

**JOINT MOTION RECORD VOLUME V**

Court File No. 00-CV-192059CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CHARLES BAXTER, SR. AND ELIJAH BAXTER**

Plaintiffs

- and -

**THE ATTORNEY GENERAL OF CANADA**

Defendant

- and -

**THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA, THE SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE DIOCESE OF ATHABASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF CARIBOO, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE DIOCESE OF MOOSONEE, THE SYNOD OF THE DIOCESE OF WESTMINSTER, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE DIOCESE OF SASKATCHEWAN, THE SYNOD OF THE DIOCESE OF YUKON, THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE PRESBYTERIAN CHURCH IN CANADA, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN CANADA, THE UNITED CHURCH OF CANADA, THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA, THE METHODIST CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS, THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS, THE ROMAN**

CATHOLIC BISHOP OF THUNDER BAY, THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, THE ROMAN CATHOLIC BISHOP OF VICTORIA, THE ROMAN CATHOLIC BISHOP OF NELSON, THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD – McLENNAN, THE CATHOLIC ARCHDIOCESE OF EDMONTON, LA DIOCESE DE SAINT-PAUL, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF MACKENZIE, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, THE ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT-BONIFACE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF SAULT STE. MARIE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, THE MISSIONARY OBLATES OF MARY IMMACULATE – GRANDIN PROVINCELES PERES MONTFORTAINS (also known as THE COMPANY OF MARY), JESUIT FATHERS OF UPPER CANADA, THE MISSIONARY OBLATES OF MARY IMMACULATE – PROVINCE OF ST. JOSEPH, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (also known as LES REVERENDS PERES OBLATS DE L'IMMACULEE CONCEPTION DE MARIE), THE OBLATES OF MARY IMMACULATE, ST. PETER'S PROVINCE, LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES TERRITOIRES DU NORD OUEST, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (PROVINCE U CANADA – EST), THE SISTERS OF SAINT ANNE, THE SISTERS OF INSTRUCTION OF THE CHILD JESUS (also known as THE SISTERS OF THE CHILD JESUS), THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERT (also known as THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERTA), THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES, THE SISTERS OF CHARITY (GREY NUNS) OF MONTREAL (also known as LES SOEURS DE LA CHARITÉ (SOEURS GRISES) DE L'HÔPITAL GÉNÉRAL DE MONTREAL), THE GREY SISTERS NICOLET, THE GREY NUNS OF MANITOBA INC. (also known as LES SOEURS GRISES DU MANITOBA INC.), THE SISTERS OF ST. JOSEPH OF SAULT STE. MARIE, LES SOEURS DE SAINT-JOSEPH DE ST-HYACINTHE and INSTITUT DES SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE (also known as LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE) DE NICOLET AND THE SISTERS OF ASSUMPTION, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE DE L'ALBERTA, THE DAUGHTERS OF THE HEART OF MARY (also known as LA SOCIETE DES FILLES DU COEUR DE MARIE and THE DAUGHTERS OF THE IMMACULATE HEART OF MARY), MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (also known as

**MISSIONARY OBLATES OF THE SACRED HEART AND MARY IMMACULATE,  
or LES MISSIONAIRES OBLATS DE SAINT-BONIFACE), LES SOEURS DE LA  
CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (also known as SISTERS  
OF CHARITY OF OTTAWA - GREY NUNS OF THE CROSS), SISTERS OF THE  
HOLY NAMES OF JESUS AND MARY (also known as THE RELIGIOUS ORDER OF  
JESUS AND MARY and LES SOEURS DE JESUS-MARIE), THE SISTERS OF  
CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (also known as THE SISTERS  
OF CHARITY OF HALIFAX), LES SOEURS DE NOTRE DAME AUXILIATRICE,  
LES SOEURS DE ST. FRANCOIS D'ASSISE, SISTERS OF THE PRESENTATION  
OF MARY (SOEURS DE LA PRESENTATION DE MARIE), THE BENEDICTINE  
SISTERS, INSTITUT DES SOEURS DU BON CONSEIL, IMPACT NORTH  
MINISTRIES, THE BAPTIST CHURCH IN CANADA**

Third Parties

*Proceeding under the Class Proceedings Act, 1992*

**JOINT MOTION RECORD  
(Certification, Settlement Approval and Approval of Legal Fees)**

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**ABBREVIATED INDEX**

**TAB NO.**

**DOCUMENT DESCRIPTION**

***VOLUME I & – Agreement in Principle & Settlement Agreement  
VOLUME II***

1. Agreement in Principle, dated November 20, 2005
2. Residential Schools Settlement Agreement, dated May 10, 2006

***VOLUME III***

3. Notice of Motion for Settlement Approval, returnable August 29-31, 2006
  - A. Schedule “A” to the Notice of Motion [Amended Statement of Claim]
  - B. Schedule “B” to the Notice of Motion [Draft Order Amending the Title of Proceedings]
  - C. Schedule “C” to the Notice of Motion [Draft Order Approving the Settlement]
  - D. Schedule “D” to the Notice of Motion [Draft Order Approving Fees]
4. Affidavit of Jonathan Ptak
5. Affidavit of the Honourable Frank Iacobucci, Q.C.
6. Affidavit of Chief Larry Phillip Fontaine

***VOLUME IV – National Background***

7. Affidavit of Robert Robson
8. Affidavit of David Russell
9. Affidavit of Len Marchand

***VOLUME V – Regional Histories***

10. Affidavit of Richard Courtis
11. Affidavit of Donald Belcourt
12. Affidavit Nora Bernard

<b><u>TAB NO.</u></b>	<b><u>DOCUMENT DESCRIPTION</u></b>
13.	Affidavit of Brian O'Reilly
14.	Affidavit of Bonnie Reid
15.	Affidavit of Doug Keshen
<b><i>VOLUME VI – Notice Program</i></b>	
16.	Affidavit of Todd Hilsee (May 17, 2006)
17.	Affidavit of Todd Hilsee (June 29, 2006)
18.	Affidavit of Todd Hilsee (July 26, 2006)
19.	Affidavit of Kerry Eaton
20.	Order of the Honourable Mr. Justice Warren K. Winkler, dated May 24, 2006
21.	Affidavit of James Bruce Boyles [Anglican Church]
<b><i>VOLUME VII – The Church Defendants</i></b>	
22.	Affidavit of James Vincent Scott (United Church Entities)
23.	Affidavit of Stephen Kendall (Presbyterian Entities)
24.	Affidavit of Sister Bernadette Poirer s.g.m. (Catholic)
25.	Affidavit of Father Jacques Gagné (Catholic)
26.	Affidavit of Archbishop Joseph Edmond Emilius Goulet (Catholic)
27.	Affidavit of Sister Gloria Keylor s.p. (Catholic)
28.	Affidavit of Father Jacques L'Heureux (Catholic)
29.	Affidavit of Father Camille Piche (Catholic)
30.	Affidavit of Father Bernard Pinet (Catholic)
31.	Affidavit of Father Cécil Fortier (Catholic)
32.	Affidavit of Bishop Gary Gordon (Catholic)
33.	Affidavit of Sister Dorothy Jean Beyer (Catholic)

<b><u>TAB NO.</u></b>	<b><u>DOCUMENT DESCRIPTION</u></b>
34.	Affidavit of Sister Pauline Phaneuf (Catholic)
35.	Affidavit of Sister Suzanne Tremblay (Catholic)
36.	Affidavit of Sister Robéa Duguay (Catholic)
37.	Affidavit of Sister Pearl Goudreau (Catholic)
38.	Affidavit of Sister Denise Brochu (Catholic)
39.	Affidavit of Sister Suzanne Bridet (Catholic)
40.	Affidavit of Sister Diane Beaudoin (Catholic)
41.	Affidavit of Sister Gloria Paradis (Catholic)

***VOLUME VIII – Legal Fees***

42.	Affidavit of Darcy Merkur
43.	Affidavit of Sandra Staats
44.	Affidavit of Laura Cabott

***VOLUME IX – Individual Representative Plaintiffs***

45.	Affidavit of Percy Archie
46.	Affidavit of Charles Baxter
47.	Affidavit of Elijah Baxter
48.	Affidavit of Evelyn Baxter
49.	Affidavit of Janet Brewster
50.	Affidavit of John Bosum
51.	Affidavit of Brenda Cyr
52.	Affidavit of Malcolm Dawson
53.	Affidavit of Vincent Bradley Fontaine
54.	Affidavit of Elizabeth Kusiak
55.	Affidavit of Theresa Ann Larocque

<b><u>TAB NO.</u></b>	<b><u>DOCUMENT DESCRIPTION</u></b>
56.	Affidavit of Veronica Marten
57.	Statutory Declaration of Michelline Ammaq
58.	Statutory Declaration of Rhonda Buffalo
59.	Statutory Declaration of Ernestine Caibaisosai-Gidmark
60.	Statutory Declaration of Michael Carpan
61.	Statutory Declaration of Ann Dene
62.	Statutory Declaration of James Fontaine
63.	Statutory Declaration of Peggy Good
64.	Statutory Declaration of Fred Kelly
65.	Statutory Declaration of Jane McCallum
66.	Statutory Declaration of Cornelius McComber
67.	Statutory Declaration of Stanley Nepetaypo
68.	Statutory Declaration of Flora Northwest
69.	Statutory Declaration of Norman Pauchay
70.	Statutory Declaration of Camble Quatell
71.	Statutory Declaration of Alvin Saulteaux
72.	Statutory Declaration of Christine Semple
73.	Statutory Declaration of Dennis Smokeyday
74.	Statutory Declaration of Kenneth Sparvier
75.	Statutory Declaration of Edward Tapiatic
76.	Statutory Declaration of Helen Wildeman
77.	Statutory Declaration of Adrian Yellowknee

## DETAILED INDEX

**TAB NO.**

**DOCUMENT DESCRIPTION**

***VOLUME I - Agreement in Principle & Settlement Agreement***

1. **Agreement in Principle, dated November 20, 2005**
  - A. Schedule "A" to the Agreement in Principle, dated November 20, 2005 [List of Catholic Entities]
  - B. Schedule "B" to the Agreement in Principle, dated November 20, 2005 [Independent Assessment Process (IAP) for Continuing Indian Residential Schools Abuse Claims]
  - C. Schedule "C" to the Agreement in Principle, dated November 20, 2005 [List of Residential Schools]
  - D. Schedule "D" to the Agreement in Principle, dated November 20, 2005 [List of Additional Residential Schools]
  - E. Schedule "E" to the Agreement in Principle, dated November 20, 2005 [Truth and Reconciliation Principles]
  - F. Schedule "F" to the Agreement in Principle, dated November 20, 2005 [Inuit and Inuvialuit Schools to be Researched]
  - G. Schedule "G" to the Agreement in Principle, dated November 20, 2005 [AIP Implementation]
  - H. Schedule "H" to the Agreement in Principle, dated November 20, 2005 [Letter to Former Students of Indian Residential Schools and their Legal Counsel from Mario Dion, Deputy Minister, Indian Residential Schools Resolution Canada, July 2005]
  
2. **Residential Schools Settlement Agreement, dated May 10, 2006**
  - A. Schedule "A" to Residential Schools Settlement Agreement, dated May 10, 2006 [Application for Common Experiences Payment for Former Students Who Resided at Indian Residential Schools]
  - B. Schedule "B" to Residential Schools Settlement Agreement, dated May 10, 2006 [List of Anglican Defendants]
  - C. Schedule "C" to Residential Schools Settlement Agreement, dated May 10, 2006 [List of Corporate Catholic Defendants]

<b><u>TAB NO.</u></b>	<b><u>DOCUMENT DESCRIPTION</u></b>
D.	Schedule "D" to Residential Schools Settlement Agreement, dated May 10, 2006 [Independent Assessment Process (IAP) for Continuing Indian Residential School Abuse Claims]
E.	Schedule "E" to Residential Schools Settlement Agreement, dated May 10, 2006 [List of Residential Schools]
F.	Schedule "F" to Residential Schools Settlement Agreement, dated May 10, 2006 [List of Additional Residential Schools]
G.	Schedule "G" to Residential Schools Settlement Agreement, dated May 10, 2006 [List of Anglican Defendants]
H.	Schedule "H" to Residential Schools Settlement Agreement, dated May 10, 2006 [List of Other Catholic Entities]
I.	Schedule "I" to Residential Schools Settlement Agreement, dated May 10, 2006 [Trust Agreement]
J.	Schedule "J" to Residential Schools Settlement Agreement, dated May 10, 2006 [Commemoration Policy Directive]
K.	Schedule "K" to Residential Schools Settlement Agreement, dated May 10, 2006 [Settlement Notice Plan Prepared by Hilsoft Notifications]

***VOLUME II - Agreement in Principle & Settlement Agreement***

L.	Schedule "L" to Residential Schools Settlement Agreement, dated May 10, 2006 [Common Experience Payment Process Flowchart and Memorandum]
M.	Schedule "M" to Residential Schools Settlement Agreement, dated May 10, 2006 [Funding Agreement]
N.	Schedule "N" to Residential Schools Settlement Agreement, dated May 10, 2006 [Mandate for the Truth and Reconciliation Commission]
O.	Schedules "O" to Residential Schools Settlement Agreement, dated May 10, 2006 [Schedules Amending Settlement Agreement]
1.	Schedule "O" to Residential Schools Settlement Agreement, dated May 10, 2006 [Schedule O-1 Second Amending Agreement]

**TAB NO.**

**DOCUMENT DESCRIPTION**

- A. Schedule A to Schedule O-1 Second Amending Agreement [The Presbyterian Fund for Healing and Reconciliation]
- B. Schedule B to Schedule O-1 Second Amending Agreement [Full and Final Release in Claims by Persons who Opt Out of the IRSSA]
2. Schedule "O" to Residential Schools Settlement Agreement, dated May 10, 2006 [Schedule O-2 Amending Agreement]
  - A. Schedule A to Schedule O-2 Second Amending Agreement [The Anglican Entities]
  - B. Schedule B to Schedule O-2 Second Amending Agreement [The Anglican Fund for Healing and Reconciliation ("AFHR")]
  - C. Schedule C to Schedule O-2 Second Amending Agreement [Full and Final Release in Claims by Persons Who Opt Out of the IRSSA]
  - D. Schedule D to Schedule O-2 Second Amending Agreement [Process for Providing Documents to the Truth and Reconciliation Commission]
  - E. Schedule E to Schedule O-2 Second Amending Agreement [Sections of IRSSA Incorporated by Reference]
  - F. Schedule F to Schedule O-2 Second Amending Agreement [Notice Information for Anglican Entities]
3. Schedule "O" to Residential Schools Settlement Agreement, dated May 10, 2006 [Schedule O-3 Settlement Agreement]
  - A. Schedule A to Schedule O-3 Settlement Agreement [List of the Catholic Entities]
  - B. Schedule B to Schedule O-3 Settlement Agreement [The Catholic Healing, reconciliation and Service Evaluation Committee]
  - C. Schedule C to Schedule O-3 Settlement Agreement [Conditions Under Which Payments are Made from the Corporation to the Aboriginal Healing Foundation]
  - D. Schedule D to Schedule O-3 Settlement Agreement [Full and Final Release in Claims by Persons who Opt Out of the IRSSA]
  - E. Schedule E to Schedule O-3 Settlement Agreement [Process for Providing Documents to the Truth and Reconciliation Commission]



**TAB NO.**

**DOCUMENT DESCRIPTION**

- F. Schedule F to Schedule O-3 Settlement Agreement [Sections of IRSSA Incorporated by Reference]
- G. Schedule G to Schedule O-3 Settlement Agreement [Names and Addresses of the Catholic Entities for Giving Notice]
- 4. Schedule "O" to Residential Schools Settlement Agreement, dated May 10, 2006 [Schedule O-4 Settlement Agreement]
  - A. Schedule A to Schedule O-4 Settlement Agreement [Indian Residential Schools Related to the United Church]
  - B. Schedule B to Schedule O-4 Settlement Agreement [Healing and Reconciliation and In-Kind Services Criteria]
  - C. Schedule C to Schedule O-4 Settlement Agreement [Full and Final Release in Claims by Persons Who Opt Out of the IRSSA]
- P. Schedule "P" to Residential Schools Settlement Agreement, dated May 10, 2006 [Full and Final Release]
- Q. Schedule "Q" to Residential Schools Settlement Agreement, dated May 10, 2006 [Treasury Board of Canada Secretariat Travel Directive]
- R. Schedule "R" to Residential Schools Settlement Agreement, dated May 10, 2006 [July 2005 Open Letter to Former Students of Indian Residential Schools and their Legal Counsel from Mario Dion, Deputy Minister, Indian Residential Schools Resolution Canada]
- S. Schedule "S" to Residential Schools Settlement Agreement, dated May 10, 2006 [National Certification Committee Members]
- T. Schedule "T" to Residential Schools Settlement Agreement, dated May 10, 2006 [ADR Pilot Projects]
- U. Schedule "U" to Residential Schools Settlement Agreement, dated May 10, 2006 [IAP Working Group Members]
- V. Schedule "V" to Residential Schools Settlement Agreement, dated May 10, 2006 [Agreement Between the Government of Canada and the Merchant Law Group Respecting the Verification of Legal Fees]

***VOLUME III***

3. **Notice of Motion for Settlement Approval, returnable August 29-31, 2006**
  - E. Schedule "A" to the Notice of Motion [Amended Statement of Claim]
  - F. Schedule "B" to the Notice of Motion [Draft Order Amending the Title of Proceedings]
  - G. Schedule "C" to the Notice of Motion [Draft Order Approving the Settlement]
  - H. Schedule "D" to the Notice of Motion [Draft Order Approving Fees]
4. **Affidavit of Jonathan Ptak**
5. **Affidavit of the Honourable Frank Iacobucci, Q.C.**
  - A. Exhibit "A" to the Affidavit of the Honourable Frank Iacobucci, Q.C. [Political Agreement]
  - B. Exhibit "B" to the Affidavit of the Honourable Frank Iacobucci, Q.C. [Letter from the Honourable Frank Iacobucci to Interested Parties, dated June 1, 2005]
  - C. Exhibit "C" to the Affidavit of the Honourable Frank Iacobucci, Q.C. [Letter from the Honourable Frank Iacobucci to Interested Parties, dated July 4, 2005]
  - D. Exhibit "D" to the Affidavit of the Honourable Frank Iacobucci, Q.C. [Letter from the Honourable Frank Iacobucci to Interested Parties, dated July 15, 2005]
  - E. Exhibit "E" to the Affidavit of the Honourable Frank Iacobucci, Q.C. [Chart describing meetings and telephone conversations]
  - F. Exhibit "F" to the Affidavit of the Honourable Frank Iacobucci, Q.C. [Agreement in Principle]
6. **Affidavit of Chief Larry Phillip Fontaine**
  - A. Exhibit "A" to the Affidavit of Chief Larry Phillip Fontaine [Chapter 10, *Report of the Royal Commission on Aboriginal Peoples*]

- B. Exhibit “B” to the Affidavit of Chief Larry Phillip Fontaine [Statement of Reconciliation]
- C. Exhibit “C” to the Affidavit of Chief Larry Phillip Fontaine [*Guiding Principles for Working Together to Build Restoration and Reconciliation*]
- D. Exhibit “D” to the Affidavit of Chief Larry Phillip Fontaine [*The Assembly of First Nations Report on Canada’s Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools*]
- E. Exhibit “E” to the Affidavit of Chief Larry Phillip Fontaine [Political Agreement dated May 30, 2005]
- F. Exhibit “F” to the Affidavit of Chief Larry Phillip Fontaine [Assembly of First Nations’ Resolutions]
- G. Exhibit “G” to the Affidavit of Chief Larry Phillip Fontaine [Final Conference Report of the Assembly of First Nations’ Residential Schools July 2005 Conference]
- H. Exhibit “H” to the Affidavit of Chief Larry Phillip Fontaine [List of Residential Schools conferences of meetings attended by the Assembly of First Nations Indian Residential Schools Unit]

***VOLUME IV – National Background***

- 7. **Affidavit of Robert Robson**
  - A. Exhibit 1 to the Affidavit of Rob Robson [Affidavit of Rob Robson Previously Sworn on July 25, 2003]
- 8. **Affidavit of David Russell**
- 9. **Affidavit of Len Marchand**

***VOLUME V – Regional Histories***

- 10. **Affidavit of Richard Courtis**
  - A. Exhibit “A” to the Affidavit of Richard Courtis [Statement of Reconciliation issued January 7, 1998]
  - B. Exhibit “B” to the Affidavit of Richard Courtis [List of Members of the National Consortium]
  - C. Exhibit “C” to the Affidavit of Richard Courtis [Amended Fresh as Amended Statement of Claim]

- D. Exhibit "D" to the Affidavit of Richard Courtis [Order Amending Statement of Defence, dated February 16, 2005]
- E. Exhibit "E" to the Affidavit of Richard Courtis [Order Amending Third Party Claim, dated February 16, 2005]
- F. Exhibit "F" to the Affidavit of Richard Courtis [Minutes of Case Conferences]
- G. Exhibit "G" to the Affidavit of Richard Courtis [Minutes of December 14, 2004 Case Conference]
- H. Exhibit "H" to the Affidavit of Richard Courtis [Reasons of Justice Winkler dated May 30, 2005]
- I. Exhibit "I" to the Affidavit of Richard Courtis [Proposed Amended Statement of Claim]
- J. Exhibit "J" to the Affidavit of Richard Courtis [Proposed Application Form to be Completed by Eligible CEP Recipients]
- K. Exhibit "K" to the Affidavit of Richard Courtis [Letter from Ms. Coughlan to Mr. Faulds, dated May 23, 2006]
- L. Exhibit "L" to the Affidavit of Richard Courtis [Expert Opinion from Lalive, Attorneys-at-Law, dated November 2, 2005]
- M. Exhibit "M" to the Affidavit of Richard Courtis [December 2005 Report of Siggner & Associates]
- N. Exhibit "N" to the Affidavit of Richard Courtis [Plaintiff's Litigation Plan in *Baxter*]
- 11. **Affidavit of Donald Belcourt**
  - A. Exhibit "A" to the Affidavit of Donald Belcourt [Case Management Order of the Honourable Mr. Justice T.F. McMahon, dated January 8, 2000]
  - B. Exhibit "B" to the Affidavit of Donald Belcourt [Alberta Law Reform Institute Class Actions Final Report No. 85, December 2000]
  - C. Exhibit "C" to the Affidavit of Donald Belcourt [Proposal of the Plaintiffs for the Conduct of Residential School Litigation]
  - D. Exhibit "D" to the Affidavit of Donald Belcourt [Reasons for Decision of the Honourable Mr. Justice T.F. McMahon, dated April 26, 2000]

- E. Exhibit “E” to the Affidavit of Donald Belcourt [Reasons for Decision of the Honourable Mr. Justice T.F. McMahon, dated May 20, 2003]
- 12. **Affidavit Nora Bernard**
- 13. **Affidavit of Brian O’Reilly**
- 14. **Affidavit of Bonnie Reid**
- 15. **Affidavit of Doug Keshen**

***VOLUME VI – Notice Program***

- 16. **Affidavit of Todd Hilsee (May 17, 2006)**  
Exhibit “A” to the Affidavit of Todd Hilsee (May 17, 2006) [Notice Plan]
- 17. **Affidavit of Todd Hilsee (June 29, 2006)**
- 18. **Affidavit of Todd Hilsee (July 26, 2006)**
- 19. **Affidavit of Kerry Eaton**
  - A. Attachment “A” to the Affidavit of Kerry Eaton [Weekly Report No. 01-06]
  - B. Attachment “B” to the Affidavit of Kerry Eaton [Weekly Report No. 02-06]
  - C. Attachment “C” to the Affidavit of Kerry Eaton [Weekly Report No. 03-06]
- 20. **Order of the Honourable Mr. Justice Warren K. Winkler, dated May 24, 2006**

***VOLUME VII – The Church Defendants***

- 21. **Affidavit of James Bruce Boyles [Anglican Church]**
  - A. Exhibit “A” to the Affidavit of James Bruce Boyles (Anglican Entities) [Indian Residential Schools Related to Anglican Entities]
  - B. Exhibit “B” to the Affidavit of James Bruce Boyles (Anglican Entities) [Settlement Agreement dated March 11, 2003]
- 22. **Affidavit of James Vincent Scott (United Church Entities)**

- A. Exhibit "A" to the Affidavit of James Vincent Scott (United Church Entities) [Indian Residential Schools Related to the United Church]
- 23. **Affidavit of Stephen Kendall (Presbyterian Entities)**
- A. Exhibit "A" to the Affidavit of Stephen Kendall (Presbyterian Entities) [Indian Residential Schools Related to the Church]
- B. Exhibit "B" to the Affidavit of Stephen Kendall (Presbyterian Entities) [Settlement Agreement dated February 13, 2003]
- 78. **Affidavit of Sister Bernadette Poirer s.g.m. (Catholic)**
- 79. **Affidavit of Father Jacques Gagné (Catholic)**
- 80. **Affidavit of Archbishop Joseph Edmond Emilius Goulet (Catholic)**
- 81. **Affidavit of Sister Gloria Keylor s.p. (Catholic)**
- 82. **Affidavit of Father Jacques L'Heureux (Catholic)**
- 83. **Affidavit of Father Camille Piche (Catholic)**
- 84. **Affidavit of Father Bernard Pinet (Catholic)**
- 85. **Affidavit of Father Cécil Fortier (Catholic)**
- 86. **Affidavit of Bishop Gary Gordon (Catholic)**
- 87. **Affidavit of Sister Dorothy Jean Beyer (Catholic)**
- 88. **Affidavit of Sister Pauline Phaneuf (Catholic)**
- 89. **Affidavit of Sister Suzanne Tremblay (Catholic)**
- 90. **Affidavit of Sister Robéa Duguay (Catholic)**
- 91. **Affidavit of Sister Pearl Goudreau (Catholic)**
- 92. **Affidavit of Sister Denise Brochu (Catholic)**
- 93. **Affidavit of Sister Suzanne Bridet (Catholic)**
- 94. **Affidavit of Sister Diane Beaudoin (Catholic)**
- 95. **Affidavit of Sister Gloria Paradis (Catholic)**

*VOLUME VIII – Legal Fees*

96. **Affidavit of Darcy Merkur**
- A. Exhibit “A” to the Affidavit of Darcy Merkur [Class Action Retainer Agreement]
- B. Exhibit “B” to the Affidavit of Darcy Merkur [Verification Agreement]
97. **Affidavit of Sandra Staats**
98. **Affidavit of Laura Cabott**

*VOLUME IX – Individual Representative Plaintiffs*

99. **Affidavit of Percy Archie**
100. **Affidavit of Charles Baxter**
101. **Affidavit of Elijah Baxter**
102. **Affidavit of Evelyn Baxter**
103. **Affidavit of Janet Brewster**
104. **Affidavit of John Bosum**
105. **Affidavit of Brenda Cyr**
106. **Affidavit of Malcolm Dawson**
107. **Affidavit of Vincent Bradley Fontaine**
108. **Affidavit of Elizabeth Kusiak**
109. **Affidavit of Theresa Ann Larocque**
110. **Affidavit of Veronica Marten**
111. **Statutory Declaration of Michelline Ammaq**
112. **Statutory Declaration of Rhonda Buffalo**
113. **Statutory Declaration of Ernestine Caibaisosai-Gidmark**
114. **Statutory Declaration of Michael Carpan**

115. **Statutory Declaration of Ann Dene**
116. **Statutory Declaration of James Fontaine**
117. **Statutory Declaration of Peggy Good**
118. **Statutory Declaration of Fred Kelly**
119. **Statutory Declaration of Jane McCallum**
120. **Statutory Declaration of Cornelius McComber**
121. **Statutory Declaration of Stanley Nepetaypo**
122. **Statutory Declaration of Flora Northwest**
123. **Statutory Declaration of Norman Pauchay**
124. **Statutory Declaration of Camble Quatell**
125. **Statutory Declaration of Alvin Saulteaux**
126. **Statutory Declaration of Christine Semple**
127. **Statutory Declaration of Dennis Smokeyday**
128. **Statutory Declaration of Kenneth Sparvier**
129. **Statutory Declaration of Edward Tapiatic**
130. **Statutory Declaration of Helen Wildeman**
131. **Statutory Declaration of Adrian Yellowknee**



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CHARLES BAXTER, SR. AND ELIJAH BAXTER**

Plaintiffs

- and -

**THE ATTORNEY GENERAL OF CANADA**

Defendant

- and -

**THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA, THE SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE DIOCESE OF ATHABASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF CARIBOO, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE DIOCESE OF MOOSONEE, THE SYNOD OF THE DIOCESE OF WESTMINSTER, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE DIOCESE OF SASKATCHEWAN, THE SYNOD OF THE DIOCESE OF YUKON, THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE PRESBYTERIAN CHURCH IN CANADA, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN CANADA, THE UNITED CHURCH OF CANADA, THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA, THE METHODIST CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS, THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, THE ROMAN CATHOLIC BISHOP OF VICTORIA, THE ROMAN CATHOLIC BISHOP OF NELSON, THE CATHOLIC**

**EPISCOPAL CORPORATION OF WHITEHORSE, LA CORPORATION  
EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD – McLENNAN, THE  
CATHOLIC ARCHDIOCESE OF EDMONTON, LA DIOCESE DE SAINT-PAUL,  
THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF MACKENZIE, THE  
ARCHIEPISCOPAL CORPORATION OF REGINA, THE ROMAN CATHOLIC  
EPISCOPAL CORPORATION OF KEEWATIN, THE ROMAN CATHOLIC  
ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA CORPORATION  
ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT-BONIFACE, THE  
ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF SAULT  
STE. MARIE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES  
BAY, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, THE  
ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, LA  
CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT,  
THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT,  
THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE  
OF BRITISH COLUMBIA, THE MISSIONARY OBLATES OF MARY  
IMMACULATE – GRANDIN PROVINCELES PERES MONTFORTAINS (also  
known as THE COMPANY OF MARY), JESUIT FATHERS OF UPPER CANADA,  
THE MISSIONARY OBLATES OF MARY IMMACULATE – PROVINCE OF ST.  
JOSEPH, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (also known as  
LES REVERENDS PERES OBLATS DE L'IMMACULEE CONCEPTION DE  
MARIE), THE OBLATES OF MARY IMMACULATE, ST. PETER'S PROVINCE,  
LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES TERRITOIRES  
DU NORD OUEST, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE  
(PROVINCE U CANADA – EST), THE SISTERS OF SAINT ANNE, THE SISTERS  
OF INSTRUCTION OF THE CHILD JESUS (also known as THE SISTERS OF THE  
CHILD JESUS), THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN  
CANADA, THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERT (also  
known as THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERTA), THE  
SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES,  
THE SISTERS OF CHARITY (GREY NUNS) OF MONTREAL (also known as LES  
SOEURS DE LA CHARITÉ (SOEURS GRISES) DE L'HÔPITAL GÉNÉRAL DE  
MONTREAL), THE GREY SISTERS NICOLET, THE GREY NUNS OF MANITOBA  
INC. (also known as LES SOEURS GRISES DU MANITOBA INC.), THE SISTERS  
OF ST. JOSEPH OF SAULT STE. MARIE, LES SOEURS DE SAINT-JOSEPH DE  
ST-HYACINTHE and INSTITUT DES SOEURS DE SAINT-JOSEPH DE SAINT-  
HYACINTHE LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE (also  
known as LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE) DE  
NICOLET AND THE SISTERS OF ASSUMPTION, LES SOEURS DE  
L'ASSOMPTION DE LA SAINTE VIERGE DE L'ALBERTA, THE DAUGHTERS OF  
THE HEART OF MARY (also known as LA SOCIETE DES FILLES DU COEUR DE  
MARIE and THE DAUGHTERS OF THE IMMACULATE HEART OF MARY),  
MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (also known as  
MISSIONARY OBLATES OF THE SACRED HEART AND MARY IMMACULATE,  
or LES MISSIONAIRES OBLATS DE SAINT-BONIFACE), LES SOEURS DE LA  
CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (also known as SISTERS**

**OF CHARITY OF OTTAWA - GREY NUNS OF THE CROSS), SISTERS OF THE HOLY NAMES OF JESUS AND MARY (also known as THE RELIGIOUS ORDER OF JESUS AND MARY and LES SOEURS DE JESUS-MARIE), THE SISTERS OF CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (also known as THE SISTERS OF CHARITY OF HALIFAX), LES SOEURS DE NOTRE DAME AUXILIATRICE, LES SOEURS DE ST. FRANCOIS D'ASSISE, SISTERS OF THE PRESENTATION OF MARY (SOEURS DE LA PRESENTATION DE MARIE), THE BENEDICTINE SISTERS, INSTITUT DES SOEURS DU BON CONSEIL, IMPACT NORTH MINISTRIES, THE BAPTIST CHURCH IN CANADA**

Third Parties

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF RICHARD COURTIS  
(sworn July 27, 2006)**

I, **RICHARD COURTIS**, Barrister and Solicitor, of the City of Thunder Bay, **MAKE OATH AND SAY:**

1. I am co-counsel of record for the plaintiffs in *Baxter et al. v. Canada* (Ontario Court File No. 00-CV-192059CP ("*Baxter*")). I previously swore an affidavit on July 25, 2003 that was filed in support of the *Baxter* motion for certification.

**Definitions**

2. For the purposes of this affidavit, I will use the following terms:

"AIP" means the Agreement in Principle signed November 20, 2005;

"Churches" or "Churches organization" means collectively, The General Synod of the Anglican Church of Canada, The Missionary Society of the Anglican Church of Canada, The Dioceses of the Anglican Church of Canada listed in Schedule "B" of the Settlement Agreement, The Presbyterian Church in Canada, The Trustee Board of the Presbyterian Church in Canada, The Foreign Mission of the Presbyterian Church in Canada, Board of Home Missions and Social Services of the Presbyterian Church in Canada, The Women's Missionary Society of the Presbyterian Church in Canada, The United Church of Canada, The Board of Home Missions of the United Church of Canada, The Women's Missionary Society of the United Church of Canada, The Methodist Church of Canada, The Missionary Society of The Methodist Church of Canada. and the Catholic entities listed in Schedule "C" of the Settlement Agreement.

**"Class Members"** means those persons who are members of the classes set out in the proposed Amended Statement of Claim;

**"Common Experience Payment"** means the lump sum payment described herein;

**"Designated Amount"** means \$1,900,000,000.00;

**"DR Model"** means the dispute resolution model offered by Canada since November 2003;

**"Eligible CEP Recipient"** means all former students who resided at Indian Residential Schools;

**"Eligible IAP Claimant"** means all Eligible CEP Recipients and claimants who, 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;

**"Federal Representative"**: means the Honourable Frank Iacobucci;

**"Settlement Agreement" (SA)**: means the Indian Residential Schools Settlement Agreement entered into by the parties on May 10, 2006.

**"Independent Assessment Process" ("IAP")** means the process for the determination of individual abuse claims attached as Schedule "D" to the Settlement Agreement (SA).

**"Indian Residential Schools"** means the following:

1. Institutions listed in Schedule "E" to the Settlement Agreement (SA);
2. Institutions listed in Schedule "F" to the Settlement Agreement (SA) ("Additional Residential Schools") which may be amended from time to time; and,
3. any institution which is determined to meet the following criteria:
  - (a) The child was placed in a residence away from the family home by or under the authority of the federal government for the purposes of education;
  - (b) The federal government was jointly or solely responsible for the operation of the residence and care of the children resident there; and
  - (c) Indicators that the residence was federal in nature include, but are not limited to, whether:

- (i) The institution was federally owned;
- (ii) The federal government stood as the parent to the child;
- (iii) The federal government was at least partially responsible for the administration of the institution;
- (iv) The federal government inspected or had a right to inspect the institution;
- (v) The federal government did or did not stipulate that the institution was an IRS.

"NAC" means the national administration committee as described in the Settlement Agreement (SA).

## **Introduction**

3. I practice civil and criminal litigation across north-western Ontario. In the course of my practice I have acted for victims of institutional child abuse and have represented hundreds of Aboriginal persons, many of whom are survivors of the Residential School system. I travel regularly to reserves in Aboriginal communities across northern Ontario and, in the course of doing so, have spoken with hundreds of Indian Residential School survivors. As part of my work as Counsel in the Baxter Class Action I read the affidavit of Robert Robson which was filed by the Plaintiffs as part of the Class Certification Motion materials. The Robson affidavit sets out a detailed history of Indian Residential Schools in Canada and describes the experiences of aboriginal students in Residential Schools across Canada and the harms that resulted from those experiences. I have also reviewed the report of the Royal Commission on Aboriginal Peoples and, in particular, Chapter 10 entitled "Residential Schools". I have also reviewed the Law Commission of Canada's report entitled "Restoring Dignity—Responding to Child Abuse in Canadian Institutions".

4. I have reviewed affidavits filed in support of the various motions filed across Canada, in either sworn or final draft form. I have also spoken frequently and at length with legal counsel across Canada regarding this action and the proposed settlement of Indian Residential Schools litigation in Canada.

5. I have been involved in the prosecution of *Baxter*, including participating in the settlement negotiations and the drafting of the certification, settlement and settlement approval material.

6. As such, I have personal knowledge of the matters deposed to below, except where those matters are stated to be based on information and belief, and where so stated, I believe them to be true.

7. This affidavit is sworn in support of the motion to approve the settlement described hereafter on the basis that it is fair, reasonable and in the best interests of all class members and to approve the legal fees and disbursements to be paid to legal counsel.

8. This affidavit provides an overview of the steps taken in the *Baxter* action, describes the settlement negotiations, the terms of the settlement and the rationale for legal counsel's recommendation that the settlement be approved.

## **Background**

9. The claim against the defendants arises out of the damages incurred by class members while attending Indian Residential Schools.

10. I am informed by and accept as accurate the following extract from the preamble to Chapter 10 of the Royal Commission on Aboriginal Peoples ("RCAP") entitled "Residential Schools", wherein the RCAP states:

Put simply, the Residential School system was an attempt by successive governments to determine the fate of Aboriginal people in Canada by appropriating and reshaping their future in the form of thousands of children who were removed from their homes and communities and placed in the care of strangers. Those strangers, the teachers and staff, were, according to Hayter Reed, a senior member of the department in the 1890s, to employ "every effort...against anything calculated to keep fresh in the memories of the children habits and associations which it is one of the main objects of industrial education to obliterate." Marching out from the schools, the children, effectively re-socialized, imbued with the values of European culture, would be the vanguard of a magnificent metamorphosis: the 'savage' was to made 'civilized', made fit to take up the privileges and responsibilities of citizenship.

Tragically, the future that was created is now a lamentable heritage for those children and the generations that came after, for Aboriginal communities and, indeed, for all Canadians. The school system's concerted campaign "to obliterate" those "habits and associations", Aboriginal languages, traditions and beliefs, and its vision of radical re-socialization, where compounded by mismanagement and underfunding, the provision of inferior educational services and the woeful mistreatment, neglect and abuse of many children—facts that were known to the department and the churches throughout the history of the school system."

