

Federal Court



Cour fédérale

Date: 20231211

Docket: T-1417-18

Ottawa, Ontario, December 11, 2023

PRESENT: The Honourable Mr. Justice Pamel

CERTIFIED CLASS PROCEEDING

BETWEEN:

**REGINALD PERCIVAL, ALLAN MEDRICK MCKAY,
IONA TEENA MCKAY and LORNA WATTS**

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

ORDER

UPON HEARING the motion made by the plaintiffs, heard at a special sitting of the Court on September 12, 13 and 14, 2023, for an Order pursuant to Rule 334.29 of the *Federal Courts Rules*, SOR/98-106, approving a settlement agreement [Settlement Agreement] and for such further and other relief as counsel may request and this Court may permit;

AND CONSIDERING the motion material filed by the parties and the submissions of counsel at the hearing of the motion;

AND CONSIDERING the statements made by the representative plaintiffs and class members at the hearing of the motion in support of the approval of the Settlement Agreement;

AND CONSIDERING that the defendant consents to the relief sought;

AND CONSIDERING that the Court is satisfied, for reasons to follow, that the relief sought should be granted;

THIS COURT ORDERS that:

1. The Settlement Agreement which is attached to this Order as Schedule “A” is hereby approved as fair and reasonable, and in the best interests of class members as a whole.
2. Notwithstanding sections 1.01 and 4.02 of the Settlement Agreement, the date for the expiry of the opt-out period [Opt Out Period] will be set forth in the reasons to follow at a later date.
3. Notwithstanding paragraph 4 of the Order dated June 16, 2023, an opt-out form delivered electronically through the websites boardinghomesclassaction.com or foyersfamiliauxfederaux.com need not be signed.
4. The claims of the Primary Class Members and the Family Class Members as a whole are hereby dismissed against the defendant in accordance with articles 10.01 and 10.02 of the Settlement Agreement; in particular, as follows:
 - a. Each Primary Class Member or their Estate Executor or Personal Representative who has not opted out of the Class Action on or before the

expiry of the Opt Out Period [Primary Class Releasers] 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 or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses, and interest which any such Primary Class Releaser ever had, now has, or may hereafter have, directly or indirectly, arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the individual claims relating to *Reginald Percival et al v His Majesty the King* (T-1417-18), and this release includes any such claim made or that could have been made in any proceeding, whether asserted directly by the Primary Class Releaser or by any other person, group, or legal entity on behalf of or as representative for the Primary Class Releaser.

- b. For greater certainty, Primary Class Releasers are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute or the common law, Quebec civil law in relation to the individual claims under *Reginald Percival et al v His Majesty the King* (T-1417-18), the Primary Class Releaser will expressly limit those claims so as to exclude any portion of Canada's responsibility.

- c. Upon a final determination of an application made under and in accordance with the Claims Process, Primary Class Releasors are also deemed to agree to release the Parties, Class Counsel, Quebec Subclass Counsel and counsel for Canada, the Claims Administrator, and the Independent Reviewer 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. Primary Class Releasors are not deemed to release any claim arising from the preparation of their individual applications as against the lawyer or lawyers retained to assist them in the preparation of the application.
- d. Each Family Class Member who has not opted out of the Class Action on or before the expiry of the Opt Out Period [Family Class Releasors] 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 or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses, and interest which any such Family Class Releasor ever had, now has, or may hereafter have, directly or indirectly, arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the individual claims under *Reginald Percival et al v His Majesty the King* (T-1417-18), and this release includes any such claim made or that could have been made in any

proceeding, whether asserted directly by the Family Class Releasor or by any other person, group, or legal entity on behalf of or as representative for the Family Class Releasor.

- e. For greater certainty, Family Class Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute, the common law, or Quebec civil law, in relation to the individual claims under *Reginald Percival et al v His Majesty the King* (T-1417-18), the Family Class Releasor will expressly limit those claims so as to exclude any portion of Canada's responsibility.

- 5. There shall be no costs of this motion.

"Peter G. Pamel"

Judge

Schedule “A”

Court File No.: T-1417-18

**FEDERAL COURT
CERTIFIED CLASS PROCEEDING**

Between:

REGINALD PERCIVAL, ALLAN MEDRICK MCKAY,
IONA TEENA MCKAY AND LORNA WATTS

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

Brought pursuant to the *Federal Courts Rules*, SOR/98-106

SETTLEMENT AGREEMENT

WHEREAS

- A. *Reginald Percival et al v. His Majesty the King* (T-1417-18) was commenced in Federal Court on July 24, 2018 (“Percival”);
- B. An application for authorization to institute a class action was filed in the Quebec Superior Court in the District of Montreal, *Wiichihiiwewin Centre of Waskaganish and Anne Smith v. Attorney General of Canada* (500-06-00812-160), which has not been authorized (the “Quebec Claim”);
- C. Both the Percival action and the Quebec Claim action seek compensation and other benefits for students who were part of the federal Indian Boarding Homes Program. The Parties agree that this Settlement Agreement will resolve both Percival and the Quebec Claim. By order from the Quebec Superior Court dated April 1st, 2021, the Quebec Claim is currently stayed until a 60-days period after final judgment to be rendered in the Percival action, considering that the Quebec Claim cause of action is subsumed in the Percival certification order;

- D. Commencing in 1951, Indigenous students across Canada were placed by Canada in private homes for the purpose of attending school, other than a post-secondary institution. Certain abuses were committed against them and harms were suffered by students placed in the Indian Boarding Homes Program;
- E. Over time, responsibility for the placement of students was transferred from Canada to Indigenous governing bodies;
- F. Percival was certified on consent as a class proceeding by order of Madam Justice Strickland, dated June 28, 2019;
- G. A dispute resolution conference was held in Percival in Toronto before Madam Justice Strickland on November 14 – 16, 2022, and December 6 – 7, 2022;
- H. On December 7, 2022, the Parties entered into an Agreement in Principle with respect to the settlement of Percival. The Parties have committed to work together to prepare a final settlement agreement (the “Settlement Agreement”) and supporting documents for claims administration and notice;
- I. The Parties intend there to be a fair, comprehensive and lasting settlement of claims related to the Indian Boarding Homes Program, and further desire the promotion of healing, education, commemoration, and reconciliation. They have negotiated this Settlement Agreement with these objectives in mind;
- J. Subject to the Approval Order and the expiry of the Opt Out Period without the Opt Out Threshold having been met or waived by the Defendant, the claims of the Primary Class Members and Family Class Members, save and except for the claims of Primary Class Members who have opted out of the Class Action before the end of the Opt Out Period, shall be settled on the terms contained in this Agreement;

NOW THEREFORE in consideration of the mutual agreements, covenants, and undertakings set out herein, the Parties agree as follows:

SECTION ONE

INTERPRETATION

1.01 Definitions

In this Agreement, the following definitions apply:

“Agreement in Principle” means the Agreement in Principle dated December 7, 2022, and attached hereto as Schedule A;

“Application” means a claim for compensation by a Claimant submitted to the Claims Administrator;

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

“Business Day” means a day other than a Holiday;

“Canada” means His Majesty the King in Right of Canada, the Attorney General of Canada, and their legal representatives, employees, agents, servants, predecessors, successors, executors, administrators, heirs, and assigns;

“Category 1 Payment” means a payment of \$10,000;

“Category 2 Payment” means the further payment in accordance with a compensation grid attached as Schedule B;

“Category 2 Compensation Grid” means the compensation grid attached as Schedule B;

“Certification Order” means the order of the Federal Court dated June 28, 2019, certifying this Class Action under the *Federal Courts Rules*;

“Claimant” means a Primary Class Member or an Estate Executor, or Personal Representative, who makes a claim by completing and submitting an Application to the Claims Administrator;

“Claim Deadline” means the date that is two years and six months after the Implementation Date;

“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 Process” means the process outlined in this Agreement and related forms, for the submission, assessment, determination and payment of compensation to Primary Class Members;

“Class Action” or **“Percival”** means the class action certified by the Federal Court on June 28, 2019, with the style of cause: *Reginald Percival, Allan Medrick McKay, Iona Teena McKay and Lorna Watts v. His Majesty the King* (Federal Court File #T-1417-18);

“Class Counsel” means Klein Lawyers LLP;

“Class Members” means Primary Class Members and Family Class Members;

“Court” means the Federal Court unless the context otherwise requires;

“Eligible Claimant” means a Claimant who has made an Application in accordance with this Agreement which has been approved for payment by the Claims Administrator;

“Estate Executor” means the executor, administrator, trustee or liquidator of a deceased Primary Class Member’s estate;

“Exceptions Committee” means the committee established in Section 9;

“Family Class Member” means a person who has a derivative claim in accordance with applicable family law legislation arising from a family relationship with a Primary Class Member;

“Family Class Releasers” means each Family Class Member who has not opted out of the Class Action on or before the expiry of the Opt Out Period as set out in section

10.02(1);

“Federal Indian Boarding Home Program” or **“Indian Boarding Home Program”** or **“IBHP”** means the program administered by Canada whereby Indigenous children were placed in private homes for the purpose of attending school, excluding post-secondary education;

“Foundation” means the foundation established pursuant to Section 2.01;

“Holiday” means any 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 as set out in the *Interpretation Act*, RSC 1985, c I-21, s 35 or a holiday as set out in the *Federal Courts Rules*, SOR/98-106, s 2;

“Implementation Date” means the latest of:

- a) thirty (30) days after the expiry of the Opt-Out Period; and
- b) the day following the last day on which a Primary Class Member or the Family Class Member may appeal or seek leave to appeal the Approval Order; and
- c) the date of the final determination of any appeal brought in relation to the Approval Order;

“Independent Reviewer” means the person or persons appointed by the Court to carry out the duties of the Independent Reviewer as specified in this Agreement and in the Claims Process;

“Opt Out Period” means the period from publication of the notice of certification of the Class Action as a class proceeding until a date set by the Court that is at least sixty (60) days from the Approval Order;

“Opt Out Threshold” means the Opt Out Threshold set out in Section 5.02;

“Parties” means the signatories to this Agreement;

“Person Under Disability” means 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;

“Personal Representative” means the person appointed to manage or make reasonable judgments or decisions in respect of the affairs of a Person Under Disability;

“Primary Class Member” means a person who was placed by the Government of Canada in a private home for the purpose of attending school, excluding placements made for the purpose of attending a post-secondary educational institution, and includes any person participating in the IBHP during the period from and including September 1, 1951, and ending on June 30, 1992. A person who participated in the IBHP between September 1, 1951, and June 30, 1992, is deemed to be placed by Canada. A person who was placed in a private home for the purpose of attending school, excluding placements made for the purpose of attending a post-secondary educational institution after June 30, 1992, is a Primary Class Member if that person was placed prior to the date on which responsibility for such placement was transferred from Canada to an Indigenous governing body;

“Primary Class Releasors” means Each Primary Class Member or their Estate Executor or Personal Representative who has not opted out of the Class Action on or before the expiry of the Opt Out Period as set out in section 10.01(1);

“Quebec Subclass Counsel” means Dionne Schulze S.E.N.C.;

“Request for Deadline Extension” means a request for an extension of the Claim Deadline made by a Claimant in accordance with Section 7.04 of this Agreement;

“Settlement Agreement” or **“Agreement”** means this Agreement and the Schedules attached hereto.

1.02 No Admission of Liability

This Agreement shall not be construed as an admission of liability by the Defendant.

1.03 Headings

The division of this Agreement into sections and the use of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

1.04 Extended Meanings

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".

1.05 No Contra Proferentem

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.

1.06 Statutory References

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.

1.07 Day For Any Action

Where the time on or by which any action required to be taken hereunder expires or falls on a day that is a Holiday, such action may be done on the next succeeding day that is a Business Day.

1.08 Final Order

For the purpose of this Agreement, a judgment or order becomes final when the time for appealing or seeking leave to appeal the judgement 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.

1.09 Currency

All references to currency herein are to lawful money of Canada.

1.10 Compensation Inclusive

The amounts payable to Primary Class Members under this Agreement are inclusive of any prejudgment or post-judgment interest or other amounts that may be claimed by Primary Class Members against Canada for claims arising out of Percival.

1.11 Schedules

The following Schedules to this Agreement are incorporated into and form part of this Agreement:

Schedule A	Agreement in Principle
Schedule B	Category 2 Compensation Grid
Schedule C	Percival Statement of Claim
Schedule D	Quebec Claim Amended Application for Authorization
Schedule E	Certification Order
Schedule F	Draft Federal Court Approval Order

1.12 No Other Obligations

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 Primary Class Member or Family Class Member ever had, now has, or may hereafter have arising in relation to Percival 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 Implementation Date, and Canada will have no further liability except as set out in this Agreement.

1.13 Entire Agreement

This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof 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.

1.14 Benefit of the Agreement

This Agreement will enure to the benefit of and be binding upon the Parties, Class Members and their respective heirs, Estate Executors, and Personal Representatives.

1.15 Applicable Law

This Agreement will be governed by and construed in accordance with the laws of the Province or Territory where the Primary Class Member or Family Class Member resides and the laws of Canada applicable therein.

1.16 Counterparts

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.

1.17 Official Languages

A French translation of this Agreement will be prepared as soon as practicable after the execution of this Agreement. Canada will pay for the costs of a translation, to be approved by the Parties. The French version shall be of equal weight and force at law.

1.18 Date when Binding and Effective

On the Implementation Date, this Agreement will become binding and effective on the Parties and all Primary Class Members and Family Class Members. The Approval Order constitutes approval of this Settlement Agreement by all Primary Class Members who have not exercised their right to opt out of the Class Action.

1.19 Effective in Entirety

Subject to Section 11.01(2), none of the provisions of this Agreement will become effective unless and until the Federal Court approves this Agreement.

SECTION TWO

LEGACY MEASURES

2.01 Establishing the Foundation

(1) As part of the legacy of the IBHP, the Parties are committed to implementing the Settlement Agreement in a manner that contributes to commemoration, healing, languages, culture and reconciliation. The Parties agree that these essential objectives will be supported and promoted through the funding of certain projects. To this end, the Foundation will be established under the *Canada Not-for-Profit Corporations Act* prior to the Implementation Date.

(2) The Parties agree that the intention of the Foundation is to promote and support Class Members and their descendants in healing, wellness, education, languages, cultures, heritage, commemoration and reconciliation activities and programs. The activities and programs will not duplicate those of the Government of Canada.

2.02 Directors

- (1) The Foundation will have at least five first directors, to be appointed by the Parties.
- (2) The board of directors of the Foundation will consist of individuals providing national First Nations and Inuit representation, including Québec. The board of directors will include one director appointed by Canada. The director appointed by Canada will not be an employee or public servant of Canada.
- (3) The Foundation's directors shall supervise the activities and affairs of the Foundation, which will receive, hold, invest, manage, and disburse the Foundation's monies for the Foundation's purposes as described in the Settlement Agreement.

2.03 Advisory Board

- (1) The directors of the Foundation 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.

2.04 Funding

- (1) Canada will provide fifty million dollars (\$50,000,000.00) to the Foundation to fund the Foundation's activities. These funds will be paid to the Foundation within 30 days after the Implementation Date.
- (2) The Foundation will have a small administrative staff and will retain financial consultants to provide investment advice. Once funds have been invested, the expenses of the Foundation will be paid from its capital and its investment income.

2.05 Commemoration

- (1) In order to satisfy the Class Members' call for full and public disclosure of the truth, the Foundation shall take measures to commemorate and memorialize the harms caused

by the Indian Boarding Homes Program by creating a historical record that is accessible to the public for future study and use; this record is intended to be based on both investigation and testimony.

SECTION THREE

COMPENSATION FOR INDIVIDUAL CLAIMANTS

3.01 Payment to Primary Class Members

- (1) Payments shall be made to Eligible Claimants for general damages; specifically,
 - (a) a Category 1 Payment of \$10,000 for placement in the IBHP; and,
 - (b) a further Category 2 Payment in accordance with the Category 2 Compensation Grid.
- (2) A Claimant who applies for a Category 1 Payment may make a separate Application for a Category 2 Payment. A Claimant may not apply for more than one Category 2 Payment.

3.02 Transfer of Funds by Canada

Canada will transfer funds directly to the Claims Administrator to provide for payment to Eligible Claimants, as described in the Claims Process.

3.03 Social Benefits

- (1) 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 Primary Class Member pursuant to any legislation of any province or territory of Canada.
- (2) 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 Primary Class Member pursuant to any Canadian social benefit programs including Old Age Security and Canada Pension Plan.

SECTION FOUR

IMPLEMENTATION OF THIS AGREEMENT

4.01 Quebec Claim

An application to discontinue the Quebec Claim shall be filed within thirty (30) days of the Implementation Date, without costs and without conditions.

4.02 Federal Court Approval Order

The Parties agree that an Approval Order of this Settlement Agreement will be sought from the Federal Court substantially in the form attached as Schedule F and shall include the following provisions:

- (1) incorporating by reference this Agreement in its entirety including all Schedules;
- (2) ordering and declaring that the Approval Order is binding on all Primary Class Members and Family Class Members, including Persons Under Disability, unless they have opted out on or before the expiry of the Opt Out Period; and
- (3) ordering and declaring that on the expiry of the Opt Out Period, no Primary Class Members save and except those who have opted out on or before expiry of the Opt Out Period, and no Family Class Members may commence proceedings against Canada seeking compensation or other relief arising from or in relation to a Primary Class Member's participation in the Indian Boarding Homes Program.

SECTION FIVE

OPTING OUT

5.01 Right to Opt Out

Primary Class Members and Family Class Members have the right to opt out of the Class Action in accordance with the opt out procedures stipulated by the Court in an order to be obtained by the Parties approving a notice to the class of the certification of this action as a class proceeding and of the right to opt out.

5.02 Opt Out Threshold

If the number of Primary Class Members opting out of the Class Action exceeds 4,000, this Settlement Agreement will be void and the Approval Order will be set aside in its entirety subject only to the right of Canada, in its sole discretion, to waive compliance with this section. Canada has the right to waive compliance with this provision at any time, but within no more than thirty (30) days after the end of the Opt Out Period. The Opt Out Threshold does not include opt outs filed by Family Class Members.

SECTION SIX

PAYMENTS TO ESTATE EXECUTORS OR PERSONAL REPRESENTATIVES

6.01 Compensation if Deceased

(1) If a Primary Class Member died or dies on or after July 24, 2016, and an Application has been submitted to the Claims Administrator by a Claimant prior to the Primary Class Member's death, or by his or her Estate Executor after the Primary Class Member's death, the Estate Executor shall be paid the compensation to which the deceased Primary Class Member would have been entitled under this Settlement Agreement as if the Primary Class Member had not died. If there is no Estate Executor, the compensation to which the deceased Primary Class Member would have been entitled under this Settlement Agreement will be paid in accordance with a protocol to be agreed upon by the Parties and approved by the Court.

(2) No payment under this Settlement Agreement is available for Primary Class Members who died before July 24, 2016.

6.02 Person Under Disability

If a Primary Class Member who submitted an Application to the Claims Administrator within the Claims Deadline is or becomes a Person Under Disability prior to their receipt of compensation, the Personal Representative of the Primary Class Member will be paid the compensation to which the Primary Class Member would have been entitled under this Settlement Agreement

6.03 Canada, Claims Administrator, Class Counsel, Quebec Subclass Counsel, Independent Reviewer and Exceptions Committee and its Members, Held Harmless

Canada, the Claims Administrator, Class Counsel, Quebec Subclass Counsel, the Independent Reviewer and the Exceptions Committee and its members shall be held harmless from any and all claims, suits, actions, causes of action, or demands whatsoever by reason of or resulting from a payment to a Personal Representative or Estate Executor pursuant to this Settlement Agreement.

SECTION SEVEN

CLAIM PROCESS

7.01 Claims Process

The Claims Administrator will pay compensation to a Claimant provided that:

- a) the Application is submitted to the Claims Administrator in accordance with the provisions of this Agreement;
- b) the Application is received by the Claims Administrator prior to the Claim Deadline or any extension thereof;
- c) the Primary Class Member was alive on July 24, 2016; and
- d) an award of compensation has been approved in accordance with this

Agreement including the Claims Process.

7.02 Compensation for Primary Class Members

(1) It is the intention of the Parties that Category 1 Payments will be paid to all Eligible Claimants for the Primary Class Members' participation in the IBHP.

(2) It is the intention of the Parties that Category 2 Payments will be paid for Primary Class Members who suffered psychological, physical, and sexual abuse at the boarding home. The amount of the Category 2 Payments will be determined in accordance with the Category 2 Compensation Grid. Compensation will only be paid for Primary Class Members whose Applications have been approved as eligible for compensation in accordance with this Settlement Agreement.

7.03 Principles Governing Claims Administration

(1) The Claims Process is intended to be expeditious, cost-effective, user-friendly and culturally sensitive and respect Class Member's privacy. The intent is to minimize the burden on the Claimant in pursuing their claims and to mitigate any likelihood of re-traumatization through the Claims Process.

(2) The Claims Administrator, Independent Reviewer, and Exceptions Committee and its members, 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, Independent Reviewer, and Exceptions Committee and its members, shall draw all reasonable and favourable inferences that can be drawn in favour of the Claimant, as well as resolving any doubt as to whether a claim has been established in favour of the Claimant.

7.04 Request for Deadline Extension

(1) The Parties recognize that in extraordinary circumstances a Claimant should receive relief from the strict application of the Claim Deadline. Requests for Deadline Extension will be decided by the Exceptions Committee.

(2) The Request for Deadline Extension form will be a single form that includes all of the information required to support an Application as well as information as to why the Claim Deadline was not met by the Claimant.

(3) The deadline for making a Request for Deadline Extension will be six months after the Claim Deadline. A Request for Deadline Extension will not be considered if the Request for Deadline Extension is transmitted after that date.

