

Amended Pursuant to the Order of Justice Harrington
Made June 3, 2015

Court File No. T-1542-13

~~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,

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 shíshálh 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 Frezie) 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 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'émłúpsəmc, 'the people of the confluence', now known as the Tk'émłúps te Secwépeḡc Indian Band are members of the northernmost of the Plateau People and of the Interior-Salish Secwépeḡc (Shuswap) speaking peoples of British Columbia. The Tk'émłúps 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'émłúps Indian Band, resident or formerly resident on the reserve.

32. Secwepemctsin is the language of the Secwépeḡc, and it is the unique means by which the cultural, ecological, and historical knowledge and experience of the Secwépeḡc 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 Secwépeḡc people are captured and shared. From the Secwépeḡc perspective all aspects of Secwépeḡc 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 Secwépeḡc by the Creator for communication to the people and to the natural world. This communication created a reciprocal and cooperative relationship between the Secwépeḡc 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 Secwépeḡc culture, traditions, laws and identity.

34. For the Secwépeḡc, 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 shíshááh 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 *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

{01447063.2}

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 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 11th, 2013

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

Solicitors for the Plaintiffs

~~Len Marchand
Fulton & Company LLP
#300-350 Lansdowne Street
Kamloops, BC
V2C 1Y4
Tel: (250) 372-5542
Fax: (250) 851-2300~~

) Contact and Address for Service
) for the Plaintiffs

Peter R. Grant
Peter Grant & Associates
Barristers and Solicitors
900 - 777 Hornby Street
Vancouver, BC
V6Z 1S4
Tel: (604) 685-1229
Fax: (604) 685-0244

John Kingman Phillips
Phillips Gill LLP, Barristers
Suite 200
33 Jarvis Street
Toronto, ON
M5E 1N3
Tel: (647) 220-7420
Fax: (416) 703-1955