11. I agree with these statements.

12. I believe that Canada has previously publicly acknowledged the national scope of the Indian Residential School system and its legacy by issuing a "Statement of Reconciliation" on January 7, 1998. Attached as exhibit "A" to this affidavit is a copy of the aforementioned Statement of Reconciliation issued January 7, 1998.

## **The history of Indian Residential Schools**

13. A more detailed discussion of the history, purpose, operation and management of Indian Residential Schools in Canada is included in the affidavit sworn by Robert Robson for this settlement motion and dated July 9, 2006. I have reviewed that affidavit and agree with its contents. A brief discussion of the history of Indian Residential Schools follows.

14. Indian Residential Schools predate Confederation. Canada operated nearly every school as a joint venture with various religious organizations, including the Churches. The schools were located in every province and territory except Newfoundland, New Brunswick and Prince Edward Island.

15. Approximately 130 schools existed over time, and while most Indian Residential Schools ceased to operate by the mid-1970's, the last federally-run school in Canada closed in 1996.

16. The RCAP brought the trauma experienced by some students in Indian Residential Schools to national attention. In RCAP's 178 days of public hearings in 96 communities, many Indian Residential School survivors had the courage to tell their stories of physical and sexual abuse, bringing attention to this tragic legacy. Indian Residential Schools issues became a significant part of the RCAP Report, which was released in 1996.

17. In 1998, Canada issued a Statement of Reconciliation including an apology to those people who were sexually or physically abused while attending Indian Residential Schools and established the Aboriginal Healing Foundation (the "AHF"). The AHF was provided with \$350 million to fund community-based healing projects focussing on addressing the



legacy of Indian Residential Schools. In Budget year 2005, Canada committed an additional \$40 million to continue to support the important work of the AHF.

### **The National Consortium and Class Counsel**

18. Class Counsel were assisted by the law firms listed at exhibit "B" of this affidavit who are members of the National Consortium. Contact information for each law firm is provided.

19. National Consortium members practice in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland, Nunavut and the Northwest Territories and have been retained by approximately 8,000 Indian residential school survivors from across Canada.

20. Collectively, National Consortium members were and are experienced in areas relevant to this class proceeding such as class action litigation, aboriginal law and personal injury litigation. In addition, members have extensive specific experience in Indian Residential School litigation.

21. I believe that Class Counsel and the National Consortium have sufficient resources and expertise to effectively prosecute this class proceeding and to advance it to the settlement approval stage and, if necessary, to trial.

22. A more extensive description of the National Consortium is set out in the affidavit of Darcy Merkur, filed on this motion.

### **Steps in the Litigation**

23. The plaintiffs commenced the Baxter class action on behalf of all Residential School Survivors and their families by issuance of a statement of claim on June 13, 2000.

24. A number of amendments were made to the Baxter claim (in October, 2002; March 2003 and December 2004) and in its final form the 'Amended Fresh as Amended Statement of Claim', filed December 14, 2004, is attached as exhibit "C". The claim defines two classes – the 'Survivor Class' and the 'Family Class'. The Claim alleges causes of action and claims against the defendant Canada in paragraphs 19 and 20.

25. On March 10, 2003, Canada filed a statement of defence. This defence was amended by Order dated February 16, 2005. The main defences asserted by Canada to the allegations made by the plaintiffs are pleaded in paragraphs 30, 31 and 32. Canada also pleads Limitation defences at paragraph 46. A copy of the aforementioned Order attaching the Amended Statement of Defence is attached as exhibit "D".

26. On April 24, 2003, Canada brought a third party claim against the Churches. The main basis for the third party claim was Canada's assertion that the Churches were responsible for the day to day operations of the Residential Schools which they operated and as a result were liable to indemnify Canada in respect of any consequences to the plaintiffs resulting from the operation of the schools through the class period. The third party claim was also amended by Order dated February 16, 2005. A copy of this Order attaching the Amended Third Party Claim is attached as exhibit "E".

27. More than 85 religious entities were named as third parties by Canada. Based on their position taken in litigation filed elsewhere in Canada, and in particular in the *Cloud* class action, the Churches will raise defences including a denial that breaches of duty took place, a denial that damage or injury occurred to the plaintiffs and various Limitation defences, including laches.

**Steps leading to the proposed settlement of this action**

28. While the pleadings were being completed, the parties attended numerous case conferences with Mr. Justice Warren K. Winkler of the Ontario Superior Court of Justice.

29. Case conferences were held on the following dates: April 15, 2002; October 24 2002; January 7, 2003; February 24, 2003; May 22, 2003; June 17, 2003; September 9, 2003; October 21, 2003 and November 27, 2003.

30. Attached as exhibits "F" are copies of the minutes of the case conferences referred to above (save for the conferences of October 21, 2003 and November 27, 2003 when no Minutes were taken).

31. The case conference minutes make clear that this was, and is, extremely complex litigation.

32. While the *Baxter* action was pending, the proceedings in *Cloud v. The Attorney General of Canada* ("*Cloud*") were being pursued in this court by members of the National Consortium.

33. The plaintiffs in *Cloud* were former students at Mohawk Institute Residential School in Brantford, Ontario and their families. They moved for certification of the action as a class proceeding. Haines J. dismissed the motion. The plaintiffs appealed to the Divisional Court. The majority of the Divisional Court (Valin and Gravely JJ.) dismissed the appeal. Cullity J. dissented and delivered lengthy reasons. He would have allowed the appeal and certified the action as a class proceeding.

34. The plaintiffs appealed to the Court of Appeal from the Order of the Divisional court pursuant to leave granted on October 10, 2003 (McMurtry C.J.O., Goudge and Simmons JJ.A.).

35. On December 3, 2004, the Ontario Court of Appeal released its reasons in *Cloud*, certifying that action as a class proceeding. Leave to appeal to the Supreme Court of Canada was denied on May 12, 2005.

36. Both Cullity J. and the Court of Appeal found that a failure to certify would result in a failure of access to justice. They referred to the poverty of the former students, their inability to afford the cost of individual actions and the effect such proceedings would have on the continuing emotional problems from which the former students suffer, and continue to suffer, as a result of their experiences at the Mohawk Institute.

37. On December 14, 2004, the parties to the Baxter action attended another case conference with Mr. Justice Winkler. A schedule for the certification motion in *Baxter* was set at the case conference, with the certification motion hearing date set down for May 2005. Copies of the minutes of the December 14, 2004 case conference are attached as exhibit "G" to this affidavit.

38. Further case conferences with Mr. Justice Winkler were held throughout the rest of 2005. Several important issues arose in early 2005 including the extent to which the third parties could bring rule 21 motions prior to certification and the extent to which they could or would be allowed to participate in the certification motion. A motion resulted. An adverse decision for the plaintiffs would have delayed the resolution of *Baxter* for years.

39. On May 30, 2005, Justice Winkler released his reasons staying the various motions brought by the third parties and directing that the certification motion be heard first. This opened the way to a scheduling Order that would likely have seen the Baxter Certification motion heard before the end of 2005. A copy of Justice Winkler's May 30, 2005 reasons are attached as exhibit "H" to this affidavit. Leave to appeal was sought by certain of the third parties but the motion was subsequently abandoned. Leave being granted would have further delayed these proceedings.

40. On May 30, 2005, Canada appointed The Honourable Frank Iacobucci to negotiate with the key stakeholders to develop an agreement for a fair and lasting resolution of the legacy of Indian Residential Schools.

41. The dates, issues discussed and resolutions are to be detailed in the affidavit of the Honourable Frank Iacobucci filed in support of the within motion.

42. As will be detailed in the Iacobucci Affidavit, the parties engaged in settlement negotiations from June 2005 to November 20, 2005. Other details of the negotiations are provided in the Affidavit of Darcy Merkur filed on this motion. I have reviewed the Merkur Affidavit and agree with its contents.

43. Settlement negotiations resulted in the parties agreeing upon the form of an Agreement in Principle dated November 20, 2005.

44. The settlement was ultimately formalized in the Settlement Agreement, a process which took many months of further negotiations between the parties. The Settlement Agreement (the "SA") including all schedules thereto has been filed with this Court.

45. As a term of the SA, the parties agreed that a uniform omnibus Statement of Claim would be delivered which merges all the claims being advanced in class action and representative action litigation across Canada and also names the Churches as party defendants. A copy of the proposed Amended Statement of Claim is attached as exhibit "I" to this affidavit.

**The proposed settlement is fair, reasonable and in the best interests of class members**

46. Class Counsel's opinion is that the Settlement is fair, reasonable and in the best interests of class members for the reasons set out in the following paragraphs.

**A) The Common Experience Payment**

47. Canada will make a Common Experience Payment to every Eligible CEP Recipient who was alive on May 30, 2005.

48. The amount of the Common Experience Payment will be:

- (a) \$10,000 to every Eligible CEP Recipient who attended an Indian Residential School for one school year or part thereof;
- (b) an additional \$3,000 for each school year (or part thereof) thereafter that an Eligible CEP Recipient attended a Residential School;
- (c) less the amount of any advance payment on the CEP received.

49. To effectuate the distribution of the Common Experience Payments, Canada will transfer the Designated Amount (\$1.9 billion) to the Trustee as defined in the Settlement Agreement (incumbent Ministers responsible for Indian Residential Schools Resolution Canada) pursuant to the Trust Agreement attached to the Settlement Agreement (SA) as Schedule "I". Service Canada, a Federal Government department with 20,000 employees and 320 offices across Canada, will act as the operating agency for the Trustee. Applications for

the CEP will be submitted to Service Canada. The parties have developed application procedures for Eligible CEP Recipients that reflect the need for simplicity of form, expedition of payments, and an appropriate form of audit verification in consultation with key stakeholders. A copy of the proposed application form to be completed by Eligible CEP Recipients is attached as exhibit "J" to this affidavit. Service Canada will be responsible for carrying out the duties of the Trustee as set out in Article 10 of the SA, including:

- (a) Developing, installing and implementing systems and procedures necessary to meet its obligations under the Trust Agreement;
- (b) Developing, installing and implementing systems and procedures for paying out compensation for validated CEP Applications;
- (c) Reporting to the NAC and the Courts respecting CEP payments received and being administered and compensation paid; and,
- (d) Providing trained personnel in such reasonable numbers as are required for the performance of its duties.

All amounts, including the Designated Amount, held by Service Canada in Trust will bear interest as provided in Order in Council P.C. 1970-300 of February 17,1970. All interest earned will be added to the Designated Amount.

50. In the event that the Designated Amount is insufficient to pay all Eligible CEP Recipients the Common Experience Payments to which they are entitled, Canada has agreed to add a sufficient amount to remedy any deficiency in this respect. This is a key component of the Settlement.

51. In the event the Designated Amount proves to be in excess by more than \$40,000,000 of the total amount required to pay all Eligible CEP Recipients their Common Experience Payments, Canada has agreed to cause Service Canada to credit each Eligible CEP Recipient, *pro rata*, with an amount up to \$3,000 in the form of Personal Credits (the "Personal Credits") which may be redeemed for personal or group educational services from a list of educational

entities or groups jointly approved by Canada and the AFN pursuant to terms and conditions to be developed by Canada and the AFN with input from key stakeholders.

52. Personal Credits may be transferred by the CEP recipient to a Family Class member or may be combined with the Personal Credits of other individuals.

53. A similar set of terms and conditions has been developed by Canada and Inuit organizations for Eligible CEP Recipients who are Inuit.

54. If the excess after payment of the Common Experience Payments is less than \$40,000,000, such lesser amount will be paid to the National Indian Brotherhood Trust Fund (NIBTF) and to the Inuvialuit Education Foundation (IEF).

55. In the further event that the Designated Amount proves to be in excess of the amount required to pay the maximum Personal Credits, Canada has agreed that Service Canada will transfer any such excess to the NIBTF and the IEF. Any amounts remaining in the Designated Amount Fund on January 1, 2015 will be paid to the NIBTF and the IEF.

**B) Verification and Administration**

56. It has been that agreed that Canada will assume the costs of verifying claims for the Common Experience Payments and administrative expenses relating to their distribution.

**C) The Individual Assessment Process ("IAP")**

57. The parties have agreed that the IRS claims which may be pursued by former students of Indian Residential Schools and the compensation to be paid for such claims when proven, are as set out at pages 2-6 of the IAP attached as Schedule "D" to the SA.



58. The parties also agreed that the Instructions for Adjudicators set out at pages 31-38 of the IAP are approved, subject to minor wording changes consistent with the intended meaning.

59. The parties further agreed that the remaining standards for the IAP shall be substantially as set out in Schedule "D" to the SA.

60. No limitations defence will be advanced in any continuing claim diverted by the Chief Adjudicator to the courts. Canada will rely on Crown immunity in such claims where applicable.

61. Plaintiffs' counsel insisted and Canada ultimately agreed that Canada will provide sufficient resources to permit, after a 6 month lead-in period, the resolution of no fewer than 2,500 continuing claims per year, and to maintain the current standard of offering an IAP hearing, or to resolve an IAP claim, within nine months of an application having been screened in, provided the delay is not the responsibility of the claimant.

62. Where these goals are not achieved, the NAC may request that the government provide additional resources for claims processing, or may apply to the court for an order making changes to the IAP process sufficient to permit the realization of these goals.

63. Further details about the IAP, setting out improvements to the process negotiated as part of the overall settlement agreement, are set out below in paragraphs 85 through 101.

**D) Truth and Reconciliation and Commemoration**

64. A Truth and Reconciliation process will be established substantially as set out in the Mandate attached as Schedule "N" to the SA. Funding for the Truth and Reconciliation

process will be provided by Canada in the amount of \$60,000,000, for the establishment and work of the Commission. The statement of Principles contained in the Commission's Mandate includes the objective of "rebuilding and renewing Aboriginal relationships and the relationship between Aboriginal and non-aboriginal Canadians". The goals of the Commission include the mandate to "provide a holistic, culturally appropriate and safe setting for former students, their families and communities as they come forward to the Commission". The programmes of the Commission will benefit survivors, their families and communities.

65. The Crown will provide funding for commemoration initiatives, events, projects and memorials with respect to Indian Residential Schools at both the national and community level in accordance with the "Commemoration Policy Directive" that forms Schedule "J" to the SA. Such funding will total \$20 million covering both national commemorative and community-based activities and projects including funding already authorized. These commemorative events will benefit survivors, their families and communities.

66. In addition to the foregoing, the various church entities that are parties to the SA will provide up to \$102.8 million, through cash and in-kind services to develop new programmes designed to assist with healing and reconciliation for the Survivor Class members, the Family Class members and their communities.

**E) Healing**

67. Canada will provide \$125,000,000 as a grant to the AHF to fund healing programmes over a five year period to address the legacy of harms including the physical and sexual abuse suffered in Indian Residential Schools. The Terms and Conditions of the grant are set out in

the Funding Agreement between the Crown and the AHF which is attached to the SA as Schedule "M". In particular the criteria for eligible projects state that they "shall address healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools" and "focus on prevention and early detection of the effects of the Legacy of Indian Residential Schools, including the intergenerational impacts on all generations". These projects will benefit survivors, their families and their communities.

68. In the fourth year after the court orders approving the Settlement, Canada has agreed to have an evaluation of the healing initiatives and programmes undertaken by the AHF to determine the efficacy of such initiatives and programmes and to recommend whether and to what extent funding should continue.

69. I believe that the programs described above, which are being funded as part of the overall settlement of IRS claims across Canada, will be of significant benefit to Family Class members in their struggle to deal with the intergenerational effects of the Residential School legacy.

**F) Eligibility Issues**

70. Article 14 of the SA confirms that all First Nations, Inuit, Inuvialuit and Metis students who attended institutions listed on Schedule "E" or Schedule "F" to the SA while such schools operated as Residential Schools are eligible for the CEP and will have access to the IAP in accordance with its terms.

71. Article 12 of the SA sets out a process for an individual to request that additional institutions be added to the list of Schools set out in Schedule "F" to the SA. The Article lists criteria to be applied to the decision by Canada as to whether a particular institution is a

Residential School for the purposes of the SA. The Article also provides that Canada's decision will be communicated, with reasons, to the Requestor and to the NAC with recourse to the Courts by the Requestor and the NAC in the event of a dispute.

**G) The Churches**

72. The Churches and church entities agree that, as parties to the SA, they will:

- (a) Provide, at their own expense, assistance with witnesses and access to documents for resolution of continuing claims on terms substantially similar to the following:
  - (i) Comply with all reasonable requests from Canada for information and assistance during proceedings;
  - (ii) Provide counsel for Canada and any researchers or experts retained by it, with full access to all relevant files and databases, excepting documents with respect to which solicitor-client privilege or other lawful privilege applies and is asserted. Any information obtained from records pursuant to this section will be used exclusively for the defence of the continuing claim or claims for which the information was sought unless otherwise agreed in writing; and
  - (iii) In litigation, provide disclosure and production of relevant documents in their possession or control, provide witness statements on request, attend as appropriate at the discovery of their witnesses, and otherwise facilitate the testimony of witnesses within their employ.

73. The Churches have agreed to provide, along with Canada, all relevant documents to and for the use of the Truth and Reconciliation Commission ("TRC"), subject only to overriding concerns about the privacy interests of an individual. In such cases, researchers for the TRC shall have access to such documents, provided privacy is respected.

74. The Churches have agreed to refrain from advancing or relying upon any limitations or laches defence in any continuing claim for which the Chief Adjudicator authorizes recourse to the courts, and to pay any judgment in such claims to which they are a party and in which Canada is immune from liability, provided that Canada has agreed to indemnify the Church.

75. The SA provides that Canada may settle any continuing claims without a hearing, subject to any rights of consultation set out in an applicable Church/Canada agreement.

76. The Churches have agreed that binding financial and other commitments will be entered into with Canada concerning the resolution of the Indian Residential Schools legacy on terms substantially similar to existing letters of understanding with Canada and certain denominations and the Memorandum of Understanding between Canada and the Catholic entities.

77. Canada has confirmed its commitment to renegotiate existing church agreements to give effect to the most favoured nation clauses found within them with a view to maintaining equity among the denominations.

#### **H) Implementation**

78. As part of the negotiations that culminated in the AIP the parties agreed to a comprehensive plan and schedule for the implementation of the settlement. This plan has been incorporated into the SA as Article 4.

79. A number of Committees are created by Article 4 to assist in the implementation of the SA including a National Certification Committee (NCC) as well as one National Administration Committee and three Regional Administration Committees. The membership in these committees is composed of the major stakeholders including Canada, the Churches, Plaintiffs' Counsel, the AFN and Inuit representatives. The defendants' representatives are a minority on each of these committees. The role of each of these committees is set out in detail in Article 4 of the SA but includes assisting in the process of obtaining Court Orders approving the settlement, and assisting in the interpretation and implementation of the

Approval Orders for the duration of the time required to disburse the CEP and conduct all necessary processes under the IAP.

80. Canada has agreed to use its best efforts to obtain agreement of provincial and territorial governments and any federal government departments to ensure that the receipt of any payments under the SA will not affect the amount, nature or duration of any social benefits or social assistance benefits available or payable to an Eligible CEP Recipient or Eligible IAP Claimant. The other parties have agreed to use their best efforts to reach similar results. By letter dated May 23, 2006 from Catherine Coughlan of the Department of Justice to Jon Faulds of Field LLP, a member of the National Consortium, Ms. Coughlan provided Mr. Faulds with an update on Canada's progress relating to this issue. Ms. Coughlan's letter dated May 23, 2006 to Mr. Faulds is attached as exhibit "K". Further information on the results of these efforts will be provided by Canada at the hearing of the settlement approval motion.

**I) Legal Fees**

81. Legal counsel representing plaintiffs and claimants across Canada did very substantial work on behalf of Eligible CEP Recipients for many years. They have contributed significantly to the achievement of the AIP and SA. They have undertaken not to seek payment of legal fees from clients in respect of the Common Experience Payment to be paid to Eligible CEP Recipients. In the negotiations that lead to the AIP the issue of Legal Fees was a major point of contention between the parties. After lengthy and difficult discussions between Plaintiffs' Counsel and the Federal Representative an agreement on the payment of Legal Fees was reached and was incorporated into the AIP.

82. These provisions were expanded and incorporated into the SA as Article 13 which deals comprehensively with all legal fee issues including payment for work done in furtherance of the settlement approval process and fees for work done on the Committees which are created by the SA for the implementation of the settlement agreement.

83. I have reviewed the affidavit of Darcy Merkur, filed on this motion, which provides extensive and detailed information on the agreement between Canada and the National Consortium concerning compensation for work done by Consortium members up to and including November 20, 2005.

84. I believe that the agreement of the parties with respect to legal fees set out in Article 13 of the SA is fair and reasonable given the risk undertaken and the success achieved by Class Counsel.

**J) Improvements to the ADR/IAP**

85. During negotiations with the Federal Representative, Class Counsel were determined to improve the old DR system. This topic occupied a significant portion of the total time spent in negotiation between June and November 2005.

86. In the final phase of those discussions Class Counsel commissioned an expert opinion from Lalive, Attorneys-at-Law in Geneva regarding the IAP. A copy of that opinion, dated November 2, 2005, is attached as exhibit "L" to this affidavit.

87. Class Counsel were able to obtain significant changes and improvements to the DR process which are now incorporated in the IAP and are summarized below.

88. Payments under the IAP will be increased and standardized. Under the old DR system, there were different compensation grids for residents of different provinces. Residents of B.C., Yukon and Ontario received higher compensation than residents of other provinces. Under the DR system, payment of the full award was dependant on compensation from the Churches. The Catholic Church, for the most part, refused to pay a share of the compensation and the amount received by an individual was reduced by 30% reflecting this problem.

89. Under the IAP, the overall compensation grid for non-pecuniary harm has been increased (from a former high of \$245,000 to \$275,000) and other provinces have been brought up to the level of BC/Yukon/Ontario levels. All persons will receive 100% of their compensation regardless of the Church affiliation of their Residential School.

90. Compensable harms have been changed. Lower level physical abuse and wrongful confinement within the institution is no longer compensable in the IAP, although the CEP payments which we negotiated will compensate survivors for these lesser harms. But persistent abuse or other wrongful acts which have caused serious psychological consequences will now be compensable.

91. Liability for sexual and physical abuse has been extended from employees of the institution to any adult person lawfully on the premises of the Residential School. Persons eligible to make a claim have been extended from students at Residential School to persons under the age of 21 permitted by an adult employee to be on the premises to take part in authorized school activities.



92. The list of schools covered by the program has been extended by including boarding facilities to which students were dispatched to attend local schools.

93. The basis for the defendants' liability for abuse by other students has been extended from sexual to physical abuse. Where the assaults are serious sexual assaults, the onus is on Canada and the Churches to show that reasonable supervision was in place at the time.

94. In less serious student on student assaults, the claimant must show that an adult employee of Canada or the Church had or should reasonably have had knowledge that abuse of the kind alleged was occurring at the Indian Residential School in question during the time period of the alleged abuse, and did not take reasonable steps to prevent such abuse.

95. This is a broader standard than the previous test which required that the claimant prove that the assault in question was the subject of a pattern of sexual assaults which continued after the staff of the Indian Residential School had actual knowledge the sexual assaults were occurring.

96. The grid covering opportunity loss has been increased. Actual income loss, formerly not compensable, is available up to \$250,000 within the IAP proper and in excess of that amount where the Chief Adjudicator refers the matter to the Court for determination.

97. Additional aggravating factors resulting in increased compensation have been added to the list in the old DR process.

98. Provision has been made for settlement of claims without a hearing. This was not possible under the DR system. Similarly under the DR system, expert reports, which are

required to prove certain harms and impacts, were available only after a hearing. Under the new process, the parties may consent to the obtaining of these reports prior to a hearing.

99. Timelines for resolution of individual claims have been incorporated into the process. In particular, there is a commitment that individual claims would be resolved within nine months, provided the delay is not on the part of the claimant. No fewer than 2,500 decisions per year are to be made. Where these timelines are not met, the NAC may apply to court to change the process to permit their realization.

100. Claims will no longer be vetted by Canada in advance. They will be submitted directly to the Secretariat.

101. Of enormous significance is the fact that Canada will no longer have the option of modifying the DR process unilaterally. In the IAP, this can only be done, in respect of minor changes, by the NAC, 5 of whose 7 members represent, in one fashion or another, claimants. In respect of major changes, these can only be done by the courts, and the entire implementation of the settlement, including the IAP, will ultimately be subject to judicial supervision.

**K) The Value of the Settlement Agreement**

102. The total value of the Settlement Agreement is difficult to quantify precisely. It consists of some elements with a specified dollar value and others whose value must be estimated.

103. The provisions with a specified value are as follows:

- The CEP to be funded to the amount of at least \$1.9 billion;

- The Truth and reconciliation Commission -- \$60 million
- The Aboriginal Healing Foundation -- \$125 million
- Commemoration and Memorialization Funding -- \$20 million
- Church contribution for healing and reconciliation -- \$102.8 million

The total value of these aspects of the settlement is just over \$2.2 billion.

104. The value of the IAP process is not stated in the SA. The DR, which was the predecessor to the IAP, was expected to cost Canada approximately \$1.7 billion, of which approximately \$950 million was allocated to compensation and \$750 million to administration.

105. The IAP is more generous than the DR in a variety of ways. It allows for higher awards as described in paragraphs 88, 89 and 96 of this affidavit. These benefits are also extended retroactively to persons whose claims have already been decided under the old DR. It extends the basis for liability as described in paragraphs 91 to 95 of this affidavit. While lower level physical abuse, which was compensable under the DR, has been eliminated as a claim under the IAP, such claims attracted a maximum compensation of only \$3,500.00. On the other hand the IAP now recognizes persistent abuse or wrongful action resulting in serious psychological harm as a compensable claim. Such claims, which would be reasonably expected to attract significant damages, were not compensable under the DR.

106. The administration of the IAP has also been improved. The SA establishes timelines for the resolution of IAP claims as described in paragraph 99 of this affidavit and Canada has committed to providing sufficient resources to meet these timelines, which may also ultimately be enforced by the Courts.

107. As Canada has not provided any estimates of the cost of the IAP, I cannot provide an specific value for that aspect of the settlement. However I am confident in saying that with the enhancements and improvements described above the projected cost of the IAP will be substantially, by which I mean in the range of hundreds of millions of dollars, more than the projected cost of its predecessor, the DR.

108. In addition to these elements, the SA also commits Canada to the costs of the Notice Program required in connection with the settlement approval process and the costs of administering the CEP, including the processes for receiving applications and distributing funds. The costs of the other administrators and committees charged with overseeing the settlement are also to be paid by Canada.

109. Taking all of the foregoing into account I conclude that the overall value of the settlement can be fairly estimated to be between \$4 billion and \$5 billion.

### **The risks of proceeding with the class action and the litigation**

110. As stated above, the various statements of defence (filed in this action and others) made it clear that a number of possibly valid defences existed, such as:

- (a) limitations defences under both federal and provincial statutes;

- (b) other delay-related defences that arise at both common law and in equity, such as laches, waiver, release, accord and satisfaction and acquiescence;
- (c) consent;
- (d) with respect to the claim for negligence, that the actions of the Crown were policy-driven decisions and not operational decisions and were subject to Crown immunity;
- (e) that certain, if not all, actions of Canada were authorized by statute, order-in-councils or regulation;
- (f) that there is no cause of action in law for Culture and Language claims;
- (g) that many schools were operated for some or all of their existence in accordance with the standards of the day and without any breach of applicable standards of care; and,
- (h) various damages defences.

111. In addition to the defences listed above, there was also the risk of class members dying before judgment could be obtained, with the result that their claim would be extinguished, except where preserved by statute.

112. There were additional special risks relating to the claims of the Family Class which included: the absence of a statutory foundation similar to Ontario's Family Law Act in other provinces and Territories; absence of statutory foundation in Ontario prior to 1978; compelling Limitation and laches defences without the mitigating factors that applied to the claims of survivors and significant difficulties in the assessment of damages.

113. If the defendants were successful in establishing any of the defences listed above, the plaintiffs would not succeed, at least in the entirety, at the trial of the common issues and there would be limited recovery.

114. There was also a risk that a National class proceeding (*Baxter*) would not be certified on a contested motion.

### **Class definition and class size**

115. As set out in the proposed Amended Statement of Claim, the plaintiffs propose the following classes:

**"Survivor Class" means:**

All persons who attended at a Residential School in Canada between January 1, 1920 and December 31, 1997, who are living, or who were living as of May 30, 2005, and who, as of the date hereof, or who, at the date of death resided in:

Alberta, for the purposes of the Alberta Court of Queen's Bench;

British Columbia, for the purposes of the British Columbia Supreme Court;

Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;

Nunavut, for the purposes of the Nunavut Court of Justice; and

Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;

Québec, for the purposes of the Quebec Superior Court;

Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan;

Yukon, for the purposes of Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

**"Family Class" means:**

the spouse, child, grandchild, parent, grandparent or sibling of a Survivor Class Member;

the spouse of a child, grandchild, parent, grandparent or sibling of a Survivor Class Member;

a former spouse of a Survivor Class Member;

a child or other lineal descendent of a grandchild of a Survivor Class Member;

a person of the same or opposite sex to a Survivor Class Member who cohabited for a period of at least one year with that Survivor Class Member immediately before his or her death;

a person of the same or opposite sex to a Survivor Class Member who was cohabiting with that Survivor Class Member at the date of his or her death and to whom that Survivor Class Member was providing support or was under a legal obligation to provide support on the date of his or her death;

any other person to whom a Survivor Class Member was providing support for a period of at least three years immediately prior to his or her death; and,

such other persons as the Court recognizes or directs,

and who, as of the date hereof, are resident in:

Alberta, for the purposes of the Alberta Court of Queen's Bench;

British Columbia, for the purposes of the British Columbia Supreme Court;

Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;

Nunavut, for the purposes of the Nunavut Court of Justice; and

Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;

Québec, for the purposes of the Quebec Superior Court;

Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan;

Yukon, for the purposes of Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

**"Deceased Class" means:**

All persons who attended at a Residential School in Canada between 1920 and 1997, who died before May 30, 2005, and who were, at their date of death, residents of:

Alberta, for the purposes of the Alberta Court of Queen's Bench;

British Columbia, for the purposes of the British Columbia Supreme Court;

Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;

Nunavut, for the purposes of the Nunavut Court of Justice; and

Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;

Québec, for the purposes of the Quebec Superior Court;

Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan;

Yukon, for the purposes of Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

116. The Survivor Class is comprised of all those who attended a Residential School in Canada during the material time period before the year the last Residential School closed.

117. The Family Class is comprised of all parents, grandparents, spouses, children, grandchildren and lineal descendents of Survivor Class Members.

118. The Deceased Class is comprised of all those who attended a Residential in Canada during the material time period but died prior to May 30, 2005.

119. As stated in paragraph 2 of Canada's Statement of Defence in the *Baxter* action, Canada originally estimated that there were approximately 90,600 living Survivor Class Members.

120. In June 2005, in preparation for negotiations with the Federal Representative, Counsel for the plaintiffs prepared their own estimate of the Survivor Class size based on demographic



and schooling information obtained from the 1991 and 1996 Census data. The plaintiffs' estimate was that there were 58,526 living Survivor Class Members.

121. During the settlement negotiations, further work was done on a class size. Attached as exhibit "M" to this affidavit is a copy of a December 2005 report prepared by Siggner & Associates Inc. estimating the number of survivor class members in 2005 at 80,012 and in 2006, due to mortality, at 78,994.

122. The treatment of the Deceased Class was the subject of discussion at various stages of the negotiations and ensuing discussions. Various perspectives and considerations were raised including the following:

- A general preference that payment to living survivors took precedence over payment on account of deceased claimants;
- That in many jurisdictions claims were extinguished upon the death of the claimant;
- That in a national settlement of this sort differential treatment based upon the province of residence was undesirable (this same consideration led to the elimination of regional compensation grids in the IAP);
- The *Cloud* class members were in a somewhat different position than others by virtue of having had their claim certified and the classes defined;
- There was uncertainty whether in the context of this settlement structure the claims of deceased claimants had been uniformly preserved against provincial limitation periods;
- That Canada had raised claimants expectations by its announcement of May 30,2005; and,
- That the death rate among survivors created urgency in arriving at a resolution.

123. Canada's proposal, ultimately accepted by all parties, was that, other than in *Cloud* where the class had already been judicially defined, the Survivor Class consist of all persons alive as of the appointment of the Federal Representative on May 30, 2005.

### **The *Baxter* Litigation Plan**

124. Attached as exhibit "N" to this affidavit is the Plaintiff's Litigation Plan (the "Plan"). This Plan, and in particular the Individual Damage Assessment Process, was designed by Class Counsel after a careful review of the model for individual claim assessment adopted by the Irish government for compensation of victims of Institutional Child Abuse in the *Residential Institutions Redress Act, 2002* and a review of Canada's draft National Residential School Framework. In addition, I travelled to Ireland to meet with the proponents of the Irish Legislation.

125. The Plan sets out in detail the plaintiffs' proposal for dealing with the class proceeding in the event that it had proceeded on a contested basis. I have reviewed the plaintiffs' original Plan and believe that it set out a comprehensive framework for dealing with Residential School litigation in Canada that was fair, efficient and manageable. The provisions of the Settlement are consistent with the Plan in this respect.

126. I also believe that the notice program set out in the Plan would have served to appropriately and adequately notify the class members of the existence of the class action once certified. The provisions of the Settlement are consistent with the Plan in this respect.

127. I also believe that the opt out procedures and the special opt out procedures set out in the Plan would have provided appropriate and adequate opportunity for Class Members,

including Class Members who are currently represented by counsel and/or who have ongoing civil actions, to consider and determine how to best advance their rights. The provisions of the Settlement are consistent with the Plan in this respect.

### **Common issues**

128. The proposed original common issues are set out in Schedule B to the Baxter Litigation Plan.

129. The common issues listed in the Plan dealt with the scope of Canada's responsibility for the alleged institutional child abuse that took place at the Residential Schools.

130. A decision on these common issues would have substantially advanced this litigation. Any remaining individual issues would have been less complex and less difficult and could have been fairly and efficiently dealt with in the manner prescribed in the Plaintiffs' Litigation Plan.

131. The Settlement resolves the common issues in a manner consistent with the common issues listed in the Plan.

### **Preferable procedure**

132. I believe that a class proceeding is the preferable procedure for the resolution of this litigation for the reasons set out below.

### **Judicial economy**

133. I believe that the issues to be resolved through the Settlement are issues that are fundamental to each class members' claim.

134. In the event that this action is not certified and settled, issues will be raised, tried and determined in each any every individual Residential School claim resulting in an inefficient use of judicial resources and the potential for inconsistent judicial decisions.

135. Furthermore, I understand from information published by Canada that there are at least 14,000 ongoing Residential School claims against the Canada. I also verily believe that Canada has recognized that individual proceedings are not an ideal process for resolving Residential School Claims in Canada and that it needs a system that does not clog the courts.

136. I verily believe that certification and settlement of this class action will serve to substantially reduce the Residential School litigation caseload throughout Canada.

### **Access to Justice**

137. I verily believe that, but for a class action, tens of thousands of putative Class Members will not be able to advance claims against Canada for the reasons set out below.

138. I believe that individual litigation will prove economically prohibitive. Determinations of the issues relating to liability and causation will require extensive documentary and expert evidence, it will be costly, time consuming and inefficient to litigate these issues in each individual claim and many of the claims may not be sufficiently large to make individual lawsuits viable. It is only through a class proceeding that the fixed cost of the litigation can reasonably be shared among class members such that the litigation may be effectively pursued.

139. I am informed by and believe the following extract from page 162 of the Law Commission of Canada's report entitled "Restoring Dignity—Responding to Child Abuse in Canadian Institutions":

Survivors are not necessarily well-informed about the claims they may have against those who abused them and against the institutions where they resided. The actual or perceived cost of consulting or retaining a lawyer may prevent some from seeking the information they need to determine whether they wish to proceed with an action. Survivors may be deterred for psychological as well as financial reasons. They may lack confidence in the legal system. They may not be prepared to open up perhaps the most sensitive and private parts of their lives for scrutiny in the adversarial setting of a courtroom. Survivors may also not know where to turn to find a lawyer who has the special legal training or experience necessary to deal effectively with a case involving institutional child abuse. These cases present particular difficulties of proof, as well as the challenge of dealing with clients who are likely to be psychologically fragile. Lawyers must also be willing to work with therapists and others who support survivors.

140. I believe that a substantial number of Class Members live on reserves and/or in remote communities and do not have ready or convenient access to lawyers or to the court system.

141. I also am informed by and believe the following extract from the following comments at page 98-99 of the Law Commission of Canada's report entitled "Restoring Dignity—Responding to Child Abuse in Canadian Institutions":

When Aboriginal children were removed from their families and placed in Residential Schools, a crucial link in the transmission of cultural values and practices was weakened. Those who were forced to speak in only English or French sometimes lost their ability to communicate effectively with their parents. These children were no longer able to learn from their parents and extended families. This situation of intergenerational disconnection has contributed to poverty, substance abuse, lack of parenting skills, spiritual and cultural alienation, psychological and emotional problems, and violence and crime in Aboriginal communities. It has also diminished the capacity of Aboriginal communities to heal those who were physically and sexually abused.

142. I believe that a substantial number of Class Members are not in a position due to psychological impacts associated with the Indian Residential School experience, language barriers, cost concerns, substance abuse, poverty, lack of trust issues, inability to find legal representation, lack of means to retain legal representation, and other issues, to advance Residential School claims against Canada.

143. Based on the foregoing, I believe that this class proceeding will provide otherwise unattainable access to justice to persons who suffered harms as a result of attending Indian Residential Schools and their immediate family members.

### **Behaviour modification**

144. I believe that Canada had previously refused to accept their responsibility for the full range of impacts resulting from the Indian Residential School system, despite having issued the Statement of Reconciliation referred to above.

145. Canada had previously failed to accept and act on the recommendations by both the Law Commission of Canada and the Royal Commission on Aboriginal Peoples for a public inquiry into the Indian Residential Schools system. The Truth and Reconciliation Commission created as part of this settlement will fulfill a similar function.

146. Due to the magnitude of compensation potentially available through this class proceeding including the potential for large compensatory damages awards to all Class Members, I believe that findings in favour of the plaintiffs in this class proceeding will result in a modification of Canada's behaviour in dealing with Aboriginal peoples and other disadvantaged groups.

**The *Baxter* representative plaintiffs**

147. The Survivor Class in the *Baxter* class action is to be represented by Charles Baxter, Sr. I am not aware of any conflicts of interests between the interests of Mr. Charles Baxter, Sr. and the Survivor Class.

148. I verily believe that Charles Baxter, Sr. would fairly and adequately represent the interest of the Survivor Class Members.

149. The Family Class in the *Baxter* class action is to be represented by Elijah Baxter and Evelyn Baxter. I am not aware of any conflicts of interest between the interests of Elijah Baxter or Evelyn Baxter and the Family Class.

150. I verily believe that Elijah Baxter and Evelyn Baxter will fairly and adequately represent the interest of the Family Class Members.