7.05 Reconsideration

A Claimant whose Application is denied by the Claims Administrator may seek a reconsideration of the Application by the Independent Reviewer. A Claimant whose Application for a Category 2 Payment is assessed by the Claims Administrator at a level lower than the level the Claimant has identified in the Application may seek a reconsideration by the Independent Reviewer. The procedures for reconsideration will be set out in a protocol to be developed by the Parties and approved by the Court.

7.06 Referrals to the Exceptions Committee

(1) The Independent Reviewer shall refer an Application to the Exceptions Committee in the following circumstances:

- a) Where harm described in the Application is not contemplated in the Category 2 Compensation Grid; or
- b) Where the Independent Reviewer, is unable to determine that a Claimant is eligible for any compensation but, having regard to the object, intention and spirit of the Settlement Agreement, the circumstances are such that the Claimant, in the opinion of the Independent Reviewer, should receive compensation.

(2) The Independent Reviewer shall forward reasons for the referral, together with the Application being referred.

7.07 Finality of Decisions

(1) A decision of the Claims Administrator is final and binding upon the Claimant without any recourse or appeal, except as set out in the Settlement Agreement and Claims Process.

(2) A decision of the Independent Reviewer is final and binding upon the Claimant and the Claims Administrator without any recourse or appeal, except as set out in the Settlement Agreement and Claims Process.

(3) A decision of the Exceptions Committee is final and binding, and is not subject to any review, recourse or appeal.

SECTION EIGHT

THE CLAIMS ADMINISTRATOR

8.01 Duties of the Claims Administrator

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

- a) developing, installing, and implementing systems, forms, information, guidelines and procedures for processing and making decisions on Applications in accordance with this Agreement;
- b) developing, installing, and implementing systems and procedures for making payments of compensation 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, preparing such financial statements, reports, and records as are required by the Court;
- e) reporting to the Exceptions Committee on a monthly basis respecting:

- i. Applications received and determined;
 - ii. Applications qualified outside the class period
- f) responding to enquiries respecting Applications, reviewing Applications and making decisions in respect of Applications and giving notice of decisions in accordance with this Agreement;
- 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 the Claimant;
- h) such other duties and responsibilities as the Court may from time to time direct.

8.02 Appointment of the Claims Administrator

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

8.03 Appointment of the Independent Reviewer

The Independent Reviewer will be appointed by the Court on the recommendation of the Parties.

8.04 Costs of Claims Process

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

SECTION NINE

EXCEPTIONS COMMITTEE

9.01 Exceptions Committee

(1) There shall be an Exceptions Committee appointed by the Court consisting of five members: a Primary Class Member, one member of Class Counsel and one member of Quebec Subclass Counsel who participated in the negotiation of this Agreement, one of Canada's legal counsel who participated in the negotiation of this Agreement, and a former jurist agreed to by the Parties who will sit as chair.

(2) The Exceptions Committee shall endeavour to reach consensus. If consensus cannot be reached, the individual agreed to by the Parties to chair shall cast the deciding vote.

(3) Any of the five members to the Exceptions Committee may be substituted by agreement of the Parties.

(4) The Exceptions Committee is a monitoring body established under this Settlement Agreement with the following responsibilities:

- a) monitoring the work of the Claims Administrator and the Claims Process;
- b) receiving and considering reports from the Claims Administrator, including on administrative costs;
- c) giving such directions to the Claims Administrator as may, from time to time, be necessary;
- d) considering and determining any disputes between the Parties in relation to the implementation of this Agreement;
- e) deciding Requests for Deadline Extension;
- f) considering and determining any Applications referred to it by the

Independent Reviewer;

- g) referring to the Parties for determination and resolution, if appropriate and in a manner consistent with this Agreement, claims for compensation that were the subject of a report by the Claims Administrator under 8.01(e);
- h) dealing with any other matter referred to the Exceptions Committee by the Court.

(5) Canada will pay the costs of the Primary Class Member and former jurist appointed to the Exceptions Committee.

9.02 Dispute Resolution

The Parties agree that any dispute between them in relation to the implementation of this Agreement will be finally determined by the Exceptions Committee.

9.03 Decisions are Final and Binding

The decisions of the Exceptions Committee are final and binding.

9.04 Jurisdiction Limited

The Exceptions Committee will have no authority or jurisdiction to consider or determine matters other than as specifically set out in this Agreement. The Exceptions Committee is not a further level of appeal or review and has no jurisdiction to consider or determine motions or applications of any kind from Claimants or their counsel or anyone else. The Exceptions Committee has no jurisdiction to extend deadlines beyond those set out in this Agreement.

SECTION TEN

RELEASES

10.01 Primary Class Member Releases

The Approval Order issued by the Court will declare that:

(1) Each Primary Class Member or their Estate Executor or Personal Representative who has not opted out of the Class Action on or before the expiry of the Opt Out Period (hereinafter “Primary Class Releasers”) 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 or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses, and interest which any such Primary Class Releaser ever had, now has, or may hereafter have, directly or indirectly, arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the individual claims relating to Percival, and this release includes any such claim made or that could have been made in any proceeding, whether asserted directly by the Primary Class Releaser or by any other person, group, or legal entity on behalf of or as representative for the Primary Class Releaser.

(2) For greater certainty, Primary Class Releasers are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute or the common law, Quebec civil law in relation to the individual claims under Percival, the Primary Class Releaser will expressly limit those claims so as to exclude any portion of Canada’s responsibility.

(3) Upon a final determination of an Application made under and in accordance with the Claims Process, Primary Class Releasers are also deemed to agree to release the Parties, Class Counsel, Quebec Subclass Counsel and counsel for Canada, the Claims Administrator, and the Independent Reviewer 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. Primary Class Releasors are not deemed to release any claim arising from the preparation of their individual Applications as against the lawyer or lawyers retained to assist them in the preparation of the Application.

10.02 Family Class Member Releases

The Approval Order issued by the Court will declare that:

(1) Each Family Class Member who has not opted out of the Class Action on or before the expiry of the Opt Out Period (“Family Class Releasors”) 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 or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses, and interest which any such Family Class Releasor ever had, now has, or may hereafter have, directly or indirectly, arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the individual claims under Percival, and this release includes any such claim made or that could have been made in any proceeding, whether asserted directly by the Family Class Releasor or by any other person, group, or legal entity on behalf of or as representative for the Family Class Releasor.

(2) For greater certainty, Family Class Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute, the common law, or Quebec civil law, in relation to the individual claims under Percival, the Family Class Releasor will expressly limit those claims so as to exclude any portion of Canada's responsibility.

10.03 Deemed Consideration by Canada

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 Primary Class Releasors and Family Class Releasors 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.

SECTION ELEVEN

LEGAL FEES

11.01 Class Counsel and Quebec Subclass Counsel Fees

(1) Canada agrees to pay Class Counsel and Quebec Subclass Counsel collectively the amount the Court determines is fair and reasonable in respect of legal fees and disbursements for their past and future work on behalf of the class as a whole ("Class Counsel Fees"). Canada will pay this amount as directed in writing by Klein Lawyers LLP and Dionne Schulze SENC within the latest of: a) the Implementation Date; b) thirty (30) days after the date on which the Court makes its order as to Class Counsel Fees; c) thirty (30) days after the date of the final determination of any appeal brought in relation to the Class Counsel Fee order.

(2) No part of the Class Counsel Fee will be paid by Class Members and there will be no reduction in any amount payable to a Class Member to pay for Class Counsel Fees.

(3) Class Counsel and Quebec Subclass Counsel will jointly bring a motion for approval of a Class Counsel Fee. Canada will have the right to make responding submissions.

(4) If the Court approves this Agreement, the provisions of this Agreement will come into effect on the Implementation Date regardless of the date on which an order is made or appeal determined regarding Class Counsel Fees.

(5) Class Counsel and Quebec Subclass Counsel will continue to provide services for the benefit of the class after the Implementation Date on all matters related to the implementation and administration of this Settlement Agreement, including providing information and advice to class members, persons or organizations that serve class members, the media, and members of the public. No further or other Class Counsel Fee will be paid for those services. Individual fees, as provided for in Section 11.02, may be paid to Class Counsel or Quebec Subclass Counsel for assisting Claimants with the preparation of their individual claims.

11.02 Individual Legal Fees

(1) Claimants may retain the counsel of their choice to assist them with the preparation of their individual claims. If the Claimant has been assisted by a lawyer, Canada will pay the Claimant's lawyer an amount equal to 5% of the Claimant's Category 2 Payment plus applicable taxes without additional Court approval beyond the approval of this Agreement. Canada will pay up to an additional 5% of the Claimant's Category 2 Payment plus applicable taxes for legal fees and/or disbursements provided such amount is approved by the Federal Court in accordance with Rule 334.4 of the *Federal Courts Rules* and guidelines to be agreed upon by the Parties and approved by the Court.

(2) Canada will not pay any legal fees or disbursements associated with a claim for a Category 1 Payment.

(3) No amount, including for legal fees or disbursements, may be charged to Claimants in respect of compensation under this Settlement Agreement or any other advice relating to this Settlement Agreement unless prior Court approval of such amounts has been obtained by motion to the Court and on notice to the Parties.

11.03 No Other Fees to be Charged

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

SECTION TWELVE

CLASS MEMBERS SUPPORT

12.01 Class members support

Canada agrees that Class members covered by this Agreement will have access to existing Government of Canada mental health and emotional support services and agrees to make those services available to those who are resolving claims under this Agreement.

SECTION THIRTEEN

TERMINATION AND OTHER CONDITIONS

13.01 Termination of Agreement

This Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled.

13.02 Amendments

Except as expressly provided in this Agreement, no amendment may be made to this Agreement unless agreed to by the Parties in writing and approved by the Federal Court.

13.03 No Assignment

(1) 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.

(2) Payment will be made to each Claimant by direct deposit or by cheque mailed to his or her home address. Where the Claimant is deceased or is a Person Under Disability, payment will be made to their Estate Executor or Personal Representative by direct deposit or by cheque.

SECTION FOURTEEN

CONFIDENTIALITY

14.01 Confidentiality

(1) Any information provided, created or obtained in the course of this settlement, whether written or oral, will be kept confidential by the Parties, Class Counsel and Quebec Subclass Counsel, all Primary Class Members and Family Class Members, the Claims Administrator and the Independent Reviewer and will not be used for any purpose other than this Agreement unless otherwise agreed by the Parties.

(2) Except 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 Agreement in Principle and this Agreement continues in force.

14.02 Destruction of Primary Class Member Information and Records

The Claims Administrator will destroy all Primary Class Member information and documentation in its possession on a schedule beginning no sooner than two years after completing the compensation payments, according to a protocol to be developed by the Parties and approved by the Court. The protocol to be approved by the Court will provide a right for a Class Member or their Estate Executor or Personal Representative to specifically request the return to them of their information and documentation by the Claims Administrator.

SECTION FIFTEEN

COOPERATION

15.01 Cooperation with Canada

Upon execution of this Agreement, the representative plaintiffs appointed in Percival, Class Counsel and Quebec Subclass Counsel will cooperate with Canada and make

best efforts to obtain approval of this Agreement and to obtain the support and participation of Primary Class Members and Family Class Members in all aspects of this Agreement.

15.02 Public Announcements

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 Settlement Agreement as of this 29th day of September, 2023.



For the Representative Plaintiffs,
Reginald Percival, Allan Medrick
McKay, Iona Teena McKay, and
Lorna Watts



For the Quebec Subclass
Representative Plaintiff, Kenneth
Weistche

By his counsel, David Schulze

**Bess,
Darlene** Digitally signed by Bess,
Darlene
Date: 2023.09.26
09:31:49 -04'00'

For the Defendant,

Darlene Bess
Chief, Finances, Results and Delivery
Officer,
Crown-Indigenous Relations and
Northern Affairs Canada

Schedule A

Court File No: T-1417-18

**FEDERAL COURT
CLASS PROCEEDING**

BETWEEN:

REGINALD PERCIVAL, ALLAN MEDRICK MCKAY, IONA TEENA MCKAY AND
LORNA WATTS

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

Brought pursuant to the *Federal Courts Rules*, SOR/98-106

AGREEMENT IN PRINCIPLE

PREAMBLE

1. WHEREAS this class action was certified on consent by order of Madam Justice Strickland, dated June 28, 2019 (the "Certification Order");
2. AND WHEREAS a dispute resolution conference was held in this proceeding in Toronto before Madam Justice Strickland on November 14-16, 2022, and December 6-7, 2022 (the "Dispute Resolution Conference");
3. AND WHEREAS the Parties have reached this Agreement in Principle at the Dispute Resolution Conference and have committed to work together to prepare a final settlement



agreement (the "Settlement Agreement") and supporting documents for claims administration and notice;

THE PARTIES AGREE AS FOLLOWS:

CLASS DEFINITION AND CLASS PERIOD

4. The class definition is as defined in the Certification Order, but it shall be modified to be temporally bounded to include a class period with a start date of September 1, 1951 and an end date of June 30, 1992.

5. There may be individuals who fall within the class definition but outside the class period. The Settlement Agreement will include a procedure for those individuals to participate in the settlement. For greater certainty, band or private placements are not included.

INDIVIDUAL COMPENSATION

6. Payments shall be made to eligible Primary Class Members ("Claimants") for general damages in accordance with a compensation grid.

7. The claims determination process will be simple, user-friendly, and culturally sensitive. 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. In the absence of reasonable grounds to the contrary, it will be assumed that a Claimant is acting honestly and in good faith. In considering a claim, all reasonable and favourable inferences that can be drawn in favour of the Claimant shall be drawn. Any doubt as to whether a claim has been established shall be resolved in favour of the Claimant.

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

Handwritten signatures and initials. On the left is a stylized signature. On the right are the initials 'CS' above 'AM'.

9. Claimants may apply for Category 1 compensation and make a separate application for Category 2 compensation. This will facilitate prompt payments to Claimants receiving awards under Category 1, and allow Claimants additional time to prepare claims under Category 2 if they wish.

10. There will be a deadline by which Claimants must submit Category 1 and 2 claims, subject to any provision in the Settlement Agreement for extension of the claims deadlines.

11. A Claimant may qualify for payment under both Category 1 and Category 2. Claimants will not, however, qualify for more than one payment under Category 2.

12. Upon submission of a simple application, every class member will be eligible for a Category 1 payment of \$10,000 for placement in a boarding home by Canada.

13. Claimants may apply for Category 2 compensation in accordance with a five-level grid as follows:

- 2A - \$10,000
- 2B - \$50,000
- 2C - \$100,000
- 2D - \$150,000
- 2E - \$200,000

Criteria for each level will be in the Settlement Agreement reflecting increasing degrees of severity of abuse.

14. Claimants will specify the level of compensation claimed (i.e., Category 2 A, B, C, D, or E). The Claims Administrator will have authority to award compensation at a higher or lower level than the one specified by the Claimant in their claim form and may request further information from the Claimant with respect to the claim. A reconsideration process will be developed for Claimants who were awarded a lower level of compensation than they applied for.

15. The Parties specifically agree that the payments for both Category 1 and Category 2 are in the nature of non-pecuniary damages and not referable to income.



COMMEMORATION, HEALING, LANGUAGES AND CULTURE

16. A foundation will be created to further the objects of commemoration, healing, languages and culture (the "Foundation"). Canada will support reconciliation projects for the benefit of class members including payment of \$50 million to be administered by the Foundation. The precise terms of the reconciliation projects and work of the Foundation will be subject to further negotiation by the Parties; however, the objectives of the Foundation will not include the generation of profit.

NOTICE AND ADMINISTRATION

17. The Parties shall jointly agree on a notice program and administration process to be paid for by Canada.

CLASS MEMBER SUPPORT AND ASSISTANCE

18. The Parties will agree to culturally sensitive health, information, and other supports to be provided to Claimants for the duration of the claims process as well as funding to deliver support to Claimants who suffer or may suffer trauma, to be paid by Canada.

RELEASES

19. The class members agree to release Canada from any and all claims that have been pleaded or could have been pleaded with respect to this action and agree to limit any claims against any third parties to prevent the third party from claiming over against Canada

SETTLEMENT APPROVAL

20. The Parties agree that the Settlement Agreement shall be approved in the Federal Court.

Handwritten signatures in black ink, including a stylized signature on the left and a signature with initials 'AM' on the right.

PARALLEL PROCEEDINGS

21. The Parties shall co-operate to obtain the stay or dismissal or other suitable final disposition of related class proceedings in other jurisdictions covered by the Settlement Agreement. The Parties are presently aware of only one such action, filed in the Quebec Superior Court as *Anne Smith v. Attorney General of Canada*, District of Montreal, Court File No. 500-06-00812-160.

EXCEPTIONAL CIRCUMSTANCES

22. The Parties agree to establish a mechanism to consider exceptional circumstances that may arise out of the claims process.

SOCIAL BENEFITS

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

24. Canada will make its best efforts to obtain the agreement of the necessary federal government departments that the receipt of any payments pursuant to the Settlement Agreement will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Claimant pursuant to any social benefit program of Canada such as Old Age Security and Canada Pension Plan.

FAMILY CLASS

25. The Family Class Members shall not receive direct compensation under the Settlement Agreement but rather such claims will be recognized and addressed by the indirect compensation made available through reconciliation projects supported by the Foundation.

Two handwritten signatures in black ink are located at the bottom right of the page. The signature on the left is a stylized, cursive signature. The signature on the right is also cursive and includes the initials 'CM' written below the main signature.

ESTATE CLAIMS

26. The Parties shall work collaboratively with the Claims Administrator to design claims forms and procedures to permit claims to be made by representatives of deceased Primary Class Members. The intention of such procedures is to provide a cost-effective procedure for the surviving family members of a deceased Primary Class Member to obtain compensation on behalf of the Class Member even where the Class Member did not leave a will.

27. Estate claims can be made where the deceased Class Member was alive on or after July 24, 2016.

INDIVIDUAL LEGAL SERVICES TO CLASS MEMBERS

28. If the Claimant has been assisted by a lawyer, Canada will pay the Claimant's lawyer an amount equal to 5% of the Claimant's Category 2 award plus applicable taxes without additional Court approval beyond the approval of the Settlement Agreement. Canada may pay up to an additional 5% of the Claimant's Category 2 award plus applicable taxes for legal fees and/or disbursements provided such amount is approved by the Federal Court in accordance with Rule 334.4 and guidelines to be agreed by the Parties and approved by the Court. Canada will not pay any legal fees or disbursements associated with a claim under Category 1.

LEGAL FEES FOR CLASS COUNSEL

29. The Parties will enter into a separate agreement ("Fee Agreement") as to the legal fees, disbursements and related taxes owing to Class Counsel and Quebec Subclass Counsel in relation to the work 1) on the common issues up to the date of settlement approval, and 2) for the benefit of the Class during the implementation of the settlement. Approval of the Settlement Agreement is not contingent on approval of the Fee Agreement.

The image shows two handwritten signatures in black ink. The signature on the left is stylized and appears to be 'RJR'. The signature on the right is more complex and includes the letters 'AM' at the bottom.

Signed at Toronto this 7th day of December, 2022

His Majesty the King ("Canada"), as represented by the
Attorney General of Canada by:




Attorney General of Canada
For the Defendant

The Plaintiffs, as represented by Class Counsel by:



Klein Lawyers LLP
For the Plaintiffs

Kenneth Weistche, as represented by Quebec Subclass
Counsel by:



Dionne Schulze, s.e.n.c.
For the Quebec Subclass

Schedule B

Schedule B

Schedule B
Category 2 Compensation Grid

Category 2A \$10,000.00

- Sexual comments or sexualized provocation
- Unreasonable or disproportionate acts of discipline or punishment
- One or more incidents of mocking, denigration (such as belittling or abusive language), humiliation or shaming
- Threats of violence or intimidating statements or gestures
- One incident of abuse, such as:
 - unreasonable confinement (e.g., being locked in a room)
 - being deprived of food, medical care, adequate clothing, heating or bedding
 - being forced to do unpaid labour (in excess of normal domestic tasks)
 - being forced to consume alcohol, narcotics or noxious substances
 - being prevented from attending school

Category 2B \$50,000.00

- One or more incidents of:
 - Forced exposure to pornography
 - Nude photographs taken
 - Individuals exposing themselves
 - Touching genitals or private parts (directly or through clothing), fondling or kissing
 - Simulated intercourse
- One or more physical assaults causing:
 - Serious but temporary harm (such as a black eye, bruise, abrasion, laceration, or incapacitation that led to or should have led to bed rest)
 - Minor impairment or disfigurement that was not permanent (such as loss of consciousness or broken bones, loss of or damage to teeth)
- Two or more incidents of abuse, such as:
 - unreasonable confinement (e.g., being locked in a room)
 - being deprived of food, medical care, adequate clothing, heating or bedding
 - being forced to do unpaid labour (in excess of normal domestic tasks)
 - being forced to consume alcohol, narcotics or noxious substances

- being prevented from attending school

Category 2C \$100,000.00

- One incident of:
 - Masturbation
 - Oral or attempted oral intercourse
 - Attempted penetration (including vaginal or anal, digital penetration or penetration with an object)
- Recurring physical assaults causing:
 - Serious but temporary harm (such as a black eye, bruise, abrasion, laceration or incapacitation that led to or should have led to bed rest)
 - Minor impairment or disfigurement that was not permanent (such as loss of consciousness, broken bones, loss of or damage to teeth)

Category 2D \$150,000.00

- One incident of penetration (including vaginal or anal, digital penetration or penetration with an object)
- Two or more incidents of:
 - Attempted oral intercourse
 - Attempted penetration
- One or more physical assaults causing permanent or long-term mental or physical impairment, injury or disfigurement

Category 2E \$200,000.00

- Two or more incidents of:
 - Masturbation
 - Oral intercourse
 - Penetration (including vaginal or anal, digital penetration or penetration with an object)
- Any pregnancy resulting from an incident of sexual assault (including pregnancy interrupted by miscarriage or therapeutic abortion)
- One or more physical assaults causing permanent mobility loss or brain injury

Schedule C

Court File No.: T-1417-18

Court File No.:

**FEDERAL COURT
PROPOSED CLASS PROCEEDING**

BETWEEN:

e-document	T-1417-18
F I L E D	FEDERAL COURT COUR FÉDÉRALE REGISTRATION JUL 24, 2018
Joyce Fan	
Vancouver, BC	

REGINALD PERCIVAL, ALLAN MEDRICK MCKAY,
INA TEENA MCKAY AND LORNA WATTS

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

Brought pursuant to the *Federal Courts Rules*, SOR/98-106

STATEMENT OF CLAIM

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. 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 defense 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 defense is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defense is sixty days.

