

Federal Court



Cour fédérale

Date: 20231003

Docket: T-1417-18

Vancouver, British Columbia, October 3, 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 MOTION brought by the plaintiffs with the consent of the defendant for appointing PricewaterhouseCoopers Inc. as the Claims Administrator as defined in the proposed Settlement Agreement attached to this Order as Schedule “A”, pursuant to the *Federal Court Rules*, SOR/98-106 [Rules];

AND UPON being satisfied that the appointment will facilitate the claims process in the event of approval of the proposed Settlement Agreement by this Court;

AND UPON being satisfied that it is in the interests of justice that the motion be granted;

THIS COURT ORDERS that:

1. PricewaterhouseCoopers Inc. is appointed the Claims Administrator to carry out the duties assigned to it in the proposed Settlement Agreement.
2. The Defendant shall pay PricewaterhouseCoopers Inc.'s reasonable fees and expenses for carrying out the duties of Claims Administrator.
3. In the event of approval of the proposed Settlement Agreement pursuant to Rule 334.29 of the Rules, the defendant shall transfer funds directly to the Claims Administrator to provide for payment to eligible class member claimants, as described in the proposed Settlement Agreement in section 3.02.

"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 Releasors” 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 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 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 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 Releasor or by any other person, group, or legal entity on behalf of or as representative for the Primary Class Releasor.

(2) 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 Percival, the Primary Class Releasor 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 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.

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