**Conclusion**

151. I have reviewed the compensation proposals and the claims processes set out in the SA and the IAP and find them to be reasonable and fair, particularly in light of the fact that there are provisions for the court to exercise exclusive and continuing jurisdiction over the claims administration process to ensure that the administration and payment of claims is effective and fair.

152. I also understand that a condition of the settlement included the requirement to dismiss claims for aggravated exemplary and punitive damages. I believe that it is in the best interests of class members and their families to enter into this settlement, which provides for the full and timely payment of fair and reasonable compensation, rather than to take on the risks,

delays and expense associated with protracted litigation which would require them to prove liability generally, as well as for aggravated, exemplary and punitive damages.

153. Our objectives in this litigation have been satisfied by this proposed settlement which combines effective court supervision of the claims administration process, and the provision of a full and complete measure of compensatory damages to class members. I believe that this settlement fully protects the interests and rights of class members.

154. Class Counsel are recommending this settlement. In so recommending, Class Counsel have been guided by our analysis of the facts and law applicable to the claims of Class Members, taking into account the expense, uncertainty and risk associated with litigation, including a vigorously contested certification motion and all possible appeals, a trial of the merits and subsequent possible appeals.

155. The proposed representative plaintiffs are also in favour of the settlement as are the class members I have spoken to.

156. The AIP was signed on November 20, 2005 and contemplated approval hearings in May 2006. As the result of a change in government during the intervening time the dates for the finalization of the settlement and scheduling of the approval hearings were delayed by several months. The AIP also contemplated notice of the approval hearings being given to class members. I understand that notice has been given.

157. In addition, the various documents relating to the settlement have been posted on the websites of IRSRC, Class Counsel and the AFN. Counsel and their staff were available to



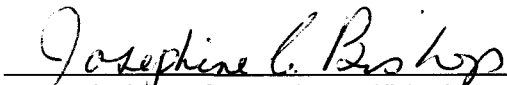
answer questions or concerns of class members. Numerous calls were received by Class Counsel.

158. Once court approval has been obtained, Class Counsel will continue to be actively involved in the implementation of the settlement. The implementation of the settlement is of at least equal importance to its negotiation, conclusion and court approval. The implementation will be significant in terms of the time, resources and commitment that will be required.

159. I verily believe that this class proceeding is the preferable procedure for resolution of the Common Issues and that this class proceeding will promote judicial economy, access to justice and behaviour modification.

160. I swear this affidavit in good faith and for no improper purpose.

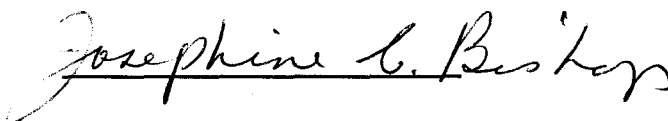
SWORN BEFORE ME at the City of  
Thunder Bay, in the Province of  
Ontario on July 27, 2006.

  
Commissioner for Taking Affidavits

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Curtis,  
Barrister and Solicitor.  
Expires November 10, 2007.

  
RICHARD COURTIS

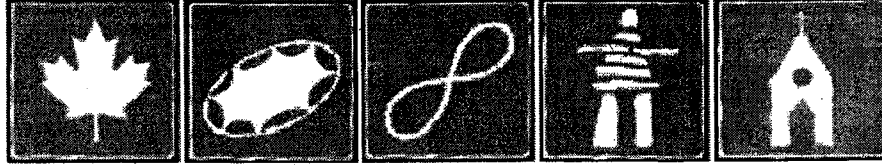
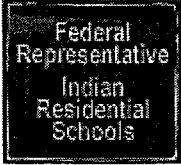
THIS IS EXHIBIT A  
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO  
ON JULY 27, 2006

A handwritten signature in cursive script that reads "Josephine C. Bishop". The signature is written in dark ink and is positioned above the printed name and title.

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Courtis,  
Barrister and Solicitor.  
Expires November 10, 2007.



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## Statement of Reconciliation

### Learning from the Past

As Aboriginal and non-Aboriginal Canadians seek to move forward together in a process of renewal, it is essential that we deal with the legacies of the past affecting the Aboriginal peoples of Canada, including the First Nations, Inuit and Métis. Our purpose is not to rewrite history but, rather, to learn from our past and to find ways to deal with the negative impacts that certain historical decisions continue to have in our society today.

The ancestors of First Nations, Inuit and Métis peoples lived on this continent long before explorers from other continents first came to North America. For thousands of years before this country was founded, they enjoyed their own forms of government. Diverse, vibrant Aboriginal nations had ways of life rooted in fundamental values concerning their relationships to the Creator, the environment, and each other, in the role of Elders as the living memory of their ancestors, and in their responsibilities as custodians of the lands, waters and resources of their homelands.

The assistance and spiritual values of the Aboriginal peoples who welcomed the newcomers to this continent too often have been forgotten. The contributions made by all Aboriginal peoples to Canada's development, and the contributions that they continue to make to our society today, have not been properly acknowledged. The Government of Canada today, on behalf of all Canadians, acknowledges those contributions.

Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country, we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self-sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the result of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.

Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the federal government which have contributed to these difficult pages in the history of our relationship together.

One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School system. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continue to reverberate in Aboriginal communities to this day. Tragically, some children were the victims of physical and sexual abuse.

The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at residential schools, and who have carried this burden believing that in some way they must be responsible, we wish to



emphasize that what you experienced was not your fault and should never have happened. **To those of you who suffered this tragedy at residential schools, we are deeply sorry.**

01519

In dealing with the legacies of the Residential School system, the Government of Canada proposes to work with First Nations, Inuit and Métis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of this sad era of our history.

No attempt at reconciliation with Aboriginal people can be complete without reference to the sad events culminating in the death of Métis leader Louis Riel. These events cannot be undone; however, we can and will continue to look for ways of affirming the contributions of Métis people in Canada and of reflecting Louis Riel's proper place in Canada's history.

Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong country. We must instead continue to find ways in which Aboriginal people can participate fully in the economic, political, cultural and social life of Canada in a manner which preserves and enhances the collective identities of Aboriginal communities, and allows them to evolve and flourish in the future. Working together to achieve our shared goals will benefit all Canadians, Aboriginal and non-Aboriginal alike.

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THIS IS EXHIBIT B  
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO

ON JULY 27, 2006

*Josephine C. Bishop*

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Curtis,  
Barrister and Solicitor.  
Expires November 10, 2007.

**OFFICIAL BAXTER NATIONAL CLASS ACTION CO-COUNSEL LIST**

01521

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and

Jacqueline Levesque  
c/o Jacqueline Levesque (250-960-2183)  
fax: 250.960.2185  
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c/o Gilles Gareau (514-848-9363)  
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email: [gareaug@adams gareau.com](mailto:gareaug@adams gareau.com)

THIS IS EXHIBIT C  
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO  
ON JULY 27, 2006

*Josephine C. Bishop*

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Curtis,  
Barrister and Solicitor.  
Expires November 10, 2007.

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

CHARLES BAXTER, SR.  
and ELIJAH BAXTER

Plaintiffs

- and -

*Winkler, J.*

14 December 2004 THE ATTORNEY GENERAL OF CANADA

*A. Vincent*

Defendant

*Proceeding under the Class Proceedings Act, 1992*

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU  
by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario  
lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by  
the rules of court, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a  
lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this court office,  
WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are  
served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the rules of court. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

DATE: "June 13, 2000"

Issued by

"Y. Grant"

Local Registrar

Address of court office:

10<sup>th</sup> Floor  
393 University Avenue  
Toronto, Ontario M5G 1E6

TO: THE ATTORNEY GENERAL OF CANADA  
c/o Mr. George Thomson  
Deputy Minister of Justice  
Justice Building  
239 Wellington Street  
Ottawa, Ontario  
K1A 0H8

### CLAIM

1. THE PLAINTIFF, CHARLES BAXTER, SR., on his own behalf, and on behalf of the members of the CLASS OF PERSONS, (the "Survivor Class") described in paragraphs 6 and 7 who were transported to, attended at and/or confined in Aboriginal Residential Schools as defined below between January 1, 1920 and December 31, 1996 (the "Class Period"), claims:
  - (a) an Order certifying this proceeding as a Class Proceeding and appointing him representative Plaintiff for the Survivor Class and any appropriate subgroup thereof;
  - (b) a Declaration that the Defendant, the Attorney General of Canada ("The Crown"), owed and was in breach of non-delegable, fiduciary, statutory and/or common law duties to the Plaintiff and the other Survivor Class Members in relation to the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and/or support of the Aboriginal Residential School system and the individual schools therein (the "Residential Schools") throughout Canada;
  - (c) a Declaration that The Crown was negligent in the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and/or support of the Residential Schools throughout Canada;
  - (d) a Declaration that The Crown was or is in breach of its statutory duties pursuant to the **Indian Act** and its Treaty obligations to the Plaintiff and the other Survivor Class Members as a consequence of its establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and/or support of the Residential Schools throughout Canada;
  - (e) a Declaration that The Crown is liable to the Plaintiff and other Survivor Class Members for the damages caused by its breach of non-delegable, fiduciary, statutory and/or common law duties and for negligence in relation to the establishment, funding, operation, supervision, control maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor

Class Members at and/or support of the Residential Schools throughout Canada;

- (f) non-pecuniary general damages for negligence, breach of non-delegable, fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (g) pecuniary general damages and special damages for negligence, breach of non-delegable fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (h) aggravated, exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (i) prejudgment and postjudgment interest pursuant to the provisions of the **Courts of Justice Act**, R.S.O. 1990, c. C.43, Sections 128 and 129 as amended; and,
- (j) costs of this action on a substantial indemnity scale.

2. ELIJAH BAXTER, on his own behalf, and on behalf of the members of the CLASS OF PERSONS (the "Family Class") described in paragraphs 8 and 9 who are related to Survivor Class Members, claim:

- (a) an Order certifying this proceeding as a Class Proceeding and appointing him representative Plaintiff for the Family Class and any appropriate subgroup thereof;
- (b) a Declaration that The Crown owed and was in breach of non-delegable, fiduciary, statutory and/or common law duties to the Plaintiff and the other Family Class Members in relation to the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and/or support of the Residential Schools throughout Canada;
- (c) a Declaration that The Crown was negligent in the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and/or support of the Residential Schools throughout Canada;

- (d) a Declaration that The Crown was or is in breach of its statutory duties pursuant to the **Indian Act** and its Treaty obligations to the Plaintiff and the other Family Class Members as a consequence of its establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and/or support of the Residential Schools throughout Canada;
- (e) a Declaration that The Crown is liable to the Plaintiff and other Family Class Members for the damages caused by its breach of non-delegable, fiduciary, statutory and/or common law duties and for negligence in relation to the establishment, funding, operation, supervision, control maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and/or support of the Residential Schools throughout Canada;
- (f) non-pecuniary general damages for negligence, breach of non-delegable, fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (g) pecuniary general damages and special damages for negligence, breach of non-delegable fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (h) aggravated, exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (i) damages in the amount of four billion dollars (\$4,000,000,000.00), or such other sum as this Honourable Court finds appropriate, pursuant to the **Family Law Act**, R.S.O. 1990, c. F. 3, Section 61, as amended, and its predecessors;
- (j) prejudgment and postjudgment interest pursuant to the provisions of the **Courts of Justice Act**, R.S.O. 1990, c. C.43, Sections 128 and 129 as amended; and,
- (k) costs of this action on a substantial indemnity scale.

3. The Plaintiff CHARLES BAXTER, SR. (DOB November 24, 1950) was born a member of the Marten Falls First Nation (Ogoki Post) and is an Indian as defined in s. 6 of the Indian Act, R.S.C. 1985, c. 1-5. He is now a member of, and presently lives on the Constance Lake First Nation near Calstock, Ontario where he is employed as the Residential School Coordinator. He attended two Residential Schools: Pelican Falls near Sioux Lookout (from approximately 1958 to 1966) and Shingwauk Hall in Sault Ste. Marie (from approximately 1966 to 1968). Charles Baxter's experience at Residential School involved, but was not limited to, the following: being removed from the care of his parents, family and community, having his hair cut off, being required to do labour in a barn, being physically abused by being slapped, strapped, pulled by the hair and thrown to the ground as punishment often without cause and often for speaking his native language, Ojibway, being given inadequate food and supplies (such as being restricted to three sheets of toilet paper), being given an inadequate education and being repeatedly sexually molested by dormitory supervisors, other staff at Pelican Falls and other students.
4. The Plaintiff ELIJAH BAXTER (DOB January 27, 1923) is a member of the Marten Falls First Nation (Ogoki Post) and is an Indian as defined in s. 6 of the Indian Act, R.S.C. 1985, c. 1-5. He presently lives in the Town of Geraldton in the Province of Ontario. He attended the Pelican Falls Residential School near Sioux Lookout from approximately 1933 to 1936. Elijah Baxter is father to 11 children. Elijah Baxter's experience at the Residential School included, but was not limited to, the following: being removed from the care of his parents, family and community, being required to do labour on a farm, being inadequately educated resulting in his illiteracy, being physically abused by being hit all over his body including on his head and being strapped (typically involving six strokes of a thick strap on his bare buttocks) as punishment often without cause and often for speaking his native language and being sodomized on more than one occasion by a member of the staff at Pelican Falls while on school property. After having to endure such an experience, Elijah Baxter was forced to send his own children to Residential School where they were also abused.
5. The following abbreviations are used in this Claim:
  - a) "Aboriginal", "Aboriginal People(s)" or "Aboriginal Person(s)" means a person whose rights are recognized and affirmed by the *Constitution Act, 1982*, s. 35;
  - b) "Aboriginal Right(s)" means rights recognized and affirmed by the *Constitution Act, 1982*, s. 35; and,
  - c) "Class Period" means the period from January 1, 1920 to December 31, 1996; and,



- d) "Residential School(s)" means a residential, boarding or industrial school(s) however designated, established by Canada from time to time under the purported authority of the *Indian Act*, regulations and orders-in-council pursuant thereto and/or other legislation relating to Aboriginal Persons;

**Description of the Survivor Class and Class Period**

6. CHARLES BAXTER, SR. brings this action on his own behalf and on behalf of the Class of Persons described in paragraph 7 who were transported to, attended at and/or confined in Residential Schools in Canada during the period January 1, 1920 to December 31, 1996 ("the Class Period") The year 1920 was the date school attendance was made obligatory by The Crown for Aboriginal children aged 7 to 15. The year 1996 is when the last Federally operated Residential School was closed.
7. The proposed Survivor Class Members are:
- (a) All Aboriginal Persons who attended Residential Schools in Canada during the Class Period; and/or,
  - (b) Such other persons as the Court recognizes or directs.

**Description of the Family Class**

8. ELIJAH BAXTER brings this action on his own behalf and on behalf of the Class of Persons who are the relatives and family of the Survivor Class and who are described in paragraph 9.
9. The proposed Family Class Members are:
- (a) the spouse, child, grandchild, parent, grandparent or sibling of a Survivor Class Member;
  - (b) the spouse of a child, grandchild, parent, grandparent or sibling of a Survivor Class Member;
  - (c) a former spouse of a Survivor Class Member;
  - (d) a child or other lineal descendent of a grandchild of a Survivor Class Member;
  - (e) a person of the same or opposite sex to a Survivor Class Member who cohabited for a period of at least one year with that Survivor Class Member immediately before his or her death;

- (d) a person of the same or opposite sex to a Survivor Class Member who was cohabiting with that Survivor Class Member at the date of his or her death and to whom that Survivor Class Member was providing support or was under a legal obligation to provide support on the date of his or her death;
- (e) any other person to whom a Survivor Class Member was providing support for a period of at least three years immediately prior to his or her death; and,
- (f) Such other persons as the Court recognizes or directs.

### **The Defendant and its Duties**

10. The Defendant Crown represents the Canadian Federal Government has a fiduciary relationship with Aboriginal People in Canada. The Crown created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated all Residential Schools in Canada during the Class Period. All Aboriginal Persons who attended Residential Schools did so as Wards of The Crown, with the Crown as their guardian, and were persons to whom The Crown owed the **highest** non-delegable, fiduciary, moral, statutory and common law duties, which included, but was not limited to, the duty to ensure that reasonable care was taken of the Survivor Class while at Residential School, the duty to protect the Survivor Class while at Residential School, the duty to protect the Survivor Class from intentional torts perpetrated on them while at a Residential School, liability if these non-delegable and/or fiduciary duties were performed negligently or tortiously and the special responsibility to ensure the safety of the Survivor Class while at a Residential School. The Crown was responsible:

- (a) for the administration of the **Indian Act**, R.S.C. 1985, c. I-5, as amended, and its predecessor statutes as well as any other statutes relating to Aboriginal Persons and all Regulations promulgated under these Acts and their predecessors during the Class Period;
- (b) for the promotion of the health, safety and well being of Aboriginal Persons in Canada during the Class Period;
- (c) for the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments during the Class Period;
- (d) for decisions, procedures, regulations promulgated, operations and actions taken by the Department of Indian Affairs and Northern

Development, its employees, servants, officers and Agents in Canada and their predecessors during the Class Period;

- (e) for the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of Residential Schools in Canada and for the creation, design and implementation of the program of education for Aboriginal Persons confined therein during the Class Period;
- (f) for the selection, control, training, supervision and regulation of the designated operators, including the Churches listed in Schedule "A" hereto and other Religious organizations, and their employees, servants, officers and agents, and for the care and education, control and well being of Aboriginal Persons confined in Residential Schools in Canada during the Class Period;
- (g) for the provision of all educational services and opportunities to Aboriginal Persons in Canada, including Survivor Class members, pursuant to the provisions of the **Indian Act** and any other statutes relating to Aboriginal Persons during the Class Period;
- (h) for transportation of Survivor Class Members to and from Residential Schools and to and from their homes while attending Residential Schools during the Class Period;
- (i) for complying with the various treaties outlined below and for providing an appropriate education and educational environment in compliance with the various treaties;
- (j) for preserving, promoting, maintaining and not interfering with Aboriginal Rights, including the right to retain and practice their culture, spirituality, language and traditions and the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities;
- (k) for the care and supervision of all members of the Survivor Class while they were in attendance at Residential Schools during the Class Period and for the supply of all the necessities of life to Survivor Class Members, **in loco parentis**, during the Class Period;
- (l) for the provision of educational and recreational services to the Survivor Class while in attendance at Residential Schools during the Class Period;
- (m) for inspection and supervision of Residential Schools and all activities that took place therein during the Class Period and for full and frank reporting to The Crown and to the Family Class

Members with respect to conditions in the Residential Schools and all activities that took place therein during the Class Period; and,

- (n) for communication with and reporting to the Family Class with respect to the activities and experiences of Survivor Class Members while attending Residential Schools during the Class Period.

#### **The Residential School System & Systemic Child Abuse, Neglect and Maltreatment**

11. Residential Schools were established by The Crown as early as 1874. The Crown removed Aboriginal Persons, usually young children, from their homes and home communities and transported them to Residential Schools which were often long distances away. The Crown controlled all aspects of the admission of Aboriginal Persons to the schools including arrangements for the care of such persons over holiday periods and the methods of transporting children to and from Residential Schools. Aboriginal Persons were often taken from their families without the consent of their parents or guardians. The stated purpose of the Residential Schools from their inception was the education of Aboriginal children. In fact, the true purpose was the complete integration and assimilation of Aboriginal children into main stream Canadian society and the obliteration of their traditional language, culture and Religion.
12. It is estimated that there were in excess of one hundred (100) Residential Schools in operation in Canada in every Province and Territory except New Brunswick and Prince Edward Island during the Claim Period, with a peak of 74 schools in operation in 1920. The Crown has estimated that, as of 2001, there were approximately one hundred and five thousand (105,000) survivors of Residential Schools in Canada, representing the potential size of the Survivor Class.
13. During the Class Period, children were subjected to systemic child abuse, neglect and maltreatment. They were forcibly confined in Residential Schools and were systematically deprived of the essential components of a healthy childhood. They were subjected to physical, emotional, psychological, cultural, spiritual and sexual abuse by those who were responsible for their well being. Their accommodation was crowded, cold, and sub-standard. They were underfed and ill nourished. They were forbidden to speak their native language and to practice the customs and traditions of their culture. They were deprived of love and affection from their families and of the support that a child would normally expect to have from those in positions of trust and authority. They were subjected to corporal punishment, assaults, including physical and sexual, and systematic child abuse.

14. The systemic child abuse, neglect and maltreatment sustained by the children at Residential Schools during the Class Period, the effect and impact of which is still being felt by Survivor Class Members and Family Class Members, was in violation of the rights of children, specifically, but not limited to, the following rights set out in the United Nations Convention on the Rights of the Child, adopted by the United Nations in 1989, and ratified by Canada in December of 1991:
- (a) Freedom from discrimination – The Crown ought to have protected children from any form of discrimination or punishment based on Family's status, activities or beliefs;
  - (b) Best interest of child – The Crown ought to have ensured the establishment of institutional standards for the care and protection of children and ought to have considered the best interest of the child in all legal and administrative decisions;
  - (c) Respect for parental responsibility – The Crown ought to have protected the rights of parents or guardians to provide direction to their children in the exercise of their rights;
  - (d) Survival and development – The Crown ought to have ensured the survival and maximum development of the child;
  - (e) Name and nationality – The Crown ought to have recognized the right to a name and to acquire a nationality and the right to know and be cared for by parents;
  - (f) Preservation of identity – The Crown ought to have recognized the right to preserve or re-establish the child's identity (name, nationality and family ties);
  - (g) Parental care and non-separation – The Crown ought to have recognized the right to live with parents and maintain contact with both parents unless these are deemed incompatible with the child's best interest and The Crown ought to have provided information since the separation resulted from Crown action;
  - (h) Free expression of opinion – The Crown ought to have recognized the child's right to express an opinion in matters affecting the child and to have that opinion heard;
  - (i) Freedom of thought, conscious and religion – The Crown ought to have recognized the right to determine and practice any belief and ought to have respected the rights of

parents or guardians to provide direction and the exercise of this right;

- (j) Freedom of association – The Crown ought to have recognized the right to freedom of association and freedom of peaceful assembly;
- (k) Protection of privacy – The Crown ought to have recognized the right to protection from arbitrary or unlawful interference with privacy, family, home, or corresponding attacks on honour and reputation;
- (l) Parental responsibilities – The Crown ought to have recognized the principal that both parents are responsible for the upbringing of their children and that parents or guardians have primary responsibility;
- (m) Abuse and neglect – A Crown ought to have protected the children from all forms of abuse, neglect and exploitation by parents or others and ought to have undertaken preventative and treatment programs in this regard;
- (n) Health care – The Crown ought to have recognized the right to the highest attainable standards of health and access to medical services and ought to have attempted to diminish infant and child mortality, combat disease and malnutrition, ensure health care for expectant mothers, provide access to health education, develop preventative health care and abolish harmful traditional practices;
- (o) Periodic review – The Crown ought to have recognized the right of children placed by The Crown for reasons of care, protection or treatment to have all aspects of that placement reviewed regularly;
- (p) Education – The Crown ought to have recognized the right to education by providing free and compulsory primary education, ensuring equal access to secondary and higher education and ensuring that school discipline does not threaten the child's human dignity;
- (q) Aims of education – The Crown ought to have directed education at developing the child's personality and talents, preparing the child for a responsible life in a free society and developing respect for the child's parents, basic human rights, the natural environment and the child's own cultural and national values and those of others;

- (r) Children of minorities – The Crown ought to have recognized the right of children of minority communities and indigenous populations to enjoy their own culture, practice their own religion and use their own language;
  - (s) Leisure and recreation – The Crown ought to have recognized the right to leisure, play and participation in cultural and artistic activities;
  - (t) Child labour – The Crown ought to have protected children from economic exploitation and from engaging in work that constitutes a threat to health, education and development;
  - (u) Sexual exploitation – The Crown ought to have protected children from sexual exploitation and abuse;
  - (v) Other exploitation – The Crown ought to have protected children from all other forms of exploitation; and,
  - (w) Torture, capital punishment and deprivation of liberty – The Crown ought to have protected children from torture or other cruel, inhumane or degrading treatment.
15. Attempts to provide educational opportunities to children confined to Residential Schools were ill conceived and poorly executed by inadequately trained teaching staff. The result was to effectively deprive the children of any useful or appropriate education. Very few survivors of Residential Schools went on to any form of higher education.
16. The conditions and abuses in the Residential Schools during the Class Period were well known to The Crown. Information about the misconduct of the persons operating the Residential Schools was suppressed and covered up.
17. The Crown began to close schools and by 1979 only twelve (12) schools remained with a total resident population of one thousand, eight hundred and ninety nine (1,899) students.

#### **The Crown Statement of Reconciliation**

18. In January of 1998, The Crown issued a Statement of Reconciliation acknowledging and apologizing for the failures of the Residential School System. Moreover, The Crown admitted that the Residential School system was wrongly and inappropriately designed to assimilate Aboriginal Persons. The Plaintiffs plead that the Statement of Reconciliation by The Crown is an admission by the Crown of the facts and duties set out in

paragraphs 10-18 and the allegations set out in paragraphs 23-24 herein and is relevant to the Plaintiffs' claim for damages, particularly punitive damages. The Statement of Reconciliation stated, in part, as follows:

"Sadly, our history with respect to the treatment of Aboriginal people is not something to which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self-sustaining nations that were desegregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the **Indian Act**. We must acknowledge that the results of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.

Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the Federal Government which have contributed to these difficult pages in the history of our relationship together.

**One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School System. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continued to reverberate in Aboriginal communities to this date. Tragically, some children were the victims of physical and sexual abuse.**

**The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at Residential Schools, and who have carried this burden believing that in some way they must be responsible, we**



wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at Residential Schools, we are deeply sorry. In dealing with the legacies of the Residential School program, the Government of Canada proposes to work with First Nations, Inuit, Metis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of the sad era of our history...

Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. **The Government of Canada recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong community...**"

#### **The Defendant's Breach of Duty**

19. The defendant Crown was, through its servants, officers, employees and agents, negligent and in breach of its non-delegable fiduciary, moral, statutory, and common law duties of care to the Survivor Class and the Family Class during the Class Period. Particulars of the negligence and breach of duty of the Crown include the following:
- (a) it systematically, negligently, unlawfully and wrongfully delegated its fiduciary and other responsibility and duties regarding the education of and care for Aboriginal children to others, including the Churches listed in Schedule "A" hereto and other Religious organizations;
  - (b) it systematically, negligently, unlawfully and wrongfully admitted and confined Aboriginal children to Residential Schools;
  - (c) it acted without lawful authority and not in accordance with any statutory authority pursuant to or as contemplated by the provisions of the *Indian Act* or any other statutes relating to Aboriginal Persons as:
    - i) said provisions are and were *ultra vires* the Parliament of Canada and of no force and effect in law;
    - ii) The conduct of the Defendant in placing the Aboriginal children in Residential Schools, confining them therein,

and treating or permitting them to be treated there as set forth herein was in breach of the Defendant's fiduciary obligations to the Survivor Class and Family Class Members, which was not authorized or permitted by any applicable legislation and was, to the extent such legislation purported to authorize such fiduciary breach, of no force and effect and/or *ultra vires* the Parliament of Canada; and,

- iii) The Defendant routinely and systematically failed to act in accordance with its own laws, regulations, policies and procedures with respect to the confinement of Aboriginal children in Residential Schools, which confinement was wrongful.
- (d) it delegated to and contracted with the Churches listed in Schedule "A" hereto and other Religious organizations to implement its program of forced integration, confinement and abuse;
- (e) it failed to adequately screen and select the organizations and individuals to which it delegated the implementation of its Residential School program;
- (f) it failed to adequately supervise and control Residential Schools and its agents operating same under its jurisdiction in Canada;
- (g) it deliberately and chronically deprived the Survivor Class Members of the education they were entitled to or were led to expect from the Residential Schools or of any adequate education;
- (h) it designed, constructed, maintained and operated Residential School buildings which were sub-standard, inadequate to the purpose for which they were intended and detrimental to the emotional, psychological and physical health of the Survivor Class;
- (i) it failed to provide funding for the operation of Residential Schools that was sufficient or adequate to supply the necessities of life to Aboriginal children confined to them;
- (j) it failed to respond appropriately or at all to disclosure of abuses in the Residential Schools during the Class Period;
- (k) it conspired with the operators of the schools to suppress information about abuses taking place in the Residential Schools during the Class Period;

- (l) it assaulted and battered the Survivor Class Members and/or permitted them to be assaulted and battered during the Class Period;
- (m) it forcibly confined the Survivor Class Members and/or permitted them to be forcibly confined during the Class Period;
- (n) it was in breach of its fiduciary duty to its Wards the Survivor Class Members by reason of the misfeasances, malfeasances and omissions set out above;
- (o) it failed to inspect or audit the Residential Schools adequately or at all;
- (p) it failed to implement an adequate system of evaluation, monitoring and control of teachers, administrators and non-teaching staff of the Residential Schools during the Class Period;
- (q) it failed to periodically reassess its regulations, procedures and guidelines for Residential Schools when it knew or ought to have known of serious systemic failures in the Residential Schools during the Class Period;
- (r) it failed to close the Residential Schools in Canada and/or otherwise protect and care for those persons confined therein when it knew or ought to have known that it was appropriate and essential to do so in order to preserve the health, welfare and well being of the Survivor Class Members;
- (s) from May 21, 1952 it was in breach of the United Nations Genocide Convention and in particular Article 2(b), (c) and (e) of the convention;
- (t) it delegated, attempted to delegate, continued to delegate and/or improperly delegated its non-delegable duties and responsibility for the Survivor Class when it was incapable to do so and when it knew or ought to have known that these duties and responsibilities were not being met;
- (u) it failed to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed;
- (v) it conspired with various Religious organizations including the Churches listed in Schedule "A" hereto to eradicate Aboriginal culture in Canada through the implementation of a Residential Schools program in Canada;

- (w) it undertook a systematic program of forced integration and assimilation of the Aboriginal Persons through the institution of Residential Schools when it knew or ought to have known that doing so would cause profound and permanent cultural, psychological, emotional and physical injury to the members of the Survivor Class during and following the Class Period;
- (x) the effects from the forced integration and assimilation of the Aboriginal Persons has caused a profound and permanent cultural, psychological, emotional and physical injury and is in breach of the United Nations Genocide Convention, in particular Article 2(b), (c) and (e) of the convention, ratified by Canada in September, 1952. The effects from the residential school policy also violates the International Covenant on Civil and Political Rights, in particular Articles 1 and 27 of the convention, ratified by Canada in May, 1976, because it has interfered with the Survivor Class Members' and the Family Class Members' rights, including, but not limited to:
  - i) the right to retain and practice their culture, spirituality, language and traditions;
  - ii) the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities; and,
  - iii) the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities.
- (y) it was in breach of its obligations to the Survivor Class Members and Family Class Members as set out in the **Indian Act**, R.S.C. 1985, c. I-5 and its Treaties with various First Nations providing a right to education at a school to be established and maintained by The Crown and which implicitly included the right to education in a safe environment free from abuse and the right to an education which would recognize Aboriginal beliefs, traditions, culture, language and way of life in a way that would not denigrate or eliminate these beliefs, traditions, culture, language and way of life. The Treaties relied on by the Plaintiffs include, but are not limited to, the following Treaties referred to below and the excerpts from these Treaties also provided below, but not limited to the excerpted portions provided:

- i) Treaty No. 1 – “And further, Her Majesty agrees to maintain a school on each reserves hereby made, whenever the Indians of the reserve should desire it.”;
- ii) Treaty No. 2 – “And further, Her Majesty agrees to maintain a school in each reserves hereby made, whenever the Indians of the reserves shall desire it.”;
- iii) Treaty No. 3 – “And further, Her Majesty agrees to maintain the schools for instruction in such reserves hereby made as Her Government of Her Dominion of Canada may seem advisable whenever the Indians of the reserves shall desire it.”;
- iv) Treaty No. 4 – “Further Her Majesty agrees to maintain a school in the reserves allotted to each band as soon as they settle on said reserve and are prepared for a teacher.”;
- v) Treaty No. 5 – “And Further Her Majesty agrees to maintain the schools for instruction in such reserves hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it.”;
- vi) Treaty No. 6 – “And Further, Her Majesty agrees to maintain the schools for instruction in such reserves hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserves shall desire it.”;
- vii) Treaty No. 7 – “Further, Her Majesty agrees to pay the salary of such teachers to instruct the children of said Indians as to Her Government of Canada may seem advisable, when said Indians are settled on their Reserves and shall desire teachers.”;
- viii) Treaty No. 8 – “FURTHER, Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as to Her Majesty’s Government of Canada may seem advisable.”;
- ix) Treaty No. 9 (The James Bay Treaty) – “Further, His Majesty agrees to pay such salaries of teachers

to instruct the children of said Indians, and also to provide such school buildings and educational equipment as may seem advisable to His Majesty's Government of Canada.";

- x) Treaty No. 10 - "Further His Majesty agrees to make such provision as made from time to time be deemed advisable for the education for the Indian children."; and,
- xi) Treaty No. 11 - "Further, His Majesty agrees to pay the salaries of teachers to instruct the children of said Indians in such manner as His Majesty's Government may deem advisable."

20. The Defendant Crown, through its servants, officers, contractors, agents and employees, for those conduct and breaches it is in law responsible, was negligent and in breach of its non-delegable, fiduciary, statutory, moral and/or common law duties to the Survivor Class and the Family Class during the Class Period. Particulars of the negligence and breach of duty (including breach of non-delegable duties) of The Defendant Crown are as follows:

- (a) the selection and employment of incompetent and immoral persons as teaching and non-teaching staff in Residential Schools during the Class Period;
- (b) the failure to adequately train or supervise teaching and non-teaching staff employed at Residential Schools;
- (c) the failure to report to the proper authorities the physical, psychological, emotional, cultural and sexual abuses to which children in their care were being subjected at Residential Schools during the Class Period;
- (d) the failure to provide the necessities of life to Survivor Class Members in their care in Residential Schools during the Class Period;
- (e) the knowing cover up of the existence of systematic and widespread abuse of Aboriginal Persons at Residential Schools during the Class Period;
- (f) the deprivation of Survivor Class Members in their care of their languages, as well as their religious and cultural beliefs and practices;

- (g) the failure to provide Survivor Class Members with an adequate or useful education;
- (h) the deprivation of Survivor Class members of contact with their families and of the essential elements of a healthy childhood;
- (i) the conspiracy to eradicate aboriginal culture through the Residential School System;
- (j) the failure to adequately or properly administer, manage and operate the Residential Schools;
- (k) the assault and battery of Survivor Class Members during the Class Period;
- (l) the breach of its fiduciary duties to the Survivor Class members and Family Class members by reason of the misfeasances, malfeasances and omissions set out above;
- (m) the failure to inspect or audit the Residential Schools adequately or at all;
- (n) the failure to implement an adequate system of evaluation, monitoring and control of teachers, administrators and non-teaching staff of the Residential Schools during the Class Period; and,
- (o) the failure to periodically reassess their procedures and guidelines for Residential Schools when they knew or ought to have known of serious systemic failures in the Residential Schools during the Class Period.

**Undertaking regarding Crown's responsibility for the fault of the Churches**

21. The Plaintiffs agree not to seek to recover from the Defendant either in the action or by any other proceeding, any portion of the losses claimed which this Court attributes to the fault of the Churches listed in Schedule "A" hereto.

**Damages**

22. As a consequence of the negligence and/or breach of duty and/or breach of a non-delegable or fiduciary duty and/or intentional infliction of harm by The Crown and/or its agents for whom it is in law responsible, the

Survivor Class Members, including the representative plaintiff, Charles Baxter, suffered injury and damages including:

- (a) isolation from family and community;
- (b) prohibition of the use of Aboriginal language and the practice of Aboriginal religion and culture and the consequential loss of facility and familiarity with Aboriginal language, religion and culture;
- (c) forced confinement;
- (d) assault and battery;
- (e) sexual abuse;
- (f) emotional abuse;
- (g) psychological abuse;
- (h) deprivation of the fundamental elements of an education;
- (i) an impairment of mental and emotional health amounting to a severe and permanent disability;
- (j) an impaired ability to trust other people or to form or sustain intimate relationships;
- (k) a propensity to addiction;
- (l) an impaired ability to participate in normal family life;
- (m) an impaired ability to control anger and rage;
- (n) alienation from family, spouses and children;
- (o) an impaired ability to enjoy and participate in recreational, social, athletic and employment activities;
- (p) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
- (q) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the Residential School experience;
- (r) sexual dysfunction;
- (s) depression, anxiety and emotional dysfunction; and,
- (t) pain and suffering.



23. As a consequence of the negligence and/or breach of duty and/or breach of a non-delegable or fiduciary duty and/or intentional infliction of harm by The Crown and/or its agents for whom it is in law responsible, the Family Class Members, including the representative plaintiff, Elijah Baxter, suffered injury and damages including:
- (a) they were separated and alienated from Survivor Class Members for the duration of their confinement in Residential Schools;
  - (b) their relationships with Survivor Class Members were impaired, damaged and distorted as the result of the experiences of Survivor Class members in Residential Schools;
  - (c) they suffered abuse from Survivor Class members as a direct consequence of their Residential School experience;
  - (d) they were unable to resume normal family life and experience with Survivor Class Members after their return from Residential Schools;
  - (e) they were deprived of pecuniary support from Survivor Class Members as the direct and indirect consequence of impairments caused by the Residential School experience;
  - (f) they incurred special and out of pocket expenses in their care of Survivor Class Members and were required to provide support and medical care to Survivor Class Members as a direct or indirect consequence of the Residential School experience; and,
  - (g) their culture and language was undermined and in some cases eradicated by, amongst other things, as pleaded herein, the forced assimilation of Survivor Class Members into non-aboriginal culture through the Residential Schools.

**Vicarious Liability**

24. The Plaintiffs state that the Crown is vicariously liable for the negligence, malfeasances and misfeasances of their servants, contractors, agents, officers and employees.

### **Liability for Breach of Treaties**

25. The Plaintiffs plead that The Crown was in breach of its various treaty obligations set out above through the Residential School System and experience and is liable for such breaches.

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

26. The Plaintiffs plead that the Defendant had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses of Survivor Class Members which were occurring at Residential Schools during the Class Period. Despite this knowledge, the Defendant continued to operate the schools and permit the perpetration of grievous harm to the Survivor Class Members. In addition, the Defendant deliberately planned the eradication of the language, religion and culture of Survivor Class Members and Family Class Members. The Defendant's actions were deliberate and malicious and in the circumstances punitive, exemplary and aggravated damages are appropriate and necessary.

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

27. The Plaintiffs plead that any section of the **Indian Act** and its predecessors and any Regulation passed thereunder and any other statutes relating to Aboriginal Persons that provides or purports to provide the statutory authority for the forcible removal of the Survivor Class from their families and communities or for the obligated attendance of the Survivor Class at Residential Schools is, in addition to the reasons set out in paragraph 23(c) above, in violation of sections 1 and 2 of the Canadian Bill of Rights, R.S.C. 1985, as well as sections 7 and 15 of the Canadian Charter of Rights and Freedoms and should therefore be treated as having no force and effect. In particular, the Plaintiffs challenge the constitutionality of sections 9 and 10 of the **Indian Act**, R.S.C. 1927, c. 98 and R.S.C., as amended and superseded by subsequent legislation, and any Regulations past pursuant to section 113 through 118 of the **Indian Act**, S.C. 1951, c. 29, as amended and superseded, and sections 114 through 122 of the **Indian Act**, R.S.C. 1985 c. I-5.