Copies of the Federal Courts 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: Pacific Centre
P.O. Box 10065
701 West Georgia Street,
Vancouver, British Columbia
V7Y 1B6

TO: Her Majesty the Queen
Office of the Deputy Attorney General of Canada
British Columbia Regional Office
Department of Justice Canada
900 – 840 Howe Street,
Vancouver, British Columbia
V6Z 2S9

Relief Sought

1. The Plaintiffs, Reginald Percival, Allan Medrick McKay, Iona Teena McKay and Lorna Watts, claim on their own behalf and on behalf of a class of similarly situated persons:
 - a. an order certifying this action as a class proceeding and appointing Reginald Percival, Allan Medrick McKay, Iona Teena McKay and Lorna Watts as representative plaintiffs under the Federal Courts Rules, SOR/98-106;
 - b. general damages plus damages equal to the costs of administering the plan of distribution;
 - c. special damages in an amount to be determined, including but not limited to past and future medical expenses and out-of-pocket expenses;
 - d. exemplary and punitive damages;
 - e. punitive damages pursuant to the *Charter of Human Rights and Freedoms*, CQLR c C-12 and the *Civil Code of Quebec*, CQLR c C-1991;
 - f. disgorgement by the Defendant of its profits;
 - g. recovery of health care costs incurred by the Ministry of Health and its predecessor Ministries and Departments and other provincial and territorial health insurers on behalf of the Plaintiffs and other Class Members pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c 27 and comparable legislation in the other provinces and territories;
 - h. damages pursuant to the *Family Law Act*, RSO 1990 c F-3 and comparable legislation in other provinces and territories;
 - i. pre-judgment and post-judgment interest;
 - j. costs; and
 - k. such further and other relief as this Honourable Court may deem just.

Nature of this Action

2. This action concerns the establishment, implementation, administration and management by the Defendant, Her Majesty the Queen (“Canada”), of the Boarding Home Program for Indian Students, an educational program designed to advance Canada’s policy of culturally assimilating Indigenous persons into mainstream Canadian society.

3. Pursuant to the Boarding Home Program for Indian Students, Indigenous children and adolescents (collectively “children”) were forcibly removed from their families and Indigenous communities by Canada and then transported to urban communities to stay with boarding families and to attend public, non-Indigenous schools.

4. Canada placed the Indigenous children in boarding homes primarily with non-Indigenous families and, at times, with Indigenous families belonging to a different First Nation, Inuit ethnic group or ancestral Métis community than their own. Canada screened and monitored the boarding homes and provided funding, for each Indigenous child in care, to those that operated the boarding homes.

5. As a consequence of the Boarding Home Program, Indigenous children were separated by large geographical distances from their families and communities and were unreasonably denied access to their language, culture, traditions, customs and aboriginal and treaty rights and benefits.

6. The individuals operating the boarding homes were often predators who inflicted physical, sexual, emotional and psychological abuse on the Indigenous children they housed. And the children were often subjected to child slavery and unpaid labour. Canada knew of this abuse and tolerated, acquiesced and, in some cases, encouraged it. Canada failed to remove Indigenous children from abusive boarding homes in a timely manner or at all.

7. At all material times, Canada had a duty to protect and preserve the culture and identity of the Indigenous children. Canada also had a duty to prevent injury to Indigenous children and to ensure their mental and physical health and well-being.

8. Canada’s conduct and the conduct of its servants in establishing, implementing, administering and managing the Boarding Home Program for Indian Students caused extreme and ongoing harm to the Plaintiffs and other class members.

9. Class members experienced a loss of their Indigenous culture, language and identity, suffered extreme sexual, physical and psychological abuse and lost the opportunity to exercise

their aboriginal and treaty rights. These harms continue to have devastating intergenerational effects on Indigenous families and communities.

Parties and Class

10. The Plaintiff, Reginald Percival, is an Indian as defined by the *Indian Act*, RSC 1985, c I-5 and a member of the Nisga'a Nation. Pursuant to the Boarding Home Program for Indian Students, Canada forcibly removed Mr. Percival from his family and Nisga'a community when he was 13 years old. Mr. Percival currently resides in Gitlaxt'aamiks, British Columbia.

11. The Plaintiff, Iona Teena McKay, is an Indian as defined by the *Indian Act*, RSC 1985, c I-5 and a member of the Nisga'a Nation. Pursuant to the Boarding Home Program for Indian Students, Canada forcibly removed Ms. McKay from her family and Nisga'a community when she was 12 years old. Ms. McKay currently resides in Terrace, British Columbia.

12. The Plaintiff, Allan Medrick McKay, is an Indian as defined by the *Indian Act*, RSC 1985, c I-5 and a member of the Nisga'a Nation. Pursuant to the Boarding Home Program for Indian Students, Canada forcibly removed Mr. McKay from his family and Nisga'a community when he was 14 years old. Mr. McKay currently resides in Terrace, British Columbia.

13. The Plaintiff, Lorna Watts, is an Indian as defined by the *Indian Act*, RSC 1985, c I-5 and a member of the Nisga'a Nation. Pursuant to the Boarding Home Program for Indian Students, Canada forcibly removed Ms. Watts from her family and Nisga'a community when she was 12 years old. Ms. Watts currently resides in Kincolith, British Columbia.

14. After their apprehension by Canada, the Plaintiffs were all placed in boarding homes with non-Indigenous and non-Nisga'a families in urban communities across British Columbia.

15. From a time prior to contact with Europeans to the present, the Nisga'a Nation has sustained its people, communities and distinctive culture by exercising Nisga'a laws, customs and traditions in relation to citizenship, adoption, family care, marriage, property and use of resources.

16. The Plaintiffs bring this action on their own behalf and on behalf of a proposed class of Indigenous persons in Canada who were taken from their families and Indigenous communities and placed in boarding homes with non-Indigenous families or with Indigenous families belonging to a different First Nation, Inuit ethnic group or ancestral Métis community than their own (“Class Members”, to be further defined in the Plaintiffs’ application for class certification). The Class is composed of Indians, Inuit and Métis persons.

17. The Plaintiffs and Class Members are aboriginals within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11. The Plaintiffs and Class Members’ aboriginal and treaty rights existed and were exercised at all relevant times pursuant to section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11.

18. The Plaintiffs also bring this action on behalf of each person who, by reason of his or her relationship to a Class Member, is entitled by legislation to make a claim as a result of injury to the Class Member (collectively “Secondary Class Members”). This legislation includes but is not limited to the *Family Law Act*, RSO 1990, c F-3; the *Tort-Feasors Act*, RSA 2000, c T-5; *The Tortfeasors and Contributory Negligence Act*, CCSM, c T-90; the *Tortfeasors Act*, RS 1989, c 471; the *Tortfeasors Act*, RSNB 2011, c 231; the *Civil Code of Quebec*; comparable legislation in other provinces and territories; and the common law.

19. The Defendant Canada was, at all relevant times, responsible for the administration of the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes. Canada has exclusive jurisdiction in respect of Indigenous persons pursuant to section 91(24) of the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK) and the common law.

20. Canada’s liability arises from its negligence and breach of fiduciary duty, and from the conduct, negligence and malfeasance of individuals who were at all material times Canada’s employees, agents and servants. Canada had authority and control over these employees, agents and servants and is vicariously liable for their torts and for the damage caused by their faults,

pursuant to section 3 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and its predecessor legislation.

The Boarding Home Program for Indian Students

21. In or around the early 1950s, Canada determined that the assimilation of Indigenous children into mainstream Canadian society could be accelerated if Indigenous students were removed from Indigenous communities or segregated residential schools and put into public provincial schools in urban municipalities. To further this policy objective, Canada created and implemented the Boarding Home Program for Indian Students.

22. The Boarding Home Program for Indian Students operated throughout Canada and continued until the early 1980s.

23. At all relevant times, the program was operated, administered and maintained by Canada's Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments.

24. To facilitate the implementation of the Boarding Home Program, Canada sought out boarding homes for the children, offering funding for the room and board of each Indigenous child in care.

25. Canada also entered into agreements with the provinces and territories pursuant to which the provinces and territories would permit Indigenous children to attend provincial and territorial public schools, and Canada would provide payments to the provinces and territories to cover the cost of tuition, books and supplies for each Indigenous child in attendance.

26. Pursuant to the Boarding Home Program, Canada apprehended Indian, Inuit and Métis children, transported them to urban municipalities and placed them in boarding homes to live with strangers – sometimes hundreds of kilometres from their families and Indigenous communities.

Student Experiences

Loss of Culture

27. Canada's conduct in the creation, administration, maintenance, funding and operation of the Boarding Home Program for Indian Students furthered Canada's policy of forcibly assimilating Indigenous peoples, and it systematically eradicated the culture, society, language, customs, traditions, practices and spirituality of the Plaintiffs and other Class Members.

28. Pursuant to the Boarding Home Program, Class Members were forced to live in boarding homes for extended stays – sometimes for years – far removed from their families, cultural communities and language.

29. Class Members were expected to assimilate into non-Indigenous culture and were taught to be ashamed of their Indigenous culture and identity.

30. Given the significant change in their environment, Class Members often suffered from culture shock, accompanied by depression and anxiety.

31. Class Members were discouraged or forbidden from maintaining contact with their Indigenous families. Given the geographical distance of the urban boarding homes from many Indigenous communities, the families of Class Members were often unable to visit. And when families did undertake the expense and lengthy travel to visit, they were often denied the ability to see and interact with their loved ones.

32. Class Members were denied any reasonable opportunity to practice and maintain their Indigenous identity, language, culture, rights, customs and traditions. The boarding home families did not speak Indigenous languages and did not teach Class Members about their Indigenous cultural traditions and practices.

33. Class Members were often deprived of their aboriginal and treaty rights and monetary benefits to which they were entitled under the *Indian Act* and related legislation and policies.

34. The denial of familial and cultural connections caused significant emotional and financial harm for the Plaintiffs and other Class Members.

Physical, Sexual and Psychological Abuse

35. The Boarding Home Program for Indian Students was poorly executed and managed. Canada insufficiently vetted boarding homes and failed to ensure that Indigenous students in the care of boarding home families were safe and secure. Consequently, Class Members were subjected to egregious physical, sexual, emotional and psychological abuse perpetrated by their boarding home families. This abuse was systemic and existed within the Boarding Home Program at large.

36. Through its policies, acts and omissions, Canada created an environment where abuse of Class Members was commonplace, condoned and, arguably, encouraged.

37. Given the financial incentive for hosting Indigenous students, boarding home families often housed more students than they had room for. Students were often housed in overcrowded conditions, often with other students and often segregated from the boarding home family's primary living space, either through locks or through physical restraints.

38. Class Members – children and adolescents – were repeatedly fondled, raped and sodomized by members of their boarding home families.

39. Class Members – children and adolescents – were frequently required to perform fellatio on members of their boarding home families.

40. Class Members were frequently beaten by members of their boarding home families and subjected to racism and psychological abuse.

41. Class Members were often required to perform slave labour for their boarding home families.

42. Many Class Members were malnourished as they were not fed nutritional meals and, often, were denied food for extended periods of time. The fridges in boarding homes were often padlocked.

43. Class Members often had no one to report the abuse and other harm to. When abuse and other injustices were reported to counsellors and other servants of Canada, no meaningful and timely action was taken to safeguard Class Members against further abuse and harm. And the perpetrators were not sufficiently punished.

Representative Plaintiffs

Reginald Percival

44. Mr. Percival was born on August 13, 1955 in Gitlaxt'aamiks, British Columbia.

45. As a young child and in order to avoid being sent to a residential school or boarding home, Mr. Percival's parents often hid him to evade his apprehension by agents of Canada.

46. However, at the age of 13 – one week after his father died in a logging accident – Mr. Percival and about 500 other Nisga'a children were apprehended by Canada pursuant to the Boarding Home Program for Indian Students. The children were forced to leave their families and Nisga'a communities and were transported by bus loads to municipalities in British Columbia and Alberta, far from their Nisga'a homes. Mr. Percival recalls the sea of children being led onto the buses.

47. Mr. Percival felt scared and alone.

48. When Mr. Percival's bus arrived in Vancouver, a counsellor from Indian Affairs and Northern Development called out his name and the names of the other children, and they were matched with their boarding home families. Mr. Percival never again saw most of the children who were apprehended that day.

49. Mr. Percival's boarding home family was non-Indigenous. When Mr. Percival first met them, they threw his bag in the back of their pick-up truck and told him to climb in the back with

his bag. They then drove off without saying anything further to Mr. Percival. He recalls sitting in the back of the truck, petrified as the truck sped off. He wondered if he would ever again see his family and his Nisga'a community.

50. When Mr. Percival arrived at his boarding home in Surrey, British Columbia, he was told that he would be staying in the basement of the house with four other boarding home children. He and the other children were segregated from his boarding home family and rarely able to interact with them.

51. Mr. Percival recalls the extreme racism he endured at the hands of his boarding home family. He frequently heard his boarding home parents say that they "were getting back their taxes" by housing Indian children.

52. Mr. Percival's boarding home family did not speak his Nisga'a language. Neither did the other children in the boarding home. Mr. Percival's boarding home parents discouraged any contact with his family and denied Mr. Percival any reasonable opportunity to practice his Nisga'a language, culture, customs, heritage and traditions. He was also denied any reasonable opportunity to practice his aboriginal rights as a Nisga'a member.

53. Mr. Percival was, in reality, forced to forget his Nisga'a language and culture and "act white" in order to survive. He didn't feel like a person. He was known in many contexts only by his "number": 6770042601.

54. Mr. Percival's boarding home family would often keep the monthly allowance he received from Canada – \$20 – which was meant to buy clothes and other necessities.

55. Mr. Percival attended Johnston Heights Secondary School in Surrey where he encountered physical and verbal abuse from the non-Indigenous students. On Mr. Percival's first day there, one of the older students called him a "squaw". Before he could react, Mr. Percival's shirt was grabbed from behind by a teacher. The teacher told him that any retaliatory action on his part would result in him being kicked out of school.

56. Mr. Percival was frequently called a “dumb Indian” and a “dirty Indian” by both students and teachers and was often beaten up by non-Indigenous students. These students were defended by the teachers even when the teachers heard the students’ racist insults. Mr. Percival recalls the teachers simply smirking and allowing the violence to continue.

57. The non-Indigenous students at the school would throw food at the back of Mr. Percival’s head during lunch break.

58. Mr. Percival was never allowed to play sports. He was never invited to or allowed to participate in any track and field events and was made to sit on the bench during basketball games. His non-Indigenous peers were never treated this way.

59. The racism Mr. Percival experienced every day at Johnston Heights Secondary School caused him to feel ashamed of his Nisga’a identity. He never felt like he belonged at the school or anywhere. He felt alone, anxious and depressed.

60. Despite his constant complaints to his counsellor from Indian Affairs and Northern Development, neither the counsellor nor any other servant of Canada intervened or otherwise tried to help Mr. Percival. Consequently, he internalized his pain and became too ashamed to talk about his experiences.

61. Eventually, alone and overwhelmed by shame, he turned to alcohol to ease his pain.

62. Mr. Percival did not return home immediately after completing the Boarding Home Program for Indian Students – he did not feel that he had a home to return to.

63. After completing post-secondary education, Mr. Percival worked with the Union of BC Indian Chiefs in Vancouver. He returned to Gitlaxt’aamiks when he was offered a position with the Nisga’a Health Authority in 1989. He was 34.

64. On returning home to his family and Nisga'a community, Mr. Percival felt displaced and isolated. The emotional and physical separation from his family and community at such a young age had permanently impacted his ability to fit in with his Nisga'a family and community.

65. As a result of Canada's Boarding Home Program for Indian Students, Mr. Percival lost his Nisga'a language, identity, heritage and culture. He also lost monetary benefits to which he was entitled under the *Indian Act*.

66. It's taken Mr. Percival several years to rebuild his place in his Nisga'a community. He has undergone counselling and now acts as a counsellor for others who are survivors of the Boarding Home Program and the residential school system. Mr. Percival also works as an Administrative Review Officer for the Nisga'a Lisims Government.

67. Mr. Percival continues to be haunted by his Boarding Home Program experience and has for years struggled with depression and anxiety. He has nightmares about being taken away from his family – and still hears the cries of the parents as their children were herded onto the buses.

68. Mr. Percival's depression and anxiety prevented him from bringing an action against Canada in respect of his injury, damage or loss caused by the Boarding Home Program for Indian Students. Mr. Percival has always felt silenced and has never felt safe or capable of sharing his experiences.

69. It was only in the summer of 2018, after meeting several other survivors of the Boarding Home Program and hearing their stories of abuse and loss of culture, that he felt compelled to give a public voice to their stories. The support of his Nisga'a community had the effect of sufficiently stabilizing his depression and anxiety so he could consider commencing this litigation.

Iona Teena McKay

70. Ms. McKay was born on October 10, 1955 in Laxgalts'ap, British Columbia.

71. Although her father had successfully hidden Ms. McKay in her early years to avoid her apprehension, Ms. McKay was apprehended by Canada when she was 12. Ms. McKay and her family were advised that she was being apprehended pursuant to the Boarding Home Program for Indian Students, and that she would be sent to live with a boarding home family elsewhere to attend public school.

72. Ms. McKay recalls being incapacitated by fear and deep sadness. Not only was she being taken from her family, she was, at age 12, about to be transported to a whole new life.

73. Ms. McKay was transported by boat and then bus, along with several other Indigenous children, to Terrace, British Columbia, to start her new life.

74. When she arrived in Terrace, Ms. McKay was met by a counsellor from Indian Affairs and Northern Development. She was told that she would be living with a non-Indigenous family from Holland.

75. Ms. McKay's boarding home family was racist and treated her like a second-class citizen.

76. In addition to the psychological abuse Ms. McKay had to endure, she was physically and sexually abused by her boarding home father.

77. On one occasion, Ms. McKay snuck out of the house to watch a movie. After being caught, her boarding home father beat her repeatedly with his belt. As he was doing so, he told her that she was "stupid" and that she would "be like every other Indian in this world – waiting in the welfare line".

78. One night, while Ms. McKay was asleep, her boarding home father came into her room and started fondling her labia and clitoris before inserting his fingers into her vagina. Ms. McKay was petrified.

79. When Ms. McKay disclosed the sexual assault to her boarding home mother, her boarding home mother called Ms. McKay – only 12 – a "dirty Indian whore" and kicked her out of their home.

80. Ms. McKay reported the abuse to her Indian Affairs and Northern Development counsellor. To Ms. McKay's knowledge, her boarding home father was never punished.
81. After being kicked out of her first boarding home, Ms. McKay's counsellor sent Ms. McKay to live with another boarding home family in Terrace.
82. Ms. McKay endured psychological and sexual abuse in her new boarding home.
83. Ms. McKay had two boarding home brothers at this second home. The older brother would often come into Ms. McKay's bedroom at night while he was naked and drunk. Every night, Ms. McKay felt terrified – worried that he would come into her room naked again.
84. Once, Ms. McKay awoke from her sleep to find herself being raped by the younger of her two boarding home brothers. He was lying naked on top of her, his penis inside her, with his hand over her mouth to prevent her from screaming. She was 14.
85. Eventually, Ms. McKay was put into a third boarding home where she remained until she finished grade 12.
86. Ms. McKay's school teachers and fellow students were racist and mean. She was often bullied.
87. Ms. McKay felt ashamed, isolated and hopeless. At the age of 13 she started turning to alcohol and drugs to numb her pain.
88. Ms. McKay suffered from extreme depression and suicidal ideation. She began taking anti-depressants.
89. At age 16, Ms. McKay tried to kill herself.
90. Ms. McKay didn't ever feel at home in Terrace. None of her boarding home families spoke her Nisga'a language and they didn't know or understand her culture.

91. While in the Boarding Home Program for Indian Students, Ms. McKay was denied any reasonable opportunity to maintain contact with her family and her Nisga'a community. She was denied any reasonable opportunity to learn and practice her Nisga'a language, culture, customs, heritage and traditions. She was also denied any reasonable opportunity to practice her aboriginal rights as a Nisga'a member.

92. When Ms. McKay returned to Laxgalts'ap after grade 12, she was disheartened to still feel alone and isolated. Laxgalts'ap no longer felt like the home she'd remembered. She didn't speak the language or know the customs of her Nisga'a people.

93. As a result of Canada's Boarding Home Program for Indian Students, Ms. McKay lost her Nisga'a identity, language, heritage customs and culture. She also lost monetary benefits to which she was entitled under the *Indian Act*.

94. As a consequence of her experiences in the Boarding Home Program, Ms. McKay never had the opportunity to learn life skills or parenting skills from her parents. Because of this and because of the sexual and physical abuse she endured, Ms. McKay was not able to properly parent her children.

95. To this day, Ms. McKay suffers from extreme depression and anxiety. Ms. McKay regularly seeks mental health support for the ongoing impacts of the sexual and physical abuse she endured and the trauma of having been torn away from her biological family. Ms. McKay lives her life in fear and keeps herself isolated within her home.

