy Angels (Fort Chipewyan, École des Saint-Anges)	Fort Chipewyan	January 1, 1920	August 31, 1956
Fort Vermillion (St. Henry's)	Fort Vermillion	January 1, 1920	August 31, 1964
Joussard (St. Bruno's)	Lesser Slave Lake	1920	October 31, 1969
Morley (Stony/Stoney, replaced McDougall Orphanage)	Morley (Stony Indian Reserve)	September 1, 1922	July 31, 1969
Old Sun (Blackfoot)	Gleichen (Blackfoot Reserve)	January 1, 1920  <b>Interim Closures:</b> 1922 to February 1923 June 26, 1928 to February 17, 1931	June 30, 1971
Sacred Heart (Peigan, Brocket)	Brocket (Peigan Indian Reserve)	January 1, 1920	June 30, 1961
St. Cyprian (Queen Victoria's Jubilee Home, Peigan)	Brocket (Peigan Indian Reserve)	January 1, 1920  <b>Interim Closure:</b> September 1, 1953 to October 12, 1953	June 30, 1961

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
St. Mary's (Blood, Immaculate Conception)	Cardston (Blood Indian Reserve)	1920  <b>Interim Closure:</b> September 1, 1965 to January 6, 1966	August 31, 1969
St. Paul's (Blood)	Cardston (Blood Indian Reserve)	January 1, 1920	August 31, 1965
Sturgeon Lake (Calais, St. Francis Xavier)	Calais	January 1, 1920	August 31, 1959
Wabasca (St. John's)	Wabasca Lake	January 1, 1920	August 31, 1965
Whitefish Lake (St. Andrew's)	Whitefish Lake	January 1, 1920	June 30, 1950
Grouard	West side of Lesser Slave Lake, Grouard	January 1, 1920	September 30, 1957
<b>Saskatchewan Residential Schools</b>			
Beauval (Lac la Plonge)	Beauval	January 1, 1920	August 31, 1968
File Hills	Balcarres	January 1, 1920	June 30, 1949
Gordon's	Punnichy (Gordon's Reserve)	January 1, 1920  <b>Interim Closures:</b> June 30, 1947, to October 14, 1949 January 25, 1950 to September 1, 1953	August 31, 1968

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	Lebret	January 1, 1920  <b>Interim Closure:</b> November 13, 1932 to May 29, 1936	August 31, 1968
Marieval (Cowesess, Crooked Lake)	Cowesess Reserve	January 1, 1920	August 31, 1969
Muscowequan (Lestock, Touchwood)	Lestock	January 1, 1920	August 31, 1968
Prince Albert (Onion Lake Anglican, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	Onion Lake / Lac La Ronge / Prince Albert	January 1, 1920	August 31, 1968
St. Anthony's (Onion Lake, Sacred Heart)	Onion Lake	January 1, 1920	March 31, 1969
St. Michael's (Duck Lake)	Duck Lake	January 1, 1920	August 31, 1968
St. Philip's	Kamsack	April 16, 1928	August 31, 1968
<b>Manitoba Residential Schools</b>			
Assiniboia (Winnipeg)	Winnipeg	September 2, 1958	August 31, 1967
Brandon	Brandon	1920  <b>Interim Closure:</b> July 1, 1929 to July 18, 1930	August 31, 1968
Churchill Vocational Centre	Churchill	September 9, 1964	June 30, 1973
Cross Lake (St. Joseph's, Norway House)	Cross Lake	January 1, 1920	June 30, 1969
Fort Alexander (Pine Falls)	Fort Alexander Reserve No. 3, near Pine Falls	January 1, 1920	September 1, 1969