### Statutes

28. The Plaintiffs plead and rely upon the following:

**Crown Liability and Proceedings Act**, R.S.C. 1985, c. C-50, ss. 3, 21, 22, and 23;

**Canadian Charter of Rights and Freedoms**, ss. 7, 15 and 24;

**Constitution Act, 1982**, s. 35(1).

**Crimes Against Humanity and War Crimes Act**, S.C. 2000, c. 24, ss. 4, 5 and 30;

**The Family Law Act**, R.S.O. 1990, c. F. 3, s. 61, and the equivalent statutes, if any, in each other Province and territory in Canada;

**The Negligence Act**, R.S.O. 1990, c. N. 1 and the equivalent statutes, if any, in each other Province and territory in Canada;

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

**The Class Proceedings Act**, S.O. 1992, c. 6;

**The Indian Act**, S.C. 1951, c. 29, ss. 113-118;

**The Indian Act**, R.S.C. 1927, c. 98, ss. 9-10; and,

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

### International Treaties

**Convention on the Prevention and Punishment of the Crime of Genocide**, Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 *entry into force* 12 January 1951, in accordance with article XIII;

**Convention on the Rights of the Child**, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 *entry into force* 2 September 1990, in accordance with article 49; and,

**International Covenant on Civil and Political Rights**, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, *entry into force* 23 March 1976, in accordance with Article 49.

SCHEDULE "A"

1. THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA
2. THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA
3. THE SYNOD OF THE DIOCESE OF ALGOMA
4. THE SYNOD OF THE DIOCESE OF ATHABASCA
5. THE SYNOD OF THE DIOCESE OF BRANDON
6. THE SYNOD OF THE DIOCESE OF BRITISH COLUMBIA
7. THE SYNOD OF THE DIOCESE OF CALGARY
8. THE SYNOD OF THE DIOCESE OF CARIBOO
9. THE INCORPORATED SYNOD OF THE DIOCESE OF HURON
10. THE SYNOD OF THE DIOCESE OF KEEWATIN
11. THE DIOCESE OF MOOSONEE
12. THE SYNOD OF THE DIOCESE OF WESTMINSTER
13. THE SYNOD OF THE DIOCESE OF QU'APPELLE
14. THE DIOCESE OF SASKATCHEWAN
15. THE SYNOD OF THE DIOCESE OF YUKON
16. THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY)
17. THE PRESBYTERIAN CHURCH IN CANADA
18. THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA
19. THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA
20. BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN CANADA
21. THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN CANADA
22. THE UNITED CHURCH OF CANADA
23. THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA
24. THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA
25. THE METHODIST CHURCH OF CANADA
26. THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA)
27. THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS
28. THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY
29. THE ROMAN CATHOLIC BISHOP OF KAMLOOPS
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34. THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE
35. LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD - McLENNAN
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49. THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA
50. THE MISSIONARY OBLATES OF MARY IMMACULATE - GRANDIN PROVINCE

51. LES PERES MONTFORTAINS (also known as THE COMPANY OF MARY)
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53. THE MISSIONARY OBLATES OF MARY IMMACULATE – PROVINCE OF ST. JOSEPH
54. LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (also known as LES REVERENDS PERES OBLATS DE L'IMMACULEE CONCEPTION DE MARIE)
55. THE OBLATES OF MARY IMMACULATE, ST. PETER'S PROVINCE
56. LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES TERRITOIRES DU NORD OUEST
57. LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (PROVINCE DU CANADA – EST)
58. THE SISTERS OF SAINT ANNE
59. THE SISTERS OF INSTRUCTION OF THE CHILD JESUS (also known as THE SISTERS OF THE CHILD JESUS)
60. THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA
61. THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERT (also known as THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERTA)
62. THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES
63. THE SISTERS OF CHARITY (GREY NUNS) OF MONTREAL (also known as LES SOEURS DE LA CHARITÉ (SOEURS GRISES) DE L'HÔPITAL GÉNÉRAL DE MONTREAL)
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65. THE GREY NUNS OF MANITOBA INC. (also known as LES SOEURS GRISES DU MANITOBA INC.)
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67. LES SOEURS DE SAINT-JOSEPH DE ST-HYACINTHE and INSTITUT DES SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE
68. LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE (also known as LES SŒURS DE L'ASSOMPTION DE LA SAINTE VIERGE) DE NICOLET AND THE SISTERS OF ASSUMPTION
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70. THE DAUGHTERS OF THE HEART OF MARY (also known as LA SOCIETE DES FILLES DU COEUR DE MARIE and THE DAUGHTERS OF THE IMMACULATE HEART OF MARY)
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75. LES SOEURS DE NOTRE DAME AUXILIATRICE
76. LES SOEURS DE ST. FRANCOIS D'ASSISE
77. SISTERS OF THE PRESENTATION OF MARY (SOEURS DE LA PRESENTATION DE MARIE)
78. THE BENEDICTINE SISTERS
79. INSTITUT DES SOEURS DU BON CONSEIL
80. IMPACT NORTH MINISTRIES
81. THE BAPTIST CHURCH IN CANADA

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**AMENDED FRESH AS AMENDED STATEMENT  
OF CLAIM**

THOMSON, ROGERS  
Barristers and Solicitors  
Suite 3100  
390 Bay Street  
Toronto, Ontario  
M5H 1W2

LAWRENCE H. MANDEL, Q.C.  
CRAIG BROWN  
ALAN A. FARRER  
416-868-3163  
Fax No. 416-868-3134

Solicitors for the Plaintiffs

(89/622 /drm)

01553

THIS IS EXHIBIT D  
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO  
ON JULY 27, 2006

*Josephine C. Bishop*

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Courtis,  
Barrister and Solicitor.  
Expires November 10, 2007.

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE )

) WEDNESDAY, THE 16<sup>TH</sup> DAY

MR. JUSTICE WINKLER )

) OF FEBRUARY, 2005

BETWEEN

CHARLES BAXTER, SR. AND ELIJAH BAXTER

Plaintiffs

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE. LA PRÉSENT ATTESTATION CE DOCUMENT, DONT CHAQUE DES PAGES EST REVÊTUE DU SCAU DE LA COUR SUPÉRIEURE DE JUSTICE À TORONTO, EST UNE COPIE CONFORME DU DOCUMENT CONSERVÉ DANS CE BUREAU.

- and -

DATED AT TORONTO THIS DAY OF 16 February 2005  
FAIT À TORONTO LE 16 JUILLET 2005

THE ATTORNEY GENERAL OF CANADA

Defendant

REGISTRAR

GREFFIER

- and -

- THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA
- THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA
- THE SYNOD OF THE DIOCESE OF ALGOMA
- THE SYNOD OF THE DIOCESE OF ATHABASCA
- THE SYNOD OF THE DIOCESE OF BRANDON
- THE SYNOD OF THE DIOCESE OF BRITISH COLUMBIA
- THE SYNOD OF THE DIOCESE OF CALGARY
- THE SYNOD OF THE DIOCESE OF CARIBOO
- THE INCORPORATED SYNOD OF THE DIOCESE OF HURON
- THE SYNOD OF THE DIOCESE OF KEEWATIN
- THE DIOCESE OF MOOSONEE
- THE SYNOD OF THE DIOCESE OF WESTMINSTER
- THE SYNOD OF THE DIOCESE OF QU'APPELLE
- THE DIOCESE OF SASKATCHEWAN
- THE SYNOD OF THE DIOCESE OF YUKON
- THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND  
(also known as THE NEW ENGLAND COMPANY)
- THE PRESBYTERIAN CHURCH IN CANADA
- THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA
- THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA



BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN  
 CHURCH IN CANADA  
 THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN  
 CANADA  
 THE UNITED CHURCH OF CANADA  
 THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA  
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 LES PERES MONTFORTAINS (also known as THE COMPANY OF MARY)  
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 THE MISSIONARY OBLATES OF MARY IMMACULATE – PROVINCE OF ST.  
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 LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES  
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THE SISTERS OF SAINT ANNE  
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 INSTITUT DES SOEURS DU BON CONSEIL  
 IMPACT NORTH MINISTRIES  
 THE BAPTIST CHURCH IN CANADA

Third Parties

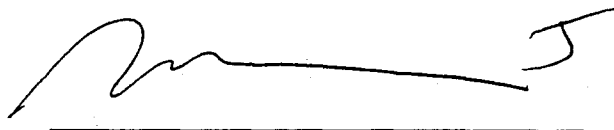
*Proceeding under the Class Proceedings Act, 1992*

## ORDER

THIS MOTION, made by the defendant the Attorney General of Canada for leave to amend the statement of defence and validate service, was heard this day at a case conference at the Courthouse, 393 University Avenue, Toronto, Ontario.

ON HEARING the submissions of counsel for the defendant the Attorney General of Canada, and on being advised by counsel for the plaintiffs and the third parties that those parties do not oppose the defendant's motion:

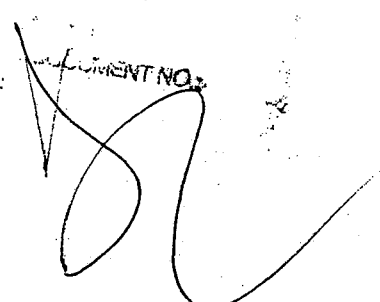
1. THIS COURT ORDERS that the defendant be and is hereby granted leave to file an Amended Statement of Defence in the form attached as Schedule A.
2. THIS COURT ORDERS that service of the Amended Statement of Defence on the plaintiffs and the third parties by electronic mail dated January 14, 2005 be and is hereby validated, *nunc pro tunc*.



ENTERED AT/INSCRIT À TORONTO  
ON/BOOK NO:  
LE/DANS LE REGISTRE NO.:

MAR - 7 2005

AS DE  
À TITRE  
PERSONNEL  
DOCUMENT NO.:



Schedule A

Court File No. 00-CV-192059CP

**SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHARLES BAXTER, SR. AND ELIJAH BAXTER

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under *the Class Proceedings Act, 1992*

**AMENDED STATEMENT OF DEFENCE**

1. The defendant the Attorney General of Canada ("Attorney General") admits the allegations in the first sentence of paragraph 3, the first sentence of paragraph 4, and paragraph 10(c) (but not the preamble or any other part of paragraph 10) ^ of the amended fresh as amended statement of claim ("claim").
2. The Attorney General denies the allegations in paragraphs 1 and 2 of the claim; the last sentence of paragraph 3; the last two sentences of paragraph 4; allegations in paragraphs 10, 11, 12 (to the extent that there were also no residential schools in Newfoundland ^), 13, 14, 15, 16, 18 (to the extent that the Statement of Reconciliation ^ is alleged to be an admission of facts or of liability as alleged in paragraphs 10–16 and 18-20 of the claim), 19, 20, 22, 23, 24, 25, 26, 27, and 28 of the claim.

3. The Attorney General has insufficient knowledge to either admit or deny the allegations in the second and third sentences of paragraph 3; the second, third and fourth sentences of paragraph 4; and paragraphs 5, 6, 7, 8, 9, 17 and 21 of the claim.

4. According to information in the possession of the Attorney General, the plaintiff Charles Baxter, Sr. was enrolled at Pelican Lake Indian Residential School in 1959 and continued to be enrolled there until June 1964. He was then enrolled at Shingwauk Indian Residential School from September 1964 to June 1967.

#### Historical Background

5. Parliament has constitutional authority, under the *Constitution Act, 1867*, to enact legislation relating to Indians and lands reserved to Indians. Pursuant to this constitutional authority, Parliament enacted the *Indian Act*.

6. In 1894, Parliament amended the *Indian Act*, enabling the Governor-in-Council to establish or declare existing schools to be industrial or boarding schools for Indians. In 1919-1920, Parliament enacted amendments to the *Indian Act* which provided that the Governor-in-Council could establish day, industrial or boarding schools for Indians, and further provided that every Indian child between the ages of 7 and 15 who was physically able was required to attend such a school. The *Indian Act* was further amended in 1930 to include Indian children between the ages of 7 and 16.

7. Pursuant to the *Indian Act*, many Indian children received an education at day schools on their reserves. Other Indian children received their education at residential schools, often because there were insufficient numbers of families to support a day school

in a remote community, or because their families were migrant. Nearly all of these residential schools were controlled and operated throughout Canada by a wide variety of religious organizations, pursuant to agreements entered into between the relevant religious organizations and the Crown.

8. Beginning in or about 1948, as a result of a policy of educating Indian children wherever possible in association with other children, provinces and their school boards assumed, over time, increasing responsibility for Indian education. This change occurred at differing rates and times depending upon the province involved and the wishes of the Aboriginal bands and parents concerned.

9. From 1948 forward, progressively greater numbers of Indian children attended day schools operated by school boards under provincial jurisdiction. A number of these children continued to reside in residences operated by the Churches pursuant to agreements with the Crown.

10. The Crown had no role whatsoever in the operation of such provincial schools, nor in the choice of curriculum, administration, management, teaching personnel, academic orientation, procedures or policies of the schools.

11. As of April 1, 1969, the Department of Indian Affairs and Northern Development assumed management of residential schools. Day schools and other arrangements began to replace residential schools which became special service only. The Churches continued to have a role and responsibility in the management and operation of the residence, including the hiring, supervision and discipline of administrators, officers,

supervisors, domestic staff and other support staff, including dormitory supervisors, and in the religious teaching, caring, upbringing, safety and protection of the resident children.

12. From the early 1970's onward, various Aboriginal entities began to assume responsibility for and control of the education of Aboriginal children. In 1973, the Crown agreed to devolve control of Indian education to band councils and Indian education committees. By the mid 1970's, the residential schools which remained in operation were in many cases administered by local band councils or their nominees. The Crown's role was limited in such cases to offering financial assistance and, occasionally, other assistance where requested by the responsible Aboriginal entity, whose day to day care and control of the schools was established by agreements entered into with the Crown.

13. Most Indian residential schools ceased to operate by the mid-1970's.

14. The requirement that Indian children attend school, which was part of the *Indian Act*, was consistent with provincial legislation requiring that non-Indian children attend school. The requirement to attend school was a *bona fide* measure intended to ensure that all children of Canada, whether Indian or non-Indian, received an education for their betterment and was similar in intent to legislation existing in most other developed countries.

15. It was never the intention of the Crown to eradicate Aboriginal language, culture or spiritual beliefs through the residential school system.

16. The policies implemented with respect to the education of Indian children were formulated with a benevolent intent and were in accord with the accepted wisdom and standards of the time, both domestically and internationally. As societal views evolved over time, so too did the views of governments and educators in general throughout the developed world. The administration of the residential schools changed to reflect such emerging viewpoints and attitudes.

17. The experience and treatment of residential school students, and the implementation of policy with respect to residential schools was not uniform across all schools, religious organizations and time periods. Rather, such experiences, treatment and implementation varied widely dependant upon a host of factors including, but not limited to, variations in curriculum by province, region, religious affiliation, school, and time period, the pre- and post-school experiences of individual students, their individual degree of fluency in both their Aboriginal and the English and French languages at the time of entry into the school system, and their experience of particular cultural or spiritual activities prior to, during and following attendance at the schools.

18. Other factors which impacted upon the experience of each individual student in relation to his or her attendance included the composition of the student population, and the presence or absence of a mix of nations, bands, language groups, religious orientations and genders within the school population.



19. Individual experiences were affected by the geographic location of the individual school, its relative remoteness from or connection to the non-Aboriginal population, the impact of increasing urbanization of Canada over the class period, variability of funding from school to school and year to year, differences in hiring practices and procedures, the relative economic status of the religious order responsible for the administration of the school, individual practice with regard to the enforcement of attendance requirements, the presence or absence of Aboriginal caregivers, teaching and administrative staff, proximity of the school to the home reserve, availability of day schools on the home reserve, the individual family circumstances of the particular student, and variability of cultural practice and language use within particular nations or bands.

20. If an effect of the residential school system was harm to Aboriginal people and Aboriginal culture, which is denied, this harm was unintended and was not foreseeable at the time.

21. At all times during the establishment and operation of the residential school system, the Crown acted with due care, in good faith and within its legislative authority with respect to the education of Indian children. The conduct of the Crown must be measured by what was considered reasonable and appropriate at the time of the formulation and implementation of the policies at issue. To the extent that such harm is said to have arisen from the formulation and implementation of specific policy, the Crown is in any event immune from suit or liability.

Treaty Issues

22. Many of the Aboriginal people who attended residential schools across Canada were not members of the groups who entered into treaties with the Crown. As such, they were not and have never been beneficiaries of treaties with the Crown. They therefore have no treaty rights whatsoever to assert.

23. Many of the treaties with the Crown make no provision with respect to establishing or maintaining schools, paying salaries of teachers, or with respect to education of Indian children at all.

24. In the case of the limited number of treaties which do address education of Indian children, there are no express or implied rights granted as to any particular kind or quality of education. The Attorney General denies that any treaties between the Crown and Aboriginal peoples either implicitly or otherwise included the right to an education which would recognize Aboriginal beliefs, traditions, culture, language or way of life, and further denies that any such treaties may give rise to an individual cause of action against the Crown.

25. The proposed representative plaintiffs, as members of the Martin Falls First Nation at the relevant times, may be entitled to the benefits provided by Treaty No. 9 within the geographical boundaries of Treaty No. 9. As described in paragraph 19(y) of the claim, Treaty No. 9 provides that the Crown agrees to pay the salaries of teachers to instruct the children of Indians, and to provide such school buildings and educational equipment as

may seem advisable to the Crown. The Crown faithfully and fully discharged its obligations with respect to education under Treaty No. 9.

26. Neither Charles Baxter, Sr. nor Elijah Baxter claim to have attended a residential school within the geographical boundaries of Treaty No. 9. They both claim to have attended Pelican Lake Indian Residential School, which was located within the geographical boundaries of Treaty No. 3. In addition, Charles Baxter, Sr. attended Shingwauk Indian Residential School, which was located within the geographical boundaries of the Robinson-Huron Treaty, 1850. Neither Charles Baxter, Sr. nor Elijah Baxter hold or held any rights or benefits under Treaty No. 3 or the Robinson-Huron Treaty, 1850. They have no standing to assert claims for breaches of those treaties or any other treaties (except to the extent that such rights may have accrued under Treaty No. 9) either on their own behalves or on behalf of any other persons.

#### **Operation of the Residential Schools**

27. From the inception of the residential schools system until 1969, almost all of the residential schools were controlled and operated by a wide variety of religious organizations of different denominations and with different organizational structures (the "Churches"). The Churches were responsible for the operation and administration of the schools. The Churches' responsibilities included, but were not limited to, the following:

- a) admission and transportation of children to the school;
- b) living conditions and food within the school;
- c) selection, hiring, supervision, discipline and dismissal of staff;

- d) academic, religious, and moral teaching of the students;
- e) school curriculum; and
- f) supervision, day-to-day care, guidance and discipline of the students.

28. The Crown provided financial assistance to the Churches for the operation of the residential schools, pursuant to agreements with the Churches. The Crown also provided policy guidelines from time to time. The Crown inspected and audited the schools from time to time to ensure that the Churches were complying with their agreements with the Crown, and with the Crown's policy guidelines. The Crown was not responsible for and did not undertake the day-to-day operations of the schools.

29. A number of other governments, institutions and organizations were also involved in and responsible for the operation of residential schools and the education of Indian children in general. For example, in some cases:

- a) provincial and territorial governments bore responsibility for the education of Indian children, often pursuant to agreements with the Crown;
- b) provincial governments established standards and curricula, and undertook inspections of residential schools;
- c) education was provided in provincial day schools to students who resided in residential schools, often under the auspices of or pursuant to agreements with local school boards; and
- d) child welfare agencies were involved in or responsible for the admissions policies and procedures of residential schools, since many of the Aboriginal

students who attended did so as orphans or abandoned children, or for other child welfare reasons.

**Allegations of Abuse**

30. The Attorney General denies that the Crown owed the non-delegable, fiduciary, statutory and common law duties alleged in the claim. In particular, he denies that the Crown owed a duty to promote the health, safety and well-being of Aboriginal persons, or their language, cultural and spiritual traditions, or to provide an education or educational services to the plaintiffs, save in accordance with the specific statutory authority provided by the *Indian Act* as amended from time to time. If the Crown owed any such duties, it properly discharged them by taking reasonable care, including but not limited to having the Churches care for and educate the students, which was reasonable at the time and in the circumstances. In the alternative, such actions as were undertaken by the Crown were dictated by *bona fide* policy choices made by successive Canadian governments which cannot give rise to liability at the suit of these plaintiffs.

31. With respect to the specific duties and breaches of duty alleged by the plaintiffs, the Attorney General pleads as follows:

- a) The Attorney General denies that the plaintiffs were, at any material times, in the Crown's custody, or wards of the state whose care and welfare required the Crown to stand *in loco parentis* to them. At all material times, the plaintiffs' care was the responsibility of their parents or the Churches.

- b) He denies that the living conditions at the schools were inadequate or were below acceptable standards for the time periods and circumstances in question. In any event, the Crown was not responsible for the living conditions at the schools. The Churches were responsible for the daily operations of the schools, including the food and living conditions. If there were inadequacies in the food and living conditions, the Crown was not made aware of them, through no fault or negligence of its own. Such conditions in any event varied by school, time period, relative wealth of the religious organization responsible for the administration of the school, presence or absence and productivity of farms at the schools, annual funding arrangements, and the general level of economic health of the national economy in any particular era.
- c) He denies that students were subjected to emotional, cultural, or spiritual abuse. In any event, such allegations disclose no cause of action in law. If such a cause of action exists, it is dependent upon proof of specific acts or omissions in the circumstances of each individual claimant.
- d) He denies that the Crown sought to destroy the students' ability to speak their native language, or to lose the customs and traditions of their culture by requiring that the formal education of the children be conducted in English or French. This requirement was consistent with provincial standards of education at the relevant time and place. It was also a result of the express desire of some Indian leaders from time to time for schools modelled on the provincial schools, the presence of several nations with different languages within the same school, a lack of teachers

capable of teaching in Aboriginal languages, and the lack of texts in the Aboriginal languages. If particular students were in any manner punished or demeaned for speaking their native languages, or for practicing their cultural or spiritual traditions, such actions were in no way directed by any Crown policy or systemic practice.

- e) If individual students suffered losses of language or culture, which is not admitted, such losses occurred as a result of myriad historical, personal, societal and community circumstances, as a result of the interaction of Aboriginal communities and mainstream society, and the progressive urbanization of Canadian society, as part of an observable international trend towards diminishing use of minority languages and culture, and not as a result of any acts or omissions of the Crown or its employees or agents with respect to the residential school system. In any event, the plaintiffs' allegations concerning loss of language and culture disclose no cause of action in law.

32. Furthermore, with respect to the plaintiffs' allegations of abuse, neglect and maltreatment, the Attorney General pleads as follows:

- a) The Attorney General denies that the students suffered systemic child abuse, neglect or maltreatment. Any instances of abuse, neglect or maltreatment were isolated and not incidents of a systemic problem. Any abuse, neglect or maltreatment of students was caused not by the breach of any duty of the Crown or its employees or agents, but solely by the acts or omissions of the Churches' employees or agents, for whose actions the Crown is not liable.

- b) In the alternative, if any employees or agents of the Crown did abuse, neglect or mistreat students, the Crown is not vicariously liable for those acts, as they were not authorized by the Crown. None of the alleged acts of abuse were sufficiently related to the course or scope of employment or agency by the Crown so as to justify the imposition of vicarious liability on it.
- c) The Crown is not and cannot at law be held directly liable in negligence for any abuses which may have taken place. The Crown was not aware of the alleged abuses, and was not made aware of them, through no fault or negligence of its own. Any failure by the Crown to acquire such knowledge or awareness is attributable to the failure of the Churches and the plaintiffs to advise the Crown. The Attorney General denies that the Crown suppressed or covered up any information about abuses at residential schools and pleads that it at all times took steps to institute programmes or policies appropriate to the state of the then accepted professional understanding among educators generally as to the likelihood of such abuses occurring, which understanding itself evolved significantly over the class period.
33. If any of the persons alleged to have abused, neglected or otherwise mistreated the plaintiffs ever became employees or agents of the Crown, the Attorney General pleads that the Churches who selected and trained those persons continued to be liable for their actions on the grounds of negligence or negligent misrepresentation, particulars of which are as follows:



- a) The Churches were the initial employers of such persons, and had regular contact with them in the course of their day-to-day management and operation of the schools. Accordingly, they had, or ought to have had, knowledge regarding the qualifications and suitability of such persons for employment at the schools, and their treatment of the students who attended the schools.
  
- b) During the material times, they failed to report any concerns to the Crown about the qualifications or suitability of such persons for employment at the schools, but rather held such persons out as being competent employees and appropriate persons to have contact with the students.
  
- c) They knew that the Crown had very little or no knowledge regarding the qualifications and suitability of such persons for employment at the schools, or their treatment of the students who attended the schools, and that the Crown relied exclusively upon their knowledge and expertise in retaining such individuals, particularly since the Crown was not involved in the day-to-day operations of the schools. Accordingly, it was reasonable in the circumstances for the Crown to rely on the representations made by the Churches regarding such persons.

**The Family Class Members**

34. With respect to the claims of the proposed Family Class members, the Attorney General denies that the Crown owed or owes any duties to those plaintiffs arising out of or relating to the residential school system. In particular, the Attorney General denies that the Crown owed or owes any fiduciary or non-delegable duties to those plaintiffs. The

Attorney General denies that the Family Class plaintiffs have any cause of action against the Crown.

35. With respect to the *Family Law Act*, R.S.O. 1990, c. F-3, and its equivalents, if any, in the other provinces and territories of Canada, the Attorney General denies that it applies retroactively or at all to any of the claims of the Family Class plaintiffs.

**Inapplicability of United Nations Conventions**

36. The Attorney General denies that the Crown violated the rights of children or the *United Nations Convention of the Rights of the Child* in particular. In any event, the *United Nations Convention on the Rights of the Child* cannot be applied retroactively or retrospectively, has no application to the matters alleged and does not give rise to any cause of action against the Crown.

37. The Attorney General denies that it at any time violated any provision of the *United Nations Genocide Convention* or the *International Covenant on Civil and Political Rights*, and pleads that such convention and covenants cannot be applied retroactively or retrospectively, have no application to the matters alleged and do not give rise to any cause of action against the Crown.

**Crimes Against Humanity and War Crimes Act**

38. The Attorney General further denies that any liability or cause of action arises against the Crown under the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24. The Act did not exist at any relevant time during the class period, has no application to the matters alleged and does not give rise to any cause of action against the Crown.

**Statement of Reconciliation and Church Apologies**

39. The Attorney General denies that the Statement of Reconciliation has the meaning or effect suggested by the plaintiffs, and denies that it constitutes any admission of liability for the plaintiffs' claims or supports any fact alleged in the claim.

40. [deleted]

**Constitutional Issues**

41. The Attorney General denies that the Crown contravened its own laws, or that its laws were *ultra vires* the Parliament of Canada. He pleads that the Crown at all times acted within its constitutional authority and in accord with the provisions of the *Indian Act*, as amended from time to time.

42. He denies that the Crown has breached any provision of the *Canadian Bill of Rights*, the *Canadian Charter of Rights and Freedoms* ("*Charter*"), or the *Constitution Act, 1982*. In any event, neither the *Bill of Rights*, the *Charter*, nor Section 35 of the *Constitution Act* can have any retroactive or retrospective application.

**Damages**

43. If the plaintiffs suffered any of the damage, losses or injuries alleged, such damage, losses or injuries were not caused by any acts or omissions of the Crown or for which the Crown is liable. Rather, such damage, losses or injuries were caused by factors unrelated to the Crown's conduct, including events prior and subsequent to the plaintiffs' attendance at residential schools. Furthermore, the damage, losses and injuries alleged by the

plaintiffs are exaggerated, remote and unforeseeable, and the monetary damages claimed are excessive.

44. The Attorney General denies that the circumstances alleged, if proven, were such as to give rise to liability for punitive, exemplary, or aggravated damages.

45. If the plaintiffs suffered any of the damage, losses or injuries alleged as a result of any acts or omissions of the Crown or for which the Crown is liable, which is not admitted but denied, the individual plaintiffs, and the plaintiffs as a whole, were under a duty to exercise reasonable diligence and ordinary care in attempting to minimize their damages after the occurrence of damage, losses or injury as alleged in the claim. The Attorney General pleads that the plaintiffs, individually or as a group, failed to take reasonable actions which would have tended to mitigate any damages.

#### Limitation Periods

46. The plaintiffs' claims are out of time and statute-barred. The Attorney General pleads and relies upon the *Limitations Act*, R.S.O. 1990, c. L-15, and similar legislation in each of the other provinces and territories, the *Public Authorities Protection Act*, R.S.O. 1990, c. P-38 and similar legislation in each of the other provinces and territories, the *Trustee Act*, R.S.O. 1990, c. T-23 and similar legislation in each of the other provinces and territories, the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and the *Crown Liability Act*, S.C. 1952-53, c. 30. He also relies upon the equitable doctrines of laches and acquiescence.

47. The Crown cannot be held vicariously liable in tort for conduct of Crown servants prior to May 14, 1953, which is the date upon which subsection 3(1)(a) of the *Crown Liability Act*, S.C. 1952-53, c. C-30, came into force. Prior to then, pursuant to the *Exchequer Court Act*, R.S.C. 1927, c. 34, as amended by S.C. 1938, c. 28, the Crown could only be held liable for the negligence of a Crown servant acting within the scope of his or her duties of employment. Furthermore, prior to amendment of the *Exchequer Court Act*, the Crown could only be held liable for the negligence of a Crown servant on a public work. The Attorney General denies any such negligence with respect to the plaintiffs' claims.

48. With respect to the plaintiffs' claim for prejudgment interest, the failure of the plaintiffs to give sufficient particulars of the damages claimed and the basis of such claims, causing the Attorney General to be unable to evaluate such claims, disentitles the plaintiffs from claiming prejudgment interest. In the alternative, if the plaintiffs are entitled to prejudgment interest, such interest may be awarded only for a period beginning on February 1, 1992 at the earliest by virtue of s. 36(6) of the *Federal Court Act*, R.S.C. 1985, c. F-7, and s. 31(6) of the *Crown Liability and Proceedings Act*.

49. The Attorney General pleads that the allegations as set out in the claim are incapable of meeting the requirements of the *Class Proceedings Act*, S.O. 1992, c. 6 as amended and in particular section 5 thereof, and denies that the claims of the plaintiffs are such as can be certified under the Act.

50. The Attorney General therefore requests that this action against him be dismissed with costs.

Date: January 15, 2005

Department of Justice  
Ontario Regional Office  
The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
Toronto, Ontario  
M5X 1K6

Per: Paul Vickery (LSUC 17196T)  
Glynis Evans (LSUC 38204E)

Tel: (416) 973-2318

Fax: (416) 973-2319

Solicitors for the Defendant,  
the Attorney General of Canada

BAXTER ET AL

AND

ATTORNEY GENERAL OF CANADA

Plaintiffs

Defendant

*(Short title of proceeding)*

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at  
Toronto

**STATEMENT OF DEFENCE**

Department of Justice  
Ontario Regional Office  
The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
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M5X 1K6

Per: Paul Vickery (LSUC 17196T)  
Glynis Evans (LSUC 38204E)  
Tel: (416) 973-2318  
Fax: (416) 973-2319  
Our File: ORO.4-459638

Solicitors for the Defendant,  
the Attorney General of Canada

01578

**CHARLES BAXTER, SR.  
and ELIJAH BAXTER**

- and -

**THE ATTORNEY GENERAL OF CANADA**

- and -

**THE GENERAL SYNOD OF THE  
ANGLICAN CHURCH OF CANADA et al.**

**Plaintiffs**

**Defendant**

**Third Parties**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at

**Toronto**

**ORDER**

**Department of Justice  
Ontario Regional Office  
The Exchange Tower  
130 King Street West  
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Toronto, Ontario  
M5X 1K6**

Per: Paul Vickery (LSUC 17196T)  
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Fax: (416) 973-2319  
Our File: ORO.4-459638

Solicitors for the Defendant,  
The Attorney General of Canada

01579



THIS IS EXHIBIT E  
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO  
ON JULY 27, 2006

*Josephine C. Bishop*

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Courtis,  
Barrister and Solicitor.  
Expires November 10, 2007.

THIS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE

LA PRÉSENT ATTEST QUE CE DOCUMENT, DONT CHACUNE DES PAGES EST REVÊTUE DU SCEAU DE LA COUR SUPÉRIEURE DE JUSTICE A TORONTO, EST UNE COPIE CONFORME DU DOCUMENT CONSERVÉ DANS CE BUREAU

ONTARIO SUPERIOR COURT OF JUSTICE

DATED AT TORONTO THIS 7th DAY OF March 2005 / FAIT À TORONTO LE 7 JOUR DE Mars 2005

REGISTRAR / GREFFIER THE HONOURABLE MR. JUSTICE WINKLER

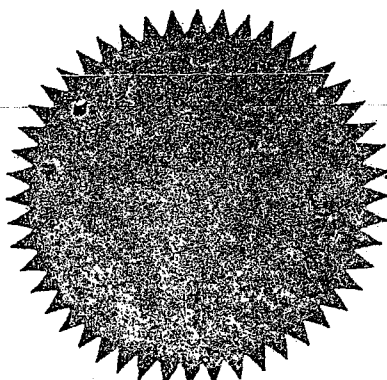
) WEDNESDAY, THE 16th DAY OF FEBRUARY, 2005

BETWEEN:

CHARLES BAXTER, SR. AND ELIJAH BAXTER

Plaintiffs

- and -



THE ATTORNEY GENERAL OF CANADA

Defendant

- and -

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA THE SYNOD OF THE DIOCESE OF ALGOMA THE SYNOD OF THE DIOCESE OF ATHABASCA THE SYNOD OF THE DIOCESE OF BRANDON THE SYNOD OF THE DIOCESE OF BRITISH COLUMBIA THE SYNOD OF THE DIOCESE OF CALGARY THE SYNOD OF THE DIOCESE OF CARIBOO THE INCORPORATED SYNOD OF THE DIOCESE OF HURON THE SYNOD OF THE DIOCESE OF KEEWATIN THE DIOCESE OF MOOSONEE THE SYNOD OF THE DIOCESE OF WESTMINSTER THE SYNOD OF THE DIOCESE OF QU'APPELLE THE DIOCESE OF SASKATCHEWAN THE SYNOD OF THE DIOCESE OF YUKON THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY) THE PRESBYTERIAN CHURCH IN CANADA THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA

BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN  
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 THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF  
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 THE MISSIONARY OBLATES OF MARY IMMACULATE – GRANDIN PROVINCE  
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 LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES  
 TERRITOIRES DU NORD OUEST  
 LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (PROVINCE DU  
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THE SISTERS OF SAINT ANNE  
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 LES MISSIONAIRES OBLATS DE SAINT-BONIFACE)  
 LES SOEURS DE LA CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX)  
 (also known as SISTERS OF CHARITY OF OTTAWA - GREY NUNS OF THE  
 CROSS)  
 SISTERS OF THE HOLY NAMES OF JESUS AND MARY (also known as THE  
 RELIGIOUS ORDER OF JESUS AND MARY and LES SOEURS DE JESUS-  
 MARIE)  
 THE SISTERS OF CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (also known  
 as THE SISTERS OF CHARITY OF HALIFAX)  
 LES SOEURS DE NOTRE DAME AUXILIATRICE  
 LES SOEURS DE ST. FRANCOIS D'ASSISE  
 SISTERS OF THE PRESENTATION OF MARY (SOEURS DE  
 LA PRESENTATION DE MARIE)  
 THE BENEDICTINE SISTERS  
 INSTITUT DES SOEURS DU BON CONSEIL  
 IMPACT NORTH MINISTRIES  
 THE BAPTIST CHURCH IN CANADA

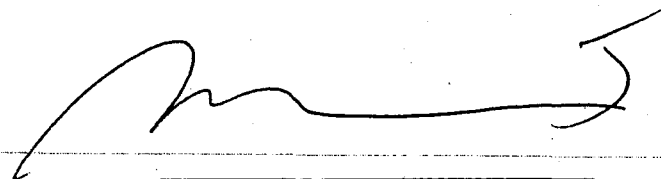
Third Parties

*Proceeding under the Class Proceedings Act, 1992***ORDER**

THIS MOTION, made by the defendant the Attorney General of Canada for leave to amend the third party claim and validate service, was heard this day at a case conference at the Courthouse, 393 University Avenue, Toronto, Ontario.

ON HEARING the submissions of counsel for the defendant the Attorney General of Canada, and on being advised by counsel for the plaintiffs and the third parties that the plaintiffs and the third parties, including the added third party Les Oblats de Marie Immaculée de Manitoba, do not oppose the defendant's motion:

1. THIS COURT ORDERS that the defendant be and is hereby granted leave to file an Amended Third Party Claim in the form attached as Schedule A.
2. THIS COURT ORDERS that service of the Amended Third Party Claim on the plaintiffs and the third parties by electronic mail dated January 14, 2005 be and is hereby validated, *nunc pro tunc*.



ENTERED AT/INSCRIT À TORONTO  
ON/BOOK NO:  
LE/DANS LE REGISTRE NO.:

MAR 07 2005

AS DOCUMENT NO.:  
À TITRE DE DOCUMENT NO.:

PER/PAR:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHARLES BAXTER, SR. AND ELIJAH BAXTER

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

- and -

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THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA  
 THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA  
 THE SYNOD OF THE DIOCESE OF ALGOMA  
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 THE SYNOD OF THE DIOCESE OF CALGARY  
 THE SYNOD OF THE DIOCESE OF CARIBOO  
 THE INCORPORATED SYNOD OF THE DIOCESE OF HURON  
 THE SYNOD OF THE DIOCESE OF KEEWATIN  
 THE DIOCESE OF MOOSONEE  
 THE SYNOD OF THE DIOCESE OF WESTMINSTER  
 THE SYNOD OF THE DIOCESE OF QU'APPELLE

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THE DIOCESE OF SASKATCHEWAN  
 THE SYNOD OF THE DIOCESE OF YUKON  
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IMMACULATE IN THE PROVINCE OF MANITOBA  
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DES FILLES DU COEUR DE MARIE and THE DAUGHTERS OF THE  
IMMACULATE HEART OF MARY)  
MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (also known as MISSIONARY  
OBLATES OF THE SACRED HEART AND MARY IMMACULATE, or LES  
MISSIONAIRES OBLATS DE SAINT-BONIFACE)  
LES SOEURS DE LA CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (also  
known as SISTERS OF CHARITY OF OTTAWA - GREY NUNS OF THE CROSS)  
SISTERS OF THE HOLY NAMES OF JESUS AND MARY (also known as THE  
RELIGIOUS ORDER OF JESUS AND MARY and LES SOEURS DE JESUS-MARIE)  
THE SISTERS OF CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (also known as  
THE SISTERS OF CHARITY OF HALIFAX)  
LES SOEURS DE NOTRE DAME AUXILIATRICE  
LES SOEURS DE ST. FRANCOIS D'ASSISE  
SISTERS OF THE PRESENTATION OF MARY (SOEURS DE  
LA PRESENTATION DE MARIE)  
THE BENEDICTINE SISTERS  
INSTITUT DES SOEURS DU BON CONSEIL  
IMPACT NORTH MINISTRIES  
THE BAPTIST CHURCH IN CANADA

Third Parties

**AMENDED THIRD PARTY CLAIM**

TO THE THIRD PARTY

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by way of a third party claim in an action in this court.