96. Ms. McKay's depression and anxiety were so severe that they prevented her from bringing an action against Canada in respect of her injury, damage or loss caused by her apprehension by Canada and placement in the Boarding Home Program for Indian Students. Ms. McKay's interests and circumstances were so pressing that she could not reasonably commence an action.

97. It was not until the summer of 2018, after meeting with Mr. Percival and other Nisga'a Boarding Home survivors, that she finally felt sufficiently supported to share her experience and to try and bring about resolution and healing for herself and other Class Members.

Allan McKay

98. Mr. McKay was born on June 22, 1953 in Middle Bay, British Columbia. When he was a young child, his family moved to Laxgalts'ap.

99. When Mr. McKay was 13, he was apprehended by Canada pursuant to the Boarding Home Program for Indian Students. He was terrified, having never left his family or Nisga'a community before.

100. Mr. McKay was sent by train, along with approximately 40 other Indigenous children, to Mission, British Columbia, to live with a non-Indigenous boarding home family and to attend a predominantly non-Indigenous school.

101. Mr. McKay's first boarding home family was an elderly couple. The couple hosted four other boarding home students. The couple noted, on numerous occasions, that they were boarding the students because they needed money to make their mortgage payments.

102. Mr. McKay and the other children were confined to the basement of the house and were allowed upstairs only to eat.

103. In this home, he endured child slavery, constant racism and psychological abuse.

104. The couple used Mr. McKay and the other children as free labour to renovate their "fixer-upper" homes. Once the fixer-upper was renovated, the couple would sell the home and move to another fixer-upper, which Mr. McKay and the other children would renovate. And the cycle continued. Mr. McKay and the other children never received any pay for their work on these houses.

105. Mr. McKay also experienced extreme culture shock. Moving from his small Nisga'a community to a primarily Caucasian urban city – and attending a large school – was overwhelming. Within 6 weeks, Mr. McKay collapsed from exhaustion and was put on bed rest for 2 weeks.

106. At school, Mr. McKay and the other children experienced severe racism from the non-Indigenous students. They were called names such as “dirty drunken Indians” and were constantly bullied. Mr. McKay was often challenged to fist fights after school. The teachers encouraged these fights.

107. Eventually, Mr. McKay was moved to a home in Port Moody with a non-Indigenous family. Again, he endured constant racism and psychological abuse.

108. While at this home, he was required to share a bed with other boarding home students. One night, Mr. McKay woke up to find another male student, naked in bed next to him, trying to rape him.

109. In his third boarding home, he was malnourished and constantly denied food. His boarding home family kept a padlock on the fridge; only the family had access to the food.

110. Mr. McKay then lived with a boarding home family in Prince Rupert. He continued to endure racism and psychological abuse.

111. No matter where Mr. McKay lived, he was an outcast. He was unloved – housed only to earn money for his boarding home families.

112. In grade 11, feeling desperate and alone, Mr. McKay turned to drugs and alcohol to numb his pain. He dropped out of school.

113. While in the Boarding Home Program for Indian Students, Mr. McKay was denied any reasonable opportunity to maintain contact with his family and his Nisga'a community.

114. Mr. McKay was denied any reasonable opportunity to practice his aboriginal rights as a Nisga'a member. And he was denied any reasonable opportunity to practice his Nisga'a language, culture, customs, heritage and traditions.

115. Mr. McKay lost his ability to speak his Nisga'a language. And, having been unable to participate in the Nisga'a feasts growing up, failed to learn the Nisga'a way of life. He lost his Nisga'a identity. Mr. McKay also lost monetary benefits to which he was entitled under the *Indian Act*.

116. Suffering from alcoholism and depression, Mr. McKay chose to be a fisherman in Prince Rupert and remain distant from his Nisga'a people, believing he would never again fit in.

117. When Mr. McKay finally returned to Laxgalts'ap in his late 20s, he felt alone and unable to fit in with his Nisga'a community.

118. Because Mr. McKay's life was void of nurturing and love during his formative years, he never learned to give and receive love. It is difficult for Mr. McKay to form bonds with people and to maintain relationships. His Boarding Home Program experience has left him with permanent emotional scars.

119. Mr. McKay has worked for decades to better himself and to learn his Nisga'a language and culture. He quit drinking and, at 46, graduated from high school. He has become a Hereditary Chief of his Nisga'a people.

120. To this day, Mr. McKay suffers from depression and regularly attends counselling sessions to help him cope. His depression is triggered by memories of his time living in boarding homes.

121. Mr. McKay's interests and circumstances were so pressing that he could not reasonably consider commencing an action against Canada in respect of his injury, damage or loss caused by

his apprehension by Canada and his placement in the Boarding Home Program for Indian Students.

122. It was not until the summer of 2018, after meeting with Mr. Percival and other Nisga'a Boarding Home survivors, that he felt capable of telling his story of survival and commencing this litigation.

Lorna Watts

123. Ms. Watts was born on October 7, 1955 in Kincolith, British Columbia.

124. Ms. Watts was apprehended by Canada when she was 12. She and several other Indigenous children were put onto boats and taken to Prince Rupert. She remembers the pain and fear she felt that day, being taken from her parents at such a young age.

125. From Prince Rupert, Ms. Watts and other Indigenous children were taken by bus to Burnaby, British Columbia. Ms. Watts recalls the children being herded off the buses.

126. The children were met by a counsellor for the Department of Indian Affairs and Northern Development. The children had numbers taped on their bodies and it was by this number – not their names – that the counsellor called the children and matched them to their respective boarding home families. Ms. Watts remembers feeling not only scared, but also embarrassed. She felt like an animal, not a child.

127. Ms. Watts' siblings had also been on the bus, but she was not allowed to say goodbye to them before she was taken away by her boarding home family.

128. Ms. Watts was boarded with a non-Indigenous family, along with three other female children. Her boarding home parents were racist and abusive.

129. When Ms. Watts and the other girls arrived, they were required to sprinkle the insecticide dichlorodiphenyltrichloroethane (DDT) on their beds, being told they “may have bugs on their bodies from the reserve”.

130. Ms. Watts and the other girls had long black hair. Ms. Watts’ boarding home mother suspected that one of the girls had lice, so Ms. Watts and the other girls were forced to get short, boyish haircuts. Ms. Watts recalls sobbing as her cut hair fell to the floor; long, braided hair was a source of pride in her Nisga’a community.

131. Ms. Watts and the other girls were confined to the basement of the house. The basement had no heating; it was damp and cold.

132. Ms. Watts and the other girls were fed insufficient amounts of food by their boarding home parents and became malnourished. They were not allowed to eat meals with their boarding home parents. Instead, their plates were left on a tray at the top of the stairs to the basement. Their boarding home mother would holler when the tray was placed, and Ms. Watts or one of the other children would retrieve the tray. Since the small table in the basement could only seat two, Ms. Watts and the other girls would take turns eating.

133. After dinner, Ms. Watts and the girls were always given wine to drink. They were told it was “non-alcoholic dinner wine.” They were also told not to tell anyone about the wine – it was a “secret”.

134. At the insistence of their boarding home father, they were ordered by their boarding home mother to sleep naked.

135. The boarding home father would come into the basement at night to watch Ms. Watts and the other girls sleep. Ms. Watts suspects that, while in a deep sleep from the wine, their boarding home father would sexually abuse them.

136. Ms. Watts told an older schoolmate about how she and the other girls were being treated at the boarding home. The older student informed the school counsellor and, eventually, Ms. Watts and the other girls were removed from the home.

137. Ms. Watts was sent to live with another non-Indigenous boarding home family in Burnaby. This family was racist. The family frequently referred to Ms. Watts as “squaw” and, in fact, rarely called her by her name.

138. Ms. Watts had to share a bed with another boarding home student.

139. Ms. Watts was required to sleep in the unheated basement, and she was required to hide from any household guests.

140. Ms. Watts’ boarding home parents used her for free labour. Ms. Watts was expected to do all of the household chores and was constantly required to squeeze tubs of grapes to make wine. Ms. Watts would serve her boarding home family meals in the dining room, and then was relegated to the kitchen to eat whatever was left in the pots and pans. Ms. Watts felt like a slave.

141. Her boarding home parents kept Ms. Watts’ allowance that she was given by Canada – which was meant to allow Ms. Watts money for clothes and other necessities. On one occasion, Ms. Watts and another boarding home student, Darlene, noticed a mug with money in it and a piece of paper that said “Lorna and Darlene’s allowance”. They took the money believing that it was theirs. Later, they were apprehended by the police for stealing the money. The boarding home family threatened punishment and more chores when the police took Ms. Watts and Darlene back to the house.

142. When Ms. Watts was approximately 14, she was sent to live in her third boarding home with a young non-Indigenous couple in New Westminster, British Columbia.

143. Ms. Watts was again used as free child labour. She was expected to get up early in the morning to pick bushels of fruit. She was told she would get paid depending on how much she picked. She was never paid for the work she did.

144. Once, when her boarding home mother left for the day, her boarding home father's brother got naked and approached Ms. Watts who screamed and ran upstairs.

145. Ms. Watts was eventually moved to another non-Indigenous boarding home in Terrace.

146. Ms. Watts recalls being treated like a servant in this house. She was regularly late to school because she was expected to do several chores before she could leave the house in the morning.

147. By this time, Ms. Watts was 16 and struggling with depression. She started to skip classes in the hope that she would be expelled from school and removed from the home. When this finally happened, the boarding home father kicked her and told her that he didn't want "her kind" in his house again.

148. At the various schools she attended, Ms. Watts was surrounded by non-Indigenous students and teachers who constantly subjected her to racist jokes and remarks. She always felt like an outsider.

149. As a young teenager, Ms. Watts turned to alcohol to cope. She felt worthless, uncared for and alone.

150. Later in her life, Ms. Watts found out that her biological family had been trying to contact her throughout the years that she was gone. She was never told about any of their messages.

151. While in the Boarding Home Program for Indian Students, Ms. Watts was denied any reasonable opportunity to maintain contact with her family and her Nisga'a community. She was denied any reasonable opportunity to learn and practice her Nisga'a language, culture, customs, heritage and traditions. She was also denied any reasonable opportunity to practice her aboriginal rights as a Nisga'a member.

152. When Ms. Watts finally returned to Kincolith in her late teens, she felt isolated. She had changed so much that her grandmother did not recognize her. She felt like a stranger in her own community. She didn't speak the Nisga'a language or know the customs of her Nisga'a people.

153. As a result of Canada's Boarding Home Program for Indian Students, Ms. Watts lost her Nisga'a identity, language, heritage customs and culture. She also lost monetary benefits to which she was entitled under the *Indian Act*.

154. Ms. Watts' experiences in the Boarding Home Program have left her emotionally scarred.

155. To this day, Ms. Watts suffers from depression. She was regularly attending counselling sessions but had to stop because it was too painful to speak about her experiences in boarding homes. She also struggles to maintain employment.

156. Ms. Watts struggled with alcoholism for much of her life and was only able to stop when her husband became ill and needed her to care for him.

157. Ms. Watts still has nightmares about her years in the Boarding Home Program. Her interests and circumstances were so pressing that she could not reasonably consider commencing an action against Canada in respect of her injury, damage or loss caused by her apprehension by Canada and her placement in the Boarding Home Program for Indian Students.

158. It was not until the summer of 2018, after meeting with Mr. Percival and other Nisga'a Boarding Home survivors, that she felt capable of telling her story of survival and commencing this litigation. She wants to bring about closure and healing for her and the other Boarding Home Program survivors.

Duties of the Defendant***Generally***

159. In establishing, implementing, administering and managing the Boarding Home Program for Indian Students, Canada had a duty to protect and preserve the identity, culture, language, heritage, religion, rights, spirituality and traditions of the Plaintiffs and other Class Members. Canada also had a duty to ensure the safety and well-being of the Plaintiffs and other Class Members, and to ensure that that the boarding homes in which they were placed were free of physical, sexual, psychological and emotional abuse.

160. Indigenous people are entitled to a special duty of care, good faith, honesty and loyalty from Canada.

161. At all relevant times, Canada was responsible for:

- a. the administration of the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes as well as any other statutes relating to Indians and all Regulations promulgated under these Acts and their predecessors;
- b. the promotion of the physical and mental health, safety and well-being of the Plaintiffs and other Class Members;
- c. the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments;
- d. the decisions of, procedures of, regulations promulgated by, and operations and actions taken by the Department of Indian Affairs and Northern Development, its employees, servants, officers and agents and their predecessors;
- e. the hiring and supervision of employees, officers and management at the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments, including the Indian Commissioner and including the counsellors who dealt directly with the Plaintiffs and other Class Members, all of whom were Canada's servants and agents and all of whom were within Canada's direction and control;

- f. the establishment, creation, operation, management, maintenance and administration of the Boarding Home Program for Indian Students;
- g. the vetting, financing and supervision of the boarding homes which housed the Plaintiffs and other Class Members;
- h. the financing of Indigenous education; and
- i. the preservation of the aboriginal and treaty rights of the Plaintiffs and other Class Members, including the right to:
 - i. retain their status as Indians;
 - ii. benefit from Indigenous laws, customs and traditions in relation to education, citizenship, adoption, family care, marriage, property and use of resources;
 - iii. retain and practice their culture, religion, language and traditions;
 - iv. fully learn their culture, religion, language and traditions from their families and communities; and
 - v. obtain monetary benefits under the *Indian Act*, RSC 1985, c I – 5 and its predecessor statutes and related legislation and policies.

Fiduciary Duty

162. Canada stands in a fiduciary relationship with Canada's Indigenous peoples. Canada's relationship with the Plaintiffs and other Class Members was, at all material times, one of dependence, trust and reliance; Canada had undertaken to act in the best interests of the Plaintiffs and other Class Members.

163. Canada has an ongoing obligation to consult with Indigenous peoples on matters relevant to their interests.

164. At all material times, the Plaintiffs and other Class Members were particularly vulnerable and – being children taken away from their families, homes and Indigenous communities – were in need of protection. With respect to these Class Members, Canada assumed *loco parentis* responsibility for their care and supervision while they were part of the Boarding Home Program for Indian Students.

165. The health and welfare of the Plaintiffs and other Class Members and their Indigenous identity and culture were legal or substantial practical interests of the Plaintiffs and other Class Members. Canada was required to take steps to safeguard, monitor, preserve, secure and protect these interests.

166. At all material times, Canada assumed such a degree of discretionary control over the protection and preservation of the health, welfare, identity and culture of the Plaintiffs and other Class Members that it amounted to a direct administration of those interests. The protection and preservation of the health, welfare, identity and culture of the Plaintiffs and other Class Members were within the power, discretion or control of Canada and were subject to the unilateral exercise of Canada's power, discretion or control.

167. Canada's fiduciary duty owed to the Plaintiffs and other Class Members was, at all material times, a non-delegable duty.

Common Law Duty

168. At all material times, Canada owed a common law duty of care to the Plaintiffs and other Class Members, who were unwilling participants in the Boarding Home Program for Indian Students, to take steps to prevent them from losing their Indigenous identity and culture and to ensure their physical and mental safety and well-being.

169. Canada had a duty to consult with Indigenous communities regarding the provision of educational programs to Indigenous children. A special relationship – to which the law attached a duty of care – existed as between Canada and Indigenous communities. This special relationship, by extension, existed as between Canada and Class Members, all of whom were apprehended, pursuant to an educational program, and placed in boarding homes.

170. In the alternative, a common law duty of care arose by virtue of the relationship of proximity that existed between Canada and Class Members.

171. There is a long-standing historical and constitutional relationship between Canada and Indigenous peoples that has evolved into a unique and important relationship premised on trust.

172. At all material times, the Plaintiffs and other Class Members were under Canada's reasonable care and control. The Plaintiffs and other Class Members reasonably expected that they would not be harmed – physically, sexually, psychologically, culturally and emotionally – while participating in Canada's Boarding Home Program for Indian Students. The Plaintiffs and Class Members were, while living in boarding homes, wards of Canada. A relationship of proximity existed as between Canada and Class Members.

173. Given the relationship of proximity that existed between Canada and Class Members, Canada knew or ought to have known that a failure on its part to take reasonable care in establishing, implementing, administering and managing the Boarding Home Program for Indian Students would cause significant harm to the Plaintiffs and other Class Members.

174. Canada was required to exercise a reasonable standard of care in establishing, implementing, administering and managing the Boarding Home Program for Indian Students. The standard of care required by Canada included but was not limited to:

- a. taking proper and reasonable steps to prevent injury to the Plaintiffs and other Class Members' health, safety and well-being;
- b. ensuring that boarding homes were environments free from racism and sexual, physical, emotional and psychological abuse;
- c. ensuring that the language, culture, identity, religion, heritage, customs and rights of the Plaintiffs and other Class Members were protected and preserved;
- d. ensuring that adequate services and resources were provided to the Plaintiffs and other Class Members to enable them to exercise, practice and maintain their language, culture, identity, religion, heritage, customs and rights;
- e. preventing the cultural assimilation of the Plaintiffs and other Class Members;
- f. preserving and protecting the Plaintiffs' and other Class Members' monetary benefits under the *Indian Act*, RSC 1985 c I-5 and its predecessor statutes and related legislation and policies;
- g. consulting with Indian Bands and other Indigenous stakeholders about the Boarding Home Program for Indian Students;

- h. ensuring that counsellors and other staff who administered and managed the Boarding Home Program for Indian Students – all of whom were Canada’s servants and agents and all of whom were within Canada’s direction and control – were appropriately trained and educated and understood that the abuse of Class Members would not be tolerated;
- i. ensuring that staff was sufficiently supervised;
- j. using reasonable care in the establishment, implementation, administration and management of the Boarding Home Program for Indian Students;
- k. establishing, implementing and enforcing appropriate policies, guidelines and procedures to ensure that the Plaintiffs and other Class Members would be free from sexual, physical, emotional, cultural and psychological abuse;
- l. ensuring that sufficient systems were in place for reporting incidents of abuse and other harms;
- m. investigating and addressing complaints and allegations of abuse and other harms in a timely manner; and
- n. ensuring that perpetrators of abuse and other harms were appropriately punished.

Breach of the Defendant’s Duties

175. With respect to the Plaintiffs and other Class Members who participated in the Boarding Home Program for Indian Students, Canada and its servants breached its duties by, among other things:

- a. failing to take proper and reasonable steps to prevent injury to the Plaintiffs and other Class Members’ health, safety and well-being;
- b. failing to prevent the systemic sexual, physical, emotional and psychological abuse of the Plaintiffs and other Class Members;
- c. failing to establish, implement and enforce appropriate policies, guidelines and procedures to ensure that the Plaintiffs and other Class Members would be free from sexual, physical, emotional and psychological abuse;
- d. failing to ensure that the Boarding Home Program for Indian Students delivered appropriate child welfare and educational services for Indigenous children;

- e. supporting or acquiescing in the apprehension and removal of the Plaintiffs and other Class Members from their Indigenous families and communities;
- f. failing to take reasonable steps to prevent the Plaintiffs and other Class Members from being placed in the care of non-Indigenous boarding homes or in boarding homes with Indigenous families belonging to a different First Nation, Inuit ethnic group or ancestral Métis community than their own;
- g. having occupied a position analogous to that of a parent, failing to establish and maintain systems to protect the Plaintiffs and other Class Members as a good parent should;
- h. failing to take reasonable steps to prevent the Plaintiffs and other Class Members from losing their Indigenous identity and culture;
- i. failing to ensure that adequate services and resources were provided to the Plaintiffs and other Class Members to enable them to exercise, practice and maintain their Indigenous language, culture, identity, religion, heritage, customs and rights during the period of placement in boarding homes;
- j. supporting or acquiescing in denying the Plaintiffs and other Class Members a reasonable opportunity to exercise their rights as Indigenous peoples, including their aboriginal and treaty rights;
- k. failing to take reasonable steps to preserve and protect the Plaintiffs' and other Class Members' monetary benefits under the *Indian Act*, RSC 1985 c I-5 and its predecessor statutes and related legislation and policies
- l. failing to ameliorate the harmful effects of the Boarding Homes Program for Indian Students;
- m. failing to ensure that Indigenous children were made aware of their aboriginal and treaty rights;
- n. permitting unqualified and otherwise unsuitable individuals operate boarding homes without adequate screening and supervision;
- o. failing to protect the Plaintiffs and other Class Members from harm and injury while they were resident in boarding homes;
- p. failing to properly monitor and oversee the provision of funding it made to the Boarding Home Program for Indian Students;

- q. failing to properly monitor and oversee the provision of funding it made to boarding home families;
- r. failing to properly monitor and oversee the provision of funding it made to provincial and territorial public schools;
- s. failing to establish, implement and enforce appropriate policies, guidelines and procedures to ensure that the Plaintiffs and other Class Members would have reasonable access to their families and Indigenous communities;
- t. failing to ameliorate the harmful effects to the Plaintiffs and other Class Members of extended stays away from their families and Indigenous communities;
- u. failing to ensure that Boarding Home Program staff and staff of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments was appropriately trained and educated and understood that the abuse of Class Members would not be tolerated;
- v. failing to ensure that Boarding Home Program staff and staff of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments was appropriately supervised;
- w. failing to consult with Indigenous communities and other Indigenous stakeholders about the Boarding Home Program for Indian Students, the provision of funding to the program for that purpose, and the policies and practices that would be adopted in operating and administering that program;
- x. actively promoting a policy of cultural assimilation;
- y. investigating and addressing complaints and allegations of abuse and other harms in a timely manner; and
- z. ensuring that perpetrators of abuse and other harms were appropriately punished.

176. The acts and omissions of Canada were systemic and were acts of fundamental disloyalty and betrayal to the Plaintiffs and other Class Members.

177. Canada's conduct was in breach of its constitutional obligations arising under section 91(24) of the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK) and section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11.

178. Pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and its predecessor legislation, Canada is vicariously liable for the negligent acts and omissions of its employees, servants and agents.