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK)	Clearwater Lake	September 5, 1952	August 31, 1968
Norway House	Norway House	January 1, 1920  <b>Interim Closure:</b> May 29, 1946 to September 1, 1954	June 30, 1967
Pine Creek (Camperville)	Camperville	January 1, 1920	August 31, 1969
Portage la Prairie	Portage la Prairie	January 1, 1920	August 31, 1960
Sandy Bay	Sandy Bay Reserve	January 1, 1920	June 30, 1970
<b>Ontario Residential Schools</b>			
Bishop Horden Hall (Moose Fort, Moose Factory)	Moose Island	January 1, 1920	August 31, 1964
Cecilia Jeffrey (Kenora, Shoal Lake)	Shoal Lake	January 1, 1920	August 31, 1965
Fort Frances (St. Margaret's)	Fort Frances	January 1, 1920	August 31, 1968
McIntosh (Kenora)	McIntosh	May 27, 1925	June 30, 1969
Pelican Lake (Pelican Falls)	Sioux Lookout	September 1, 1927	August 31, 1968
Poplar Hill	Poplar Hill	September 1, 1962	June 30, 1989
St. Anne's (Fort Albany)	Fort Albany	January 1, 1920	June 30, 1976
St. Mary's (Kenora, St. Anthony's)	Kenora	January 1, 1920	August 31, 1968
Spanish Boys' School (Charles Garnier, St. Joseph's)	Spanish	January 1, 1920	June 30, 1958
Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's)	Spanish	January 1, 1920	June 30, 1962

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	School Closing or Transfer Date
<b>Quebec Residential Schools</b>			
Fort George (Anglican)	Fort George	September 1, 1933  <b>Interim Closure:</b> January 26, 1943 to July 9, 1944	August 31, 1971
Fort George (Roman Catholic)	Fort George	September 1, 1937	June 30, 1978
Point Bleue	Point Bleue	October 6, 1960	August 31, 1968
Sept-Îles	Sept-Îles	September 2, 1952	August 31, 1969
<b>Nova Scotia Residential Schools</b>			
Shubenacadie	Shubenacadie	September 1, 1929	June 30, 1967
<b>Northwest Territories Residential Schools</b>			
Aklavik (Immaculate Conception)	Aklavik	July 1, 1926	June 30, 1959
Aklavik (All Saints)	Aklavik	August 1, 1936	August 31, 1959
Fort Providence (Sacred Heart)	Fort Providence	January 1, 1920	June 30, 1960
Fort Resolution (St. Joseph's)	Fort Resolution	January 1, 1920	December 31, 1957
Hay River (St. Peter's)	Hay River	January 1, 1920	August 31, 1937
<b>Yukon Residential Schools</b>			
Carcross (Chooutla)	Carcross	January 1, 1920  <b>Interim Closure:</b> June 15, 1943 to September 1, 1944	June 30, 1969
Whitehorse Baptist Mission	Whitehorse	September 1, 1947	June 30, 1960
Shingle Point Eskimo Residential School	Shingle Point	September 16, 1929	August 31, 1936

## List 2 – Schools Not Known to Have Day Scholars

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	Closing or Transfer Date
<b>British Columbia Residential Schools</b>			
Ahousaht	Ahousaht (Maktosis Reserve)	January 1, 1920	January 26, 1940
Coqualeetza from 1924 to 1940	Chilliwack	January 1, 1924	June 30, 1940
Cranbrook (St. Eugene's, Kootenay)	Cranbrook (on reserve)	January 1, 1920	June 23, 1965
St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	Alert Bay (on reserve)	January 1, 1920	August 31, 1960
<b>Alberta Residential Schools</b>			
Edmonton (Poundmaker, replaced Red Deer Industrial)	St. Albert	March 1, 1924  <b>Interim Closures:</b> July 1, 1946 to October 1, 1946 July 1, 1951 to November 5, 1951	August 31, 1960
Lesser Slave Lake (St. Peter's)	Lesser Slave Lake	January 1, 1920	June 30, 1932
St. Albert (Youville)	St. Albert, Youville	January 1, 1920	June 30, 1948
Sarcee (St. Barnabas)	Sarcee Junction, T'suu Tina (Sarcee Indian Reserve)	January 1, 1920	September 30, 1921
<b>Saskatchewan Residential Schools</b>			
Round Lake	Broadview	January 1, 1920	August 31, 1950
Sturgeon Landing (replaced by Guy Hill, MB)	Sturgeon Landing	September 1, 1926	October 21, 1952
Thunderchild (Delmas, St. Henri)	Delmas	January 1, 1920	January 13, 1948
<b>Manitoba Residential Schools</b>			
Birtle	Birtle	January 1, 1920	June 30, 1970