The action was commenced by the plaintiff against the defendant for the relief claimed in the statement of claim served with this third party claim. The defendant has defended the action on the grounds set out in the statement of defence served with this third party claim. The defendant claim against you is set out in the following pages.



IF YOU WISH TO DEFEND THIS THIRD PARTY CLAIM, you or an Ontario lawyer acting for you must prepare a defence in Form 29B prescribed by the Rules of Civil Procedure, serve it on the lawyers for the other parties or, where a party does not have a lawyer, serve it on the party, and file it, with proof of service, WITHIN TWENTY DAYS after this third party claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your third party defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a third party defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your third party defence.

YOU MAY ALSO DEFEND the action by the plaintiff against the defendant by serving and filing a statement of defence within the time for serving and filing your third party defence.

IF YOU FAIL TO DEFEND THIS THIRD PARTY CLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

*(Where the claim made is for money only, include the following:)*

IF YOU PAY THE AMOUNT OF THE THIRD PARTY CLAIM AGAINST YOU, and \$ for costs, within the time for serving and filing your third party defence, you may move to have the third party claim dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the third party claim and \$400.00 for costs and have the costs assessed by the court.

Date:

Issued by \_\_\_\_\_  
Local registrar

Address of court office:

TO:

**The General Synod of the Anglican Church of Canada**  
600 Jarvis St.  
Toronto, ON M4Y 2J6  
Phone: (416) 924-9192 or (416) 924-9199 - Fax: (416) 924-0211

**The Missionary Society of the Anglican Church of Canada**

**The Synod of the Diocese of Algoma**

619 Wellington St. East, Box 1168  
Sault Ste. Marie, ON P6A 5N7  
Phone: (705) 256-5061 or (705) 256-2791 - Fax: (705) 946-1860

**The Synod of the Diocese of Athabasca**

Box 6868  
Peace River, AB T8S 1S6  
Phone: (780) 624-2767 - Fax: (780) 624-2365

**The Synod of the Diocese of Brandon**

Box 21009 W.E.P.O.  
Brandon, MB R7B 3W8  
Phone: (204) 727-7550 - Fax: (204) 727-4135

**The Synod of the Diocese of British Columbia**

900 Vancouver St.  
Victoria, BC V8V 3V7  
Phone: (250) 386-7781 - Fax: (250) 386-4013

**The Synod of the Diocese of Calgary**

Suite 560, 1207 - 11th Ave. SW  
Calgary, AB T3C 0M5  
Phone: (403) 243-3673 - Fax: (403) 243-2182

**The Synod of the Diocese of Cariboo**

**The Incorporated Synod of the Diocese of Huron**

190 Queens Ave.  
London, ON N6A 6H7  
Phone: (519) 434-3225 - Fax: (519) 679-4151

**The Synod of the Diocese of Keewatin**

A. P.O. Box 118  
Kenora, ON P9N 3X1  
B. 915 Ottawa St.  
Keewatin, ON P0X 1C0  
Phone: (807) 547-3353 - Fax: (807) 547-3356

**The Diocese of Moosonee**

Box 841  
Schumacher, ON P0N 1G0  
Phone: (705) 360-1129 - Fax: (705) 360-1120

**The Synod of the Diocese of Westminster**  
Suite 580, 401 West Georgia St.  
Vancouver, BC V6B 5A1  
Phone: (604) 684-6306 - Fax: (604) 684-7017

**The Synod of the Diocese of Qu'Appelle**  
1501 College Ave.  
Regina, SK S4P 1B8  
Phone: (306) 522-1608 - Fax: (306) 352-6808

**The Diocese of Saskatchewan**  
1308 Fifth Avenue East  
Prince Albert, SK S6V 2H7  
Phone: (306) 763-2455 or (306) 764-1171 - Fax: (306) 764-5172

Suffragan Bishop: Rt. Rev. Charles J. Arthurson  
Box 96  
Lac La Ronge, SK S0J 1L0  
Phone: (306) 425-2015

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**The Synod of the Diocese of Yukon**  
Box 31442  
Whitehorse, YT Y1A 6K6  
Phone: (867) 667-7746 - Fax: (867) 667-6125

**The Company for the Propagation of the Gospel in New England (also known as the New England Company)**  
Bower House, Clavering, Saffron Walden  
Essex UK CB11 4QT  
Phone: 20 7717 5400 - Fax: 01799 550169

**The Presbyterian Church in Canada**  
Registered Head Office  
50 Wynford Drive  
Don Mills, ON M3C 1J7  
Phone: (416) 441-1111 or Toll Free: (800) 619-7301 - Fax: (416) 441-2825

**The Trustee Board of the Presbyterian Church in Canada**

**The Foreign Mission of the Presbyterian Church in Canada**

**Board of Home Missions and Social Services of the Presbyterian Church in Canada**

**The Women's Missionary Society of the Presbyterian Church in Canada**

**The United Church of Canada**  
The General Council Offices  
3250 Bloor Street West, Suite 300  
Toronto, ON M8X 2Y4  
Telephone: (416) 231-5931, Voice Mail: (416) 231-7680 - Fax: (416) 231-3103

**The Board of Home Missions of the United Church of Canada**

**The Women's Missionary Society of the United Church of Canada**

**The Methodist Church of Canada**

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**The Missionary Society of the Methodist Church of Canada (also known as the Methodist Missionary Society of Canada)**

**The Canadian Conference of Catholic Bishops**  
2500 Don Reid Drive  
Ottawa, ON K1H 2J2

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**The Roman Catholic Bishop of the Diocese of Calgary**  
120 - 17th Avenue SW  
Calgary, AB T2S 2T2

**The Roman Catholic Bishop of Kamloops**  
635 A Tranquille Road  
Kamloops, BC V2B 3H5  
Phone: (250) 376-3351 - Fax: (250) 376-3363

**The Roman Catholic Bishop of Thunder Bay**  
1222 Reaume Street  
Postal Box 10400  
Thunder Bay, ON P7B 6T8  
Phone: (807) 343-9313 - Fax: (807) 343-9114

**The Roman Catholic Archbishop of Vancouver**  
150 Robson Street  
Vancouver, BC V6B 2A7  
Phone: (604) 683-0281 - Fax: (604) 683-4288

**The Roman Catholic Bishop of Victoria**  
740 View Street  
Victoria, BC V8W 1J8  
Phone: (250) 388-5571 - Fax: (250) 388-5998

**The Roman Catholic Bishop of Nelson**

**The Catholic Episcopal Corporation of Whitehorse**  
406 Steele Street  
Whitehorse, YT Y1A 2C8  
Phone: (867) 668-3826 - Fax: (867) 667-4713

**La Corporation Episcopale Catholique Romaine De Grouard – McLennan**  
C.P. 388  
McLennan, AB T0H 2L0  
Phone: (780) 324-3820 - Fax: (780) 324-3952

**The Catholic Archdiocese of Edmonton**  
The Chancery Office:  
8421 - 101 Avenue  
Edmonton, AB T6A 0L1

**La Diocèse de Saint-Paul**  
4410 51<sup>ème</sup> Rue  
Saint Paul, AB T0A 3A2  
Phone: (780) 645-3277 - Fax: (780) 645-6099

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**The Roman Catholic Episcopal Corporation of Mackenzie**

**The Archiepiscopal Corporation of Regina**  
445 Broad Street North  
Regina, SK S4R 2X8

**The Roman Catholic Episcopal Corporation of Keewatin**

**The Roman Catholic Archiepiscopal Corporation of Winnipeg**  
1495 Pembina Highway  
Winnipeg, MB R3T 2C6

**La Corporation Archiepiscopale Catholique Romaine de Saint-Boniface**  
151 de la Cathedrale Avenue  
Winnipeg, MB R2H 0H6

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**The Roman Catholic Episcopal Corporation of the Diocese of Sault Ste. Marie**

**The Roman Catholic Episcopal Corporation of James Bay**

**The Roman Catholic Episcopal Corporation of Halifax**  
1531 Grafton Street  
Halifax, NS B3J 2Y3

**The Roman Catholic Episcopal Corporation of Hudson's Bay**  
230 Laverendrye  
Churchill, MB

**La Corporation Episcopale Catholique Romaine de Prince Albert**  
1415 – 4th Avenue West  
Prince Albert, SK S6V 5H1

**The Roman Catholic Episcopal Corporation of Prince Rupert**  
6500 Southridge Avenue  
Box 7000  
Prince George, BC V2N 3Z2  
Phone: (250) 964-4424 - Fax: (250) 964-2101

**The Order of the Oblates of Mary Immaculate in the Province of British Columbia**

**The Missionary Oblates of Mary Immaculate – Grandin Province**  
10336 -114 Street  
Edmonton, AB T5K 1S3

**Les Oblats de Marie Immaculee du Manitoba or The Oblates of Mary Immaculate in the Province of Manitoba**

**Les Peres Montfortains (also known as The Company of Mary)**  
6455 Louis-Riel Avenue  
Montreal, QC H1M 1P1

**Jesuit Fathers of Upper Canada**  
Jesuit Provincial Office  
1325 Bay St., Suite 300  
Toronto, ON M5R 2C4  
Phone: (416) 962-4500 - Fax: (416) 962-4501

**The Missionary Oblates of Mary Immaculate – Province of St. Joseph**  
3456 Avenue du Musee  
Montreal, QC H3G 2C7

~~**Les Missionnaires Oblats de Marie-Immaculee**~~  
~~**(Les Reverends Peres Oblats de l'Immaculee Conception de Marie)**~~  
3456 Avenue du Musee  
Montreal, QC H3G 2C7

**The Oblates of Mary Immaculate St. Peter's Province**

**Les Reverends Peres Oblats de Marie Immaculee des  
Territoires du Nord Quest**

**Les Missionnaires Oblats de Marie Immaculee (Province du Canada – Est)**  
3400 Chemin Saint-Louis  
Sainte-Foy, QC G1W 1S4

**The Sisters of Saint Anne**

1550 Begbie Street

Victoria, BC V8R 1K8

Phone: (604) 592-3133/721-0888 - Fax: (604) 592-0234

**The Sisters of Instruction of the Child Jesus (also known as Sisters of the Child Jesus)**

The Vocation Team

524 West 6<sup>th</sup> Street

North Vancouver, BC V7M 2X7

Phone: (604) 986-2148 - Fax: (604) 986-4238

**The Sisters of Charity of Providence of Western Canada**

**The Sisters of Charity (Grey Nuns) of Albert (also known as The Sisters of Charity (Grey Nuns) of Alberta)**

**The Sisters of Charity (Grey Nuns) of the Northwest Territories**

**The Sisters of Charity (Grey Nuns) of Montreal (Les Soeurs de la Charité (Soeurs Grises) de l'Hôpital Général de Montreal)**

138, rue Saint-Pierre

Montreal, QC H2Y 2L7

Phone: (514) 842-9035/842-9411 - Fax: (514) 842-7855

1190 rue Guy

Montreal, QC

Phone: (514) 937-9501

**The Grey Sisters Nicolet**

**The Grey Nuns of Manitoba Inc. (Les Soeurs Grises du Manitoba Inc.)**

151 Despins Street

St. Boniface, MB R2H 0L7

Phone: (204) 237-8941

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**The Sisters of St. Joseph of Sault Ste. Marie**

2025 Main Street West

North Bay, ON P1B 2X6

Phone: (705) 474-3800 - Fax: (705) 495-3028

**Les Soeurs de Saint-Joseph de St.-Hyacinthe and Institut des Soeurs de Saint-Joseph de Saint-Hyacinthe**

12375 du Fort-Lorette Street

Montreal, QC H2C 3C9

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**Les Soeurs de l'Assomption de la Sainte Vierge (also known as Les Sœurs de l'Assomption de la Sainte Vierge de Nicolet and The Sisters of Assumption)**  
311 Saint-Jean-Baptiste Street  
Nicolet, QC J3T 1H5

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**Les Soeurs de l'Assomption de la Sainte Vierge de l'Alberta**  
8533 - 90 Street  
Edmonton, AB T6C 3L4

**The Daughters of the Heart of Mary (also known as La Societe des Filles du Coeur de Marie and the Daughters of the Immaculate Heart of Mary)**  
4122, avenue de Lorimier  
Montréal, QC H2K 3X7  
Phone: (514) 522-9447/593-6434 - Fax: (514) 593-9513

**Missionary Oblate Sisters of Saint-Boniface (also known as Missionary Oblates of the Sacred Heart and Mary Immaculate, or Les Missionnaires Oblats de Saint-Boniface)**  
601, rue Aulneau  
Winnipeg, MB R2H 2V5  
Phone: (204) 233-7287/237-8802 - Fax: (204) 233-7844

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**Les Soeurs de la Charite d'Ottawa (Soeurs Grises de la Croix) (also known as Sisters of Charity of Ottawa – Grey Nuns of the Cross)**  
St. Therese Convent  
2441 Westminster Blvd  
Windsor, ON N8T 1X9  
Phone: (519) 948-5095

**Sisters of the Holy Names of Jesus and Mary (also known as The Religious Order of Jesus and Mary and Les Soeurs de Jesus-Marie)**  
10070 D'Auteuil Avenue  
Montreal, QC H3L 2K1

^

**The Sisters of Charity of St. Vincent De Paul of Halifax (also known as The Sisters of Charity of Halifax)**  
^150 Bedford Highway,  
Halifax, NS B3M 3J5  
Phone: (902) 457-3500 ext. 335 - Fax: (902) 457-3506

**Les Soeurs De Notre Dame Auxiliatrice**  
895 Perreault Street East  
Rouyn-Noranda, QC J9X 5H5

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**Les Soeurs de St. François D'Assise**  
Saint-François d'Assise, Soeurs de (SFA)  
2700, rue Lacordaire  
Montréal, QC H1N 2M6  
Phone: (514) 254-8340/254-4158 - Fax: (514) 251-2730

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**Sisters of the Presentation of Mary (Soeurs de la Presentation de Marie)**  
1405 Bishop Pascal Place  
Prince Albert, SK S6V 5J1

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**The Benedictine Sisters**

**Institut des Soeurs du Bon Conseil**  
Soeurs du Bon-Conseil  
1381 Roy Street  
Normandin, QC G8M 3V4  
Phone: (418) 274-3141

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**Impact North Ministries**  
1 Irwin Drive  
P.O. Box 315  
Red Lake, ON P0V 2M0  
Phone: (807) 727-2291 - Fax: (807) 727-2141

**The Baptist Church in Canada**

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1. The defendant, The Attorney General of Canada, claims against the third parties:
  - a) a declaration that he is entitled to contribution and indemnity from the third parties to the extent to which he is found liable to pay damages to the plaintiffs, including any award as to interest and costs made against him;
  - b) judgment for contribution and or indemnity in an amount equivalent to the amount of any judgment awarded against him in favour of the plaintiffs, including any award as to pre- or post-judgment interest and costs;
  - c) a declaration that any loss or damage suffered by the plaintiffs by reason of the matters set out in the Amended Fresh As Amended Statement of Claim was caused or contributed to by the breaches of duty of care, of fiduciary duty and of contract by the third parties;
  - d) a declaration that the third parties are bound by any determination of fact and apportionment of damages arising from the main action;
  - e) the costs of this third party claim on a substantial indemnity basis; and
  - f) such further and other relief as to this Honourable Court seems just.
2. The plaintiffs sue the defendant seeking damages for physical, sexual and psychological abuse, loss of language and culture, and other heads of damage, arising from the experiences of the proposed plaintiffs classes in relation to Indian residential schools, all as set out in the fresh as amended statement of claim.
3. The third parties (hereinafter the "Churches") are religious organizations or entities which, from the inception of the residential schools system until at least

1969, controlled and operated Indian residential schools pursuant to agreements entered into between them and the Government of Canada (hereinafter "the Crown") or among one or more of them. The Churches were responsible for the operation and administration of the schools.

4. The defendant repeats and relies as against the third parties upon the allegations set out in the statement of defence.
5. The defendant says that the third parties' responsibilities included, but were not limited to, the following:
  - a) admission and transportation of children to the schools;
  - b) living conditions and food within the schools;
  - c) selection, hiring, supervision, discipline and dismissal of residential and educational staff;
  - d) academic, religious, and moral teaching of the students;
  - e) school curriculum; and
  - f) supervision, day-to-day care, guidance and discipline of the students.
6. The Crown provided financial assistance to the Churches for the operation of the residential schools, pursuant to agreements with the Churches. The Crown also provided policy guidelines from time to time. The Crown inspected and audited the schools from time to time to ensure that the Churches were complying with their agreements with the Crown, and with the Crown's policy guidelines. The Crown was not responsible for and did not undertake the day-to-day operations of the schools.
7. Particulars of the third parties' involvement in the residential schools, as currently known by the defendant, are set out in the attached Schedule "A". Further particulars will be provided prior to trial.

8. Many of the third parties, in particular male and female Catholic orders and local bishops and archbishops, were responsible for the management and day-to-day operations, including staffing, of a specific school or schools during one or more time periods. Others assumed a more general responsibility to manage or supervise the activities of religious orders or entities required to report and account to them in accordance with their own internal structures and arrangements, or alternatively assigned responsibility to such orders or entities for schools for which they themselves were responsible pursuant to agreements with the Crown. Most or all of the third parties were employers of residential and educational staff at residential schools, and as such may be vicariously liable for the acts and omissions of such staff.
  
9. The defendant says that the third parties are liable to indemnify him with regard to any and all liability he may incur as a result of the acts or omissions attributable to the third parties, their employees, agents and assigns, or those organizations over whom they exerted or had authority, influence or control throughout the periods in which they or such organizations had responsibility for the schools and residences concerned.
  
10. The defendant states that the third parties are responsible in whole or in part for the loss or damage suffered by the plaintiffs by reason of their breaches of duty of care, of fiduciary duty and of contract.
  
11. Those third parties resident outside of the Province of Ontario are served pursuant to the provisions of Rule 17(h), (o) and (q) of the Rules of Civil Procedure.

April 24, 2003

Department of Justice  
Ontario Regional Office  
The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
Toronto, Ontario  
M5X 1K6

Per: Paul Vickery  
Glynis Evans

Tel: (613) 957-4801/(416) 973-2318  
Fax: (613) 952-8713/(416) 973-2319

Solicitors for the Defendant,  
The Attorney General of Canada

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**SCHEDULE "A"**

01601

**ANGLICAN CHURCH ENTITIES**

**1) THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA**

Schools and Dates of Involvement:

Metlakatla	Metlakatla, BC	1891-1962
St. George's	Lytton, BC	1901-1969
St. Michael's	Alert Bay, BC	1878-1962
Yale (All Hallows Boarding School)	Yale Station, Fraser River, BC	1884-1920
Lesser Slave Lake (St. Peter's)	Lesser Slave Lake, AB	1900-1932
Old Sun (Blackfoot IRS)	Gleichen, Blackfoot Reserve, AB	1929-1971
Sarcee Boarding School	Sarcee Junction, AB	1894-1930
St. Cyprian	Brocket, Peigan Reserve, AB	1892-1961
St. Paul's Boarding School (Blood)	Blood Reserve, AB	1880-1975
Wabasca (St. John's IRS)	Wabasca, AB	1895-1966
Whitefish Lake, (St. Andrew's IRS)	St. Andrew's Mission, AB	1895-1950
Battleford Industrial School	Battleford, SK	1883-1943
Emmanuel College	Prince Albert, SK	1865-1923
Gordon's Residential School	Gordon's Reserve, SK	1889-1975
Lac la Ronge (Prince Albert)	La Ronge, SK	1914-1969
Onion Lake (St. Barnabas, Prince Albert)	Makao's Reserve, SK	1893-1951
Prince Albert (All Saints/St. Alban's)	Prince Albert, SK	1951-1964
Elkhorn (Washakada)	Elkhorn, MB	1889-1949
Mackay (Dauphin)	The Pas Reserve, MB Dauphin, MB	1915-1933 1957-1988
Montreal Lake	Montreal Lake, SK	
Chapleau (St. Joseph's, St. John's)	Chapleau, ON	1907-1950
Mohawk Institute	Brantford, ON	1850-1969
Moose Factory (Horden Hall, Moose Fort)	Moose Island, ON	1907-1963
Pelican Lake	Sioux Lookout, ON	1927-1973

**THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA**

Schools and Dates of Involvement:

Shingwauk	Sault Ste. Marie, ON	1877-1971
Fort George	Fort George, QC	1934-1979
La Tuque	La Tuque, QC	1962-1980
Carcross, Chooultla IRS	Carcross, YT	1911-1969
St. Paul's Hostel	Dawson, YT	1920-1943
Yukon Hostel	Whitehorse, YT	1959-1986
All Saints (Aklavik IRS)	Aklavik, NT	1936-1959
Fort MacPherson Residence	Fort MacPherson, NT	1898-1970
Fort Simpson Hostel/Bompass Hall	Fort Simpson, NT	1920-1970
Hay River	Hay River – Treaty 8, NT	1898-1949
Stringer Hall	Inuvik, NT	
Coppermine Hostel	Coppermine, NU	

Particulars of Involvement:

The General Synod of the Anglican Church of Canada was incorporated in or about 1921 as an organization of members operating for the common purpose of practising and promoting the Anglican religious faith in Canada. Its members include the various Dioceses described below, and the Missionary Society of the Anglican Church of Canada. Its members operated and managed the schools described above, often pursuant to written agreements with Crown. Its members also provided principals, teachers, and domestic staff and religious and academic training to students. These activities were performed under the direction and supervision of the General Synod of the Anglican Church of Canada, for the purposes of the General Synod of the Anglican Church of Canada in promoting the Anglican faith in Canada.

**2) THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA**

Schools and Dates of Involvement:

Metlakatla	Metlakatla, BC	1891-1962
St. George's	Lytton, BC	1901-1969
St. Michael's	Alert Bay, BC	1878-1962
Yale (All Hallows Boarding School)	Yale Station, Fraser River, BC	1884-1920
Lesser Slave Lake (St. Peter's)	Lesser Slave Lake, AB	1900-1932

**THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA**

Schools and Dates of Involvement:

Old Sun (Blackfoot IRS)	Gleichen, Blackfoot Reserve, AB	1929-1971
Sarcee Boarding School	Sarcee Junction, AB	1894-1930
St. Cyprian	Brocket, Peigan Reserve, AB	1892-1961
St. Paul's Boarding School (Blood)	Blood Reserve, AB	1880-1975
Wabasca (St. John's IRS)	Wabasca, AB	1895-1966
Whitefish Lake, (St. Andrew's IRS)	St. Andrew's Mission, AB	1895-1950
Battleford Industrial School	Battleford, SK	1883-1943
Emmanuel College	Prince Albert, SK	1865-1923
Gordon's Residential School	Gordon's Reserve, SK	1889-1975
Lac la Ronge (Prince Albert)	La Ronge, SK	1914-1969
Onion Lake (St. Barnabas, Prince Albert)	Makao's Reserve, SK	1893-1951
Prince Albert (All Saints/St. Alban's)	Prince Albert, SK	1951-1964
Elkhorn (Washakada)	Elkhorn, MB	1889-1949
Mackay (Dauphin)	The Pas Reserve, MB Dauphin, MB	1915-1933 1957-1988
Montreal Lake	Montreal Lake, SK	
Chapleau (St. Joseph's, St. John's)	Chapleau, ON	1907-1950
Mohawk Institute	Brantford, ON	1850-1969
Moose Factory (Horden Hall, Moose Fort)	Moose Island, ON	1907-1963
Pelican Lake	Sioux Lookout, ON	1927-1973
Shingwauk	Sault Ste. Marie, ON	1877-1971
Fort George	Fort George, QC	1934-1979
La Tuque	La Tuque, QC	1962-1980
Carcross, Chooultla IRS	Carcross, YT	1911-1969
St. Paul's Hostel	Dawson, YT	1920-1943
Yukon Hostel	Whitehorse, YT	1959-1986
All Saints (Aklavik IRS)	Aklavik, NT	1936-1959
Fort MacPherson Residence	Fort MacPherson, NT	1898-1970



**THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA**

Schools and Dates of Involvement:

Fort Simpson Hostel/Bompass Hall	Fort Simpson, NT	1920-1970
Hay River	Hay River – Treaty 8, NT	1898-1949
Stringer Hall	Inuvik, NT	
Coppermine Hostel	Coppermine, NU	

Particulars of Involvement:

The Missionary Society of the Anglican Church of Canada was incorporated in or about 1903 as an organization of all members of the General Synod of the Anglican Church of Canada. It was the corporate vehicle through which missionary work of the General Synod of the Anglican Church of Canada was undertaken from at least 1903 to at least 1969. This missionary work included the management and operation of the schools described above, often pursuant to written agreements with the Crown.

**3) THE SYNOD OF THE DIOCESE OF ALGOMA**

Schools and Dates of Involvement:

Shingwauk	Sault Ste. Marie, ON	1877-1971
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Particulars of Involvement:

This Diocese was responsible for the management, operation, and staffing of the school described above, at times in conjunction with the Missionary Society of the Anglican Church of Canada. The Incorporated Synod of the Diocese of Algoma, through the Bishop of Algoma, entered into an agreement with the Crown in 1911 to support, maintain and educate Indian children at the school.

**4) THE SYNOD OF THE DIOCESE OF ATHABASCA**

Schools and Dates of Involvement:

Lesser Slave Lake	Lesser Slave Lake, AB	1900-1932
St. John's (Wabasca)	Wabasca, AB	1895-1966
St. Andrew's (Whitefish Lake)	St. Andrew's Mission, AB	1895-1950
Fort Simpson	Fort Simpson, NT	1920-1970

**THE SYNOD OF THE DIOCESE OF ATHABASCA**

Particulars of Involvement:

This Diocese, through the Bishop of Athabasca, entered into agreements with the Crown in 1911 to support, maintain and educate Indian children at least at St. John's and St. Andrew's schools. Prior to January 1, 1923, and after March 31, 1969, this Diocese was responsible for the management, operation and staffing of all of the above-described schools. In the intervening years, this responsibility rested with the Missionary Society of the Anglican Church of Canada.

**(5) THE SYNOD OF THE DIOCESE OF BRANDON**

Schools and Dates of Involvement:

Elkhorn	Elkhorn, MB	1889-1949
Mackay (Dauphin)	The Pas Reserve, MB	1915-1933
	Dauphin, MB	1957-1988

Particulars of Involvement:

This Diocese was established in or about 1913 and incorporated in or about 1925. It was responsible for the management, operation and staffing of the above-described schools, at times in conjunction with the Missionary Society of the Anglican Church of Canada.

**(6) THE SYNOD OF THE DIOCESE OF BRITISH COLUMBIA**

Schools and Dates of Involvement:

St. Michael's	Alert Bay, BC	1891-1962
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Particulars of Involvement:

This Diocese was responsible for the management, operation and staffing of the above-described school, at times in conjunction with the Missionary Society of the Anglican Church of Canada. This Diocese, through the Bishop of Columbia, entered into an agreement with the Crown in 1911 to support, maintain and educate Indian children at the school. The Anglican Synod of the Diocese of British Columbia provided childcare workers, teachers and cooks to staff the school.

**7) THE SYNOD OF THE DIOCESE OF CALGARY**

Schools and Dates of Involvement:

Old Sun	Gleichen, Blackfoot Reserve, AB	1929-1971
Sarcee Boarding School	Sarcee Junction, AB	1894-1930
St. Cyprian	Brocket, Peigan Reserve, AB	1892-1961
St. Paul's Boarding School (Blood)	Blood Reserve, AB	1880-1975

Particulars of Involvement:

This Diocese, through the Bishop of Calgary, entered into agreements with the Crown in or about 1912 to support, maintain and educate Indian children at least at Old Sun, Sarcee and St. Paul's (Blood) schools. Prior to 1919, and after March 31, 1969, this Diocese provided chaplaincy and other services to some of the above-described schools. In the intervening years, the responsibility for the schools rested with the Missionary Society of the Anglican Church of Canada.

**8) THE SYNOD OF THE DIOCESE OF CARIBOO**

Schools and Dates of Involvement:

St. George's	Lytton, BC	1915-1969
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Particulars of Involvement:

This Diocese was responsible for or involved in the management, operation and staffing of the above-described school.

**9) THE INCORPORATED SYNOD OF THE DIOCESE OF HURON**

Schools and Dates of Involvement:

Mohawk Institute	Brantford, ON	1850-1969
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Particulars of Involvement:

This Diocese was responsible for the religious works of the General Synod of the Anglican Church of Canada in the district where the above-described school was located. This included responsibility for religious activities carried on at the school and the religious instruction of the students. The Incorporated Synod of the Diocese of Huron oversaw the management, operation and staffing of the school, through the principal, who was an Anglican clergyman, and through an advisory committee.

**10) THE SYNOD OF THE DIOCESE OF KEEWATIN**

Schools and Dates of Involvement:

Pelican Lake	Sioux Lookout, ON	1927-1973
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Particulars of Involvement:

This Diocese, through the Bishop of Keewatin, proposed the establishment of the above-described school. It was responsible for the religious works of the General Synod of the Anglican Church of Canada in the district where the school was located, which included the religious activities which were carried on at the school. It was responsible for or involved in the management, operation and staffing of the school, at times in conjunction with the Missionary Society of the Anglican Church of Canada.

**11) THE DIOCESE OF MOOSONEE**

Schools and Dates of Involvement:

Moose Factory (Bishop Horden)	Moose Island, ON	1907-1963
Fort George	Fort George, QC	1934-1979
Chapleau	Chapleau, ON	1907-1950

Particulars of Involvement:

This Diocese, through the Bishop of Moosonee, entered into agreements with the Crown in or about 1911 to support, maintain, and educate Indian Children at least at Moose Factory and Chapleau schools. It was responsible for the management, operation and staffing of the above-described schools, at times in conjunction with the Missionary Society of the Anglican Church of Canada.

**12) THE SYNOD OF THE DIOCESE OF WESTMINSTER**

Schools and Dates of Involvement:

Yale (All Hallows)	Yale, BC	1884-1920
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Particulars of Involvement:

This Diocese, through the Bishop of New Westminister, entered into an agreement with the Crown in or about 1911 to support, maintain and educate Indian children at the above-described school.

**13) THE SYNOD OF THE DIOCESE OF QU'APPELLE**

Schools and Dates of Involvement:

Gordon's Residential School	Gordon's Reserve, SK	1889-1969
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Particulars of Involvement:

This Diocese, through the Bishop of Qu'Appelle, entered into an agreement with the Crown in or about 1911 to support, maintain and educate Indian children at the above-described school. It was responsible for the management, operation and staffing of the school, at times in conjunction with the Missionary Society of the Anglican Church of Canada.

**14) THE DIOCESE OF SASKATCHEWAN**

Schools and Dates of Involvement:

Battleford Industrial School	Battleford, SK	1883-1943
Lac la Ronge	La Ronge, SK	1914-1947
Onion Lake	Makao's Reserve, SK	1893-1951
Prince Albert (All Saints/St. Alban's)	Prince Albert, SK	1951-1964

Particulars of Involvement:

This Diocese, through the Bishop of Saskatchewan, entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at least at Lac la Ronge and Onion Lake schools. This Diocese was responsible for the management, operation and staffing of the above-described schools, at times in conjunction with the Missionary Society of the Anglican Church of Canada.

**15) THE SYNOD OF THE DIOCESE OF YUKON**

Schools and Dates of Involvement:

Carcross	Carcross, YT	1911-1969
St. Paul's Hostel	Dawson, YT	1920-1943
Hay River	Hay River, NT	1898-1949

**THE SYNOD OF THE DIOCESE OF YUKON**

Particulars of Involvement:

This Diocese, through the Bishop of Yukon, entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at least at Carcross and Hay River schools. The Synod of the Diocese of Yukon was responsible for the management, operation and staffing of the above-described schools, at times in conjunction with the Missionary Society of the Anglican Church of Canada.

**16) THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND  
(ALSO KNOWN AS THE NEW ENGLAND COMPANY)**

Schools and Dates of Involvement:

St. George's	Lytton, BC	1901-1979
Mohawk Institute	Brantford, ON	1828-1969

Particulars of Involvement:

This corporation established and operated the above-described schools, at least until 1922. It entered into an agreement with the Crown in 1911 to support, maintain and educate Indian children at least at Mohawk school. It owned the lands and school buildings and entered into lease agreements with the Crown in respect of the schools in 1922 and 1947. It maintained influence over the management, operation and religious education at the schools.

**PRESBYTERIAN CHURCH ENTITIES**

**17) THE PRESBYTERIAN CHURCH IN CANADA**

Schools and Dates of Involvement:

Ahousaht	Ahousaht, BC	1901-1925
Alberni	Port Alberni, BC	1920-1925
Stoney Plain	AB	
Crowstand	Kamsack, SK	
File Hills	Balcarres, SK	1889-1925
Muscowepetung	SK	
Regina	Regina, SK	
Round Lake	Stockholm, SK	1886-1925
Birtle	Birtle, MB	1889-1970
Portage la Prairie	Portage la Prairie, MB	1895-1925
Cecilia Jeffrey	Kenora, ON	1900-1962

Particulars of Involvement:

The Presbyterian Church in Canada is an unincorporated association of members operating for the common purpose of practising and promoting the Presbyterian faith in Canada. Its members include the Trustee Board and the Board of Home Missions of the Presbyterian Church in Canada, which operated the above-described schools under the supervision of the Presbyterian Church in Canada and for the purposes of the Presbyterian Church in Canada in promoting the Presbyterian faith in Canada.

**18) THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA**

Schools and Dates of Involvement:

same as above

Particulars of Involvement:

The Trustee Board of the Presbyterian Church in Canada is a corporation incorporated in 1939. It operated the above-described schools on behalf of the Presbyterian Church in Canada. It was responsible for the management, operation and staffing of the schools.

**19) THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA**

Schools and Dates of Involvement:

same as above

Particulars of Involvement:

The Foreign Mission of the Presbyterian Church in Canada was responsible for missionary work of the Presbyterian Church in Canada to aboriginal peoples. It reported to the General Assembly of the Presbyterian Church in Canada. The Foreign Mission entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at least at Alberni, Birtle, Cecilia Jeffrey, Crowstand, File Hills and Round Lake schools.

**20) BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN CANADA**

Schools and Dates of Involvement:

same as above

Particulars of Involvement:

The Board of Home Missions and Social Services of the Presbyterian Church in Canada operated some of the above-described schools on behalf of the Presbyterian Church in Canada.

**21) THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN CANADA**

Schools and Dates of Involvement:

Birtle	Birtle, MB	1962-1970
Cecilia Jeffrey	Kenora, ON	1962-1966

Particulars of Involvement:

The Women's Missionary Society of the Presbyterian Church in Canada entered into agreement with the Crown in or about 1962 to operate the above-described schools. The Women's Missionary Society of the Presbyterian Church in Canada reported to the General Assembly of the Presbyterian Church in Canada.



**UNITED CHURCH ENTITIES**

**22) THE UNITED CHURCH OF CANADA**

Schools and Dates of Involvement:

Ahousaht	Ahousaht, BC	1925-1950
Alberni	Port Alberni, BC	1925-1973
Coqualeetza	Chilliwack, BC	1925-1937
Kitimaat	Kitimaat, BC	
Port Simpson	Port Simpson, BC	1925-1950
Edmonton	Edmonton, AB	1925-1968
Morley	Morley, AB	1925-1969
File Hills	Balcarres, SK	1925-1949
Round Lake	Stockholm, SK	1925-1950
Brandon	Brandon, MB	1925-1972
Norway House	Norway House, MB	1925-1967
Portage la Prairie	Portage la Prairie, MB	1925-1975
Mount Elgin	Muncey Town, ON	1925-1946

Particulars of Involvement:

The United Church of Canada was incorporated in or about 1924. In 1925 it assumed responsibility for the above-described schools, which had previously been managed or operated by the Presbyterian Church in Canada or the Methodist Church of Canada. The United Church of Canada was responsible for the management, operation and staffing of the schools, often through local home missions committees run by presbyteries and conferences. The United Church of Canada entered into agreements with the Crown in or about 1962 to manage and operate some of the above-described schools, including Alberni and Brandon.

**23) THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA**

Schools and Dates of Involvement:

same as above

**THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA**

Particulars of Involvement:

The Board of Home Missions is the administrative division of the United Church of Canada with responsibility for social and religious work of the United Church, including the supervision and administration of missionary work. The Board of Home Missions was responsible for the operation of the above-described schools, under the by-laws of the United Church of Canada.

**24) THE METHODIST CHURCH OF CANADA**

Schools and Dates of Involvement:

Coqualeetza	Chilliwack, BC	1886-1925
Kitimaat	Kitimaat, BC	1883-1925
Port Simpson	Port Simpson, BC	1863-1925
Edmonton	Edmonton, AB	1924-1925
Morley	Morley, AB	1886-1925
Brandon	Brandon, MB	1892-1925
Norway House	Norway House, MB	1900-1925
Mount Elgin	Muncey Town, ON	1848-1925

Particulars of Involvement:

The Methodist Church of Canada was responsible for the management, operation and staffing of the above-described schools until 1925, when the Methodist Church of Canada merged with certain congregations of the Presbyterian Church to form the United Church of Canada. Thereafter, the United Church of Canada was responsible for the schools. The Methodist Church of Canada operated the schools through its Missionary Society, described below.

**25) THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA**

Schools and Dates of Involvement:

File Hills	Balcarres, SK	1925-1949
Portage la Prairie	Portage la Prairie, MB	1926-1961

**THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA**

Particulars of Involvement:

The Women's Missionary Society of the United Church of Canada was responsible for the management, operation and staffing of the above-noted schools.

**26) THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA  
(ALSO KNOWN AS THE METHODIST MISSIONARY SOCIETY OF CANADA)**

Schools and Dates of Involvement:

same as above

Particulars of Involvement:

The Missionary Society of the Methodist Church of Canada was the division of the Methodist Church of Canada responsible for the operation of the above-described schools. The Missionary Society entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at least at Mount Elgin, Kitimaat, Port Simpson and Norway House schools.

**ROMAN CATHOLIC CHURCH ENTITIES**

**BISHOPS, DIOCESES, AND EPISCOPAL CORPORATIONS**

**27) THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS**

Schools and Dates of Involvement:

All Roman Catholic Indian Residential Schools since 1943.