International Law

179. On November 12, 2010, Canada issued a statement of support for the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”). The actions of Canada in establishing, implementing, administering and managing the Boarding Home Program for Indian Students were contrary to the spirit of UNDRIP as well as the commitments set out in Article 1 and Article 8 of UNDRIP.

180. Article 1 of UNDRIP states:

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

181. Article 8 of UNDRIP states:

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - a. Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - b. Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - c. Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - d. Any form of forced assimilation or integration;
 - e. Any form of propaganda designed to promote or incite racial or ethnic

discrimination directed against them.

Ongoing Loss and Damage

182. The Plaintiffs and other Class Members are Indigenous persons who, as children, enjoyed or were entitled to enjoy aboriginal and treaty rights, including the right to:

- a. benefit from Indigenous laws, customs and traditions in relation to education, citizenship, adoption, family care, marriage, property and use of resources;
- b. retain and practice their Indigenous culture, religion, language, heritage and traditions; and
- c. fully learn their Indigenous culture, religion, language, heritage and traditions from their families and communities.

183. As a consequence of Canada's breaches of its fiduciary and common law duties and the fault and negligence of its servants, as set out above, the Plaintiffs and other Class Members were and are subjected to ongoing damage. Particulars of the past and ongoing loss or damage suffered by the Plaintiffs and other Class Members include:

- a. loss of their Indigenous culture and identity;
- b. loss of their Indigenous customs, language, heritage, religion, spirituality and traditions;
- c. loss of the opportunity to exercise their aboriginal rights;
- d. loss of the opportunity to exercise their treaty rights;
- e. loss of the opportunity to participate in traditional methods of education;
- f. loss of their status as Indians;
- g. isolation from their families, Indigenous communities and traditional homelands;
- h. physical, sexual, emotional, spiritual and psychological abuse and suffering;
- i. post-traumatic stress disorder;
- j. loss of self-esteem and diminished self-worth;
- k. repeated and ongoing nightmares;
- l. depression;

- m. anxiety;
- n. difficulty in coping with emotional stress;
- o. suicidal ideation;
- p. attempted suicide;
- q. feelings of guilt, responsibility, and self-blame;
- r. nervous shock;
- s. mental anguish;
- t. insomnia;
- u. forced cultural assimilation;
- v. deprivation of one's ability to pass one's culture and identity on to one's children;
- w. social dysfunctionality, failed relationships and alienation from family, spouses and children;
- x. loss of ability to obtain proper education or employment;
- y. loss of income, loss of competitive advantage in the employment field, loss of income earning potential and loss of income earning capacity;
- z. loss of ability to parent;
- aa. addiction, including addiction to alcohol, prescription and non-prescription drugs;
- bb. pain and suffering;
- cc. loss of consortium;
- dd. loss of enjoyment of life; and
- ee. the cost of psychological, psychiatric and medical treatment, including but not limited to the cost of counselling, rehabilitation, therapy, medication and hospitalization.

184. As a consequence of Canada's breaches of its fiduciary and common law duties and the fault and negligence of its servants, as set out above, Secondary Class Members have also sustained and will continue to sustain injury, loss and damages, including but not limited to:

- a. actual expenses reasonably incurred for the benefit of Class Members;
- b. actual expenses incurred while supporting Class Members during counselling and/or recovery; and

- c. loss of income and/or the value of services provided by Secondary Class Members to Class Members, where such services, including nursing and housekeeping, have been provided.

185. Secondary Class Members seek compensation for the costs set out in paragraph 184 as well as compensation for loss of support, guidance, consortium, care and companionship that they might reasonably have expected to have received from Class Members. Such loss and damage was reasonably foreseeable by Canada

Punitive Damages

186. A punitive damage award in this case is necessary to express society's condemnation of Canada's conduct and to achieve the goals of both general and specific deterrence.

187. The conduct of Canada was systemic, deliberate, lasted for decades and represented a marked departure from ordinary standards of decent behaviour. Canada had detailed knowledge of the breach of aboriginal and treaty rights and the widespread psychological, emotional, sexual and cultural abuses of the Plaintiffs and other Class Members. Despite this knowledge, Canada did nothing to remedy the situation and continued to administer the Boarding Home Program for Indian Students, thus continuing to permit the perpetration of grievous harm to the Plaintiffs and other Class Members. Canada deliberately planned the eradication of the identity, language, religion and culture of the Plaintiffs and other Class Members.

188. Canada's acts and omissions and the acts of omissions of its agents and servants, as set out in detail in this claim, showed a callous disregard for the rights and well-being of the Plaintiffs and other Class Members.

189. Compensatory damages are insufficient in this case. The conduct of Canada merits punishment and warrants a claim for punitive damages.

Disgorgement

190. The Plaintiffs and other Class Members were deprived of financial benefits to which they were entitled pursuant to the *Indian Act*, RSC 1985, c I-5 and its predecessor legislation and policies. Canada wrongly retained these monies and the value of these benefits.

191. Canada should be required to disgorge the profits and other financial benefits that it inequitably acquired by virtue of its wrongful acts and omissions.

Québec Class Members

192. Where the acts and omissions of Canada and its servants took place in Québec, they constituted fault giving rise to extra-contractual liability pursuant to the *Civil Code of Québec*, CQLR, c CCQ-1991 and pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and the *Interpretation Act*, RSC 1985, c I-21 and any predecessor legislation. The conduct of Canada and its servants also constituted unlawful and intentional interference with the rights of Québec Class Members within the meaning of the *Charter of Human Rights and Freedoms*, CQLR c C-12 and any predecessor legislation.

193. Canada is liable to pay damages, including punitive damages, to the Québec Class Members pursuant to the *Civil Code of Québec*, CQLR, c CCQ-1991 and any predecessor legislation.

Legislation

194. The Plaintiffs and other Class Members plead and rely upon the common law and various statutes and regulations, including but not limited to:

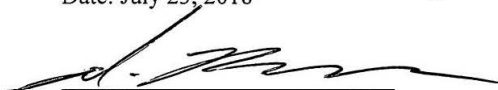
- a. *Charter of Human Rights and Freedoms*, CQLR c C-12;
- b. *Civil Code of Québec*, CQLR, c CCQ-1991;
- c. *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK);
- d. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11;
- e. *Crown Liability Act*, SC 1952-53, c 30;
- f. *Crown Liability and Proceedings Act*, RSC 1985, c C-50;

- g. *Family Law Act*, RSO 1990 c F-3;
- h. *Federal Courts Act*, RSC 1985, c F-7;
- i. *Federal Courts Rules*, SOR/98-107;
- j. *Health Care Costs Recovery Act*, SBC 2008, c 27;
- k. *Indian Act*, RSC 1951, c 149;
- l. *Indian Act*, RSC 1985, c I-5;
- m. *Interpretation Act*, RSC 1985, c I-21;
- n. *Limitation Act*, SBC 2012, c 13;
- o. *The Tortfeasors and Contributory Negligence Act*, CCSM, c T-90;
- p. *Tortfeasors Act*, RS 1989, c 471;
- q. *Tort-Feasors Act*, RSA 2000, c T-5;
- r. *Tortfeasors Act*, RSNB 2011, c 231; and
- s. All other comparable and relevant acts and regulations in Canada and their predecessor legislation;

Place of Trial

The Plaintiffs propose that this action be tried at the City of Vancouver, in the Province of British Columbia.

Date: July 23, 2018



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Schedule D

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N°: 500-06-000812-160

SUPERIOR COURT
Class Action

Wiichihiiwewin Centre of Waskaganish

Applicant

and

Anne Smith

Designated Member

[...]

v.

Attorney General of Canada

Respondent

[...]

**RE-AMENDED (fifth modification) APPLICATION FOR AUTHORIZATION TO
INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF
REPRESENTATIVE
(Art. 571 *et seq.*, C.C.P.)**

**TO ONE OF THE JUDGES OF THE SUPERIOR COURT, SITTING IN THE PRACTICE
DIVISION FOR THE DISTRICT OF MONTREAL, THE APPLICANT RESPECTFULLY
SUBMITS THE FOLLOWING:**

The applicant Wiichihiiwewin Centre of Waskaganish (“the Applicant”), an association constituted as a legal person of which Anne Smith (a pseudonym) is a designated member, requests authorization to proceed with a class action on behalf of persons in the group described below, of which Anne Smith is a member, specifically:

Description of the Primary Class

[...] “Aboriginal children and adolescents who, when they were domiciled or residents in Québec, were billeted by the Government of Canada with families other than their own, or in [...] boarding

homes (the “Primary Class”). The Primary Class excludes the claims released against the Government of Canada in respect of institutions covered by Schedules E and F of the Indian Residential Schools Settlement Agreement”; and

Description of the Family Class

“All persons who are a spouse or former spouse, child, grandchild or sibling of a member of the Primary Class and who suffered material and/or moral damages as a result of injury to the Primary Class Members (the “Family Class”)”. [...]

1. Overview

- 1.1. Every year from the time she turned █ in 1965, federal civil servants took Anne from her home in the Cree village of Rupert House (now Waskaganish), Quebec, to put her in Indian Residential School (IRS) in Fort George, Quebec, some 550 kilometers away.
- 1.2. Anne was a direct victim of the fact that, as the Prime Minister stated in his 2008 apology: “For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities,” produced as Exhibit P-1.
- 1.3. The year Anne turned 14 or 15, federal officials decided there was no room for her at the residence and billeted her with the ██████████. In that home, Anne was molested by ██████████ and raped by their ██████████.
- 1.4. Anne received no compensation for the abuse under the Indian Residential Schools Settlement Agreement (IRSSA): she received a final decision on June 21, 2016, that when federal civil servants placed her in the private home where she was raped, their decision on her accommodation had the effect of removing her from the scope of the Agreement – even though she continued to attend the same school as before, hundreds of kilometers from her home.
- 1.5. Anne was not alone: more than 100 other students from the Cree villages of Rupert House, Paint Hills (now Wemindji), Eastmain and Fort George were also billeted with families living in Fort George, while continuing to attend the same federally-operated school as when they were in residence. Several individuals from Waskaganish who were billeted with other families have described physical and sexual abuse they suffered in those homes.
- 1.6. A similar situation existed in Mistissini (then known as Mistassini) in the 1970s, where children from Mistissini and other surrounding communities were billeted in

families living in Mistissini, while attending the federal Indian day school in the community. Several individuals billeted with families in Mistissini have also described physical and sexual abuse they suffered in those homes.

- 1.7. Moreover, the federal government used its jurisdiction over primary and secondary education for Aboriginal children to impose on them a variety of other forms of placement outside their own homes while they were at school, such as boarding homes, hostels and residences, none of which meet the definition of residential schools under the IRSSA, but where students also suffered abuse.
- 1.8. This action concerns the establishment, implementation, administration and management by Canada of those placement programs for Aboriginal children and youth, which consisted of educational programs designed to advance Canada's policy of culturally assimilating Aboriginal persons into mainstream Canadian society.
- 1.9. As a result of those placements, Aboriginal children were separated by large distances from their families and communities and were unreasonably denied access to their language, culture, identity, religion, heritage and customs.
- 1.10. Through the implementation of those placement programs, Canada severely damaged the identities of those children who were billeted and subsequent generations of Aboriginal people and caused irreversible harm to individuals, families and communities.
- 1.11. The Applicant is seeking a recourse for Anne Smith and for all those in a similar situation and their families, whether in Fort George or Mistissini, or elsewhere in Québec.

2. The context of the class action: Indian Residential Schools and the Independent Assessment Process

A. The Indian Residential School system

- 2.1. A fundamental measure in Canada's policy of assimilation of Aboriginal peoples was its system of residential schools, which were operated across Canada, in collaboration with church entities, from the early 1830s until 1997, as appears from Summary of the Final Report of the Truth and Reconciliation Commission of Canada (TRC Report), produced as Exhibit P-2, at p. 70.
- 2.2. In total, roughly 150,000 Aboriginal people attended one or more of the 139 residential schools across the country, as appears from the TRC Report, P-2, at p. 3. Most of these individuals were Indians within the meaning of the *Indian Act*, like Anne and the other Quebec Cree, but many were also Inuit.

- 2.3. These schools system played an important role in a process referred to as “cultural genocide” by the Truth and Reconciliation Commission (TRC) of Canada and by the Right Honourable Beverly McLachlin, Chief Justice of the Supreme Court of Canada, as appears from the TRC Report, P-2, at p. 1, and from an article in the *Globe and Mail* dated May 28, 2015, produced as Exhibit **P-3**.
- 2.4. The Aboriginal Healing Foundation defined the “Residential School System” as including “industrial schools, boarding schools, homes for students, hostels, billets, residential schools, residential schools with a majority of day students or a combination of any of the above,” as appears from the *Third Interim Evaluation Report of Aboriginal Healing Foundation Program Activity* at p. vi, produced as Exhibit **P-31**.
- 2.5. In fact, the residential school system consisted of a variety of forms of primary and secondary education imposed on Aboriginal children by the federal government pursuant to its authority under para. 91(24) of the *Constitution Act, 1867* from Confederation till approximately 1997.

B. The Indian Residential School Settlement Agreement (IRSSA)

i. Nature and scope

- 2.6. The Indian Residential School Settlement Agreement (IRSSA), produced as Exhibit **P-4**, was approved as the settlement of nine class actions by the superior courts of six provinces (from British Columbia to Québec) and all three territories, including the decision of this Honourable Court in *Bosum v. Attorney General of Canada*, No. 500-06-000293-056, 550-06-000021-056 and 500-06-000308-052, produced as Exhibit **P-5**.
- 2.7. The IRSSA has three main components: the Truth and Reconciliation Commission (TRC); the Common Experience Payment (CEP), a lump sum payable to all former students who resided at a recognized Indian Residential School (IRS); and the Independent Assessment Process (IAP) at issue in this application, meant to compensate claims of sexual or serious physical abuse.
- 2.8. A list of the residential schools attended to by the IAP is found in Schedule P and F of the IRSSA, filed in support of this as Exhibit **P-6**, and it includes Fort George Anglican also known as St. Philip’s Indian Residential School (IRS), which Anne attended.
- 2.9. The Interim Report of the Truth and Reconciliation Commission (TRC), produced as Exhibit **P-32**, noted at p. 9 that the IRSSA excluded specific groups of former students, including:

- a) students such as Anne Smith, who attended the same schools by day as were attended by students living in the residences, who did not stay in their own homes with their own families, but who were billeted with local families; and
 - b) students who attended non-residential schools as directed by the federal government, though the schools were not under federal control – many of these students in fact boarded with families chosen by the federal government.
- 2.10. Requests made pursuant to Article 12 of the IRSSA to add institutions to the settlement agreement were denied in all 41 cases identified as “home placements,” in British Columbia, Saskatchewan, Manitoba, Ontario, Québec, the Northwest Territories and Nunavut, as appears from the full list produced as Exhibit P-33. [...]

ii. The Independent Assessment Process (IAP)

- 2.11. The IAP has two categories of claimants: Resident Claimants, who lived at the Indian Residential School (IRS), and Non-Resident Claimants, who did not reside at an IRS but, while under the age of 21, were permitted by an adult employee to be on the premises of an Indian Residential School to take part in authorized school activities.
- 2.12. The IAP awards compensation for three kinds of acts: sexual abuse, roughly from touching to repeated intercourse; severe physical abuse (PL); and “other wrongful acts” (OWA), which require a high level of psychological harm.
- 2.13. The IAP also awards compensation for:
- a) psychological harms from a modest detrimental impact, such a loss of self-esteem, to continued harm resulting in serious dysfunction, such as a chronic post-traumatic state;
 - b) consequential loss of opportunity, roughly from reduced attention span to chronic inability to obtain employment; or
 - c) proven actual income loss, instead of opportunity loss;
 - d) a future care plan for counselling or medical treatment, to a maximum of \$15,000;

the whole as it appears in IRSSA, Schedule D, produced in support of this as Exhibit P-7.

- 2.14. Liability can vary depending on the identity of the alleged perpetrator:
- a) Canada accepts liability for abuse by any adult employee of the government or of the church entity that operated the IRS, but other adults must have been lawfully on the premises;
 - b) Canada accepts liability for student on student abuse only where it took place on the premises and employees had real or constructive knowledge of the abuse (among other conditions).
- 2.15. Liability can also vary depending on the identity of the Claimant:
- a) Canada accepts liability for any compensable abuse committed against a Resident by an adult when the abuse arose from or its commission was connected to the operation of an IRS;
 - b) Canada accepts similar liability to Non-Resident Claimants, but only if an adult employee gave the Claimant permission to be on the premises for taking part in school activities.
- 2.16. The variations in liability based on the nature of the acts and the identity of the Claimants and alleged perpetrators has created a host of jurisdictional issues that can complicate cases even where the abuse clearly took place.
- 2.17. Applications under the IAP had to be submitted by September 19, 2012.
- 2.18. Upon receipt, the Indian Residential Schools Adjudication Secretariat (Secretariat) determined whether applications were complete and *prima facie* admissible, as appears from Schedule D, P-7, p. 19.
- 2.19. The Secretariat generally does not schedule hearings until a claimant has submitted mandatory documents relevant to consequential harms and opportunity loss, such as medical, treatment, employment and tax records.
- 2.20. The Secretariat then assigns an independent adjudicator to the claim, who is the sole finder of fact and the only party allowed to question the claimant throughout the process.
- 2.21. Once satisfied that abuse and harms are established, the adjudicator decides on a compensation amount in accordance with the framework set out in Schedule D, P-7, at p. 3-6.
- 2.22. An initial adjudication decision is subject to review, but “on the record (no new evidence permitted) and without oral submissions”, as appear from Schedule D, P-7, at p. 14.

2.23. The possibility of re-review arises from either party's right to "ask the Chief Adjudicator or designate to determine whether an adjudicator's, or reviewing adjudicator's, decision properly applied the IAP Model" and presumably also from the Claimant's right to "require that a second adjudicator review a decision to determine whether it contains a palpable and overriding error", as appear from Schedule D, P-7, at p. 14.

2.24. As set out below, the hearing, review and re-review adjudicators in Anne Smith's claim under the IAP all ruled that she was not eligible for any compensation under the IRSSA because the sexual abuse she suffered in the family where she was billeted did not occur on premises of the school or residence and was not committed by a federal or church employee.

3. The facts which give rise to a personal action on behalf of the [...] Designated Member against the Respondent are:

A. Anne's attendance at St. Philip's IRS

3.1. Anne, the Designated Member, is a Cree woman born on [REDACTED], and raised in the Cree village of Rupert House, Quebec (now called Waskaganish).

3.2. She spent her first year at residential school at Bishop Horden Hall in Moose Factory, Ontario.

3.3. In 1965, at the age of [REDACTED] Anne was sent to Fort George, Quebec, to attend St. Philip's IRS, also known as Fort George Anglican Residential School. At the same time, other Cree children were sent to the same community to attend Fort George Roman Catholic IRS (known variously as St. Joseph's Mission, Résidence Couture, or Sainte-Thérèse-de-l'Enfant-Jésus).

3.4. Anne lived in the St. Philip's residence from September to June, during seven or eight of the years she spent in Fort George. The school was attended as a residential school by children from other communities, like Anne, but during some years, local children whose families lived in Fort George also attended the IRS as a day-school. During some years, Inuit as well as Cree children resided at the IRS.

3.5. Around 1969, the federal government assumed sole responsibility for the operation of St. Philip's IRS from the Anglican Church of Canada. Around the same time, the federal government proposed a policy for administering the residences and the schools at an IRS separately: this so-called "administrative split" may have been the reason why around 1972, some or all classrooms at St. Philip's began to be referred to as "Sand Park Federal School." However, neither change had any significant effect on Anne.

- 3.6. After completing her ninth year of residential school, Anne was sent to [REDACTED] (now [REDACTED] Québec, in 1974 to complete her secondary education at a public English-language high school, which she did in June 1977; while she attended that school, Anne boarded with a family chosen by the Department of Indian Affairs and Northern Development (DIAND).

B. The abuse suffered when billeted with a family

- 3.7. In late August or early September of 1972 or 1973, after Anne had arrived in Fort George for the new school year, the Respondent billeted her with a Cree family living in Fort George. Anne would live with this family for two more years, while attending the same school as before.
- 3.8. During those years, [REDACTED] (A.B.C.) and [REDACTED] (D.E.) of the family sexually assaulted Anne on several occasions.
- 3.9. Although D.E. did not live with [REDACTED], he frequently visited the home.
- 3.10. A.B.C. often drank to excess and engaged in violent behaviour; he made sexual advances towards Anne and would ask her, "Why don't we have sex?" On other occasions, he would get into a rage and force everyone to leave the house, including his wife.
- 3.11. The first incident of abuse occurred during the fall of Anne's first year with the C. family, although it is difficult for her to remember the exact dates of the abuse.
- 3.12. On this occasion, Mrs. C. told Anne to get Carnation condensed milk from a room in which D.E. was lying on a bed. D. approached her, put his hands in her pants and touched her vagina. Anne pushed him and ran away.
- 3.13. On another occasion, which Anne has difficulty remembering, D.E. came into her basement bedroom in the middle of the night; she could smell alcohol on his breath. D. forced himself on top of Anne and penetrated her; at the time, Anne was a virgin.
- 3.14. In another incident, A.B.C. came down to Anne's room and ordered her to go upstairs to sleep with [REDACTED].
- 3.15. Anne obeyed and was woken up later that night by A.B.C. who was rubbing her vagina under her panties. The incident did not last long: when Anne moved, the touching stopped, and she believes she ultimately fell back asleep later that night.
- 3.16. Three other girls who were also billeted with the A.B.C. family during Anne's stay. She does not know whether those girls knew that she was being abused by A.B.C. and D.E., nor does she know whether they abused the other girls because the matter was never discussed with Anne.