School	Location	Opening Date (January 1, 1920 as per the Class Period or later, as applicable)	Closing or Transfer Date
Dauphin (replaced McKay)	The Pas / Dauphin	See McKay below	See McKay below
Elkhorn (Washakada)	Elkhorn	January 1, 1920  <b>Interim Closure:</b> 1920 to September 1, 1923	June 30, 1949
McKay (The Pas, replaced by Dauphin)	The Pas / Dauphin	January 1, 1920  <b>Interim Closure:</b> March 19, 1933 to September 1, 1957	August 31, 1968
<b>Ontario Residential Schools</b>			
Chapleau (St. John's)	Chapleau	January 1, 1920	July 31, 1948
Mohawk Institute	Brantford	January 1, 1920	August 31, 1968
Mount Elgin (Muncey, St. Thomas)	Muncey	January 1, 1920	June 30, 1946
Shingwauk	Sault Ste. Marie	January 1, 1920	June 30, 1970
St. Joseph's / Fort William	Fort William	January 1, 1920	September 1, 1968
Stirland Lake High School (Wahbon Bay Academy)	Stirland Lake	September 1, 1971	June 30, 1991
Cristal Lake High School	Stirland Lake	September 1, 1976	June 30, 1986
<b>Quebec Residential Schools</b>			
Amos	Amos	October 1, 1955	August 31, 1969
La Tuque	La Tuque	September 1, 1963	June 30, 1970

## SCHEDULE F

### DAY SCHOLARS REVITALIZATION SOCIETY PLAN

The Parties have agreed to settle the claims of the Survivor Class and the Descendant Class (“Survivors”, “Descendants”) in the *Gottfriedson v. AGC* proceeding. Under the Settlement Agreement, the Parties have agreed that Canada will fund \$50 million to establish the Day Scholars Revitalization Society (the “Society”). The Parties agree the intention of the Society will be to support Survivors and Descendants in healing, wellness, education, language, culture, heritage, and commemoration activities and programs.

The monies will be used by the Society to support activities and programs for the benefit of the Survivors and Descendants as follows:

- a. to revitalize and protect the Survivors’ and Descendants’ Indigenous languages;
- b. to protect and revitalize the Survivors’ and Descendants’ Indigenous cultures;
- c. to pursue healing and wellness for the Survivors and Descendants;
- d. to protect the Survivors’ and Descendants’ Indigenous heritage; and,
- e. to promote education and commemoration.

The activities and programs will not duplicate those of the Government of Canada. Grants will be made to Survivors and Descendants for activities and programs designed to support healing and address any losses to languages, culture, wellness, and heritage that Survivors suffered while attending Indian Residential Schools as Day Scholars.

The Society will be incorporated under the B.C. *Societies Act* prior to the Implementation Date and will be properly registered in each jurisdiction in Canada to the extent required by those jurisdictions. The Society will have between 5 and 11 Directors. One of those Directors will be named by Canada, but will not be a Government

employee. The Parties will ensure the other Directors provide adequate regional representation from across Canada.

The Society will have a small administrative staff and will retain financial consultants to provide investment advice. Once funds have been invested, the expenses of the Society will be funded from investment income.

### ***Advisory Board***

The Directors will be guided by an Advisory Board consisting of individuals, appointed by the Directors, who provide regional representation, understanding and knowledge of the loss and revitalization of Indigenous languages, cultures, wellness and heritage.

The Advisory Board shall advise the Directors regarding all activities of the Directors in the pursuit of the activities of the Society, including the development and implementation of a policy for applications to obtain funding from the Society in that pursuit.

## 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.

- 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;

- 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:

- 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;

- 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;

- 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
1. “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

**SCHEDULE “A”  
to the Order of Justice MacDonald  
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. 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)  
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

**SCHEDULE H**

**Amended Pursuant to the Order of Justice McDonald  
Made \_\_\_\_\_**

**Court File No. T-1542-13**

**CLASS PROCEEDING**

**FORM 171A - Rule 171**

**FEDERAL COURT**

**BETWEEN:**

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

CHIEF GARRY FESCHUK, on behalf of 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: \_\_\_\_\_

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 Identified 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 Identified 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 bands in the Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the 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)” 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) “Class” means the Tk’emlúps te Secwépemc Indian Band and the shíshálh band and any other Aboriginal Indian Band(s) which:
  - (i) has or had some members who are or 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.
- (g) “Canada” means the Defendant, Her Majesty the Queen in right of Canada as represented by the Attorney General of Canada;
- (h) “Class Period” means 1920 to 1997;
- (i) “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;