Particulars of Involvement:

The Canadian Conference of Catholic Bishops is an unincorporated association of Roman Catholic Bishops and Archbishops established in 1943, which acts as a governing body of the Roman Catholic Church in Canada. As a governing body, the Canadian Conference of Catholic Bishops was responsible for the promotion of the Catholic faith in Canada, including through the education of Indian children within the Catholic faith.

The Bishop and Archbishop members of the Canadian Conference of Catholic Bishops were responsible for the religious and moral education of students in Roman Catholic schools, including Indian Residential Schools, within each Bishop's or Archbishop's geographical district. In many cases, the Bishops and Archbishops carried out their responsibilities by appointing or assigning Oblate orders to manage the operations of Indian residential schools. The Bishops and Archbishops maintained authority over and responsibility for the Oblates in the operations of the residential schools. The Bishops and Archbishops undertook inspections and approved teachers and textbooks, pursuant to Canon Law. The Canadian Conference of Catholic Bishops oversaw the activities of its Bishop and Archbishop members.

**28) THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY**

Schools and Dates of Involvement:

Crowfoot	Blackfoot Reserve, AB	1909-1968
Sacred Heart	Peigan Reserve, AB	1892-1965
St. Mary's	Blood Reserve, AB	1884-1975

Particulars of Involvement:

The Roman Catholic Bishop of the Diocese of Calgary is a corporation sole, incorporated in 1913, which was responsible for the management, operation and staff of the above-described schools.

**29) THE ROMAN CATHOLIC BISHOP OF KAMLOOPS**

Schools and Dates of Involvement:

Kamloops	Kamloops, BC	1947-1978
Cariboo	Williams Lake, BC	Post-1947

Particulars of Involvement:

The Roman Catholic Bishop of Kamloops is a corporation sole incorporated in or about 1947. The Bishop of Kamloops was responsible for the management and operations of the above-described schools, and oversaw the staff.

**30) THE ROMAN CATHOLIC BISHOP OF THUNDER BAY**

Schools and Dates of Involvement:

St. Mary's	Kenora, ON	1953-1962
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Particulars of Involvement:

The Roman Catholic Bishop of Thunder Bay is a corporation sole, which prior to 1970 was known as the Roman Catholic Bishop of Fort William. The Bishop was responsible for the management and operation of the above-described school, and oversaw the staff after 1953. Prior to then, the school was managed and operated by the Archbishop of St. Boniface.

**31) THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER**

Schools and Dates of Involvement:

Cariboo	Williams Lake, BC	1909-1947
Kamloops	Kamloops, BC	1909-1947
St. Mary's	Mission City, BC	1911-1984
St. Paul's	North Vancouver, BC	1898-1959
Sechelt	Sechelt, BC	1909-1975
St. Eugene's	Cranbrook, BC	1909-1937

**THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER**

Particulars of Involvement:

The Roman Catholic Archbishop of Vancouver is a corporation sole. The Archbishop was responsible for the management, operation and staff of the above-described schools. The Archbishop entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at St. Mary's, St. Paul's and Sechelt schools.

**32) THE ROMAN CATHOLIC BISHOP OF VICTORIA**

Schools and Dates of Involvement:

Christie	Tofino, BC	1900-1983
Kuper Island	Chemainus, BC	1891-1974

Particulars of Involvement:

The Roman Catholic Bishop of Victoria was responsible for the management, operation and staff of the above-described schools.

**33) THE ROMAN CATHOLIC BISHOP OF NELSON**

Schools and Dates of Involvement:

St. Eugene's	Cranbrook, BC	1937-1970
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Particulars of Involvement:

The Roman Catholic Bishop of Nelson was responsible for the management, operation and staff of the above-described schools.

**34) THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE**

Schools and Dates of Involvement:

Coudert Hall	Whitehorse, YT	1962-1970
Lower Post	Watson Lake, YT	1945-1975

**THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE**

Particulars of Involvement:

The Catholic Episcopal Corporation of Whitehorse was incorporated in or about 1945 and was responsible for the management, operation and staff of the above-described schools.

**35) LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD - McLENNAN**

Schools and Dates of Involvement:

Assumption	Hay Lakes Reserve, AB	1949-1965
Ft. Vermilion	Fort Vermilion, AB	1890-1961
Grouard	Grouard, AB	1894-1961
Joussard	Joussard, AB	1913-1969
St. Martin	Wabasca, AB	1901-1973
Sturgeon Lake	Sturgeon Lake, AB	1907-1957

Particulars of Involvement:

La Corporation Episcopale Catholique Romaine de Grouard-McLennan was responsible for the management, operation and staff of the above-described schools. The Bishop of Athabaska, a predecessor to the Corporation Episcopale, entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at St. Martin and Sturgeon Lake schools. La Corporation Episcopale contracted with the Crown to construct school buildings and manage finances at Assumption and Grouard schools, at least until 1956.

**36) THE CATHOLIC ARCHDIOCESE OF EDMONTON**

Schools and Dates of Involvement:

Blue Quills	Blue Quills, AB	1862-1948
Ermineskin	Ermineskin, AB	1911-1973
Sacred Heart	Peigan Reserve, AB	1892-1965
St. Albert's	Sturgeon River, AB	1911-1948

**THE CATHOLIC ARCHDIOCESE OF EDMONTON**

Particulars of Involvement:

The Catholic Archdiocese of Edmonton, through the Archbishop of Edmonton, was responsible for the management, operation and staff of the above-described schools. The Bishop of St. Albert, a predecessor to the Archbishop of Edmonton, entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at Blue Quills, Ermineskin and St. Albert's schools.

37)

**LA DIOCESE DE SAINT-PAUL  
(THE DIOCESE OF SAINT-PAUL)**

Schools and Dates of Involvement:

Blue Quills	Blue Quills, AB	1948-1970
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Particulars of Involvement:

The Diocese of St. Paul, through the Bishop of St. Paul, was responsible for the management, operation and staff of the above-described school after 1948. Prior to then, the school was under the management of the Archdiocese of Edmonton.

38)

**THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF MACKENZIE**

Schools and Dates of Involvement:

Fort Chipewyan	Fort Chipewyan, AB	1902-1974
Fort Resolution	Fort Resolution, NT	1902-1958
Fort Providence	Fort Providence, NT	1867-1953
Fort Simpson (La Pointe Hall)	Fort Simpson, NT	1960-1970
Immaculate Conception (Aklarik)	Aklarik, NT	1926-1958

Particulars of Involvement:

The Episcopal Corporation of Mackenzie was incorporated in or about 1913, and was responsible for the management, operation and staff of the above-described schools. The Vicarate of Mackenzie, a predecessor to the Episcopal Corporation, entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at Fort Resolution and Fort Providence schools. The Bishop of Athabaska entered into an agreement with the Crown in or about 1911 to support, maintain and educate Indian children at Fort Chipewyan school.



**39) THE ARCHIEPISCOPAL CORPORATION OF REGINA**

Schools and Dates of Involvement:

Lebret	Lebret, SK	1884-1975
Marieval	Grayson, SK	1899-1969
Muscowequan	Lestock, SK	1895-1969

Particulars of Involvement:

The Archiepiscopal Corporation of Regina, through the Achbishop of Regina, was responsible for the management, operation and staff of the above-described schools.

**40) THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN**

Schools and Dates of Involvement:

Beauval	Lac la Plonge, SK	1906-1970
Muscowequan	Lestock, SK	1895-1969
Sturgeon Landing	Sturgeon Landing, SK	1926-1958
Cross Lake	Cross Lake, MB	1915-1969
Guy Hill	The Pas, MB	1958-1974

Particulars of Involvement:

The Roman Catholic Episcopal Corporation of Keewatin is a corporation sole incorporated in 1912 and consisting of the Archbishop of Keewatin-Le Pas and each of his successors. The Episcopal Corporation, through the Archbishop, was responsible for the management, operation and staff of the above-described schools. The Vicar Apostolic of the Diocese of Keewatin, a predecessor to the Episcopal Corporation, entered into an agreement with the Crown in or about 1911 to support, maintain and educate Indian children at Beauval school.

**41) THE ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG**

Schools and Dates of Involvement:

Assiniboia	Winnipeg, MB	1957-1973
Brandon	Brandon, MB	1970-1972
Pine Creek	Pine Creek, MB	1915-1969
Sandy Bay	Sandy Bay, MB	1915-1970

**THE ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG**

Particulars of Involvement:

The Archiepiscopal Corporation of Winnipeg is a corporation sole incorporated in 1917 and consisting of the Archbishop of Winnipeg and each of his successors. The Archiepiscopal Corporation of Winnipeg, through the Archbishop, assumed responsibility for the management, operation and staff of the above-described schools after 1915, when the Archdiocese of Winnipeg was carved out of the Archdiocese of St. Boniface.

**42) LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT-BONIFACE**

Schools and Dates of Involvement:

Fort Alexander	Fort Alexander, MB	1906-1970
Pine Creek	Pine Creek, MB	1891-1971
Sandy Bay	Sandy Bay, MB	1905-1970
St. Mary's	Kenora, ON	1935-1953
Fort Frances	Fort Frances, ON	1902-1974
St. Philip's	Kamsack, SK	1899-1914 1928-1969
Marieval (Cowesses)	Grayson, SK	1899-1969

Particulars of Involvement:

La Corporation Archiepiscopale Catholique de Saint-Boniface is a corporation sole consisting of the Archbishop of St. Boniface and each of his successors in the Archdiocese of St. Boniface. It was incorporated in 1871 in Manitoba, and in 1911 in Ontario. La Corporation Archiepiscopal, through the Archbishop, was responsible for the management, operation and staff of the above-described schools. The Archbishop of St. Boniface entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at all of the above-described schools.

**43) THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF SAULT STE. MARIE**

Schools and Dates of Involvement:

Spanish Boys	Spanish, ON	1883-1965
Spanish Girls	Spanish, ON	1883-1965
St. Joseph's (Fort William)	Thunder Bay, ON	1873-1970

**THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE  
DIOCESE OF SAULT STE. MARIE**

Particulars of Involvement:

The Episcopal Corporation of the Diocese of Sault Ste. Marie, through the Bishop of Sault Ste. Marie, was responsible for the management, operation and staff of the above-described schools. The Bishop of Sault Ste. Marie entered into an agreement with the Crown in or about 1911 to support, maintain and educate Indian children at St. Joseph's school (also known as Fort William Orphanage).

**44) THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY**

Schools and Dates of Involvement:

St. Anne's	Fort Albany, ON	1936-1964
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Particulars of Involvement:

The Episcopal Corporation of James Bay is a corporation sole incorporated in or about 1940, which consists of the Bishop of Moosonee and each of his successors. The Episcopal Corporation, through the Bishop, was responsible for the management, operation and staff of the above-described school.

**45) THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX**

Schools and Dates of Involvement:

Shubenacadie	Shubenacadie, NS	1930-1956
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Particulars of Involvement:

The Episcopal Corporation of Halifax, through the Archbishop of Halifax, was responsible for the management, operation and staff of the above-described school.

**46) THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY**

Schools and Dates of Involvement:

Chesterfield Inlet	Chesterfield, NU	1929-1970
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**THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY**

Particulars of Involvement:

The Episcopal Corporation of Hudson's Bay is a corporation sole incorporated in or about 1938, consisting of the Bishop of Churchill-Hudson Bay. The Episcopal Corporation, through the Bishop, was responsible for the management, operation and staff of the above-described school.

**47) LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT**

Schools and Dates of Involvement:

Duck Lake (St. Michael's)	Duck Lake, SK	1892-1969
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Particulars of Involvement:

La Corporation Episcopale Catholique Romaine de Prince Albert, through the Bishop of Prince Albert, was responsible for the management, operation and staff of the above-described school.

**48) THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT**

Schools and Dates of Involvement:

Lejac	Fraser Lake, BC	1924-1976
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Particulars of Involvement:

The Roman Catholic Episcopal Corporation of Prince Rupert was incorporated in 1924. Through the Bishop of Prince George, it was responsible for the management, operation and staff of the above-described school.

**ORDERS - MALE**

**49) THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA**

Schools and Dates of Involvement:

Cariboo	Williams Lake, BC	1891-1981
Christie	Tofino, BC	1938-1976
Cranbrook	Cranbrook, BC	1890-1970
Kamloops	Kamloops, BC	1890-1978
Kuper Island	Chemainus, BC	1957-1975
Lejac	Fraser Lake, BC	1910-1976
Lower Post	Watson Lake, YT	1941-1975
St. Mary's	Mission City, BC	1861-1984
St. Paul's	North Vancouver, BC	1898-1959
Sechelt	Sechelt, BC	1924-1975

Particulars of Involvement:

The Oblates of Mary Immaculate in the Province of British Columbia supplied the principals, teachers, and residence workers and managed the day-to-day operations of the above-described schools under the authority of the Bishops or Archbishops of the local dioceses.

**50) THE MISSIONARY OBLATES OF MARY IMMACULATE - GRANDIN PROVINCE**

Schools and Dates of Involvement:

Assumption	Hay Lakes Reserve, AB	1951-1970
Blue Quills	Blue Quills, AB	1931-1970
Crowfoot	Blackfoot Reserve, AB	1934-1968
Ermineskin	Ermineskin Reserve, AB	1916-1973
Fort Chipewyan	Fort Chipewyan, AB	1902-1974
Fort Vermilion	Fort Vermilion, AB	1890-1961
Grouard	Grouard, AB	1923-1962
Joussard	Joussard, AB	1913-1956

**THE MISSIONARY OBLATES OF MARY IMMACULATE – GRANDIN PROVINCE**

Schools and Dates of Involvement:

Sacred Heart	Peigan Reserve, AB	1895-1961
St. Albert's	Sturgeon River, AB	1876-1948
St. Anthony's	Onion Lake, SK	1934-1958
St. Martin's	Wabasca, AB	1901-1973
St. Mary's	Blood Reserve, AB	1926-1970
Sturgeon Lake	Sturgeon Lake, AB	1907-1957
Fort Providence	Fort Providence, NT	1867-1960
Fort Resolution	Fort Resolution, NT	1902-1958
Fort Simpson (La Pointe Hall)	Fort Simpson, NT	1960-1970
Fort Smith (Breyнат Hall)	Fort Smith, NT	1958-1970
Grolier Hall	Inuvik, NT	1959-1987
Immaculate Conception	Aklavik, NT	1926-1959

Particulars of Involvement:

The Oblates of Mary Immaculate – Grandin Province supplied the principals, teachers, and residence workers and managed the day-to-day operations of the above-described schools under the authority of the Bishops or Archbishops of the local dioceses.

**51) LES OBLATS DE MARIE IMMACULEE DU MANITOBA OR THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF MANITOBA**

Schools and Dates of Involvement:

Beauval	Lac la Plonge, SK	1906-1970
Lebret	Lebret, SK	1884-1974
Marieval	Grayson, SK	1899-1969
Muscowequan	Lestock, SK	1895-1969
St. Philip's	Kamsack, SK	1899-1914
Sturgeon Landing	Sturgeon Landing, SK	1926-1958
Thunderchild	Delmas, SK	1901-1948
Assiniboia	Winnipeg, MB	1957-1979
Brandon	Brandon, MB	1970-1975
Cross Lake	Cross Lake, MB	1915-1942

**LES OBLATS DE MARIE IMMACULEE DU MANITOBA OR  
THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF MANITOBA**

Schools and Dates of Involvement:

Fort Alexander	Fort Alexander, MB	1906-1970
Guy Hill	The Pas, MB	1958-1974
Norway House	Norway House, MB	1900-1967
Pine Creek	Pine Creek, MB	1891-1971
Sandy Bay	Sandy Bay, MB	1905-1970
Fort Frances	Fort Frances, ON	1902-1974
McIntosh	McIntosh, ON	1924-1969
St. Mary's	Kenora, ON	1894-1962

Particulars of Involvement:

The Oblates of Mary Immaculate in the Province of Manitoba were incorporated in or about 1873. Prior to 1985 they were known as Les Révérends Pères Oblats. The Oblates supplied the principals, teachers and residence workers and managed the day-to-day operations of the above-described schools, under the authority of the Bishops and Archbishops of the local dioceses. ^

52)

**LES PERES MONTFORTAINS  
(ALSO KNOWN AS THE COMPANY OF MARY)**

Schools and Dates of Involvement:

Kuper Island	Chemainus, BC	Pre-1957
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Particulars of Involvement:

Les Pères Montfortains (known as The Company of Mary after 1964) supplied principals, teachers and residence workers and managed the operation of the above-described school, under the authority of the local Bishop, until 1957. After that date, the operation of the school was assumed by the Order of the Oblates of Mary Immaculate in the Province of British Columbia.





**56) THE OBLATES OF MARY IMMACULATE, ST. PETER'S PROVINCE**

Schools and Dates of Involvement:

Shubenacadie	Shubenacadie, NS	1956-1967
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Particulars of Involvement:

The Oblates supplied principals, teachers and residence workers and managed the day-to-day operations of the above-described school, under the authority of the local Archbishop.

**57) LES REVERENDS PERES OBLATS DE MARIE IMMACULEE  
DES TERRITOIRES DU NORD OUEST**

Schools and Dates of Involvement:

Duck Lake (St. Michael's)	Duck Lake, SK	1892-1964
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Particulars of Involvement:

Les Révérends Pères Oblats de Marie Immaculee des Territoires du Nord Ouest was incorporated in 1883. Les Révérends Pères was responsible for the day-to-day operations of the above-described school. Les Révérends Pères entered into an agreement with the Crown in or about 1911 to support, maintain and educate Indian children at the school.

**58) LES MISSIONNAIRES OBLATS DE MARIE IMMACULEE  
(PROVINCE DU CANADA - EST)**

Schools and Dates of Involvement:

Amos	Amos, PQ
Sept-Iles	Sept-Iles, PQ

Particulars of Involvement:

Les Missionnaires Oblats supplied the principals, teachers, and residence workers and managed the day-to-day operations of the above-described schools.

**ORDERS – FEMALE**

**59) THE SISTERS OF SAINT ANNE**

Schools and Dates of Involvement:

Kamloops	Kamloops, BC	1890-1970
Kuper Island	Chemainus, BC	1891-1974
St. Mary's	Mission City, BC	1861-1984
Lower Post	Watson Lake, YT	1941-1975

Particulars of Involvement:

The Sisters of Saint Anne provided teachers, dormitory supervisors and domestic staff for the above-described schools.

**60) THE SISTERS OF INSTRUCTION OF THE CHILD JESUS  
(ALSO KNOWN AS SISTERS OF THE CHILD JESUS)**

Schools and Dates of Involvement:

Cariboo	Williams Lake, BC	1896-1981
St. Paul's	North Vancouver, BC	1898-1959
Sechelt	Sechelt, BC	1904-1975
Lejac	Fraser Lake, BC	1917-1964

Particulars of Involvement:

The Sisters of Instruction of the Child Jesus were incorporated in 1913. They provided teachers, dormitory supervisors and childcare workers for the above-described schools.

**61) THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA**

Schools and Dates of Involvement:

Assumption	Hay Lakes, AB	1951-1970
Crowfoot	Blackfoot Reserve, AB	1899-1968
Fort Vermilion	Fort Vermilion, AB	1908-1968
Grouard	Grouard, AB	1902-1961
Joussard	Joussard, AB	1913-1969
St. Martin's	Wabasca, AB	1901-1973

**THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA**

Schools and Dates of Involvement:

St. Mary's	Blood Reserve, AB	1884-1975
Sturgeon Lake	Sturgeon Lake, AB	1907-1961

Particulars of Involvement:

The Sisters of Charity of Providence of Western Canada provided teachers, dormitory supervisors and domestic staff for the above-described schools.

**62) THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERT  
(ALSO KNOWN AS THE SISTERS OF CHARITY (GREY NUNS) OF ALBERTA)**

Schools and Dates of Involvement:

Blue Quills	Blue Quills, AB	1862-1970
Crowfoot	Blackfoot Reserve, AB	1909-1968
Fort Chipewyan	Fort Chipewyan, AB	1902-1974
Sacred Heart	Peigan Reserve, AB	1957-1965
St. Albert's	Sturgeon River, AB	1876-1948
St. Mary's	Blood Reserve, AB	1926-1970

Particulars of Involvement:

The Sisters of Charity (Grey Nuns) of St. Albert is a province of The Sisters of Charity (Grey Nuns) of Montreal, which carried on missionary work in the province of Alberta. The Sisters of Charity (Grey Nuns) of St. Albert provided teachers, dormitory supervisors and domestic staff for the above-described schools.

**63) THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES**

Schools and Dates of Involvement:

Blue Quills	Blue Quills, AB	1862-1970
Crowfoot	Blackfoot Reserve, AB	1909-1968
Sacred Heart	Peigan Reserve, AB	1895-1957
St. Albert's	Sturgeon River, AB	1876-1948
St. Mary's	Blood Reserve, AB	1926-1970

**THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES**

Particulars of Involvement:

The Sisters of Charity (Grey Nuns) of the Northwest Territories provided teachers, dormitory supervisors and domestic staff for the above-described schools.

**64) THE SISTERS OF CHARITY (GREY NUNS) OF MONTREAL  
(LES SOEURS DE LA CHARITE (SOEURS GRISES) DE  
L'HOPITAL GENERAL DE MONTREAL)**

Schools and Dates of Involvement:

Blue Quills	Blue Quills, AB	1890-1931
Crowfoot	Blackfoot Reserve, AB	1909-1968
Fort Chipewyan	Fort Chipewyan, AB	1902-1974
Sacred Heart	Peigan Reserve, AB	1895-1965
St. Albert's	Sturgeon River, AB	1941-1948
St. Mary's	Blood Reserve, AB	1926-1970
Beauval	Lac la Plonge, SK	1906-1970
Lebret	Lebret, SK	1884-1969
Fort Frances	Fort Frances, ON	1902-1974
Fort Providence	Fort Providence, NT	1867-1960
Fort Resolution	Fort Resolution, NT	1902-1958
Fort Simpson (La Pointe Hall)	Fort Simpson, NT	1958-1970
Fort Smith (Breynat Hall)	Fort Smith, NT	1958-1970
Grollier Hall	Inuvik, NT	1959-1987
Immaculate Conception	Aklavik, NT	1926-1959
Chesterfield Inlet	Chesterfield Inlet, NU	1929-1967

Particulars of Involvement:

The Sisters of Charity (Grey Nuns) of Montreal entered into contracts with Oblate orders to work at residential schools, primarily in the area of elementary instruction. The Sisters of Charity (Grey Nuns) of Montreal oversaw the operations and activities of affiliated provinces of Grey Nuns, including the Grey Nuns of St. Boniface (Manitoba) and St. Albert.

**65) THE GREY SISTERS NICOLET  
(ALSO KNOWN AS THE SISTERS OF THE GREY NUNS OF NICOLET)**

Schools and Dates of Involvement:

St. Mary's	Blood Reserve, AB	Pre-1942
Sacred Heart	Peigan Reserve, AB	1895-1965

Particulars of Involvement:

The Grey Sisters Nicolet provided teachers, dormitory supervisors and domestic staff for the above-described schools.

**66) THE GREY NUNS OF MANITOBA INC.  
(LES SOEURS GRISES DU MANITOBA INC.)**

Schools and Dates of Involvement:

Lebret	Lebret, SK	1884-1975
Muscowequan	Lestock, SK	1889-1932
Assiniboia	Winnipeg, MB	1957-1979
Fort Frances	Fort Frances, ON	1902-1974
St. Mary's	Kenora, ON	Pre-1930

Particulars of Involvement:

The Grey Nuns of Manitoba Inc. were originally incorporated in 1872 as Les Soeurs de la Charité de l'Hopital Generale de St. Boniface. The Grey Nuns of Manitoba provided teaching services at the above-described schools under the administration of male Oblate orders.

**67) THE SISTERS OF ST. JOSEPH OF SAULT STE. MARIE**

Schools and Dates of Involvement:

St. Joseph's	Fort William, ON	1873-1970
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Particulars of Involvement:

The Sisters of St. Joseph of Sault Ste. Marie managed and operated the above-described school. The Sisters accepted aboriginal children in residence at the school, with funding from the Crown.

**68) LES SOEURS DE SAINT-JOSEPH DE ST-HYACINTHE AND  
INSTITUT DES SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE**

Schools and Dates of Involvement:

Marieval	Grayson, SK	1899-1969
Sturgeon Landing	Sturgeon Landing, SK	1926-1958
Guy Hill	The Pas, MB	1955-1979
Sandy Bay	Sandy Bay, MB	1905-1970
St. Mary's	Kenora, ON	1930-1972

Particulars of Involvement:

Les Soeurs de Saint-Joseph de St-Hyacinthe was founded in 1877 and incorporated in Quebec in 1881. The Institut des Soeurs was incorporated under Manitoba law in 1944. Les Soeurs provided teachers and domestic staff for the above-described schools, at the request and under the authority of the local Bishops or Archbishops, or in some cases under the administration of male Oblate orders.

**69) LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE  
(ALSO KNOWN AS LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE DE  
NICOLET AND THE SISTERS OF ASSUMPTION)**

Schools and Dates of Involvement:

Ermineskin	Ermineskin, AB	1916-1973
St. Anthony's	Onion Lake, SK	1894-1958
St. Philip's	Kamsack, SK	1899-1914
Thunderchild	Delmas, SK	1901-1948

Particulars of Involvement:

Les Soeurs de l'Assomption de la Sainte Vierge was incorporated in 1916. Les Soeurs de l'Assomption provided teachers, dormitory supervisors and domestic staff for the above-described schools, usually with the co-operation of male Oblate orders.

**70) LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE DE L'ALBERTA**

Schools and Dates of Involvement:

Ermineskin	Ermineskin, AB	1916-1973
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Particulars of Involvement:

Les Seours de l'Assomption provided teachers, dormitory supervisors and domestic staff for the above-described staff.

**71) THE DAUGHTERS OF THE HEART OF MARY  
(ALSO KNOWN AS LA SOCIETE DES FILLES DU COEUR DE MARIE AND THE  
DAUGHTERS OF THE IMMACULATE HEART OF MARY)**

Schools and Dates of Involvement:

Spanish Girls	Spanish, ON	1919-1962
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Particulars of Involvement:

The Daughters of the Heart of Mary owned and operated the above-described school (which was also known as St. Joseph's school) from 1919 to 1930. Beginning in 1931, the Daughters owned and operated the school through a non-profit corporation. The Daughters made admissions decisions and employed staff at the school.

**72) MISSIONARY OBLATE SISTERS OF SAINT - BONIFACE (ALSO KNOWN AS  
MISSIONARY OBLATES OF THE SACRED HEART AND MARY IMMACULATE OR  
LES MISSIONAIRES OBLATS DE SAINT-BONIFACE)**

Schools and Dates of Involvement:

Muscowequan	Lestock, SK	1932-1977
Cross Lake	Cross Lake, MB	1916-1969
Fort Alexander	Fort Alexander, MB	1906-1970
Pine Creek	Pine Creek, MB	1891-1969
Fort Frances	Fort Frances, ON	1902-1974
McIntosh	McIntosh, ON	1924-1969

**MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (ALSO KNOWN AS MISSIONARY OBLATES OF THE SACRED HEART AND MARY IMMACULATE, OR LES MISSIONAIRES OBLATS DE SAINT-BONIFACE)**

Particulars of Involvement:

The Missionary Oblate Sisters of Saint-Boniface was originally incorporated in 1909. The Sisters provided teaching services for the above-described schools, under the administration of male Oblate orders.

**73) LES SOEURS DE LA CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (ALSO KNOWN AS SISTERS OF CHARITY OF OTTAWA - GREY NUNS OF THE CROSS)**

Schools and Dates of Involvement:

St. Anne's	Fort Albany, ON	1936-1964
Fort George	Fort George, PQ	

Particulars of Involvement:

Les Soeurs de la Charité d'Ottawa provided teachers and domestic staff for the above-described schools.

**74) SISTERS OF THE HOLY NAMES OF JESUS AND MARY (ALSO KNOWN AS THE RELIGIOUS ORDER OF JESUS AND MARY AND LES SOEURS DE JESUS-MARIE)**

Schools and Dates of Involvement:

Norway House	Norway House, MB	1900-1967
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Particulars of Involvement:

The Sisters of the Holy Names of Jesus and Mary was incorporated in 1879, and provided teachers and domestic staff for the above-described school.

**75) THE SISTERS OF CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (ALSO KNOWN AS THE SISTERS OF CHARITY OF HALIFAX)**

Schools and Dates of Involvement:

Shubenacadie	Shubenacadie, NS	1930-1967
St. Eugene's (Cranbrook)	Cranbrook, BC	1936-1970







**82) THE BAPTIST CHURCH IN CANADA**

Schools and Dates of Involvement:

Baptist Mission (Ridgeview)	Whitehorse, YT	1900-1968
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Particulars of Involvement:

CHARLES BAXTER, SR. AND ELIJAH  
BAXTER

AND ATTORNEY GENERAL OF CANADA AND

THE GENERAL SYNOD OF THE  
ANGLICAN CHURCH OF CANADA E  
AL

Plaintiffs

Defendant

Third Party

*(Short title of proceeding)*

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at  
Toronto

**AMENDED THIRD PARTY CLAIM**

Department of Justice  
Ontario Regional Office  
The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
Toronto, Ontario  
M5X 1K6

Per: Paul Vickery (LSUC 17196T)  
Glynis Evans (LSUC 38204E)  
Tel: (613) 957-4801/(416) 973-2318  
Fax: (613) 952-8713/(416) 973-2319  
Our File: ORO.4-459638

Solicitors for the Defendant,  
The Attorney General of Canada

01639

Court File No. 00-CV-192059CPA

CHARLES BAXTER, SR.  
and ELIJAH BAXTER

- and - THE ATTORNEY GENERAL OF CANADA

- and -

THE GENERAL SYNOD OF THE  
ANGLICAN CHURCH OF CANADA et al.

Plaintiffs

Defendant

Third Parties

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at

**Toronto**

**ORDER**

**Department of Justice**  
Ontario Regional Office  
The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
Toronto, Ontario  
M5X 1K6

Per: Paul Vickery (LSUC 17196T)  
Glynis Evans (LSUC 38204E)  
Tel: (416) 973-2318  
Fax: (416) 973-2319  
Our File: ORO.4-459638

Solicitors for the Defendant,  
The Attorney General of Canada

01640

THIS IS EXHIBIT F  
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO  
ON JULY 27, 2006

*Josephine C. Bishop*

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Curtis,  
Barrister and Solicitor.  
Expires November 10, 2007.

**Baxter et al. v. Attorney General et al.**

Minutes of Case Conference before Winkler J.  
(prepared by Caroline Clark and Glynis Evans)

April 15, 2002 @ 9:30 a.m.  
393 University Ave., Ctrm. 1902

**ATTENDEES:**

Craig Brown, Darcy Merkur and Richard Courtis, for the Plaintiffs

Paul Vickery, Linda Dolan, Glynis Evans and Caroline Clark, for the defendant Attorney General of Canada

Russell Raikes and Kirk Baert, Counsel for the plaintiffs in the Cloud action.

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**Preliminary Matters**

- Winkler J. noted that he received correspondence from other parties, in particular Tony Merchant of Merchant Law Group in Saskatchewan, who asked to participate in the case conference by telephone. Telephone conference arrangements could not be made on such short notice.
- Counsel advised Winkler J. of other proposed class actions dealing with Indian Residential Schools which have been commenced across Canada. Mr. Brown advised that *Pauchey v. Attorney General of Canada* was commenced in January 2002 in Saskatchewan by the Merchant Law Group. Mr. Raikes advised that an action was commenced in Saskatchewan on April 11, 2002 (*Dieter v. AG of Canada*) on behalf of persons who attended Indian Residential Schools in all western provinces, and that a Mr. McKiggan had started a representative action in Nova Scotia on behalf of 600 to 800 claimants. Mr. Raikes is counsel for the plaintiffs in *Cloud v. AG of Canada*, a proposed class action in Ontario commenced on behalf of students who attended the Mohawk Institute.
- Mr. Brown advised that his firm, Thomson, Rogers, delivered a Draft Fresh as Amended Statement of Claim on April 8, 2002. Thomson, Rogers proposes to dismiss the action against the Church defendants who are named in the original Statement of Claim. Mr. Brown, Mr. Vickery and Mr. Raikes had been in touch with various Church counsel prior to the case conference, and they indicated that they would not attend the case conference in light of Thomson, Rogers' decision to seek to dismiss the claims against the Churches.
- Mr. Vickery advised that the Attorney General has instructions to third party the Churches if the plaintiffs' claims against them are dismissed.

### Issues Relating to the Draft Fresh as Amended Statement of Claim

- Mr. Brown distributed a "Plaintiff's Proposed Certification Timeline". Winkler J. suggested that before anything is scheduled, the pleadings should be in order and all of the interested parties identified and put on notice.
- Winkler J. asked about the plaintiffs' proposed amendments. Mr. Brown advised that the proposed amendments include changes to the parties and the definition of the class. The class has always included all Aboriginal Residential School survivors from then non-class action provinces. The proposed amendments would extend the definition of the class to all aboriginal persons who attended residential schools in Canada during the class period (January 1, 1920 to December 31, 1996). Mr. Vickery advised that the Attorney General will not consent to the amendments.
- Mr. Vickery provided an overview of existing IRS litigation (all numbers provided below are approximate):
  - There are currently 4,800 actions against the Attorney General across Canada, involving 9,800 plaintiffs.
  - These actions pertain to events at 138 Residential Schools, spanning 7 provinces and the 3 territories.
  - In Alberta alone, there are 1,200 actions, involving 40 schools, and 3,600 plaintiffs.
  - Saskatchewan has 2,700 actions, 3,000 plaintiffs and 31 schools
  - Ontario has a lesser degree of involvement in IRS litigation.
  - The Church organizations are sued as defendants in 2,500 actions across Canada, by 7,000 plaintiffs (these are ongoing actions).
  - 100 religious organizations are implicated in IRS litigation.
  - More than 170 law firms are acting for plaintiffs across the country.
  - These actions are being processed in each jurisdiction's Superior Courts.
  - British Columbia is the most advanced: a steady stream of cases is reaching the trial courts and appeal courts and settlements are continuously being achieved.
  - Alberta has a case management system and cases are at the examination for discovery stage.
  - Saskatchewan: the case management system is gone but the cases are at the examination for discovery and trial stages.
  - Ontario: there is an informal case management system in place under the auspices of Justices Trainor and Poupore, as per the direction of the Chief Justice.
- Mr. Vickery suggested that notice of the Baxter action and the proposed amendments be given to counsel who are currently involved in Indian Residential School litigation. He submitted that the role of the Church organizations will have to be determined at an early stage. A dismissal of the claims against the Church defendants might impact on the rights of individual plaintiffs who are proceeding against those Churches in their own individual actions.



- Mr. Vickery advised that the claim as drafted will attract an early motion to strike. The Attorney General may seek to strike pre-1953 claims (based on Crown immunity prior to 1953 under the *Crown Liability and Proceedings Act*), as well as claims relating to breaches of the United Nations Conventions on Genocide and the Rights of the Child, and any claims brought on behalf of the estates of former students (if such claims are made).
- In response to Mr. Vickery's figures concerning the number of claims and claimants, Mr. Brown advised that Thomson, Rogers' calculation based on census data is that there are at least 58,526 potential class members, the vast majority of whom are not currently represented.
- Mr. Brown suggested that a hearing be scheduled to deal with the proposed amendments to the Statement of Claim. He distributed a "Plaintiff's Litigation Plan Outline (Draft)".
- Winkler J. stated that the litigation plan is something to look at down the road. First, the Draft Fresh as Amended Statement of Claim should be sent out to all interested parties, not just the parties named in the action.
- Mr. Brown suggested that Thomson, Rogers send out a copy of the Draft Fresh as Amended Statement of Claim electronically, or post it on its website, and that the Department of Justice co-operate in this effort by providing contact information for plaintiffs' counsel across the country.

### The Cloud Action

- Mr. Raikes advised that the Cloud action was commenced in 1997. A motion for certification was argued before Haines J. last June. Certification was denied. The decision is currently under appeal to the Divisional Court, but the plaintiffs intend to move to have it traversed to the Court of Appeal, and expedited. One of the issues under appeal will be the jurisdiction of the Court to deal with pre-1953 claims.
- Mr. Raikes submitted that it makes little sense for the court to deal with these issues in the Baxter action when they will likely be dealt with by the Court of Appeal in the Cloud action this year.

### Action Plan

- Winkler J. stated that interested parties should be given notice of the Baxter proceedings so that they can decide whether to intervene. He suggested that the Attorney General prepare a very brief position paper or statement of issues to be sent to interested parties along with the Statement of Claim and Draft Fresh as Amended Statement of Claim. The position paper or statement of issues could explain, for example, that the claims against the Churches may be dismissed. It should highlight the proposed class definition and proposed common issues.

- Mr. Baert raised the issue of carriage of the class proceeding. Winkler J. agreed that carriage will emerge as a major issue. The issues to be considered in Baxter will include whether the claim should go forward cast this broadly and, if so, who should have carriage of the matter, and in which province.
- Mr. Baert suggested that Justices Trainor and Poupore be kept advised of the Baxter proceedings. Winkler J. invited the parties to keep them advised.
- The following action plan was suggested by Winkler J. and agreed upon by counsel:
  1. Thomson, Rogers will provide notice of the Baxter action to all plaintiffs' counsel in existing residential school litigation in Canada. The Department of Justice will assist by providing names and contact information for the plaintiffs' counsel of which it is aware. Mr. Raikes will assist by providing the names and contact information of the members of the national plaintiffs' counsel organization which he chairs.
  2. The notice to be sent by Thomson, Rogers should include copies of the Statement of Claim and Draft Fresh as Amended Statement of Claim, as well as a statement of issues. The statement of issues should be brief, and should highlight the proposed class and the proposed common issues. The statement of issues will be drafted by the Department of Justice with input from Thomson, Rogers and Mr. Raikes, and will be subject to approval by Winkler J.
  3. All plaintiffs' counsel in existing residential school litigation in Canada will be invited to participate in a case conference (and will be given an opportunity to seek leave to intervene if they desire). The format and scheduling of the case conference will be determined at a future case conference, once it is known how many counsel wish to attend.
  4. Once the Department of Justice, Thomson, Rogers and Mr. Raikes have conferred on the draft statement of issues, they will contact Winkler J.'s secretary to schedule a further case conference to discuss the statement and the terms of the notice to be provided by Thomson, Rogers.
- Winkler J. granted intervenor status to the plaintiffs in the Cloud action, such that Mr. Raikes and Mr. Baert will be involved in the consultation process and case conferences.