3.17. In fact, Anne never disclosed her own abuse to anyone before describing it to her legal counsel in 2012, while filling out her IAP Application.

C. The harms suffered by the Designated Member

3.18. Under Canada's placement program, Anne was separated at a young age from her family and community.

3.19. As a result, she suffered emotional harm and she was also prevented from learning and practicing Cree culture and customs, especially while she was billeted with a non-Aboriginal family in [REDACTED]

3.20. The abuse perpetrated by members of the family in which Anne was billeted also have had many profound impacts in her life.

3.21. Anne struggled for a number of years with drinking and drug abuse problems.

3.22. She started drinking when she was living with the C. family, albeit on an irregular basis. Upon her return to Waskaganish, however, she drank heavily, almost every weekend, over a 25-year span.

3.23. She also abused drugs such as mescaline, crack, and cocaine.

3.24. Anne abused these substances in attempts to suppress and hide the guilt she felt as a result of the abuse.

3.25. Anne's substance abuse reached its peak in 2007, at which point she was using cocaine on a daily basis and suffered from feeling "very slow."

3.26. Her addictions led her to forgo paying bills in favour of spending large amounts of money on drugs. She was unable to take care of her children and grandchildren.

3.27. Fortunately, Anne has now been sober for several years.

3.28. During times of heavy drug use, Anne sometimes thought of committing suicide.

3.29. On one such occasion, feeling like she "wanted to go away and end everything" Anne retrieved a firearm from her basement, whereupon it accidentally fired while in her hands. This near-fatal incident scared her and discouraged her from "going further."

3.30. The abuse she suffered also led Anne to be overly protective of [REDACTED] and her grandchildren, to the point where she sometimes had irrational fears that her [REDACTED] might have abused them. In fact, she often checked on him and the children

to ensure that abuse was not occurring. She could not trust any adult, including [REDACTED], and always had to know where [REDACTED] were.

- 3.31. Anne has had and still has feelings of shame and humiliation. She feels dirty and often wonders whether people know what happened to her.
- 3.32. Anne also suffered from sexual dysfunction early in her relationship with her husband; she would rebuff his approaches and “push him away” at first because she felt dirty, feeling like the abuse was occurring again.
- 3.33. The abuse also had an impact on her work history. In [REDACTED] she was fired from her job because of her drug abuse and drinking problems.
- 3.34. Anne has never been able to maintain stable employment because she never had confidence in herself during her adult life. She has long felt as though she cannot “handle or cope,” and that she cannot do things properly.
- 3.35. Anne believes that the instability in her life is the result of having been removed from the care of her parents, family and community at a very young age. As a result, she never had the opportunity to learn how to care for children from her parents and she did not care for [REDACTED] as she would have wished.

D. The Designated Member’s IAP claim

- 3.36. In August 2012, Anne filed an IAP claim to be compensated for the above-mentioned abuse, as appears from her Application Form, produced as Exhibit **P-8**.
- 3.37. On February 28, 2014, an IAP hearing took place, during which Anne testified about the abuse, the consequential harms and the loss of opportunity she suffered as a result.
- 3.38. During the course of the hearing and in his final submissions, Canada’s representative made an objection to Anne’s claim based on jurisdictional grounds: he argued that during the years in question, she was attending a federally-operated day school known as Sand Park, not an IRS within the scope of the IAP.
- 3.39. Adjudicator Robert Néron found Anne credible and held that she had suffered the abuse alleged. However, he upheld Canada’s preliminary objection and concluded she was not attending an IRS at the time of the abuse. He also concluded that abuse suffered by students in the homes of families with whom they were billeted is not covered by the IRSSA, as appears from his decision dated July 22, 2014, produced as Exhibit **P-9**.
- 3.40. On October 3, 2014, Anne’s legal counsel requested a review of Adjudicator Néron’s decision on the basis that, *inter alia*, Sand Park was part of St. Philip’s IRS

and that the abuse suffered in billeting families falls within the scope of the IAP, as appears from the Request for Review, produced as Exhibit **P-10**.

- 3.41. Adjudicator Néron's decision was ultimately upheld, as appears from the review decision by Deputy Chief Adjudicator Rodger Linka, dated February 23, 2015, produced as Exhibit **P-11**.
- 3.42. The decision to reject Anne's claim was upheld a second time, in the Re-Review decision of Adjudicator Anne Wallace, dated May 23, 2016, produced as Exhibit **P-12**.
- 3.43. Adjudicator Wallace found that the abuse suffered by Anne was not connected to nor did not arise from the operation of an IRS and, therefore, "the elements required by the IAP Model... [had] not been established," as appears from the re-review decision, P-12.
- 3.44. Since she held that abuse suffered in a home where a student was billeted is not compensable under the IAP, Adjudicator Wallace held that she need not decide whether the school that Anne was attending was a federal day-school or an IRS, as appears from her decision, P-12.
- 3.45. Adjudicator Wallace's decision was communicated to Anne's legal counsel on June 21, 2016, as appears from an email from the Secretariat's electronic document interchange (EDI) to Marie-Eve Dumont, produced as Exhibit **P-13**.
- 3.46. Adjudicator Wallace's re-review was the final decision on Anne's claim under the IAP: three different adjudicators had found that Anne's abuse by members of the family with whom she was billeted was not within the scope of the IAP.

E. Other billeted students in Cree communities in Québec

i. Fort George

- 3.47. Anne was not the only student billeted with a family in Fort George.
- 3.48. With the addition of secondary education to the curriculum in the fall of 1972, the Minister's agents and servants began moving children out of school residences and billeting them in private homes [...] in Fort George, to make room for classrooms and staff accommodations, as appears from a letter dated February 11, 1972 from A.E. Aimé, Supervisor of Education, to M.C. Paradis, at the Quebec regional office of DIAND, produced as Exhibit **P-23**.
- 3.49. In these circumstances, the IRS residence rapidly reached full capacity, as appears from a letter dated September 26, 1972, from J.G. Simard, Education Advisor with

DIAND's Abitibi District, to the Education Supervisor of DIAND, filed in support of this as Exhibit **P-14**.

- 3.50. Students were moved into families' homes, so that their rooms in the residences could be given to unmarried teachers, as appears from the exchange of correspondence between A.E. Aimé, Supervisor of Education, and C. Paradis, Regional Supervisor of Education, both at DIAND, dated February 18 and September 21, 1972 (in a bundle), produced as Exhibit **P-15**.
- 3.51. In accordance with this initiative, roughly fifty (50) students from Rupert House, Paint Hills (now known as Wemindji) and Eastmain were lodged in private homes at the end of September 1972, as appears from the letter from J.G. Simard, dated September 26, 1972, P-14.
- 3.52. An unspecified number of children from Fort George were also lodged in private homes during the school year, because during those months, their parents practiced a traditional "nomadic" lifestyle of hunting, fishing and trapping, as appears from J.G. Simard's letter, P-14.
- 3.53. The practice of billeting students continued in 1973-1974 and 1974-1975, as appears from a 1976 tripartite agreement between a group of parents, the Fort George Band Council, and DIAND [...] concerning the establishment of a "hostel program" in Fort George, produced as Exhibit **P-16**, p. 2 of 6.
- 3.54. In November 1974, at least 37 students were billeted with families, as appears from a letter dated November 12, 1974, from V.J. Caissie, Acting Regional Director, to R.L. Boulanger, Regional Director at DIAND [...], produced as Exhibit **P-17**.
- 3.55. According to a letter dated January 21, 1975 from V.J. Caissie, Acting Regional Director, to P.B. Lesaux, Assistant Deputy Minister of [...] Indian and Eskimo Affairs Branch of DIAND:

les cours du Secondaire I à IV inclusivement sont fournis à 140 élèves en provenance des communautés de Rupert House, Paint Hills et Eastmain. Un peu plus d'une centaine de ces étudiants sont hébergés dans des maisons privées à Fort George, la balance demeurant en résidence dans le pensionnat

as appears from the letter, produced as Exhibit **P-18**.

- 3.56. On April 10, 1975, the Acting Regional Director reported that:

Last year, approximately 140 students from smaller communities along the coast attended school at Fort George. All but 35 of those were boarded in private homes.

as appears from a letter from V.J. Caissie to H.T. Parker, Director of the Financial & Management Branch, [...] DIAND, produced as Exhibit **P-19**.

- 3.57. The Respondent's civil servants were aware that "la situation de certains élèves dans les maisons privées n'est pas acceptable, surtout à cause de l'espace vital restreint", as appears from V.J. Caissie's letter dated January 21, 1975, P-18.
- 3.58. A handwritten note on a letter dated November 1974 concerning the St. Philip's residence stated:

Les 4 hostels en construction accommodent les 31 étudiants présentement en résidence. De plus, chaque hostel peut recevoir 12 étudiants, cela signifie que 17 étudiants placés dans des foyers non-adéquats, pourront être relocalisés dans ces memes hostels.

Ceci a pour effet que les 49 étudiants demeurant dans les foyers évalués comme non-adéquats, sont réduits à 32 et que l'addition de 3 hostels seraient nécessaires [sic]....

as appears from a letter from G. Lefebvre, Education Supervisor [...] at DIAND, produced as Exhibit **P-20**.

- 3.59. The high operating costs were another reason why the Respondent decided to billet students with families living in Fort George, as appears from the 1976 tripartite agreement, Exhibit P-16, at p. 2 of 6.
- 3.60. In fact, Canada estimated the annual per capita cost of lodging children in the school residence was \$15,000, as appears from a letter dated April 10, 1975, from V.J. Caissie, Acting Regional Director, to H.T. Parker, Director of the Indian and Eskimo Affairs Branch, produced as Exhibit **P-24**, in contrast to \$1,500 for children lodged in private dwellings, as appears from Caissie's correspondence dated January 21, 1975, P-18.
- 3.61. Nevertheless, billeting so many students was known to have "caused many problems in the community," as appears in the tripartite agreement, P-16, at p. 2 of 6.
- 3.62. In January 1976, many of the billeted students were sent to live in one (1) of eight (8) hostels, which had been built as "the third alternative for boarding students" in Fort George, after the residence and private homes, as appears from the tripartite agreement, P-16, at p. 2 of 6.

- 3.63. However, because the hostels could house a total of only ninety-six (96) students, more than forty (40) students continued to live in billet families after the transfer, as appears from V.J. Caissie's letter dated April 10, 1795, P-24.
- 3.64. Canada's direct role in Cree education ended at the with the 1977-1978 school year, after which management and control were transferred to the Cree School Board, in accordance with the James Bay and Northern Quebec Agreement ("JBNQA"), as appears from section 16 of the JBNQA, produced as Exhibit **P-25**.
- 3.65. Three individuals from Waskaganish who were billeted with other families have described to the Applicant's counsel incidents of physical and sexual abuse they suffered in those homes.

ii. Mistissini

- 3.66. In Mistissini (then known as Mistassini), a similar situation existed where, after a federally-run school was built, "all [Mistassini] Indians pupils from Kindergarten to Grade 6 attend[ed] [that] school", and those "whose parents [had] to go away for trapping" were placed "in cottage-style hostels or in Indian families", as appears from a letter dated January 20, 1970, from A.R. Jolicoeur to the Regional Superintendent of Education at DIANDs, produced as Exhibit **P-26**.
- 3.67. The goal of building hostels and offering accommodation in families in Mistissini was that elementary students should "not be required to go to La Tuque Student Residence below Grade 6," as they had up till 1970, as appears from Exhibit P-26.
- 3.68. Three Mistassini Hostels, with twelve (12) beds each, began operating in the fall of 1971, as appears from a letter dated February 19, 1973, from Maurice Legendre, District Supervisor, to C. Paradis, at DIAND, produced as Exhibit **P-27**.
- 3.69. By October 1976, another 69 children were placed in what DIAND called "nomad homes" because their parents had left the community to hunt, fish and trap on their traditional territory, as appears from a letter dated October 12, 1976, from W. Halligan, District Supervisor, to Donald Daoust, at DIAND, produced as Exhibit **P-28**.
- 3.70. In 1976-1977, it was anticipated that 120 children would be placed in those "nomad homes", as appears from W. Halligan's letter, P-27.
- 3.71. According to a letter dated November 3, 1976, from G. Lemay, Acting Deputy Director, to the District Supervisor, the "nomad homes" housed Mistissini children, while children from surrounding communities lived in Mistissini hostels, as appears from G. Lemay's letter, produced as Exhibit **P-29**.

- 3.72. The “cottage-style” or “Mistissini Hostels” were recognized as an Indian Residential School for purposes of the IAP during the period from September 1, 1971, to June 30, 1978, as appears from the IAP School Narrative prepared for Mistassini Hostels, produced as Exhibit **P-30**.
- 3.73. Counsel for the Applicant has interviewed two individuals who, as children living in surrounding Cree communities, were sent to Mistissini and also placed in “nomad homes.”
- 3.74. However, those two individuals did not make any claim in regard of the abuse they suffered in the “nomad homes” because they were advised by their lawyer that it was not compensable under the IAP.

F. Government-directed educational placement of First Nations and Inuit students outside of residential schools

i. Jurisdiction and practice

- 3.75. As set out below, at all relevant times, the Minister of Indian Affairs and Northern Development asserted the legal power to designate the school that children registered as Indians or Inuit children had to attend, without the parents’ consent.
- 3.76. The Minister exercised that power, at least so long as the *Indian Act* band to which the child belonged did not control its own education budget or program or until jurisdiction over education was otherwise transferred in the Northwest Territories and northern Québec and sometimes continued to exercise it thereafter.
- 3.77. In the Northwest Territories, for instance, the federal government decided in the 1950s to replace scattered mission schools with government-run hostels and day schools, as appears from Exhibit **P-34**, volume 2 of the TRC’s *Final Report* at p. 17.
- 3.78. One of the results was that, for instance, in settlements along the Mackenzie River in the western Arctic, “[a]pproximately 50 children were placed in foster homes on a temporary basis to enable them to remain in day school while their parents were away from the settlement trapping,” as appears from the 1958-59 Annual Report of Indian Affairs Branch at p. 75, produced as Exhibit **P-35**.
- 3.79. Since 1958 at the latest, therefore, placing registered Indian or Inuit children with families other than their own or in foster homes or boarding homes was an integral part of the elementary and secondary education system operated by the Respondent, institutions that were not necessarily residential schools as defined in the IRSSA.

ii. The Boarding Home program

- 3.80. When DIAND placed high-school students like Anne Smith who were billeted in private homes in Fort George and Mistissini, its officials were acting pursuant to the Department's Boarding Home Program.
- 3.81. In 1961, the Director of what was then the Indian Affairs Branch of the Department of Citizenship and Immigration explained that he used the term "hostel accommodation" to refer to "living accommodation in residential schools for students who are receiving their classroom instruction in a nearby school, usually a non-Indian school," but that while "the number of pupils boarding in private homes is not available it is estimated that they roughly equal the number of hostel pupils," as appears from Exhibit PGC-2 to the Respondent's motion to produce relevant evidence.
- 3.82. The Director of the Indian Affairs Branch added that the supervision of students boarding in private homes was taken in charge by "Education Assistants" who performed "such duties as locating boarding homes, counselling students, acting as liaison between the Branch and the various schools in which the pupils are enrolled, visiting the homes of the pupils where distances permit, checking attendance, performing related administrative duties, reporting, public relations, etc.," as appears from Exhibit PGC-2.
- 3.83. In 1962, the Director instructed superintendents of Indian agencies and of Indian schools that accommodation in residential schools was preferred for children under the age of 16, while "private home placements," should be reserved for students over 16 when required "in order to receive a High School education which is not otherwise available," as appears from Exhibit PGC-5.
- 3.84. By the late 1960s, the Department of Indian Affairs and Northern Development (DIAND) actively sought to close Indian residential schools and replace them with day schools on reserve and, especially at the high-school level, with education in majority non-Aboriginal public schools. The TRC has concluded that: "Residential schooling from 1970 onward constituted a small and declining element in First Nations education," as appears from Exhibit P-21 at p. 92.
- 3.85. However, this decline did not mean that DIAND had stopped placing registered Indians and Inuit children in accommodation other than their family homes during their schooling. On the contrary, its 1970-71 Annual Report indicated that some 6,000 students were in residence, while 6,000 more "were living in private boarding homes and group homes during the school year, and 'the majority of these students are provided with room and board, and clothing and educational allowances,'" as appears from Exhibit P-21 at p. 92.

- 3.86. The Respondent's management of these accommodations was far from commensurate with the vulnerability of the students placed there. The head of DIAND's Guidance Services Division concluded in 1970 that the foster home program in Saskatchewan "appears to be totally inadequate to the people's needs; placement is effected without a court order and supervision of homes seems to be non-existent," as appears from Exhibit P-21 at p. 94.
- 3.87. The same year, in 1970, DIAND's Education Branch adopted an "Educational Assistance Policy and Guidelines for Operating the Boarding Home Program," as appears from Exhibit PGC-7.
- 3.88. The new policy provided "for the selection of students and their placement in boarding homes" and defined "the role of the counsellors in the selection and placement of students in boarding homes and it recommend[ed] procedures to be followed." It provided that "[b]oard and room in an approved boarding home may be provided for students who must live away from home in order to attend school," with payment "usually arranged by the Counsellor," as appears from Exhibit PGC-7.
- 3.89. The guidelines provided that neither an application for educational assistance nor the selection of a boarding home needed to be made by the student's parents, as appears from Exhibit PGC-7, but it did insist on the role of DIAND's counsellors:

It is essential for the Counsellor to visit the prospective boarding home and interview the boarding home parents in order to assess the suitability of the family and its facilities for the Boarding Home Program. In this connection, the Counsellor will ensure that any provincial or municipal standards regarding the physical requirements of boarding homes are met. Just as important, however, is an assessment of the home environment, to ensure that the relationships within the family are suitable for student placement.

[...]

In order to prevent frequency of boarding home change, the Counsellor must ensure that students are placed in boarding homes that will satisfy their individual needs. He must maintain close contact with the students and the boarding home parents during the initial adjustment period.

- 3.90. In the 1971-72 school year, maintenance of students from Québec in private homes represented 14.3% of the total national budget (\$667,000 out of \$4.67 million), the third-largest amount for any province after Ontario and British Columbia, as appears from Exhibit PGC-8.

iii. The Private Home Placement program

- 3.91. By 1981, DIAND had created a Private Home Placement program for *Indian Act* bands that it defined – without reference to the nature of school attended – as the cost of travel, supplies, room and board “for Indian students who attend elementary or secondary school away from home while residing in private homes or privately operated group homes,” as appears from the “Indian Control of Indian Education Status Report” for 1981, Exhibit P-36.
- 3.92. The Respondent recognized that where private home or group home placement of students was under DIAND’s control, it assumed responsibility for their well-being when it stated that “the department receives and approves their educational assistance applications, provides them with counselling service and issues their living allowances,” as appears from Exhibit P-36.
- 3.93. In addition, among the Inuit, from 1967 to 1978 and notwithstanding the jurisdiction of the governments of Québec and the Northwest Territories, each year DIAND sent about 140 students south for secondary education, especially in Winnipeg and Ottawa, where they boarded with local families, as appears from Exhibit P-34 at p. 177.

G. The Respondent [...]

i. The Attorney General of Canada

- 3.94. The *Crown Liability and Proceedings Act*, RSC 1985, c C-50, s. 23(1), requires proceedings against the Crown in right of Canada to be “taken in the name of the Attorney General of Canada.”
- 3.95. The Respondent in this case is acting for and on behalf of the Minister of Indian Affairs and Northern Development (the Minister).
- 3.96. The “powers, duties, and functions” of the Minister at all relevant times “extend[ed] to and include[d] all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to... Indian Affairs,” pursuant to s. 4(a) of the *Department of Indian Affairs and Northern Development Act*, RSC 1985, c I-6, and similarly extended pursuant to predecessor statutes, including the *Department of Indian Affairs and Northern Development Act*, RSC 1970, c. I-7, and *The Department of Citizenship and Immigration Act*. S.C. 1949, (2nd Sess.), c. 16.
- 3.97. As of May 18, 2011, the Department of Indian Affairs and Northern Development [...] was known as Aboriginal Affairs and Northern Development Canada (AANDC) and after November 4, 2015, it bore the name Indigenous and Northern Affairs Canada (INAC).

- 3.98. In August 2017, the Prime Minister announced the dissolution of INAC and the creation of two new departments: Indigenous Services Canada (ISC) and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). In July 2018, the Prime Minister announced that Northern Affairs would instead become the responsibility of Minister of Intergovernmental and Northern Affairs and Internal Trade.
- 3.99. While ISC was designated as a Department for the purposes of the *Financial Administration Act* by SI/2017-79, the *Department of Indian Affairs and Northern Development Act* remained in force until July 15, 2019, as of which date the *Department of Indigenous Services Act*, SC 2019, c 29, s 336, and the *Department of Crown-Indigenous Relations and Northern Affairs Act*, SC 2019, c 29, s 337, came into force. [...]

4. Grounds for the Respondent's liability

A. General Crown liability

- 4.1. Since the Crown can only act through its servants or agents, at all relevant times, the Crown in right of Canada was directly liable for the damages caused by its servants or agents, pursuant s. 3(1)(a) of the *Crown Liability Act*, RSC 1970, c C-38.
- 4.2. Each of the Crown's servants was liable pursuant to art. 1053 of the *Civil Code of Lower Canada* "for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill."
- 4.3. Moreover, the Crown's servants were liable *in solidum* pursuant to art. 1106 of the *Civil Code of Lower Canada* and jointly and severally liable at common law for the consequences of their own independent acts and omissions, together with the acts and omissions of a third party, if both directly contributed the injury suffered by the victims of their fault.