- (j) “Identified Residential School(s)” means the KIRS or the SIRS Residential School;
- (k) “KIRS” means the Kamloops Indian Residential School;
- (l) “Residential Schools” means all Indian Residential Schools recognized under the Agreement;
- (m) “Residential Schools Policy” means the policy of Canada with respect to the implementation of Indian Residential Schools;
- (n) “SIRS” means the Sechelt Indian Residential School;
- (o) “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 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. 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].

## **THE PARTIES**

### **The Plaintiffs**

3. The Tk’emlúps te Secwépemc Indian Band and the shíshálh band are Aboriginal 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 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 who *resided at* Canada's Residential Schools by way of the Agreement implemented in 2007. Notwithstanding the truth and acknowledgement of the wrong and the damages caused, many members of Canada's Aboriginal communities were excluded from the Agreement, not because they did not *attend* Residential Schools and suffer Cultural, Linguistic and Social Damage, but simply because they did not *reside at* Residential Schools.

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 Nations.

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 Aboriginal Persons to whom Canada owed fiduciary and constitutionally-mandated duties. The intended eradication of Aboriginal identity, culture, language, and spiritual practices, to the extent successful, results in the reduction of the obligations owed by Canada in proportion to the number of individuals, over generations, who would no longer identify as Aboriginal and who would be less likely 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 all of the 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 shishalh 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.

35. The Class members have all been affected by a crippling or elimination of traditional ceremonies and a loss of the hereditary governance structure which allowed for the ability to govern their peoples and their lands.

### *Canada's Duties*

36. 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.

37. 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, and in particular article 8, 2(d), which commits to the provision of effective mechanisms for redress for forced assimilation.

38. 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***

39. Canada has constitutional obligations to, and a fiduciary relationship with, Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated the Residential Schools and established the Residential Schools Policy. Through these acts, and 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.

40. 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.

41. 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 included the duty not to deliberately reduce the number of the beneficiaries to whom Canada owed its duties.

42. The fiduciary and constitutional duties owed by Canada extend to the Class because the Residential Schools Policy was intended to, and did, undermine and seek to destroy the way of life established and enjoyed by these Nations whose identities were and are viewed as collective.

43. Canada acted in its own self-interest and contrary to the interests of Aboriginal Children, not only by being disloyal to, but by actually betraying the Aboriginal Children and communities whom it had a duty to protect. Canada wrongfully exercised its discretion and power over Aboriginal People, 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, 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.

44. In 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***

45. 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 Nations have sustained

their individual members, communities and distinctive cultures by speaking their languages and practicing their customs and traditions.

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

- (a) shíshálh, Tk'emlúps and other Aboriginal cultural, spiritual and traditional activities have been lost or impaired;
- (b) the traditional social structures, including the equal authority of male and female leaders have been lost or impaired;
- (c) the shíshálh, Tk'emlúps and other Aboriginal languages have been lost or impaired;
- (d) traditional shíshálh, Tk'emlúps and Aboriginal parenting skills have been lost or impaired;
- (e) shíshálh, Tk'emlúps and other Aboriginal skills for gathering, harvesting, hunting and preparing traditional foods have been lost or impaired; and,
- (f) shíshálh, Tk'emlúps and Aboriginal spiritual beliefs have been lost or impaired.

47. Canada had at all material times and continues to have a duty to 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.

### ***Vicarious Liability***

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

49. 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**

50. 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 has 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**

51. 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**

52. The Class members are Aboriginal Indian Bands

53. 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.

54. 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 People and especially Aboriginal Children who were particularly vulnerable. Canada breached those duties, causing harm.

55. 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.

### **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*, ss. 7, 15;

*Constitution Act, 1982*, ss. 25 and 35(1),

*The Canadian Bill of Rights*, R.S.C. 1985, App. III, Preamble, ss. 1 and 2;

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

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;

*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;

*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);

*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;

*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

*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.

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

April 30, 2021

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Peter R. Grant, on behalf of  
all Solicitors for the Plaintiffs

*Solicitors for the Plaintiffs*

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