*Case conference adjourned at 11:20 a.m.*

Court File No. 00-CV-192059 CP

ONTARIO

## SUPERIOR COURT OF JUSTICE

BETWEEN:

CHARLES BAXTER, SR., ELIJAH BAXTER, WALTER BAXTER, RORY SIMON  
JOSEPH AND ROY IGNACE

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA,  
THE UNITED CHURCH OF CANADA, THE TRUSTEE BOARD  
OF THE PRESBYTERIAN CHURCH IN CANADA, THE ANGLICAN  
CHURCH OF CANADA AND THE ROMAN CATHOLIC EPISCOPAL  
CORPORATION FOR THE DIOCESE OF SAULT STE. MARIE, IN ONTARIO,  
CANADA

Defendants

*Proceeding under the Class Proceedings Act, 1992***MINUTES**

CASE CONFERENCE – OCTOBER 24, 2002 AT 9:00 A.M.  
CONFERENCE ROOM – 361 UNIVERSITY AVENUE  
JUSTICE WINKLER PRESIDING

**ATTENDEES:**

NAME	FIRM	CLIENT
Craig Brown	Thomson, Rogers	Plaintiffs
Alan Farrer	Thomson, Rogers	Plaintiffs
Darcy Merkur	Thomson, Rogers	Plaintiffs
Kirk Baert	Koskie Minsky	Intervenor (re: <i>Cloud</i> appeal)
Susan Vella & David Harvey	Goodman and Carr LLP	Various Other Plaintiffs
Paul Vickery	Attorney General of Canada	Department of Justice
Glynis Evans	Attorney General of Canada	Department of Justice
Michael Bader	Attorney General of Canada	Department of Justice
Monika Lozinska	Attorney General of Canada	Department of Justice
John Page	Cassels, Brock	Presbyterian Church and part of Anglican Church

**Plaintiff's Motion to Amend Claim**

Paul Vickery advised that the Attorney General favours holding a large case conference with all interested parties, prior to Thomson Rogers amending their statement of claim to remove the Church defendants. This is in keeping with what was decided at the April 15<sup>th</sup> case conference. Darcy Merkur explained that Thomson Rogers wants to amend their claim at this early stage, at least to indicate that the claim now includes British Columbia and Quebec.

It was agreed, and approved by Winkler J., that Thomson Rogers will amend the body of their pleading, but will not amend the style of cause – in particular, will not remove the Church organizations as defendants in the style of cause – until other interested parties have had a chance to participate in the action. Thomson Rogers will file and serve their partially amended claim.

**Settling the form of the Explanatory Notice and the Notice to residential school counsel**

Submissions were made to Justice Winkler in regard to the wording of the Notices.

Justice Winkler directed that the form of the Explanatory Notice be amended to direct lawyers wishing to participate or to have more information about the process to the website and that the Notice clearly indicate that the details pertaining to future Court attendances and scheduling matters will be available on the website only. In particular, lawyers should be advised not to contact the Court.

The Department of Justice objected to the categorization of the consortium of Plaintiffs' counsel as a "national" consortium. The word national is to be removed from the Notice in this context. The consortium is free to call itself what it wishes, otherwise.

The Attorney General can, of course, continue to deal directly with Plaintiffs' counsel in ongoing actions, including with respect to the Baxter action. It was

agreed that Thomson Rogers may use the list of plaintiffs' counsel which was provided by the Attorney General for the purpose of communicating with those counsel to determine who wishes to participate in the Baxter action. The Attorney General does not consent to Thomson Rogers using the list of plaintiffs' counsel for any other purposes.

The Department of Justice asked that paragraph numbered 3 on the second page of the Explanatory Notice reference the fact that the claim makes allegations against the Attorney General *and* the churches. After discussion relating to the Plaintiffs' motion to amend the pleading and after Justice Winkler indicated that the amended pleading could be issued so long as the style cause was not changed at present, the parties were directed to change the Notice to more plainly state that it is the position of class counsel for the Plaintiffs that the churches will be let out of the action as the Attorney General of Canada was responsible for the Residential Schools and it is the position of the Attorney General that it will third party the churches prior to the motion for certification. All parties involved in the litigation will therefore be before the Court in respect of the certification issues as required by Justice Winkler.

The Plaintiffs objected to the Government's categorization on the third page of the Notice that settlements are "being continuously achieved." The wording to be changed to indicate that "certain of the cases advanced are being settled".

The wording later in the same section should be changed to reflect that if the action is certified it could limit the ability of class members living in any province to proceed with litigation against the Churches and the Crown.

Counsel for the Plaintiffs and the Department of Justice were instructed to revise the Notices with these directions in mind.

**Timetables**

Justice Winkler directed that the lawyers to whom Notice is sent be given until February 1, 2003 to indicate their desire to participate in the process. A case conference will be convened thereafter.

In relation to the Motions proposed by the Plaintiffs, it was determined by Justice Winkler that the Motion to amend the pleading would be adjourned. The amended pleading will be served with the current style of cause. In due course, and likely coincidentally with the Attorney General's delivery of its third party claims, the Motion to delete the churches as party Defendants will be set down, if required.

The Plaintiffs have also served a Motion seeking certain injunctive relief in regard to the Government's anticipated ADR proposal. A return date for the Motion has not been set. Justice Winkler indicated to the Department of Justice that it ought, as a matter of courtesy to the Court and, in the circumstances, convene a conference with Justice Winkler and Plaintiffs' counsel in the event that a proposal impacting on the class action is initiated and before any such initiative is executed.

A Motion date, if required, can be fixed at that time. Also, Justice Winkler suggested that an expedited Motion for Certification could be considered as a result of a government announcement that addresses matters covered in the Class Action.

**Preparation of Books for the assistance of the Court**

Mr. Justice Winkler asked that counsel prepare a binder of pleadings, including the Notices of Motion and other relevant Court documents and a separate binder including Minutes of the case conferences for the Court's assistance. Thomson Rogers offered to do this, with assistance and approval of the Department of Justice.

**Action Points**

1. Thomson, Rogers to deliver Amended Statement of Claim.
2. Thomson, Rogers and Department of Justice to draft and approve a revised Notice to All Lawyers and Explanatory Notice.
3. Once approved, Notices to be circulated by Thomson, Rogers.
4. Pending Motions adjourned.
5. Case conference to be convened after February 1, 2003 unless urgent matters arise before then.
6. Thomson, Rogers to prepare binders in conjunction with the Department of Justice for the Court's assistance.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

CHARLES BAXTER, SR., ELIJAH BAXTER, WALTER BAXTER, RORY SIMON  
JOSEPH AND ROY IGNACE

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA,  
THE UNITED CHURCH OF CANADA, THE TRUSTEE BOARD  
OF THE PRESBYTERIAN CHURCH IN CANADA, THE ANGLICAN  
CHURCH OF CANADA AND THE ROMAN CATHOLIC EPISCOPAL  
CORPORATION FOR THE DIOCESE OF SAULT STE. MARIE, IN ONTARIO,  
CANADA

Defendants

*Proceeding under the Class Proceedings Act, 1992*

**MINUTES**

**CASE CONFERENCE – JANUARY 7, 2003 AT 8:30 A.M.**  
**CONFERENCE ROOM – 393 UNIVERSITY AVENUE**  
**JUSTICE WINKLER PRESIDING**

**ATTENDEES:**

<b>NAME</b>	<b>FIRM</b>	<b>CLIENT</b>
Craig Brown	Thomson, Rogers	Plaintiffs
Alan Farrer	Thomson, Rogers	Plaintiffs
Darcy Merkur	Thomson, Rogers	Plaintiffs
Paul Vickery	Attorney General of Canada	Department of Justice
Glynis Evans	Attorney General of Canada	Department of Justice
Michael Bader	Attorney General of Canada	Department of Justice
John McManus	Attorney General of Canada	Department of Justice
Ken Young	Manitoba Vice-Chief of the Assembly of First Nations, observer on his own behalf	



### Ken Young's Attendance

Paul Vickery advised that The Attorney General objected to Ken Young's attendance on behalf of the Assembly of First Nations and requested that a formal motion to intervene be required for the Assembly of First Nations. Mr. Farrer advised that the plaintiffs took no objection to Mr. Young's attendance. Ken Young advised that he was a survivor and an elected regional chief for Manitoba for the Assembly of First Nations and he has responsibility for the Residential School file at the AFN and was here simply to observe at present. Mr. Young advised that he has a personal interest in the litigation, and that he was content to simply observe the proceedings. Mr. Justice Winkler concluded that the process must be transparent and that Mr. Young could attend today on his own behalf for the purpose of a watching brief. Justice Winkler did not rule on the possible formal intervention of Mr. Young or the AFN.

### Communications by the Department of Justice with claimants and their counsel

Alan Farrer for the plaintiffs expressed concern about the government's announcement and the government's dissemination of information via the announcement and through their website, particularly in light of the plaintiffs' motion to restrain these communications that was served in advance of the last case conference (but for which no date has been set). Mr. Farrer pointed to Justice Winkler's decision in the A&P case recently released. Mr. Farrer also referred to Mr. Vickery's letter to all plaintiffs' counsel involved in Residential School litigation dated December 18, 2002. Mr. Farrer raised the following concerns with respect to Mr. Vickery's letter:

1. It proposes Ms. Evans as the only contact person, contrary to the Explanatory Notice which proposed both Ms. Evans and Mr. Merkur as contacts;
2. It discussed the Court's criteria for certification in a very restricted fashion; and,
3. It proposes an opt out deadline prior to certification.

Mr. Farrer requested that guidelines be in place for these types of communications.

Mr. Vickery expressed his belief that this communication was covered in minutes of the last case conference in that the Department of Justice expressed their intention to continue to communicate to plaintiffs' counsel as required and suggested that Thomson, Rogers can also communicate with plaintiffs' counsel about their participation in the Class Action.

Justice Winkler pointed out to Mr. Vickery that the plaintiffs were saying that the Department of Justice went too far in their communication and were providing legal advice to other plaintiffs' counsel. Justice Winkler stated that he was not prepared to give guidelines and that he would rule on conduct after the fact and not before just like in the A&P decision. Justice Winkler cautioned the parties that, at that time, the Court would look at the purpose of these types of communications. Justice Winkler explained that there is no property in the Class as of yet and until certification communications should continue to go through lawyers rather than directly to claimants, if they are represented.

### **Motion to Strike**

Mr. Vickery expressed an intention to bring a motion to strike. Justice Winkler explained that Rule 21 issues can be dealt with under section 5 of the *Class Proceedings Act* and that he will not allow procedural motions to delay the certification motion, although The Attorney General of Canada was free to file any such motion material.

### **February 24, 2003 Case Conference**

The plaintiffs requested that the scheduled February 24, 2003 case conference be used to hear the motion to delete the Churches as defendants in the Statement of Claim. Justice Winkler explained that since it was the government's intention to third party the Churches in any event that the change of the Churches from defendants to third parties should be organized on consent between the plaintiffs and the government and that a motion to make this adjustment ought not be required.

Further, Justice Winkler declined to fix an agenda for February 24<sup>th</sup> or set definitive timetables at this time, as other parties may be participating then for the first time.

## ONTARIO

## SUPERIOR COURT OF JUSTICE

BETWEEN:

CHARLES BAXTER, SR., ELIJAH BAXTER, WALTER BAXTER, RORY SIMON  
JOSEPH AND ROY IGNACE

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA,  
THE UNITED CHURCH OF CANADA, THE TRUSTEE BOARD  
OF THE PRESBYTERIAN CHURCH IN CANADA, THE ANGLICAN  
CHURCH OF CANADA AND THE ROMAN CATHOLIC EPISCOPAL  
CORPORATION FOR THE DIOCESE OF SAULT STE. MARIE, IN ONTARIO,  
CANADA

Defendants

*Proceeding under the Class Proceedings Act, 1992***MINUTES**

CASE CONFERENCE – February 24, 2003 AT 10:00 A.M.  
CONFERENCE ROOM – 361 UNIVERSITY AVENUE  
JUSTICE WINKLER PRESIDING

**ATTENDEES:**

NAME	FIRM	CLIENT
Craig Brown	Thomson, Rogers	Co-counsel of Record for the Plaintiffs
Alan Farrer	Thomson, Rogers	Co-counsel of Record for the Plaintiffs
Darcy Merkur	Thomson, Rogers	Co-counsel of Record for the Plaintiffs
Richard Courtis		Co-counsel of Record for the Plaintiffs
Paul Vickery	Department of Justice	Attorney General of Canada
Glynis Evans	Department of Justice	Attorney General of Canada
Michael Bader	Department of Justice	Attorney General of Canada

John McManus	Department of Justice	Attorney General of Canada
Don Padget	Department of Justice	Attorney General of Canada
Gregory Ellies	Lucenti, Orlando & Ellies LLP	Roman Catholic Diocese of Sault Ste. Marie
John Page	Cassels Brock & Blackwell LLP	General Synod of Anglican Church of Canada and Presbyterian Church in Canada
Alexander Pettingill	Cassels Brock & Blackwell LLP	United Church of Canada
Kirk Baert	Koskie Minsky	Counsel in the Divisional Court appeal in Cloud v. Canada, an Intervenor, and a member of the Plaintiffs Consortium
William (Bill) Percy	Thompson Dorfman Sweatman	Member of the Plaintiffs Consortium
Jon Faulds	Field Atkinson Perraton	Member of the Plaintiffs Consortium
Dan Carroll	Field Atkinson Perraton	Member of the Plaintiffs Consortium
Dale Cunningham	Field Atkinson Perraton	Member of the Plaintiffs Consortium
John McKiggan	Arnold, Pizzo, McKiggan	Member of the Plaintiffs Consortium
Daniel Simmons	White, Ottenheimer & Baker	Member of the Plaintiffs Consortium
Kimberley Gilson	Gilson Law Office	Member of the Plaintiffs Consortium
Edward Gilson	Gilson Law Office	Member of the Plaintiffs Consortium
Steven Cooper	Ahlstrom Wright Oliver & Cooper	Member of the Plaintiffs Consortium
David Paterson	Paterson Law Corporation	Member of the Plaintiffs Consortium
Clint Docken	Docken & Company	Member of the Plaintiffs Consortium
Lorena Fontaine		Consultant, Plaintiffs Consortium
Roger Hutchison	Academic Researcher	
Melvin Swan	Spiritual Leader of Spririt Wind	
Nathan McGillivray	Survivor	
Etienne Esquega	Osgoode Hall Law School Student	

**Response to Notice and letter from Mr. Vickery**

Paul Vickery for the Defendant, the Attorney General of Canada, distributed and provided the court with a Brief of Responses to the Notice and to his letter dated December 18, 2002 sent to the 146 law firms across the country involved in plaintiffs residential school claims. Mr. Vickery noted that there were 38 responses, 7 of which were from the Plaintiffs Consortium. Mr. Vickery stated that 16 of the responses suggested a present intention to proceed with individual actions. Mr. Vickery drew the Court's attention to 3 letters: one from Tony Merchant, one from Laura Cabbott and one from Leonard Marchand.

Mr. Brown, counsel for the plaintiffs, objected to the summary list of responses prepared by the Attorney General of Canada and, in particular, with the column entitled "comments". Mr. Brown pointed out that the objective of the Notice was to inform Plaintiffs counsel about the existence of the Baxter Action and to ask them whether they wished to participate. Mr. Brown pointed out that only 2 responses indicated an interest in participating, namely the response by Tony Merchant and the response by Andrew Kelly. Mr. Brown argued that the comments about present intentions are not relevant at this stage and that the only issue is participation. Mr. Brown asked the Court for directions on how to allow Mr. Kelly and Mr. Merchant to participate.

Justice Winkler agreed that the purpose of the Notice was to determine and to provide an opportunity to those wishing to participate to do so. Justice Winkler also stated that the Notice was meant to put plaintiffs counsel with existing claims on notice of the Baxter Class Action so that they would not later complain they were unaware of it. Justice Winkler stated that Mr. Merchant and Mr. Kelly should be given notice of further proceedings and can decide whether to attend or not. If they do attend, the issue of standing can be dealt with at that time.

#### **The Attorney General of Canada's Rule 21 Motion**

Mr. Vickery advised the Court that the Attorney General of Canada served and filed a Rule 21 motion on Friday, February 21, 2003. Mr. Vickery advised that many of the issues in the motion are issues currently before the Court in the Bonaparte case, under reserve by the Court of Appeal, and in the Cloud case, under reserve by the Divisional Court. Mr. Vickery requested that their Rule 21 motion be heard 5 or 6 weeks from now to allow time for these decisions to be released, as he understood from information given publicly by Justice Poupore that these decisions were expected in 4 or 5 weeks. Mr. Vickery described the Rule 21 motion as one that could significantly impact the class size and one that

raises threshold issues. Mr. Vickery further advised the Court that the Rule 21 motion could help reduce the number of third parties.

Mr. Baert, responding for the plaintiffs, argued that the Rule 21 motion was not a threshold motion as it would not completely eliminate the claim even if the motion was successful and that a certification motion would still be required. Mr. Baert stated that section 5(1) of the *Class Proceedings Act* appropriately addresses the issues raised in the Rule 21 motion and that the Court ought not fracture the proceedings but should rather deal with the Rule 21 motion at the time of certification. Mr. Baert also pointed out that the Rule 21 motion was dealt with at the certification motion by Justice Haines in the Cloud decision. Finally, the plaintiffs pointed out that this issue was dealt with at the last case conference and that the minutes showed that the Court had already indicated a preference that all motions be dealt with at certification.

Justice Winkler stated that there is uncertainty as to when the Divisional Court and the Court of Appeal would release their decisions in Cloud and Bonaparte. He stated that parties would benefit from those reasons, as it would help them re-evaluate their strategies and he indicated that there is always an issue with respect to the finality of those reasons. Justice Winkler pointed out that Rule 21 motions can result in and can be used as a form of delay in Class Actions and can result in unfairness to the plaintiffs if, for example, an ADR proposal proceeds while a proposed class action is delayed by Rule 21 motions and appeals arising therefrom, although Justice Winkler stated that he was not accusing the Attorney General of delay in this instance. Justice Winkler noted that the Rule 21 motion would not eliminate the need for a certification motion. Justice Winkler ordered that the Rule 21 motion issues be dealt with under section 5(1) of the *Class Proceedings Act* and at the motion for certification, as the test is the same and the Court should not fracture the claim and allow the opportunity for delay.

Closing the Pleadings

Mr. Brown for the plaintiffs advised the Court that the plaintiffs were requesting a timetable for delivery of pleadings. Mr. Brown specifically requested that a statement of defence be delivered and that the third party claims be ordered delivered within the timelines set out in the Rules.

Mr. Vickery for the Attorney General of Canada advised the Court that the government had prepared a preliminary draft list of residential schools across Canada. Mr. Vickery advised that the Attorney General has currently identified 145 schools potentially caught within the claim and that only 84 of those schools were currently involved in litigation (Mr. Vickery also provided a list of these schools and the associated religious organizations). He stated that there were currently 67 religious organizations represented by counsel in residential school litigation but that there are more than 67 religious organizations implicated by the claim that were not currently represented by counsel. Mr. Vickery stated that the government would potentially be third partying in excess of 100 religious organizations. Mr. Vickery requested 90 days to deliver their third party claim.

Justice Winkler indicated that he presumed that the third party claims would be relatively generic. After discussing some compromise between all the parties, Justice Winkler ordered that the Attorney General of Canada's statement of defence be delivered within 2 weeks and that third party claims be issued and served within 60 days. Justice Winkler pointed out that Mr. Vickery was free to apply for an extension of these timelines, if necessary, and Justice Winkler noted that he appreciates there may be some difficulty in serving some of the proposed third parties.

**The Plaintiffs Motion regarding the Government's ADR Announcement**

Mr. Brown for the plaintiffs reminded the Court of the plaintiffs' outstanding motion regarding communications by the Attorney General of Canada and, in particular, the plaintiffs' concern about an imminent ADR announcement. Mr. Brown advised the Court that they had information suggesting that applications for the government's ADR proposal will be released as early as April, 2003. Mr. Brown requested that the Court provide some directions on how to deal with the plaintiffs' motion in a way where the plaintiffs would not be forced to try to secure a date with the Court for an expedited motion after the applications for the ADR process are circulated.

Mr. Vickery advised the Court that he believed the April date was optimistic. Mr. Vickery advised the Court that the ADR process would be voluntary on an individual basis and that it would co-exist with the ongoing litigation.

Justice Winkler responded that the Court looks at three issues with respect to ADR proposals in Class Actions:

1. The timeframe of the ADR program;
2. The depth and scope of benefits available through an ADR program as compared to the relief claimed in the lawsuit; and,
3. Fairness and neutrality which can or cannot be found in the ADR program.

Justice Winkler also indicated that the Court looks at the timing of ADR proposals in comparing class proceedings. Justice Winkler stated that often the party developing the ADR proposal delays the Class Action so that there is no viable choice available, although he stated that he was not accusing the Attorney



General of such delay. Justice Winkler stated that to have choice there must be an alternative and that you can't have a choice with only one option. Furthermore, Justice Winkler stated that the Court looks at whether the ADR benefits include everything claimed in the lawsuit and, if that one isn't totally included in the other, then they are not mutually exclusive, in fact they are the opposite of that.

Mr. Vickery stated that there is more than one option, and some claimants and their counsel obviously think that individual actions are a preferable option. He stated that the ADR process was not cobbled together to respond to the Baxter claim, but rather that it was the result of ongoing consultations between the government and the complainant community.

Justice Winkler concluded by stating that as a courtesy, the plaintiffs and the Court ought to be given notice on a timely basis of the timing of the ADR process. Justice Winkler stated that a motion on short notice is an option if timely notice is not provided.

#### **Notice of Constitutional Question**

Mr. Vickery for the Attorney General of Canada indicated that the Attorney General of Canada believed that the plaintiffs ought to serve a Notice of Constitutional Question on the Attorney General of Ontario and on the various other Provincial and territorial Attorney Generals of Canada in accordance with the *Courts of Justice Act*. Mr. Vickery indicated that since their Rule 21 motion which included addressing the Notice of Constitutional Questions issue was being dealt with during the certification motion, this matter needed to be dealt with at this time.

Mr. Brown for the plaintiffs responded that the plaintiffs would review the matter.

Justice Winkler requested that the parties discuss and resolve this issue and, if necessary, incorporate any resolution with respect to this issue into the draft Order.

### Spirit Wind

Mr. Melvin Swan provided the Court with two resolutions passed by Spirit Wind, a grassroots organization of residential school survivors originating in Manitoba. The first of these resolutions was a document explaining the purpose of the Spirit Wind organization and the second of these resolutions was a resolution in support of the Baxter National Class Action.

### ACTION POINTS

- The plaintiffs are to prepare the minutes of this case conference and circulate them for approval and then file them with the Court.
- The plaintiffs are to prepare a draft order, circulate it for approval and have it issued and entered with the Court and then served.
- A further case conference is to be conducted after the timetable for the pleadings has passed.
- As a courtesy, the Attorney General of Canada is to provide the plaintiffs and the Court with timely notice of the timing of its ADR proposal.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHARLES BAXTER, SR. AND ELIJAH BAXTER

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

and

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA et al.

Third Parties

**MINUTES**

**CASE CONFERENCES WITH MR. JUSTICE WINKLER**  
**MAY 22, 2003 AT 2:00 PM (in person) & JUNE 17, 2003 AT 9:15 AM (by telephone)**

**Case Conference of May 22, 2003 at 2:00 P.M (in person)**

For the Plaintiffs: Craig Brown, Darcy Merkur and Kirk Baert  
For the Defendant: Paul Vickery, Dale Yurka and Glynis Evans

This case conference had been scheduled to discuss with Mr. Justice Winkler the proposed package of materials to be circulated by the Crown concerning its dispute resolution framework. Mr. Vickery advised that the dispute resolution framework is still under consideration and is subject to change, and the Crown is therefore not in a position to discuss it with Mr. Justice Winkler at this time. Instead, the parties agreed to discuss scheduling issues.

Mr. Vickery advised that 81 third parties have been named. Counsel representing 72 of those organizations have been provided with copies of the pleadings and have been asked to accept service on behalf of their clients. Most are still seeking instructions. Six other organizations have been served directly. Three organizations have not yet been contacted.

Of the counsel for the third parties who have responded, a few have advised that their clients intend to raise jurisdictional issues or bring motions to strike.

Mr. Vickery asked for 10 days to confirm which of the third party counsel can accept service on behalf of their clients, and a further three weeks to directly serve those organizations for which third party counsel cannot accept service. Mr. Vickery requested that a further case conference be held, at which all third party counsel would be invited, before the end of June.

Mr. Justice Winkler suggested that rather than having a case conference in June, the Attorney General first identify which counsel are acting for which third parties, and let the third parties identify what positions they intend to take or what motions they intend to bring. Before the third parties should be required to do so, they will need to have a copy of the plaintiffs' motion record for the motion for certification.

Mr. Brown on behalf of the plaintiffs suggested that any third party motions should not be heard before the motion for certification. Mr. Justice Winkler held that we need to know which parties intend to bring which motions before decisions can be made concerning scheduling.

Mr. Justice Winkler held that the plaintiffs should deliver complete and sworn motion materials for their motion for certification, as well as a draft timetable for further proceedings.

After discussion among the parties, the following steps and timetable were agreed to:

1. The Attorney General will ask third party counsel to confirm within 10 days whether they can accept service of the claim on behalf of their clients. If the Attorney General does not get confirmation of acceptance of service by then, it will arrange personal service directly on the remaining third parties, to be completed by June 23.
2. The third parties will have 40 days from June 23 to enter notices of intent to defend, or to otherwise confirm that they have counsel on the record.
3. Thomson, Rogers will serve their complete motion record for certification by August 1, including sworn affidavit(s). They will also deliver a proposed timetable for further steps. Thomson, Rogers will serve all of the third party counsel with the complete motion record and the proposed timetable based on a list of third party counsel to be provided by the Attorney General in advance of August 1<sup>st</sup>.
4. After third party counsel have been served with the plaintiffs' certification record, the Attorney General will canvass them to determine what their clients intend to do (for example, whether they intend to bring any preliminary motions such as motions to strike or motions concerning jurisdiction). Depending on the third party responses, the parties will work out an acceptable timetable for the delivery of materials for preliminary motions and for the certification motion.
5. A case conferences of all parties, if required, will be arranged by Thomson, Rogers, and will be held in September.

Mr. Brown raised the issue of the notice of constitutional question. The Attorney General requested that the plaintiffs serve notices of constitutional question on all of the provincial and territorial Attorneys General. Thomson, Rogers has served the Attorney

General of Ontario and the Attorney General of Canada, but declined to serve the other provincial and territorial Attorneys General on the ground that the Rules do not require them to do so. Mr. Justice Winkler suggested that it may be prudent under the circumstances for the plaintiffs to accede to the Attorney General's request and serve the notice of constitutional question on all provincial and territorial Attorneys General.

**Case Conference of June 17, 2003 at 9:15 A.M (by telephone)**

For the Plaintiffs: Craig Brown and Alan Farrer

For the Defendant: Paul Vickery, Dale Yurka and Bill Knights

A further telephone case conference was held at the request of the parties to address and clarify certain matters arising at and subsequent to the May 22<sup>nd</sup> case conference.

The following matters were discussed with the following results:

- 1) A case conference of all parties will be held on September 9, 2003 at 10:00 AM at either 361 or 393 University Avenue in Toronto, to discuss timetabling of all matters relating to the class action. Particulars of the time and date will be posted on the TR web site and included in the letter described below.
- 2) The plaintiffs' Motion for Certification materials, once available, will be served on the defendant, filed with the Court and posted on the Thomson, Rogers website. The Third Parties may be served by accessing the Motion materials from the Thomson, Rogers website ([www.thomsonrogers.com](http://www.thomsonrogers.com)) and by being advised by letter how they may obtain hard copies or CD format versions of the materials (the hard copies will generally be made available to the Third Parties at their expense or on terms to be discussed with individual third parties lacking the capability to access the materials electronically). The plaintiffs' materials will include a proposed timetable for the certification process.
- 3) After receiving the Motion for Certification materials and before September 9<sup>th</sup>, 2003, the Third Parties are requested to outline in writing their

position on any timetabling or threshold issues. It is not anticipated that the third parties need actually attend the September 9<sup>th</sup> case conference as their written response should adequately set out their position in regard to timetabling issues.

- 4) The Third Parties need not deliver Statements of Defence before the case conference on September 9, 2003.
- 5) The plaintiffs will respond, in consultation with the Department of Justice, to the letter of Rod Dunlevy dated June 6, 2003, copying Justice Winkler and the Department of Justice.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHARLES BAXTER, SR. AND ELIJAH BAXTER

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

and

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA et al.

Third Parties

**MINUTES**

**CASE CONFERENCE WITH MR. JUSTICE WINKLER**  
**SEPTEMBER 9, 2003 at 10:00 A..M.**

For the Plaintiffs: Craig Brown, Alan Farrer, Darcy Merkur and Kirk Baert

For the Defendant: Paul Vickery, William Knights, Dale Yurka, John McManus, Michael Bader

For the Third Parties: see Schedule A

Paul Vickery outlined the positions being advanced by the various third parties and advised that 15 had served motion records with 13 more expected. Generally, the out-of-province third parties are raising issues pertaining to jurisdiction of the Ontario courts over third parties and events that took place in other provinces and as to the constitutionality of the *Class Proceedings Act*. Paul Vickery suggested that these preliminary issues had to be determined before the matter could move along. He also advised Justice Winkler about the requests for bilingual hearings

Craig Brown suggested that the preliminary matters did not need to be determined before the certification hearing and stated that it would be appropriate for the



certification to proceed as quickly as possible. He argued that the third party issues were not related to the common issues and could be dealt with separately. He maintained that the common issues were drafted to exclude third party issues, and that the certification could proceed without the participation of the third parties. He advised the Judge that the third parties and defendant were not in an adversarial relationship because of the agreements reached with the Federal Government and some of the religious entities and requested particulars of any such agreement between the defendant and third parties<sup>1</sup>.

Justice Winkler suggested that the threshold issue was whether the third party claims related to the common issues. If they did not, the third parties had no standing in the certification and the third party issues could be left to a later time. He suggested that an analysis of the issues raised by the third parties by a committee in a chart would assist in determining the timing of the third party issues and whether the issues relate to the proposed common issues. Many of the issues raised by the third parties could become moot after certification or could be dealt with at the certification where class definition and common issues would be determined.

After further discussion about the order in which things should proceed (certification and preliminary motions) the third parties made submissions.

In summary, the third parties submitted:

1. The third party issues are connected to the common issues and the third parties have to be there to defend the allegations made against them;
2. Jurisdiction, constitutionality and *forum conveniens* issues have to be decided before certification;
3. If court has jurisdiction over the out-of-province third parties, then some of the third parties want to participate in the certification hearing;
4. Other provinces have been dealing with same types of claims by way of test cases or representative actions and some are close to trial, while others have been tried and have gone to appeal; and,
5. Some third parties stated that they would bring motions to strike out the third party claim against them as an abuse of process if they lose the jurisdictional dispute.

After all the third parties who wished to make submissions had done so, Justice Winkler suggested that the third party preliminary issues could be eliminated by re-pitching the claim in a narrower form. He suggested, for example, that it could be narrowed by limiting the claim to several liability against the AGC for its actions and not those of others (thereby eliminating the need for the third party claims against the religious entities) and/or by defining the class to exclude those that are already in litigation.

Justice Winkler further suggested that if the claim was left in its current form, and motions were to be heard then jurisdictional motions will be heard first, then motions to

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<sup>1</sup> In response, counsel for one of the third parties (Mr. Page) advised Justice Winkler that a copy of the agreement was available on the internet.

strike and then finally, motions to determine which parties would be entitled to participate in the certification motion and in what capacity.

After further discussion, the following steps and timetable were agreed to:

1. The plaintiffs have 30 days to determine whether they will amend their claim and will communicate their decision to the defendant only.
2. The defendant will then have 30 days to decide on its position and advise the plaintiffs. Immediately thereafter, the third parties will be advised as to whether amendments to the claim will be made or not.
3. The third parties shall have 30 days thereafter to serve and file their motion records on matters relating to jurisdiction and constitutionality.

## SCHEDULE A

Firm	Lawyer	Client	Attendance
Thomson, Rogers	Craig Brown	Plaintiffs	Present
Thomson, Rogers	Alan Farrer	Plaintiffs	Present
Thomson, Rogers	Darcy Merkur	Plaintiffs	Present
Koskie Minsky	Kirk Baert	Plaintiffs	Present
Department of Justice	Paul Vickery	Defendant	Present
Department of Justice	Dale Yurka	Defendant	Present
Department of Justice	William Knights	Defendant	Present
Department of Justice	Michael Bader	Defendant	Present
Department of Justice	John McManus	Defendant	Present
Department of Justice	Donald Padget	Defendant	Present
Aikins, Macaulay & Thorvaldson	William Emslie	Third Party	Via Telephone
Barnes, Sammon	William Sammon	Third Party	Present
Bennett Jones	George Vlavianos	Third Party	Via Telephone
Blois, Nickerson & Bryson	Thomas MacDonald	Third Party	Present
Cassels, Brock & Blackwell	John Page	Third Party	Present
Cassels, Brock & Blackwell	Alex Pettingill	Third Party	Present
Chomicki Baril	Ray Baril	Third Party	Via Telephone
Dohm, Jaffer & Jeraj	Azool Jaffer	Third Party	Present
Donlevy & Company	Roderick Donlevy	Third Party	Via Telephone
Harradence Logue Holash	Mitchell Holash	Third Party	Present
Jawl & Bundon	Frank Corbett	Third Party	Via Telephone
Kanuka Thuringer	James Ehmann	Third Party	Present
Lavery, DeBilly	Pierre Baribeau	Third Party	Present
Lucenti Orlando & Ellies	Gregory Ellies	Third Party	Present
McCarthy Tetrault LLP	Brian Daly	Third Party	Present
McCuaig Desrochers	Jean-Paul Sharpe	Third Party	Via Telephone
McCuaig Desrochers	Karen Trace	Third Party	Via Telephone
McKercher McKercher & Whitmore	Richard Elson	Third Party	Via Telephone
McInnes, Cooper	Hugh Wright	Third Party	Via Telephone
Nelligan, O'Brien & Payne	Ron Caza	Third Party	Present
Sugden McFee & Roos	Terrence O'Sullivan	Third Party	Present
Vincent Dagenais Gibson	Charles Gibson	Third Party	Present
Zimmerman & Associates	Donald McLean	Third Party	Present

THIS IS EXHIBIT 6  
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO  
ON JULY 27, 2006



Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Curtis,  
Barrister and Solicitor.  
Expires November 10, 2007.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHARLES BAXTER, SR. AND ELIJAH BAXTER

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

and

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA et al.

Third Parties

**MINUTES**

**CASE CONFERENCE WITH MR. JUSTICE WINKLER**  
**DECEMBER 14, 2004 at 11:30 a.m.**

For the Plaintiffs: Alan Farrer, Darcy Merkur and Kirk Baert

For the Defendant: Paul Vickery, Glynis Evans, John McManus, Don Padget

For the Third Parties: see Schedule A

1. Mr. Farrer advised that given that the *Cloud* decision was released by the Court of Appeal on December 3, 2004, the plaintiffs wish to move this matter forward. The plaintiffs wish to schedule their motion for certification. It is the plaintiffs' position that the third party claims should not affect the scheduling of the motion for certification. The plaintiffs believe that their amended statement of claim restricts the claim to the Crown only. They propose that if the Crown and the third parties cannot resolve the issues between them, then those issues should be dealt with after the certification motion.
2. Mr. Vickery stated that Justice Winkler had considered the involvement of the third parties at the case conferences of September 9, 2003 and November 27, 2003, and had determined then that the third party motions with respect to

jurisdiction, *forum conveniens*, motions to strike and to determine which parties should participate in the certification motion, should be heard prior to the certification motion.

3. Justice Winkler reminded the parties that his previous decision with respect to the order of hearing of the motions was made prior to the plaintiffs' efforts to amend their claim to restrict it to the several liability of the Crown. Mr. Vickery advised that he wished to have the opportunity to plead to the amended claim, and to make submissions as to whether the new claim effectively eliminates the third parties.
4. Mr. Farrer provided Justice Winkler with a draft order to permit the amending of the plaintiffs' statement of claim. The plaintiffs will have the order issued and entered.
5. The Crown will have until January 15, 2005 to deliver an amended defence. At the same time, the Crown will deliver a letter to the plaintiffs outlining its position with respect to the continued involvement of the third parties.
6. The next case conference will be scheduled for sometime after February 3, 2005 (by which time the parties will know whether the Crown will seek leave to appeal the Court of Appeal's decision in *Cloud*).
7. Justice Winkler advised that he thought it would be sensible to appoint an "expert" pursuant to Rule 52.03 and s. 12 of the *Class Proceedings Act*. The expert will be a lawyer well experienced in class actions who can assist Justice Winkler in his administration of the case. In particular, Justice Winkler needs assistance in arranging case conferences and keeping track of the counsel and parties in attendance. He does not have adequate resources at the court to assist him, and he is dissatisfied with the idea of relying on counsel for the parties to take care of administrative matters, since it can create the wrong impression for the parties. Justice Winkler proposed Randy Bennett as the expert.
8. Justice Winkler requested that the parties bring a motion for the appointment of the expert to assist with case administration. The plaintiffs agreed to prepare the necessary notice of motion and draft order. Mr. Vickery indicated that he did not have instructions to consent, but that he expected that the Crown would not oppose the motion.
9. The remuneration of the expert is to be fixed by Justice Winkler pursuant to Rule 52.03(4). Justice Winkler suggested that the Crown be responsible for the remuneration of the expert, but that such costs could be the subject of a costs claim in the ultimate result of the litigation. Mr. Vickery advised that he could not consent to any such order without instructions.

10. Mr. Farrer will deliver a notice of motion and draft order to Mr. Vickery for the appointment of the expert. Mr. Vickery will seek instructions and advise as to the Crown's position within 14 days.
11. Mr. Bell for The New England Company made submissions that his client should not be kept in both the Cloud and Baxter class actions, on the grounds that the Mohawk Institute was the only school his client was involved in, and the Cloud claim deals with that school. He requested that the plaintiffs and Crown consider his position and advise prior to the end of the year whether they intend to keep The New England Company in the Baxter action as well as in Cloud. Similar arguments would apply to Mr. Daly's client, The Incorporated Synod of the Diocese of Huron.
12. Mr. Baert advised that counsel for the plaintiffs in Cloud and Baxter agree that class members in Cloud cannot be class members in Baxter. Mr. Vickery asked that the plaintiffs amend the class definition in their statement of claim to reflect this position. Mr. Daly and Mr. Vickery raised concerns that the claims in Cloud and Baxter are not identical, such that it is not clear whether class members in Cloud might not also have claims in Baxter. Furthermore, it is possible that some plaintiffs will opt out of Cloud and it is not clear whether they would be included in Baxter. Kirk Baert for the plaintiffs will deliver a letter to Mr. Vickery outlining the plaintiffs' position with respect to the inclusion of Mohawk Institute claims within Baxter.
13. Mr. Farrer circulated a draft timetable for the certification motion. Mr. Vickery agreed to look at it, but advised that the Crown would oppose it.