B. The Minister's powers and duties

i. Generally

- 4.4. The Government of Canada's power and jurisdiction over the Designated Member and the Primary Class Members were at all relevant times rooted in s. 91(24) of the *Constitution Act, 1867*, and in the *Indian Act*, as from time to time amended. [...]
- 4.5. By virtue of this jurisdiction, the Respondent enjoyed power and discretion over significant aspects of the lives of Aboriginal people and assumed a corresponding fiduciary duty towards them.

- 4.6. At all relevant times, the Minister's powers under the *Indian Act*:
- a) allowed him to designate the school Indian children had to attend, without the parents' consent: s. 118;
 - b) allowed him to appoint truant officers with the powers of a peace officer: s. 119(1);
 - c) provided that parents served by truant officers with a notice for their children to attend school were guilty of an offence and subject to fines and imprisonment, if their children did not "attend school and continue to attend school regularly": s. 119(3) and (4);
 - d) allowed truant officers to take into custody a child who was absent from school and to "convey the child to school, using as much force as the circumstances require": s. 119(6).
- 4.7. The statutory basis for the Minister's power to choose Inuit children's school and place of residence has never been made clear, though it was presumably asserted:
- a) pursuant to his general power over Indian affairs under the *Department of Citizenship and Immigration Act*, S.C. 1949, the *Government Organization Act, 1966*, S.C. 1966-67, c. 25, s. 17, and the *Department of Indian Affairs and Northern Development Act*, RSC 1970, c. I-6; and
 - b) outside Québec and Labrador, pursuant to the *Northwest Territories Act* and the general powers over the affairs of the Northwest Territories vested in the federal Minister of Mines by the *Department of Mines and Resources Act*, S.C. 1936, c. 33, s. 10, and its successor statutes, and vested in the Minister of Indian Affairs and Northern Development as of 1966.
- 4.8. The Respondent used its powers and jurisdiction to implement a systematic policy of assimilating Aboriginal people, designed to eliminate their distinct languages, customs, and ways of life.
- 4.9. For the Designated Member and the Primary Class Members from remote communities, this involved removing them from their families and from life on the land, at a time when most Cree in Quebec and other Aboriginal people in remote communities still lived largely from hunting, fishing and trapping. The children were forced to relocate without their parents to where they could be "educated" to think like white people in federally-chosen schools.
- 4.10. Once the Minister removed the Designated Member and Primary Class Members from their parents, they became his wards and he stood in *loco parentis* towards

them; he became responsible for ensuring that they receive all the necessities of life.

ii. Fiduciary duty

- 4.11. Canada stands in a fiduciary relationship with Canada's Aboriginal peoples. Canada's relationship with the Designated Member and the Class Members was, at all material times, one of dependence, trust and reliance: Canada had undertaken to act in the best interest of the Designated Member and Primary Class Members.
- 4.12. The health and welfare of the Designated Member and other Primary Class Members and their Aboriginal identity and culture were legal and substantial practical interests of the Designated Member and other Primary Class Members.
- 4.13. At all material times, Canada assumed such a degree of discretionary control over the protection and preservation of the health, welfare, identity and culture of the Designated Member and other Primary Class Members that it amounted to a direct administration of those interests. The protection and preservation of the health, welfare, identity and culture of the Designated Member and other Primary Class Members were within the power, discretion or control of Canada and were subject to the unilateral exercise of Canada's power, discretion or control.
- 4.14. Canada's fiduciary duty owed to the Designated Member and other Primary Class Members was, at all material times, a non-delegable duty.
- 4.15. Specifically, the Minister breached his fiduciary duty owed to the Designated Member and other Primary Class Members by establishing, implementing, administering and managing the placement programs, when it knew or ought to have known that doing so would cause profound and permanent cultural, psychological, emotional and physical harm to the Class Members.

iii. Civil Law Duty

- 4.16. From the moment the Minister took charge of them, his duties to the Designated Member and the Primary Class Members had to meet the "careful parent test," the standard of a prudent parent solicitous for the welfare of his or her child.
- 4.17. When the Minister's agents and servants decided to remove the Designated Member and Primary Class Members from the IRS residence or from their own families and place them with local families or in [...] boarding homes, the standard imposed by the "careful parent test" required measures such as the proper selection, screening, training and monitoring of families or those responsible for [...] boarding homes to protect the children from possible abuse and to allow them to practice and maintain their Aboriginal language, culture, identity, religion, heritage and customs.

- 4.18. By 1972, no one in authority in DIAND should have been unaware that Indian residential school students were at risk from sexually predatory employees. More particularly, the Minister's Quebec regional office had investigated three cases of sexual abuse of students at the Anglican IRS in La Tuque between 1969 and 1971, as reported in the TRC Report, vol. 1, part 2, produced as Exhibit P-21, at pp. 443-444.
- 4.19. In fact, the principal at St. Philip's from July 1962 to May 1968 was William Peniston Starr, who is probably the most notorious abuser in the IRS system. By 1998, even before the IAP existed, Canada had already settled almost 200 claims alleging abuse by Starr while he was principal of the Gordon IRS in Saskatchewan, the school he went to after he left Fort George. Starr also pleaded guilty to 10 counts of indecent assault at Gordon's IRS during years 1976-1983 and was convicted on February 8, 1993, as reported in the TRC Report, vol. 1, part 2, P-21, at pp. 447-448.
- 4.20. The Minister acting through his agents and servants was responsible for the creation and implementation of these measures and failed in both regards.
- 4.21. Specifically, the Minister breached his duty of care by:
- a) failing to take steps to protect Class Members' retention of their Aboriginal language, culture, identity, religion, heritage and customs;
 - b) failing to properly screen individuals prior to allowing them to billet Primary Class Members and hiring individuals to act as billeting families or to operate [...] boarding homes where the Minister placed registered Indian and Inuit children, when those individuals were not qualified to provide the necessities of life for the children under their care and supervision;
 - c) failing to provide proper, adequate and effective training initially or on an on-going basis to ensure that billeting families or those who operated [...] boarding homes where the Minister placed registered Indian and Inuit children were suitable and fit to act as the Minister's employees, servants, or agents;
 - d) failing to set or implement standards of conduct for billeting families or those who operated [...] boarding homes where the Minister placed registered Indian and Inuit children with respect to the safety, health or well-being of Primary Class Members;
 - e) failing to adequately, properly and effectively supervise the conduct of billeting families and their households [...] boarding homes where the Minister placed registered Indian and Inuit children;

- f) failing to set or implement policies for recognizing and reporting potential abuse of or harm to Primary Class Members;
 - g) failing to educate Primary Class Members in the use of a system through which abuse would be recognized and reported;
 - h) failing to investigate or report injuries sustained by Primary Class Members;
 - i) failing to respond adequately, or at all, to complaints regarding the treatment of Primary Class Members, including complaints of physical, psychological, and sexual abuse; and
 - j) failing to provide adequate medical and psychological care for Primary Class Members.
- 4.22. The negligent supervision by the Crown's servants of the billeting families or those who operated [...] boarding homes where the Minister placed registered Indian and Inuit children made the Crown's servants liable *in solidum* and jointly and severally liable at civil law for the consequences of their acts and omissions, together with the acts of those families because both directly contributed the injury suffered by the Designated Member and Class Members.
- 4.23. Moreover, those standing *in loco parentis* are also bound by a special duty of loyalty to the children, which forbids them from advancing their own interests at the expense of the children.
- 4.24. In this case, the Minister saved at least \$10,000 per year for every child that was billeted instead of being housed in school residences in Fort George, as appears from V.J. Caissie's letters dated January 21, 1975, P-18, and April 10, 1975, P-24.
- 4.25. The conditions in the houses where students were billeted were considered "inadequate" by the Minister's civil servants, as appears from V.J. Caissie's letter, P-18.
- 4.26. By knowingly billeting children in Fort George in inadequate conditions, and at substantial financial savings, the Respondent advanced its own interests at the expense of the children, and thereby breached its duty of loyalty towards them.
- 4.27. The Applicant states that the Respondent's actions, inactions and omissions as aforesaid, constitute:
- a) negligence in the selection, employment and supervision of billeting families or those who operated [...] boarding homes where the Minister placed registered Indian and Inuit children;

- b) breaches of the duty of loyalty that parents owe to their children; and
 - c) failures to protect the Designated Member's and other Primary Class Members' best interests.
- 4.28. These failures and breaches resulted in the Designated Member and Primary Class Members suffering psychological harm and loss of culture and being subjected to sexual, physical and psychological abuse at the hands of persons with whom they were billeted or in [...] boarding homes where the Minister placed them.
- 4.29. Finally, the Minister made a delegation of the duty he owed to the Designated Member and Primary Class Members that was not provided for by statute when he began placing these children with local families to be billeted or [...] boarding homes.
- 4.30. While s. 115(c) of the *Indian Act*, RSC 1970, provided that the Minister could "enter into agreements with religious organizations for the support and maintenance of children who are being educated in schools operated by those organizations," the Minister had no clear right to enter into agreements with local families [...] or boarding homes for the same purpose; neither did the Minister have the right under s. 114 to delegate his duties to anyone other than a provincial or territorial government, a school board, or "a religious or charitable organization."
- 4.31. While the Designated Member and Primary Class Members were billeted or placed in [...] boarding homes, the Minister therefore remained under a non-delegable statutory duty to ensure their safety and welfare. [...]

C. Vicarious liability

- 4.32. At all relevant times, the Government of Canada was vicariously liable for the damage caused by the fault of its agents and servants, pursuant to s. 4(2) of the *Crown Liability Act* of 1970, art. 1054 of the *Civil Code of Lower Canada*, the common law and the relevant legislation of the other provinces and territories.
- 4.33. These provisions reflect one of the most fundamental principles underlying civil liability: that the person or entity who creates a risk assumes the obligation to compensate the victims if they are injured when that risk does in fact materialize.
- 4.34. Confiding a child to an adult to live with him or her places that adult in a position of great power, authority, trust and intimacy with respect to that child. The Minister thereby created a relationship between the Designated Member and Primary Class members and the billeting families or those who operated [...] boarding homes where the Minister placed registered Indian and Inuit children that placed those children at risk.

- 4.35. In this case, the Minister was in a contractual relationship with the billeting families or those who operated [...] boarding homes and he exercised power and control over them. He was responsible for the administration of the billets [...] or boarding homes at all material times because his agents and employees decided to place the children instead of leaving them with their families or having them live in the IRS residence.
- 4.36. Since the Minister's agents and servants chose the families [...] or boarding homes where the children were billeted, they could or should have been able to inspect and monitor those families and did retain or should have retained the power to remove the children at any time, if necessary for their protection.
- 4.37. The Minister therefore assumed liability for the faults committed by the billeting families or those who operated [...] boarding homes as his agents or servants and the Designated Member invokes the rule in art. 1464 of the *Civil Code of Québec*. [...]

D. The claim is not prescribed or statute-barred

- 4.38. The Designated Member and all or most Primary Class Members were victims of childhood sexual, physical and psychological abuse.
- 4.39. Section 2926.1 [...] of the *Civil Code of Quebec* and section 4 of the *Act To Amend The Civil Code, In Particular To Make Civil Actions For Sexual Aggression, Violence Suffered During Childhood And Spousal Violence Imprescriptible* provide that an action based on injuries resulting from a sexual aggression or on violent behaviour [...] suffered during childhood cannot be prescribed, regardless of any prescriptive period applicable before. [...]
- 4.40. Finally, if claims by any of the Primary Class Members are prescribed or statute-barred (which is not hereby admitted, but expressly denied), that issue would be relevant only during the individual recovery of claims and does not affect the Applicant's right to authorization. [...]

5. Designated Member's application to use a pseudonym

- 5.1. The Designated Member hereby asks for the Court's permission to use a pseudonym for all legal proceedings and court documents in this case.
- 5.2. The Designated Member lives in a small community of less than 2,500 people and does not want her community to become aware of the abuse she suffered as a child.
- 5.3. The desire to keep this most intimate part of her life private is more than understandable and is a common sentiment among survivors of child abuse.

- 5.4. Allowing the Designated Member to remain anonymous will also encourage other Primary Class Members to participate, knowing that their privacy will be respected and their identities will be kept confidential. An order allowing use of a pseudonym will therefore facilitate greater access to justice.
 - 5.5. The Designated Member is prepared to provide the Court and counsel for the Respondent with her name and that of any known Primary Class Member, under seal, provided that such information is protected and kept confidential.
- 6. The composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings**
- A. The effects of the risk created by Canada**
- 6.1. Statistics from the IAP indicate that the number of claims for compensation for abuse was equivalent to approximately 48% of the number of former students who were eligible to make such claims and alive in May 2005, as reported in the TRC Report, vol. 1, part 2, P-21, at p. 400.
 - 6.2. The TRC therefore concluded:
 - abuse was widespread throughout the residential school system;
 - a significant percentage of the acts of abuse were of a serious nature with potentially lifelong impacts;
 - male and female students were abused at equal rates;
 - male students were compensated at the most serious and damaging category of abuse at a greater rate than female students;
 - students were at risk in all institutions, regardless of the denomination of the religious order in charge of the institution; and
 - student abuse of fellow students was a serious and widespread problemas appears from Exhibit P-21, at p. 411.
 - 6.3. No reason exists to believe that students were at significantly lower risk when billeted with families or with those responsible for [...] boarding homes whom the Minister did not supervise or monitor adequately.
- B. For those in boarding homes and private home placements**
- 6.4. As set out above, three individuals from Waskaganish who were billeted with other families have described to the Applicant's counsel incidents of physical and sexual abuse they suffered in those homes.

- 6.5. The Applicant estimates that from among those sent to Fort George or Mistissini, Québec, alone there are more than 220 potential members of the Primary Class described in this Application for Authorization, based on correspondence [...] from 1975 from V.J. Caissie, Acting Regional Director of [...] DIAND, P-18, and from 1976, from District Supervisor W. Halligan, P-28.
- 6.6. Based on the information contained in P-18, P-26 and P-29, it seems that most of the potential Primary Class Members in Québec who were billeted with local families came from the [...] Cree communities of Waskaganish (Rupert House), Eastmain, Wemindji (Paint Hills), Chisasibi and Mistissini. Nevertheless, it is possible that potential Primary Class Members also came from Oujé-Bougoumou and Waswanipi.
- 6.7. As set out above, in the year 1970-71 alone, DIAND placed some 6,000 students “in private boarding homes and group homes during the school year” across Canada, as appears from Exhibit P-21 at p. 92.
- 6.8. The Applicant has no access to a list of the students who were billeted in families or in [...] boarding homes during the relevant period because it is personal information about individuals held by a government institution and protected from disclosure under the *Privacy Act*, RSC 1985, c. P-21, except with a court order.
- 6.9. The Applicant therefore submits that the identity of potential Primary Class Members is ascertainable only to the Respondent.
- 6.10. Even if some Primary Class Members could be reached or contacted by notices, radio announcements, or through word of mouth in the relevant communities, many would be reluctant to come forward and reveal facts about their childhood abuse. [...]

C. Generally

- 6.11. It is unrealistic to expect most or all Primary Class Members to identify themselves readily and outside of a process that ensures them confidentiality and the ability to apply in private.
- 6.12. Despite decades of publicity about the issue of residential school abuse, in the IAP, out of the total of 38,093 applications received by the Secretariat, more than 35 per cent (13,385) were between January 1, 2012, and the September 19, 2012, deadline, as appears from the Secretariat’s historical statistics, produced as Exhibit **P-22**.
- 6.13. In addition to the difficulties that exist in identifying and contacting other potential Primary Class Members, considerations of access to justice weight in favour of authorizing this application.

- 6.14. The amount of compensation available to individuals who succeed in independent proceedings is likely disproportionately small compared to the amount of money that they would spend on legal fees and disbursements.
- 6.15. It would be economically inefficient for individuals to proceed with a multitude of individual actions, needlessly duplicating large portions of work across many mandates and exhausting taxpayer and judicial resources.
- 6.16. Class Members are also part of a disadvantaged population, with lower education compared to other Canadians of the same age and a commensurate difficulty in using the judicial system. Should this application be denied, it seems unlikely that other means of seeking justice will be pursued by any significant number of Class Members and the grave injustice they suffered will remain unaddressed.
- 6.17. Finally, it would be inequitable to deny authorization where virtually identical faults and injuries have benefited from compensation under the IRSSA across the country and the only difference between Primary Class Members and the beneficiaries of that settlement is where the Minister assigned them to live.
- 6.18. In light of the above considerations, it would not only be impractical, if not impossible to proceed by other means, it would also be contrary to access to justice and equitable considerations.

7. The claims of the members of the class raise identical, similar or related issues of law or fact

- 7.1. The nature and quantum of damages suffered are particular to each Class Member, but the principal questions of law and fact are common to all.

A. Concerning the Respondent's civil liability, the following issues must be decided in common:

- 7.2. Could or should the Minister as represented herein by the Respondent, including the Ministers, agents or servants, have foreseen that billeting families or those responsible for [...] boarding homes were in a position that could result in them abusing their positions of power, authority and trust over children entrusted to them?
- 7.3. Did the Minister owe the Class Members a duty arising from circumstance, usage or law?
- 7.4. Did the Minister breach its fiduciary, civil law and statutory duties to the Designated Member and the Class Members when it undertook a systematic program of forced integration of Aboriginal children through the establishment,

implementation, administration and management of the placement programs for Aboriginal students?

- 7.5. Did the Minister breach its fiduciary, civil law and statutory duties to the Designated Member and the Class Members by failing to consult adequately with Aboriginal communities and other Aboriginal stakeholders about the placement programs for Aboriginal students, the provision of funding to the program for that purpose, and the policies and practices that would be adopted in operating and administering that programs?
- 7.6. Did the Minister take steps to protect and preserve the language, culture, identity, religion, heritage and customs of the Class Members, including by ensuring that adequate services and resources were provided to Primary Class Members to practice and maintain their Aboriginal language, culture, identity, religion, heritage and customs while in the care of billeting families or those responsible for [...] boarding homes?
- 7.7. Did the Minister take steps to screen billeting families or those responsible for [...] boarding homes prior to placing Primary Class Members in their care? If so, were these steps proper and adequate to prevent unqualified individuals from billeting children or caring for them in [...] boarding homes?
- 7.8. Did the Minister provide proper, adequate and effective training or monitoring initially or on an on-going basis to ensure that billeting families or those responsible for [...] boarding homes were suitable and fit to act as its employees, servants, or agents?
- 7.9. Did the Minister set or implement standards of conduct for billeting families or those responsible for [...] boarding homes with respect to the safety, health or well-being of Primary Class Members? If so, did the Minister fail to uphold these standards?
- 7.10. Did the Minister fulfill its duty to supervise and monitor the performance and behaviour of billeting families or those responsible for [...] boarding homes to ensure that they performed and behaved as qualified, reasonable and prudent employees, servants, or agents?
- 7.11. Did the Minister set or implement policies for recognizing and reporting potential abuse of or harm to Primary Class Members? If so, did the Minister fail to educate Primary Class Members in the use of a system through which abuse would be recognized and reported?
- 7.12. Was the Minister aware of any injuries sustained by the Designated Member or Primary Class Members, which occurred while in the care of billeting families or

those responsible for [...] boarding homes? If so, did the Minister adequately investigate those injuries?

- 7.13. Was the Minister aware of any complaints put forth by the Designated Member or Class Members, in relation to physical, psychological or sexual abuse? If so, did the Minister respond adequately to those complaints?
- 7.14. Did the Minister provide adequate medical and psychological care for the Designated Member and Primary Class Members while in the care of billeting families or those responsible for [...] boarding homes?
- 7.15. Was the Minister aware of inappropriate punishments delivered by billeting families or those responsible for [...] boarding homes? If so, did the Minister allow these punishments to continue?
- 7.16. Did the Minister fail to provide leadership and fulfilment of its legal and moral obligations by not enforcing or creating guidelines on sexual abuse, thereby causing the Designated Member's and the Class Members' damages?

B. Concerning the Respondent's vicarious liability

- 7.17. Were billeting families or those responsible for [...] boarding homes employees, servant or agents of the Respondent? If so, is the Respondent liable for the negligent and intentional acts committed by its employee, servant, or agent which harmed the Designated Member or Class Members?
- 7.18. Was the Respondent aware of the wrongful actions of its employees, servants, or agents, and if so, when did it become aware? If not aware, should the Respondent have been aware of the wrongful actions committed by its employees, servants, or agents?
- 7.19. The Applicant submits that these questions raise factual and legal issues of systemic fault common to all Class Members that requires an assessment of the Respondent's knowledge, actual or constructive, with respect to the selection, training, monitoring and supervision of its employees, servants or agents.
- 7.20. The resolution of these issues will move litigation further significantly; these constitute substantial elements that must be resolved in the case of each individual Class Member, and their resolution will avoid duplication of fact-finding and of legal analysis. [...]

8. The questions of fact and law specific to each Class Member are as follows

- 8.1. After the resolution of common issues, only matters specific to each Class Member will have to be addressed, including:

- a) What acts of abuse did individual Primary Class Members suffer?
 - b) What harms did Primary Class Members and Family Class Members suffer because of the acts of abuse?
 - c) Does a causal link exist between any acts of abuse and harms suffered?
 - d) What individual defences exist that could be advanced, such as prescription?
9. **It is expedient that the institution of a Class Action for the benefit of the Class Members be authorized for the following reasons**
- 9.1. The class action is the best procedural vehicle available to the Class Members in order to protect and enforce their rights herein.
 - 9.2. While the amount of damages sustained by each Class Member may differ, the Respondent's wrongful behaviour and its liability are identical for each Member.
 - 9.3. In the absence of a class action there would be no viable recourse against the Respondent for most Members, due to the cost and difficulty that an individual civil action would entail, relative to the benefits one could hope to obtain.
 - 9.4. To the best of the Applicant's knowledge, all or most of the Class Members among the Cree in Québec come from and are likely still domiciled in [...] northern Québec and would therefore incur greater than average expenses if they brought individual proceedings, due to their remote location.
 - 9.5. A single hearing by means of a class action on the issues of fact and law that all members have in common would significantly reduce the cost of litigation for all parties.
10. **The nature of the action the Designated Member intends to bring on behalf of the Class Members is an action in damages for extra-contractual liability.**
11. **The Applicant seeks the following conclusions or relief:**
- 11.1. Compensation, in an amount to be perfected at trial, for the damages incurred because of the Respondent's failure to take steps to protect Class Members' retention of their Aboriginal language, culture, identity, religion, heritage and customs and their ability to pass on to succeeding generations their spiritual, cultural and linguistic heritage.

- 11.2. Compensation, in an amount to be perfected at trial, for the damages incurred because of the Respondent's failure to screen, negligence in selecting, and inadequate supervision of its employees, servants or agents; and more generally for its breach of its obligation of loyalty and duty to protect the best interests of the Designated Member and Primary Class Members as would a parent solicitous for his or her child's well-being.
- 11.3. Compensation, in an amount to be perfected at trial, for the damages incurred as a result of the intentional and negligent actions of billeting families or those responsible for [...] boarding homes, including the perpetration of sexual, physical and psychological abuse on the Designated Member and other Primary Class Members for which the Respondent is directly or vicariously liable.
- 11.4. Compensation, in an amount to be perfected at trial, for material and moral damages sustained by Family Class Members as a result of Respondent's breaches of its fiduciary and civil law duties owed to the Primary Class Members and the fault and negligence of its employees, servants or agents;
- 11.5. Punitive damages in an amount to be perfected at trial;
- 11.6. Interest and the additional indemnity provided by the *Civil Code of Quebec*;
- 11.7. Judicial fees and legal costs;
- 11.8. Such further and other relief as this Honourable Court may deem just and reasonable in the circumstances.

12. The relief sought by the Applicant is to:

ALLOW the institution of the Applicant's class action;

GRANT the Designated Member's application for an order allowing her to use a pseudonym for herself and for Class Members;

DECLARE the Respondent Attorney General of Canada liable to the Designated Member and Class Members for the damages suffered by Respondent's breach of its fiduciary duty, its breach of its obligation to act as a parent solicitous of his or her child's welfare and its breach of its obligation of loyalty towards the Applicant and Class Members; [...]

DECLARE the Respondent vicariously liable to the Designated Member and Class Members for the damages suffered by the negligent and intentionally wrongful actions of its employees, servants, or agents;

CONDEMN the Respondent to pay to each of the Class Members compensatory, moral and punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Respondent to indemnify each and every Class Member for all damages that they have suffered as a result of Respondent's wrongful behaviour, and the wrongful behaviour of its employees, servants, and agents;

AND TO THIS END:

DECLARE the Respondent liable for the cost of judicial and extra-judicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of the Applicant and Class Members, and **ORDER** collective recovery of these sums;

CONDEMN the Respondent to pay the Applicant and Class Members the above-mentioned sums with interest at the legal rate, plus the additional indemnity provided by law, to accrue from the date of service of the present motion;

ORDER the Respondent to deposit with the Clerk of the Superior Court for the District of Montreal an amount equal to the total compensatory and punitive and exemplary damages caused by Respondent's wrongful behaviour during the class period; and **ORDER** the collective recovery of this amount, the whole according to proof to be made at trial, the whole with interest and the additional indemnity provided by law calculated from the date of service of the present Motion;

ORDER the individual liquidation in favour of the Designated Member and Class Members of a sum equivalent to their share of the damages claimed or, if this process turns out to be inefficient or impracticable,

ORDER the Respondent to perform any remedial measures that the Court may determine to be in the interest of the members of the Applicant or Class Members;

CONDEMN the Respondent to pay the costs incurred for all investigation necessary in order to establish the liability of Respondent in this matter, including the extra-judicial fees of counsel for Applicant and the Class Members and extra-judicial disbursements, including the costs of expertise;

RENDER any other order that this Honourable court shall determine may be just and proper;

THE WHOLE WITH COSTS, including the cost of notices.

13. **The Applicant requests that it be granted representative status.**
14. **The Applicant is suitable to act as representative plaintiff and is in a position to properly represent the Class Members**
 - A. **The Wiichihiiwewin Centre and its Designated Member**
 - 14.1. The Applicant's Designated Member suffered abuse and harms while under the Minister's care and supervision, and while billeted by the Minister with a family in Fort George and was subsequently also taken from her family to be placed with a non-Indigenous family in [REDACTED]
 - 14.2. The Applicant's members and those whom it serves have been deeply affected by the abuse and the Applicant considers it to be the organization's moral obligation to seek justice through the judicial system in order to bring closure and justice to the Designated Member and to all Class Members.
 - 14.3. The Applicant understands and has been thoroughly advised as to the process required for this class action.
 - 14.4. The Applicant is committed to seeking a resolution to the problems caused by the abuse alleged herein, not just for its members but also for others.
 - 14.5. The Applicant is disposed to invest the necessary resources and time towards the accomplishment of all formalities and tasks necessary for the bringing of the present class action and is committed to collaborating fully with its attorneys.
 - 14.6. The Applicant is capable of providing its attorneys with the information useful to the bringing of the present class action.
 - 14.7. The Applicant is acting in good faith with the only goal of obtaining justice for its members and for each Class Member.
 - 14.8. The Applicant may ask for financial aid from the Fonds d'aide aux actions collectives. [...]
15. **The Applicant requests that the Class Action be brought before the Superior Court for the District of Montreal for the following reasons:**
 - 15.1. To the Applicant's knowledge, most of the Class Members among the Cree in Québec are likely domiciled in the Cree communities of Waskaganish, Eastmain, Wemindji, Mistissini, and Chisasibi, which fall within the judicial district of Abitibi.

- 15.2. However, Waskaganish, Eastmain, Wemindji, Mistissini, and Chisasibi are located roughly 590 km, 700 km, 850 km, 583 km, and 930 km, respectively, from Val d'Or, the seat of the judicial district of Abitibi.
- 15.3. Given these great distances, Val d'Or is no more convenient for the Applicant, the Designated Member or Class Members to travel to than is Montreal.
- 15.4. For her part, the current Minister's principal place of business is in the District of Gatineau.
- 15.5. At the same time, the Applicant's undersigned attorneys practise in the District of Montreal and the Respondent also has a place of business in the District of Montreal, as well as in the District of Québec and the City of Ottawa.
- 15.6. It would greatly increase the time and costs of proceedings if the undersigned attorneys or those for the Respondent had to travel to Val d'Or for hearings.
- 15.7. Montreal is therefore the most appropriate location for this class action to be heard.

16. Conclusions

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the action;

AUTHORIZE the institution of the class action herein:

To sanction the Respondent's breach of its obligations, fiduciary duty, duty of care and its omissions;

To sanction its wrongful behaviour in permitting wrongful acts against the children in its care;

ASCRIBE to the Applicant the status of representative for the purpose of instituting the said class action on behalf of the group of natural persons hereinafter described:

Description of the group:

"Aboriginal children and adolescents who, when they were domiciled or resident in Québec, were billeted by the Government of Canada with families other than their own, or in [...] boarding homes (the "Primary Class"). The Primary Class excludes the claims released against the Government of Canada in respect of institutions covered by Schedules E and F of the Indian Residential Schools Settlement Agreement"; and [...]

“All persons who are a spouse or former spouse, child, grandchild or sibling of a member of the Primary Class and who suffered material and/or moral damages as a result of injury to the Primary Class Members (the “Family Class.”)” [...]

DETERMINE as follows the principal questions of fact and of law that will be dealt with collectively:

- a) Could or should the Minister as represented herein by the Respondent, including the Minister’s agents or servants, have foreseen that billeting families or those responsible for [...] boarding homes were in a position that could result in them abusing their positions of power, authority and trust over children entrusted to them?
- b) Did the Minister owe the Class Members a duty arising from circumstance, usage or law?
- c) Did the Minister breach its fiduciary, civil law and statutory duties to the Designated Member and the Class Members when it undertook a systematic program of forced integration of Aboriginal children through the establishment, implementation, administration and management of the placement programs for Aboriginal students?
- d) Did the Minister breach its fiduciary, civil law and statutory duties to the Designated Member and the Class Members by failing to consult adequately with Aboriginal communities and other Aboriginal stakeholders about the placement programs for Aboriginal students, the provision of funding to the program for that purpose, and the policies and practices that would be adopted in operating and administering that programs?
- e) Did the Minister take steps to protect and preserve the language, culture, identity, religion, heritage and customs of the Class Members, including by ensuring that adequate services and resources were provided to Primary Class Members to practice and maintain their Aboriginal language, culture, identity, religion, heritage and customs while in the care of billeting families or those responsible for [...] boarding homes?
- f) Did the Minister take steps to screen billeting families or those responsible for [...] boarding homes, prior to placing Primary Class Members in their care? If so, were these steps proper and adequate to prevent unqualified individuals from billeting children or caring for them in [...] boarding homes?
- g) Did the Minister provide proper, adequate and effective training or monitoring initially or on an on-going basis to ensure that billeting families or those responsible for [...] boarding homes were suitable and fit to act as its employees, servants, or agents?

- h) Did the Minister set or implement standards of conduct for billeting families or those responsible for [...] boarding homes with respect to the safety, health and well-being of Primary Class Members? If so, did the Minister fail to uphold these standards?
- i) Did the Minister fulfill its duty to supervise and monitor the performance and behaviour of billeting families or those responsible for [...] boarding homes to ensure that they performed and behaved as qualified, reasonable and prudent employees, servants, or agents?
- j) Did the Minister set or implement policies for recognizing and reporting potential abuse of or harm to Primary Class Members? If so, did the Minister fail to educate Primary Class Members in the use of a system through which abuse would be recognized and reported?
- k) Was the Minister aware of any injuries sustained by the Designated Member or Primary Class Members, which occurred while in the care of billeting families or [...] boarding homes? If so, did the Minister adequately investigate those injuries?
- l) Was the Minister aware of any complaints put forth by the Designated Member or Class Members, in relation to physical, psychological or sexual abuse? If so, did the Minister respond adequately to those complaints?
- m) Did the Minister provide adequate medical and psychological care for the Designated Member and Primary Class Members while in the care of billeting families or those responsible for [...] boarding homes?
- n) Was the Minister aware of inappropriate punishments delivered by billeting families or those responsible for [...] boarding homes? If so, did the Minister allow these punishments to continue?
- o) Did the Minister fail to provide leadership and fulfilment of its legal and moral obligations by not enforcing or creating guidelines on sexual abuse, thereby causing the Designated Member's and the Class Members' damages?
- p) Were billeting families or those responsible for [...] boarding homes, the Minister's employees, servant or agents? If so, is the Minister liable for the negligent and intentional acts committed by its employees, servants, or agents which harmed the Designated Member or Class Members?
- q) Was the Minister aware of the wrongful actions of its employees, servants, or agents, and if so, when did it become aware? If not aware, should the Minister have been aware of the wrongful actions committed by its employees, servants, or agents? [...]

DETERMINE as follows the related relief sought:

***ALLOW** the institution of the Applicant's class action;*

***GRANT** the Designated Member's application for an order allowing her to use a pseudonym for herself and for Class Members;*

***DECLARE** the Respondent Attorney General of Canada liable to the Designated Member and Class Members for the damages suffered by Respondent's breach of its fiduciary duty, its breach of its obligation to act as a parent solicitous of his or her child's welfare and its breach of its obligation of loyalty towards the Applicant and Class Members; [...]*

***DECLARE** the Respondent vicariously liable to the Designated Member and Class Members for the damages suffered by the negligent and intentionally wrongful actions of its employees, servants, or agents;*

***CONDEMN** the Respondent to pay to each of the Class Members compensatory, moral and punitive damages, and **ORDER** collective recovery of these sums;*

***CONDEMN** the Respondent to indemnify each and every Class Member for all damages that they have suffered as a result of Respondent's wrongful behaviour, and the wrongful behaviour of their employees, servants, and agents;*

AND TO THIS END:

***DECLARE** the Respondent liable for the cost of judicial and extra-judicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of the Applicant and Class Members, and **ORDER** collective recovery of these sums;*

***CONDEMN** the Respondent to pay the Applicant and Class Members the above-mentioned sums with interest at the legal rate, plus the additional indemnity provided by law, to accrue from the date of service of the present motion;*

***ORDER** the Respondent to deposit with the Clerk of the Superior Court for the District of Montreal an amount equal to the total compensatory and punitive and exemplary damages caused by Respondent's wrongful behaviour during the class period; and **ORDER** the collective recovery of this amount, the whole according to proof to be made at trial, the whole with interest and the additional indemnity provided by law calculated from the date of service of the present Motion;*

***ORDER** the individual liquidation in favour of the Designated Member and Class Members of a sum equivalent to their share of the damages claimed or, if this process turns out to be inefficient or impracticable,*

ORDER the Respondent to perform any remedial measures that the Court may determine to be in the interest of the members of the Applicant or Class Members;

CONDEMN the Respondent to pay the costs incurred for all investigation necessary in order to establish the liability of the Respondent in this matter, including the extra-judicial fees of counsel for Applicant and the Class Members and extra-judicial disbursements, including the costs of expertise;

RENDER any other order that this Honourable court shall determine may be just and proper;

THE WHOLE WITH COSTS, including the cost of notices.

DECLARE that, unless excluded, the members of the group are bound by any judgment to be handed down in the manner provided for by law;

SET the exclusion time period at 60 days after the date of the notice to members; upon expiry of the exclusion time period the members of the group who have not availed themselves of the means of exclusion will be bound by any judgment to be handed down;

ORDER the publication of a notice to the Class Members as determined by the Court, in accordance with art. 579, C.C.P.;

REFER the case to the Chief Judge for determination of the district where the class action will be instituted and designation of the judge who will hear it;

ORDER the clerk of this Court, should the action have to be instituted in another district, to transfer the record, upon the Chief Judge's decision, to the clerk of that other district;

The whole with costs, including the costs of notice.

Montréal, April 29, 2021

(S)

DIONNE SCHULZE

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NO : 500-06-000812-160

**SUPERIOR COURT
CLASS ACTION**

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

WICHHIWEWIN CENTRE OF WASKAGANISH
APPLICANT

AND

ANNE SMITH (PSEUDONYM)
DESIGNATED MEMBER
-v.-

ATTORNEY GENERAL OF CANADA
RESPONDENT

**RE-AMENDED (fifth modification)
APPLICATION FOR AUTHORIZATION
TO INSTITUTE A CLASS ACTION AND
TO OBTAIN THE STATUS OF
REPRESENTATIVE
(Art. 571 *et seq.*, C.C.P.)**

ORIGINAL

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Our file #5100-005

Schedule E

Federal Court



Cour fédérale

Date: 20190628

Docket: T-1417-18

Ottawa, Ontario, June 28, 2019

PRESENT: Madam Justice Strickland

CLASS PROCEEDING

BETWEEN:

**REGINALD PERCIVAL, ALLAN MEDRICK
MCKAY, IONA TEENA MCKAY AND
LORNA WATTS**

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

ORDER

UPON MOTION in writing, brought pursuant to Rules 369 and 334.12(2) of the *Federal Courts Rules*, SOR/98-106 [Rules], seeking an order:

- a) certifying this action as a class proceeding;
- b) certifying the class and subclass;
- c) appointing the representative Plaintiffs;
- d) setting out the common issues of fact or law for the class and subclass; and
- e) appointing class and subclass counsel;

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AND UPON review of the Amended Notice of Motion filed by the Plaintiffs on June 10, 2019;

AND UPON considering that the Plaintiffs and the Defendant have, on June 10, 2019, filed a joint consent to the Amended Notice of Motion and to the form of a draft order;

AND UPON considering that this action, commenced on July 24, 2018, concerns allegations by the Plaintiffs that Canada breached common law and fiduciary duties owed to Indigenous people in relation to “boarding home” programs that Canada operated in connection with providing educational programs to Indigenous students. These boarding home programs are alleged to have involved Canada placing Indigenous students in private homes, away from their families and communities, where they were not provided with reasonable access to their language, culture, identity, religion, heritage, customs and Aboriginal and treaty rights and where it is alleged that they experienced racism and physical, psychological, and sexual abuse, all as set out in the Statement of Claim;

AND UPON considering that a related proposed class action commenced in the Quebec Superior Court on September 21, 2016, *Anne Smith v Attorney General of Canada*, in the District of Montreal, Court file no. 500-06-000812-160, is proposed to be incorporated in this proposed class action by way of the proposed subclass. The Quebec proposed class action deals with similar subject matter, the boarding home program. However, because it also raises common questions of civil law that are not shared by all of the proposed class members from common law jurisdiction provinces, the proposed subclass has been identified;

AND UPON considering the certification conditions that must be met and, the matters to be considered as set out in Rule 334.16;

AND UPON being satisfied that this is an appropriate proceeding for certification as a class action on the proposed terms;

THIS COURT ORDERS that:

1. This action is certified as a class proceeding against the Defendant, Her Majesty the Queen in Right of Canada;
2. The classes in this proceeding are defined as follows:
 - (a) Primary Class means persons who were placed by the Government of Canada in private homes for the purpose of attending school, excluding placements made for the purpose of attending a post-secondary educational institution;
 - (b) Family Class means all persons who have a derivative claim in accordance with applicable family law legislation arising from a family relationship with a member of the Primary Class;The Primary Class and the Family Class and their members are collectively described as the “Class” or “Class Members”;
3. A subclass in this proceeding, in which subclass members are Class Members but are separately represented, is defined as follows:
 - (a) Quebec Subclass means Class Members resident in Quebec at the time of their placement by Canada in such private homes;
4. The following persons are appointed as Representative Plaintiffs for the Class:
 - (a) Reginald Percival;
 - (b) Allan Medrick McKay;

- (c) Iona Teena McKay; and
 - (d) Lorna Watts
5. The following person is appointed as the Representative Plaintiff in the Quebec Subclass:
- (a) Kenneth Weistche
6. Klein Lawyers LLP is appointed as Class Counsel;
7. Dionne Schulze S.E.N.C. is appointed as Quebec Subclass Counsel;
8. The following common questions of fact or law in this proceeding are certified for both the Class and the Quebec Subclass:
- (a) Did Canada owe duties to Class Members as alleged in the Statement of Claim?
 - (b) If the answer to (a) is yes, did Canada breach any of those duties?
9. The relief sought by the Class is as set out in the Statement of Claim;
10. The parties shall, as a part of a joint litigation plan, specify the time and manner for Class Members to opt out of the Class proceeding, and shall bring an informal motion seeking to amend this Order to reflect the opt out provisions, all pursuant to Rules 334.17(1)(f) and 334.19. Should the parties fail to reach an agreement, a formal motion shall be brought in writing for determination by the Court;

11. No costs are payable on this Motion for certification, in accordance with Rule 334.39.

“Cecily Y. Strickland”

Judge

Schedule F

Date: *[Date of Order]*
Court File No.: T-1417-18

Vancouver, British Columbia , 2023

PRESENT: The Honourable Justice Pamel

CERTIFIED CLASS PROCEEDING

BETWEEN:

REGINALD PERCIVAL, ALLAN MEDRICK MCKAY,
IONA TEENA MCKAY and LORNA WATTS

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

Brought pursuant to the *Federal Courts Rules*, SOR/98-106

ORDER

UPON HEARING THE MOTION made by the Plaintiffs, on consent, for an order pursuant to Rule 334.29 of the *Federal Courts Rules* approving a settlement agreement (the “Settlement Agreement”) and upon hearing counsel for the parties,

THIS COURT ORDERS that:

1. The Settlement Agreement which is attached to this order as Schedule “A” is hereby approved as fair and reasonable and in the best interests of class members as a whole.
2. [name] is hereby appointed as the Claims Administrator for the Settlement Agreement.
3. Each Primary Class Member or their Estate Executor or Personal Representative who has not opted out of the Class Action on or before the expiry of the Opt Out Period (hereinafter “Primary Class Releasers”) 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 or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses, and interest which any such Primary Class Releasor ever had, now has, or may hereafter have, directly or indirectly, arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the individual claims relating to *Reginald Percival et al v. His Majesty the King* (T-1417-18), and this release includes any such claim made or that could have been made in any proceeding, whether asserted directly by the Primary Class Releasor or by any other person, group, or legal entity on behalf of or as representative for the Primary Class Releasor.

4. For greater certainty, Primary Class Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute or the common law, Quebec civil law in relation to the individual claims under *Reginald Percival et al v. His Majesty the King* (T-1417-18), the Primary Class Releasor will expressly limit those claims so as to exclude any portion of Canada's responsibility.

5. Upon a final determination of an Application made under and in accordance with the Claims Process, Primary Class Releasors are also deemed to agree to release the Parties, Class Counsel, Quebec Subclass Counsel and counsel for Canada, the Claims Administrator, and the Independent Reviewer 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. Primary Class Releasors are not deemed to release any claim arising from the preparation of their individual Applications as against the lawyer or lawyers retained to assist them in the preparation of the Application.

6. Each Family Class Member who has not opted out of the Class Action on or before the expiry of the Opt Out Period ("Family Class Releasors") 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 or which could have been asserted whether known or unknown

including for damages, contribution, indemnity, costs, expenses, and interest which any such Family Class Releasor ever had, now has, or may hereafter have, directly or indirectly, arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the individual claims under *Reginald Percival et al v. His Majesty the King* (T-1417-18), and this release includes any such claim made or that could have been made in any proceeding, whether asserted directly by the Family Class Releasor or by any other person, group, or legal entity on behalf of or as representative for the Family Class Releasor.

7. For greater certainty, Family Class Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute, the common law, or Quebec civil law, in relation to the individual claims under *Reginald Percival et al v. His Majesty the King* (T-1417-18), the Family Class Releasor will expressly limit those claims so as to exclude any portion of Canada's responsibility.

Judge