#### **SUMMARY OF NEXT STEPS**

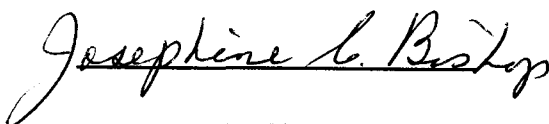
1. The plaintiffs will have their amended claim formally issued and entered.
2. The Crown will deliver an amended defence by January 15, 2005.
3. The Crown will deliver a letter outlining its position with respect to the continued involvement of the third parties by January 15, 2005.
4. The plaintiffs will prepare and serve a Notice of Motion for a motion to appoint an expert to assist Justice Winkler with case administration.
5. The plaintiffs will deliver a letter advising of their position with respect to the inclusion of claims arising out of Mohawk Institute in the Baxter action.
6. The next case conference will be held sometime after February 3, 2005.

## SCHEDULE A

<b>Firm</b>	<b>Lawyer</b>	<b>Client</b>	<b>Attendance</b>
Aikins, MacAulay & Thorvaldson	William Emslie	RCAC Winnipeg	Phone
Barnes, Sammon	William Sammon	Oblates St. Peter's, et al.	Phone
Bennett Jones	George Vlavianos	Diocese of Calgary	Phone
Blois, Nickerson & Bryson	Thomas MacDonald	Sisters of Charity Halifax	In Person
Borden Ladner Gervais	Robert Bell	New England Co.	In Person
Cassels, Brock & Blackwell LLP	John Page	Anglicans Presbyterians	In Person
McCarthy Tetrault LLP	Brian Daly	Anglicans	In Person
Cassels, Brock & Blackwell LLP	Alex Pettingill	United Church	In Person
Chomicki Baril Mah LLP	Ray Baril	Sisters of Providence	Phone
Dohm, Jaffer & Jeraj	Azool Jaffer-Jeraj	RCEC Whitehorse, et al.	Phone
Donlevy & Company	Rod Donlevy	Grey Nuns	In Person
Guild, Yule & Company	Michelle Tribe	Archbishop of Vancouver	Phone
Harradence Logue Holash	Mitch Holash	RCEC Prince Albert, et al.	Phone
Jawl & Bundon	Frank Corbett	Bishop of Victoria	Phone
Kanuka Thuringer	Keith Kilback	RCAC Regina, et al.	Phone
Lavery DeBilly	Pierre Baribeau	Les Soeurs, et al.	In Person
Lucenti Orlando & Ellies LLP	Greg Ellies	Diocese of Sault Ste. Marie	In Person
McCuaig Desrochers	Karen Trace	RCEC Grouard - McLennan, et al.	Phone
McKercher McKercher & Whitmore	Richard Elson and Dan Konkin	Oblates Grandin	In Person
McInnes, Cooper	Hugh Wright	RCEC Halifax	Phone
Heenan Blaikie	Pierre Champagne	Oblates Quebec, et al.	In Person
Patrick J. Delsey Law Corporation	Patrick J. Delsey	Sisters of Saint Anne	Phone
Rheal Teffaine	Rheal Teffaine	RCAC St. Boniface, et al.	Phone
Vincent Dagenais Gibson LLP/S.R.L.	Charles Gibson	Sisters of Sault St. Marie	In Person
Zimmerman & Associates	Wally Zimmerman	Jesuits	In Person
Lax O'Sullivan Scott LLP	Terrence O'Sullivan	Sisters of Instruction of the Child Jesus	In Person



THIS IS EXHIBIT H  
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO  
ON JULY 27, 2006

A handwritten signature in cursive script that reads "Josephine C. Bishop". The signature is written in black ink and is positioned above the printed name and title.

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Courtis,  
Barrister and Solicitor.  
Expires November 10, 2007.



Page: 2

### **Introduction**

[1] This is a motion in writing regarding the order of procedure in an intended class proceeding brought against the Attorney General of Canada on behalf of a class of aboriginal persons who attended residential schools in Canada from January 1, 1920 to December 31, 1996. The plaintiffs, defendant and third parties were directed to file written submissions regarding their respective positions on the sequencing of motions, including the certification motion.

### **Background**

[2] The issue regarding sequencing of the motions arises because the Attorney General has issued and served Third Party Claims against certain of the religious organizations that had allegedly controlled and operated the residential schools that are the subject of the proceeding. The Third Party Claims were issued on April 24, 2003 and have since been amended. There are currently over 80 religious organizations named as third parties, many of which are outside of Ontario. It is asserted by the Attorney General that the third parties are obligated to indemnify the Government of Canada for liability that may have been incurred in relation to their acts and omissions.

[3] The Third Party Claims are advanced despite the fact that the plaintiffs have since amended their claim to seek only recovery for the several liability of the Attorney General. In the result, the Third Parties have indicated that there are several motions that should be heard in advance of the certification motion. The defendant supports this position. The plaintiffs contend that all such motions should be heard after the certification motion has been heard and determined.

[4] At this juncture, in addition to the certification motion, there are two broad categories of motions that have either been brought or are contemplated by the third parties:

- a) motions to challenge the jurisdiction of this court brought or contemplated by third parties who are situate outside of Ontario (the "Jurisdictional Motions");
- b) motions to dismiss the action under the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, brought or contemplated by third parties who are located partially or entirely in Ontario (the "Rule 21 Motions").

Further, it should be noted that if the court determines that it has jurisdiction over some or all of the non-Ontario third parties, it has been indicated that each such party may then choose to bring its own motion to dismiss under the *Rules of Civil Procedure*.

Page: 3

### Submissions of the Parties

[5] The plaintiffs contend that, apart from the general proposition that a certification motion should be the first order of business in a proposed class proceeding, the circumstances of the proposed class members in this proceeding are such as to dictate that the motion be heard in priority to any other. The plaintiffs submit that many of the proposed class members are elderly and dying by the thousands annually, thus creating an urgency to the determination of the certification motion. They rely on section 2 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "CPA"), which requires a plaintiff in an intended class proceeding to bring a certification motion in a timely way. In particular, the plaintiffs point to s. 2(3) as supporting their contention that the certification motion should be heard first. It states, in part, that:

2(3) a [certification motion] shall be made:

(a) within ninety days after the later of,

- (i) the date on which the last statement of defence, notice of intent to defend or notice of appearance is delivered, and
- (ii) the date on which the time prescribed by the rules of court for delivery of the last statement of defence, notice of intent to defend or a notice of appearance expires without its being delivered; or

(b) subsequently, with leave of the court.

In addition, the plaintiffs submit that there are a number of cases which, either explicitly or by implication, hold that the determination of the certification motion ought normally to be the first order of business in a class proceeding. (See: *Moyes v. Fortune Financial Corp.* (2001), 13 C.P.C. (5th) 147 (S.C.) at paras. 9 and 12; *McNaughton Automotive Ltd. v. Co-operators General Insurance Co.* (2001), 10 C.P.C. (5th) 1 (C.A.) at para 36 and *Ward-Price v. Mariners Haven Inc.*, [2002] O.J. No. 4260 (S.C.)).

[6] The defendant, on the other hand, argues that the third party motions should be heard prior to the certification motion. The defendant contends that there is no express provision in the CPA directing that certification must be the first step in a proceeding nor should the possibility of delay in a proceeding dictate that the certification motion must be heard in advance of other motions. In support of this position, the defendant further argued that if the court were to certify the action without the participation of the third parties, only to later decide that the third parties were proper parties to the action, the common issues would likely have to be reformulated. Conversely, according to the defendant, if the court were to postpone hearing the Jurisdictional Motions until after the

Page: 4

decision to certify, only to then determine that it does not have jurisdiction to hear a national class action, the action would have to be decertified.

[7] Instead of making individual submissions, many of the third parties adopted the submissions of the Roman Catholic Episcopal Corporation of James Bay, Les Soeurs de la Charite d'Ottawa, and the Missionary Oblates of Marie Immaculate – Province of St. Joseph (now known as Les Oeuvres Oblates de l'Ontario). Most of the third parties seek to have the Rule 21 Motions and the Jurisdiction Motions heard prior to the certification motion. A small number of third parties either did not take a position or only took a position with respect to one or the other of the potential third party motions. None of the third parties argued that the certification motion should be heard first.

[8] The third parties who took positions on the issue of sequencing made arguments on several fronts. A number of them contended that motions to dismiss could be heard expediently and without interfering with the plaintiffs' proposed timetable. Others claimed that the determination of both the jurisdictional motions and the motions to dismiss could simplify the certification motion. Still others noted that third parties who are challenging jurisdiction risk being found to have attorned to the jurisdiction of the court if they first participate in the certification motion without a jurisdictional determination, thus rendering moot their potential jurisdiction motion.

#### Analysis

[9] Although the CPA does not expressly require the certification motion to be the first order of business, the 90 day time-frame imposed by section 2(3) provides a clear indication that the certification motion should be heard promptly and normally be given priority over other motions. In another case involving the scheduling of motions in a class proceeding, *Attis v. Canada (Minister of Health)*, [2005] O.J. No. 1337 (S.C.), this court held at para. 7 that "as a matter of principle, the certification motion ought to be the first procedural matter to be heard and determined."

[10] Similarly, in *Moyes*, Nordheimer J. stated at para. 8:

The time limits set out in section 2(3) would strongly suggest that the certification motion is intended to be the first procedural matter that is to be heard and determined. While I recognize that these time limits are rarely, if ever, achieved in actual practice, I do not consider that that reality detracts from the intent to be drawn from the section.

Nordheimer J. ultimately determined that the defendant's motion for summary judgment could not be heard until after the determination of the certification motion. (See also: *Ward-Price v. Mariners Haven Inc.*, [2002] O.J. No. 4260 (S.C.), *supra*, at para 36).

Page: 5

[11] Prior to certification, an action commenced under the CPA is nothing more than an intended class proceeding: *Logan v. Canada (Minister of Health)* (2003), 36 C.P.C. (5<sup>th</sup>) 176 (S.C.) at para. 23, aff'd 71 O.R. (3d) 451 (C.A.) (See also: *Boulanger v. Johnson & Johnson Corp.* (2003), 64 O.R. (3d) 208 (Div. Ct); *Attis, supra* at para 14.) In the pre-certification period it is not clear whether a proceeding will ultimately be certified. Further there is an element of fluidity in respect of the class definitions and the common issues. Accordingly, motions brought prior to certification may turn out to have been unnecessary, over-complicated or incomplete.

[12] Moreover, courts will not always have sufficient information to adequately determine motions at the pre-certification stage. This is particularly apparent with respect to the Jurisdictional Motions. In several recent cases it has been held that the certified common issues in a class action can serve as a basis for the proper assumption of jurisdiction by the court over extra-provincial parties. (See: *Harrington v. Dow Corning Corp.* (2000), 193 D.L.R. (4<sup>th</sup>) 67 (B.C. C.A.); *Wilson v. Servier* (2000), 50 O.R. (3d) 219 (S.C.), (2000), 52 O.R. (3d) 20 (Div. Ct.), leave to appeal denied S.C.C. Bulletin, 2001, p. 1539.) The thrust of *Harrington* and *Wilson*, in relation to the jurisdiction determination, is that where a class action involving intra-provincial plaintiffs could be certified, and the common issues forming the basis for the certification are shared by both the resident class and extra-provincial non-residents against the defendant, the existence of such common issues provides a "real and substantial connection" of the non-residents to the forum in relation to the action. Thus, the underpinnings of a successful certification motion could have a direct bearing on the jurisdictional analysis. On the other hand, if the certification motion fails, the jurisdictional motion will in all likelihood be rendered moot. Therefore, it would be pointless to hear the jurisdiction motion in advance of the certification motion in that, at least to this extent, all of the necessary information relevant to jurisdiction is not presently available.

[13] Given its nature, there are other factors present in this proceeding which augur in favour of hearing the certification motion in priority to other motions. The class period spans a period of over 75 years. At this point, a reasonable inference can be drawn that there are elderly potential class members for whom further delay represents significant prejudice. Those members of the potential class are entitled to have a determination of whether this proceeding is certifiable as a class action in a timely manner. As stated in R. 29.09 of the *Rules of Civil Procedure*:

29.09 A plaintiff is not to be prejudiced or unnecessarily delayed by reason of a third party claim, and on motion by the plaintiff the court may make such order or impose such terms, including an order that the third party claim proceed as a separate action, as are necessary to prevent prejudice or delay where that may be done without injustice to the defendant or the third party.

Page: 6

Here, the fact that there are currently over 80 third parties contributes to the potential for delay with its inherent prejudice to the elderly members of the putative class.

[14] Admittedly, there are instances where, as indicated in both *Attis* and *Moyes*, there can be exceptions to the rule that the certification motion ought to be the first procedural matter to be heard and determined. It may be appropriate to make an exception where the determination of a preliminary motion prior to the certification motion would clearly benefit all parties or would further the objective of judicial efficiency, such as in relation to a motion for dismissal under Rule 21 or summary judgment under Rule 20. Such motions may have the positive effect of narrowing the issues, focusing the case and moving the litigation forward. An exception may also be warranted where the preliminary motion is time sensitive or necessary to ensure that the proceeding is conducted fairly. (See: *Moyes*, *supra* at para. 12; *Re Holmes and London Life v. London Life Insurance Co. et al.* (2000), 50 O.R. (3d) 388 (S.C.) at paras. 7-8; *Hughes v. Sunbeam Corp. (Canada) Ltd.* (2002), 61 O.R. (3d) 433 (C.A.), at para. 15, leave to appeal dismissed [2002] S.C.C.A. No. 446; *Segnitz v. Royal and SunAlliance Insurance Co. of Canada*, [2001] O.J. No. 6016 (S.C.); *Stone v. Wellington County Board of Education* (1999), 29 C.P.C. (4th) 320 (C.A.), leave to appeal dismissed, [1999] S.C.C.A. No. 336.); *Vitelli v. Villa Giardino* (2001), 54 O.R. (3<sup>rd</sup>) 334 (S.C.); *Pearson v. Inco* (2001), 57 O.R. (3d) 278 (S.C)).

[15] However, there is an important distinction between Rule 20 and 21 motions that are brought by the defendant and those that are brought by third parties. In many cases, Rule 20 and 21 motions brought by the defendant have the potential to render the certification motion unnecessary if they are determined prior to certification, thereby furthering the objective of judicial economy. Rule 20 or 21 motions brought by third parties in relation to claims against these third parties do not have the same potential to render the certification motion unnecessary. The proceeding as between the plaintiff and defendant will be unaffected and the determination as to whether the action is a certifiable class proceeding must still be made.

[16] The certification determination remains necessary because the viability of the action as a class proceeding is a function of the claim by the plaintiff against the defendant, rather than the claim of the defendant against the third party. On that basis, the certification determination may be made without regard to any existing third party claim. Indeed, some courts have held that this factor may render third party participation on the certification motion unnecessary or, in any event, subject to the discretion of the court hearing the motion. As stated in *Attis* at para. 14:

...until such time as the action is certified, the nature of the proceeding is not yet crystallized so as to require the third party's participation. In consequence, the third party would have had no standing to participate in the certification motion in any event. See: *Ward-Price v. Mariners Haven Inc.* (2002), 36 C.P.C. (5th) 189 (Sup. Ct.). Indeed, the courts in British

Page: 7

Columbia have on occasion stayed a third party claim until after the common issues trial where there is no valid reason for the third party to participate in the proceeding up to that time and where their involvement may turn out to be academic. See: *Campbell v. Flexwatt Corp.* (1996), 50 C.P.C. (3d) 290 (B.C.S.C.); *Cooper v. Hobart* (1999), 35 C.P.C. (4th) 124 (B.C.S.C.).

In my view, there will rarely be a need for motions relating exclusively to a third party claim to be heard prior to a certification motion as the potential benefits of hearing such motions prior to the certification motion tend to be limited.

[17] In this case, I am not persuaded that there is any compelling reason to hear the third party motions prior to the certification motion. Some of the third parties have argued that the prior determination of the third party motions would simplify the certification motion. This argument, however, is flawed in that it both assumes the participation of the third parties on the certification motion and further assumes that such participation would be permitted in such a manner as to complicate the proceeding. On the other hand, in my view, there is a distinct possibility that the determination of the certification motion, if this motion is heard first, could simplify the third party motions or could render these motions unnecessary.

[18] Similarly, I cannot accede to the argument advanced by some of the third parties that the Rule 21 Motions could be heard on short notice, and that the hearing of those motions would not interfere with the Plaintiffs' proposed timeline for the hearing of the certification motion. Even if this were the case, which seems unlikely, given the number of third parties that have been brought into this proceeding, the determination of any such motions would be potentially subject to appeal, the effect of which could be to significantly delay the determination of the certification motion.

#### **Participation of 3<sup>rd</sup> Parties in the Certification Motion**

[19] The question of the participation of third parties on the certification motion will be dealt with in the fullness of time. Although some parties have made submissions in this regard, others have not. Since only submissions regarding the sequencing of motions were specifically requested, it would be inappropriate to determine this matter at this time.

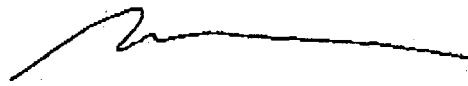
#### **Result**

[20] The certification motion shall be heard and determined prior to the Jurisdiction Motions or the Rule 21 Motions, including those motions that have not yet been brought. All Rule 21 Motions and Jurisdiction Motions that have been brought or that are brought prior to the determination of the certification motion will be stayed until after the certification motion has been heard and determined.



Page: 8

RELEASED May 30, 2005



WINKLER R.S.J.

Page: 9

COURT FILE NO.: 00-CV-192059CPA

DATE: 20050530

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CHARLES BAXTER, SR. AND ELIJAH BAXTER

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

- and -

SCHEDULE "A"

Third Parties

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REASONS FOR JUDGMENT

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WINKLER RSJ

Released: May 30, 2005

**SCHEDULE "A"**

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA  
THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA  
THE SYNOD OF THE DIOCESE OF ALGOMA  
THE SYNOD OF THE DIOCESE OF ATHABASCA  
THE SYNOD OF THE DIOCESE OF BRANDON  
THE SYNOD OF THE DIOCESE OF BRITISH COLUMBIA  
THE SYNOD OF THE DIOCESE OF CALGARY  
THE SYNOD OF THE DIOCESE OF CARIBOO  
THE INCORPORATED SYNOD OF THE DIOCESE OF HURON  
THE SYNOD OF THE DIOCESE OF KEEWATIN  
THE DIOCESE OF MOOSONEE  
THE SYNOD OF THE DIOCESE OF WESTMINSTER  
THE SYNOD OF THE DIOCESE OF QU'APPELLE  
THE DIOCESE OF SASKATCHEWAN  
THE SYNOD OF THE DIOCESE OF YUKON  
THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW  
ENGLAND (also known as THE NEW ENGLAND COMPANY)  
THE PRESBYTERIAN CHURCH IN CANADA  
THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA  
THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA  
BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE  
PRESBYTERIAN CHURCH IN CANADA  
THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH  
IN CANADA  
THE UNITED CHURCH OF CANADA  
THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA  
THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF  
CANADA  
THE METHODIST CHURCH OF CANADA  
THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA  
(also known as THE METHODIST MISSIONARY SOCIETY OF CANADA)  
THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS  
THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY  
THE ROMAN CATHOLIC BISHOP OF KAMLOOPS  
THE ROMAN CATHOLIC BISHOP OF THUNDER BAY  
THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER  
THE ROMAN CATHOLIC BISHOP OF VICTORIA  
THE ROMAN CATHOLIC BISHOP OF NELSON  
THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE  
LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD.  
McLENNAN

01687

THE CATHOLIC ARCHDIOCESE OF EDMONTON  
LA DIOCESE DE SAINT-PAUL  
THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF MACKENZIE  
THE ARCHIEPISCOPAL CORPORATION OF REGINA  
THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN  
THE ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG  
LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT  
BONIFACE  
THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF  
SAULT STE. MARIE  
THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY  
THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX  
THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY  
LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE  
ALBERT  
THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT  
THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE  
OF BRITISH COLUMBIA  
THE MISSIONARY OBLATES OF MARY IMMACULATE GRANDIN PROVINCE  
LES OBLATS DE MARIE IMMACULEE DU MANITOBA or THE OBLATES OF  
MARY IMMACULATE IN THE PROVINCE OF MANITOBA  
LES PERES MONTFORTAINS (also known as THE COMPANY OF MARY)  
JESUIT FATHERS OF UPPER CANADA  
THE MISSIONARY OBLATES OF MARY IMMACULATE PROVINCE OF ST.  
JOSEPH  
LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (also known as LES  
REVERENDS PERES OBLATS DE L'IMMACULEE CONCEPTION DE MARIE)  
THE OBLATES OF MARY IMMACULATE, ST. PETER'S PROVINCE  
LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES  
TERRITOIRES DU NORD OUEST  
LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (PROVINCE DU  
CANADA EST)  
THE SISTERS OF SAINT ANNE  
THE SISTERS OF INSTRUCTION OF THE CHILD JESUS (also known as THE  
SISTERS OF THE CHILD JESUS)  
THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA  
THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERT (also known as  
THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERTA)  
THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST  
TERRITORIES  
THE SISTERS OF CHARITY (GREY NUNS) OF MONTREAL (also known as  
LES SOEURS DE LA CHARITE (SOEURS GRISES) DE L'HOPITAL GENERAL  
DE MONTREAL)

01688

THE GREY SISTERS NICOLET  
THE GREY NUNS OF MANITOBA INC. (also known as  
LES SOEURS GRISES DU MANITOBA INC.)  
THE SISTERS OF ST. JOSEPH OF SAULT STE. MARIE  
LES SOEURS DE SAINT-JOSEPH DE ST-HYACINTHE and  
INSTITUT DES SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE  
LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE (also known as  
LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE)  
DE NICOLET AND THE SISTERS OF ASSUMPTION  
LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE DE L'ALBERTA  
THE DAUGHTERS OF THE HEART OF MARY (also known as LA SOCIETE  
DES FILLES DU COEUR DE MARIE and THE DAUGHTERS OF THE  
IMMACULATE HEART OF MARY)  
MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (also known as  
MISSIONARY OBLATES OF THE SACRED HEART AND MARY IMMACULATE,  
or LES MISSIONAIRES OBLATS DE SAINT-BONIFACE)  
LES SOEURS DE LA CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX)  
(also known as SISTERS OF CHARITY OF OTTAWA - GREY NUNS OF THE  
CROSS)  
SISTERS OF THE HOLY NAMES OF JESUS AND MARY (also known as THE  
RELIGIOUS ORDER OF JESUS AND MARY and LES SOEURS DE JESUS-  
MARIE)  
THE SISTERS OF CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (also  
known as THE SISTERS OF CHARITY OF HALIFAX)  
LES SOEURS DE NOTRE DAME AUXILIATRICE  
LES SOEURS DE ST. FRANCOIS D'ASSISE  
SISTERS OF THE PRESENTATION OF MARY (SOEURS DE  
LA PRESENTATION DE MARIE)  
THE BENEDICTINE SISTERS  
INSTITUT DES SOEURS DU BON CONSEIL  
IMPACT NORTH MINISTRIES  
THE BAPTIST CHURCH IN CANADA

## SCHEDULE "B"

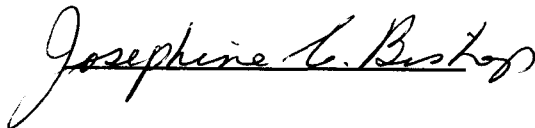
Counsel	Party
William K.A. Emsli	The Roman Catholic Archiepiscopal Corporation of Winnipeg
Thomas M. Macdonald	The Sisters of Charity of St. Vincent de Paul of Halifax (also known as The Sisters of Charity of Halifax)
Brian T. Daly	<p>The General Synod of the Anglican Church of Canada</p> <p>The Missionary Society of the Anglican Church of Canada</p> <p>The Synod of the Diocese of Algoma</p> <p>The Synod of the Diocese of Athabasca</p> <p>The Synod of the Diocese of Brandon</p> <p>The Synod of the Diocese of British Columbia</p> <p>The Synod of the Diocese of Calgary</p> <p>The Synod of the Diocese of Cariboo</p> <p>The Incorporated Synod of the Diocese of Huron</p> <p>The Synod of the Diocese of Kccowatin</p> <p>The Diocese of Moosonee</p> <p>The Synod of the Diocese of Westminster</p> <p>The Synod of the Diocese of Qu'Appelle</p> <p>The Diocese of Saskatchewan</p> <p>The Synod of the Diocese of Yukon</p>
S. John Page	<p>The Presbyterian Church in Canada</p> <p>The Trustee Board of the Presbyterian Church in Canada</p> <p>The Foreign Mission of the Presbyterian Church in Canada</p> <p>Board of Home Missions and Social Services of the Presbyterian Church in Canada</p> <p>The Women's Missionary Society of the Presbyterian Church in Canada</p> <p>Les Pères Montfortains</p>

Alex D. Pertingill	<p>The United Church of Canada</p> <p>The Board of Home Missions of the United Church of Canada</p> <p>The Women's Missionary Society of the United Church of Canada</p> <p>The Methodist Church of Canada</p> <p>The Missionary Society of the Methodist Church of Canada</p>
Ronald F. Caza and Pierre Champagne	<p>The Roman Catholic Episcopal Corporation of James Bay</p> <p>Les Soeurs de la Charité d'Ottawa</p> <p>The Missionary Oblates of Mary Immaculate – Province of St. Joseph (also known as Les Oeuvres Oblates de l'Ontario)</p> <p>Les Missionnaires Oblats de Marie Immaculée (Province du Canada-est)</p>
Frank D. Corbett	The Roman Catholic Bishop of Victoria
Jim Ehmann	<p>The Archiepiscopal Corporation of Regina</p> <p>The Roman Catholic Episcopal Corporation of Keewatin</p>
Guy Lemay	<p>Les Soeurs de Saint-Joseph de St.-Hyacinthe</p> <p>Soeurs de l'Assomption de la Sainte Vierge</p> <p>Soeurs de l'Assomption de la Sainte Vierge de l'Alberta</p> <p>Soeurs de Notre-Dame du Bon-Conseil de Chicoutimi</p> <p>Soeurs de Saint-François d'Assise</p> <p>Religieuses de Jésus Marie</p> <p>Soeurs Notre-Dame Auxiliatrice de Rouyn-Noranda</p>
Hugh Wright	The Roman Catholic Episcopal Corporation of Halifax
Mark R. Frederick	<p>The Daughters of the Heart of Mary</p> <p>Impact North Ministries</p> <p>The Roman Catholic Bishop of Thunder Bay</p>
Wally Zimmerman and Don McLean	Jesuit Fathers of Upper Canada
Peter D. Lauwers	The Roman Catholic Episcopal Corporation of the Diocese of Prince Rupert

Karen M. Trace	La Corporation Episcopale Catholique Romaine de Grouard McLennan  The Catholic Archdiocese of Edmonton  Le Diocèse de Saint-Paul  The Roman Catholic Episcopal Corporation of Mackenzie
Noah Kjar	The Sisters of Instruction of the Child Jesus (also known as the Sisters of the Child Jesus)



THIS IS EXHIBIT I  
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO  
ON JULY 27, 2006

A handwritten signature in cursive script that reads "Josephine C. Bishop". The signature is written in black ink and is positioned above a horizontal line.

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Courtis,  
Barrister and Solicitor.  
Expires November 10, 2007.

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, MICHELLINE AMMAQ, PERCY ARCHIE, CHARLES BAXTER SR., ELIJAH BAXTER, EVELYN BAXTER, DONALD BELCOURT, NORA BERNARD, JOHN BOSUM, JANET BREWSTER, RHONDA BUFFALO, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, BRENDA CYR, DEANNA CYR, MALCOLM DAWSON, ANN DENE, JAMES FONTAINE in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, VINCENT BRADLEY FONTAINE, DANA EVA MARIE FRANCEY, PEGGY GOOD, FRED KELLY, ROSEMARIE KUPTANA, ELIZABETH KUSIAK, THERESA LAROCQUE, JANE McCALLUM, CORNELIUS McCOMBER, VERONICA MARTEN, STANLEY THOMAS NEPETAYPO, FLORA NORTHWEST, NORMAN PAUCHEY, CAMBLE QUATELL, ALVIN BARNEY SAULTEAUX, CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER, EDWARD TAPIATIC, HELEN WINDERMAN and ADRIAN YELLOWKNEE**

**Plaintiffs**

- and -

**THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE UNITED CHURCH OF CANADA, THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE EPISCOPAL CORPORATION OF SASKATOON, IMMACULATE HEART COMMUNITY, OMI LACOMBE CANADA INC., THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH THE BAPTIST CHURCH IN CANADA, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN BAY, THE CANADA IMPACT NORTH MINISTRIES, THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA , THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE INCORPORATED SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE ANGLICAN CHURCH OF THE DIOCESE OF QUEBEC, THE SYNOD OF THE DIOCESE OF ATHBASCA,**

**THE SYNOD OF THE DIOCESE OF BRANDON, THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLOMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF NEW WESTMINSTER, THE SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE BOARD OF HOME MISSIONS AND SOCIAL SERVICE OF THE PRESBYTERIAN CHURCH OF CANADA, THE ROMAN CATHOLIC EPISCOPAL CORPORATION, THE SISTERS OF SAINT ANNE, LES MISSIONAIRES OBLATS DE SAINT BONIFACE and THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA**

**Defendants**

Proceeding under the *Class Proceedings Act, 1992*

**PROCEEDING UNDER the following legislation, as appropriate:**

- (a) In the Province of Québec: Articles 999 – 1051 of the *Code of Civil Procedure (Québec)*;
- (b) In the Provinces of Newfoundland and Labrador, Prince Edward Island, New Brunswick, Nova Scotia and Ontario: the *Class Proceedings Act, 1992 (Ontario)* S.O. 1992, c. 6;
- (c) In the Province of Manitoba: *The Class Proceedings Act*, C.C.S.M. c. C130;
- (d) In the Province of Saskatchewan: *The Class Actions Act*, S.S. 2001, c.C-12.01;
- (e) In the Province of Alberta: the *Class Proceedings Act*, S.A. 2003, c. C-16.5;
- (f) In the Province of British Columbia: the *Class Proceedings Act*, R.S.B.C. 1996, c.50;
- (g) In the Yukon Territory: Rule 5(11) of the *Supreme Court Rules (British Columbia)* B.C. Reg. 220/90 as adopted by the Territory by operation Section 38 of the *Judicature Act (Yukon)* R.S.Y. 2002, c. 128;
- (h) In The Northwest Territories: Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg. 010-96; and
- (i) In Nunavut: Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg 010-96, as adopted by the Territory by operation of Section 29 of the *Nunavut Act*, S.C. 1993, c. 28.

**AMENDED STATEMENT OF CLAIM****TO THE DEFENDANTS**

*A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.*

*IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the rules of court, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.*

*If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.*

*Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the rules of court. This will entitle you to ten more days within which to serve and file your Statement of Defence.*

*IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.*

DATE:

Issued by: \_\_\_\_\_

***[insert court address here]***

TO:	<p>THE ATTORNEY GENERAL OF CANADA Deputy Minister of Justice Justice Building 239 Wellington Street Ottawa, ON K1A 0H8</p> <p>On its own behalf and on behalf of all of the Defendants</p>
AND TO:	<p>The General Synod of the Anglican Church of Canada 80 Haydon Street Toronto, ON M4Y 3G2</p>

AND TO:	The Missionary Society of the Anglican Church of Canada 80 Haydon Street Toronto, ON M4Y 3G2
AND TO:	The Incorporated Synod of the Diocese of Algoma 619 Wellington St. East, Box 1168 Sault Ste. Marie, ON P6A 5N7 Phone: (705) 256-5061 or (705) 256-2791 Fax: (705) 946-1860
AND TO:	The Synod of the Diocese of Athabasca 9720 – 100 Avenue P.O. Box 6868 Peace River, AB T8S 1S6 Phone: (780) 624-2767 Fax: (780) 624-2365
AND TO:	The Synod of the Diocese of Brandon 341 -13 Street Box 21009 W.E.P.O. Brandon, MB R7B 3W8 Phone: (204) 727-7550 Fax: (204) 727-4135
AND TO:	The Anglican Synod of the Diocese of British Columbia 900 Vancouver St. Victoria, BC V8V 3V7 Phone: (250) 386-7781 Fax: (250) 386-4013
AND TO:	The Synod of the Diocese of Calgary Suite 560, 1207 - 11th Ave. SW Calgary, AB T3C 0M5 Phone: (403) 243-3673 Fax: (403) 243-2182
AND TO:	The Synod of the Diocese of Cariboo 1505 Fifth Avenue Prince George, BC V2L 3L9

AND TO:	The Incorporated Synod of the Diocese of Huron 190 Queens Ave. London, ON N6A 6H7 Phone: (519) 434-6893 Fax: (519) 679-4151
AND TO:	The Synod of the Diocese of Keewatin P.O. Box 567 915 Ottawa St. Keewatin, ON P0X 1C0 Phone: (807) 547-3353 Fax: (807) 547-3356
AND TO:	The Synod of the Diocese of New Westminster Suite 580, 401 West Georgia St. Vancouver, BC V6B 5A1 Phone: (604) 684-6306 Fax: (604) 684-7017
AND TO:	The Synod of the Diocese of Qu'Appelle 1501 College Ave. Regina, SK S4P 1B8 Phone: (306) 522-1608 Fax: (306) 352-6808
AND TO:	The Diocese of Saskatchewan 1308 Fifth Avenue East Prince Albert, SK S6V 2H7 Phone: (306) 763-2455 or (306) 764-1171 Fax: (306) 764-5172
AND TO:	The Synod of the Anglican Church of the Diocese of Quebec Church House, 31 Rue des Jardins Quebec City, Quebec G1R 4L8
AND TO:	The Synod of the Diocese of Yukon Box 31136 Whitehorse, YT Y1A 5P7 Phone: (867) 667-7746 Fax: (867) 667-6125

AND TO:	<p>The Company for the Propagation of the Gospel in New England (also known as the New England Company)          Bower House, Clavering, Saffron Walden          Essex UK CB11 4QT          Phone: 20 7717 5400          Fax: 01799 550169</p>
AND TO:	<p>The Presbyterian Church in Canada          50 Wynford Drive          Don Mills, ON M3C 1J7          Phone: (416) 441-1111 or Toll Free: (800) 619-7301          Fax: (416) 441-2825</p>
AND TO:	<p>The Trustee Board of the Presbyterian Church in Canada          50 Wynford Drive          Don Mills, ON M3C 1J7          Phone: (416) 441-1111 or Toll Free: (800) 619-7301          Fax: (416) 441-2825</p>
AND TO:	<p>The Foreign Mission of the Presbyterian Church in Canada          50 Wynford Drive          Don Mills, ON M3C 1J7          Phone: (416) 441-1111 or Toll Free: (800) 619-7301          Fax: (416) 441-2825</p>
AND TO:	<p>Board of Home Missions and Social Services of the Presbyterian Church in Canada          50 Wynford Drive          Don Mills, ON M3C 1J7          Phone: (416) 441-1111 or Toll Free: (800) 619-7301          Fax: (416) 441-2825</p>
AND TO:	<p>The Women's Missionary Society of the Presbyterian Church in Canada          50 Wynford Drive          Don Mills, ON M3C 1J7          Phone: (416) 441-1111 or Toll Free: (800) 619-7301          Fax: (416) 441-2825</p>

AND TO:	The United Church of Canada General Council Officer, Residential Schools Steering Committee 300 - 3250 Bloor Street West Toronto, ON M8X 2Y4 Telephone: (416) 231-5931 Voice Mail: (416) 231-7680 Fax: (416) 231-3103
AND TO:	The Board of Home Missions of the United Church of Canada General Council Officer, Residential Schools Steering Committee 300 - 3250 Bloor Street West Toronto, ON M8X 2Y4 Telephone: (416) 231-5931 Voice Mail: (416) 231-7680 Fax: (416) 231-3103
AND TO:	The Women's Missionary Society of the United Church of Canada General Council Officer, Residential Schools Steering Committee 300 - 3250 Bloor Street West Toronto, ON M8X 2Y4 Telephone: (416) 231-5931 Voice Mail: (416) 231-7680 Fax: (416) 231-3103
AND TO:	The Methodist Church of Canada
AND TO:	The Missionary Society of the Methodist Church of Canada (also known as the Methodist Missionary Society of Canada)
AND TO:	The Roman Catholic Episcopal Corporation
AND TO:	The Sisters of Saint Anne 1550 Begbie Street Victoria, BC V8R 1K8 Phone: (604) 592-3133/721-0888 Fax: (604) 592-0234



AND TO:	The Daughters of the Heart of Mary (also known as La Societe des Filles du Coeur de Marie and the Daughters of the Immaculate Heart of Mary) 4122, avenue de Lorimier Montréal, QC H2K 3X7 Phone: (514) 522-9447/593-6434 Fax: (514) 593-9513
AND TO:	Missionary Oblate Sisters of Saint-Boniface (also known as Missionary Oblates of the Sacred Heart and Mary Immaculate, or Les Missionnaires Oblats de Saint-Boniface) 601, rue Aulneau Winnipeg, MB R2H 2V5 Phone: (204) 233-7287/237-8802 Fax: (204) 233-7844
AND TO:	Impact North Ministries 1 Irwin Drive P.O. Box 315 Red Lake, ON P0V 2M0 Phone: (807) 727-2291 Fax: (807) 727-2141

## CLAIM

### A. OVERVIEW OF THIS CLAIM

1. This claim is an amalgamation of approximately nineteen (19) different putative class action statements of claim brought in various jurisdictions across Canada. This claim represents the distillation of all issues related to Residential Schools' attendance which the parties to this proceeding seek to address, in substantially identical format, in each of the Forums.

2. The amalgamation of the various claims, which has been achieved by consent, and the desire to address them in a uniform fashion on behalf of all Class Members, has arisen out of an extraordinary and unprecedented negotiation to address the unique issues related to Residential Schools.

3. In addition to the class actions, approximately 14,000 individual actions have been commenced against the Defendants in various jurisdictions across Canada, representing a significantly greater number of individual claims and claimants, which has placed an extraordinary burden on Canada's judicial systems and resources.

4. Amalgamation of the various claims, and the effort to subsume essentially all existing claims into a single, standard class action claim to be brought forward in each of the Forums represents an efficient yet regionally sensitive method of fully and fairly addressing the concerns of the Plaintiffs and the proposed Classes.

5. Accordingly, the Plaintiffs, with the consent of the Defendants, are filing this amended claim in substantially identical form in each of the Forums with a view to seeking and obtaining certification in each of the Forums on identical terms.

**DEFINITIONS**

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

- (a) "Aboriginal", "Aboriginal People(s)" or "Aboriginal Person(s)" means a person whose rights are recognized and affirmed by the *Constitution Act*, 1982, s. 35, being Schedule B to the *Canada Act 1982 (UK)*, 1982. c. 11;
- (b) "Aboriginal Right(s)" means rights recognized and affirmed by the *Constitution Act*, 1982, s. 35, being Schedule B to the *Canada Act 1982 (UK)*, 1982. c. 11;
- (c) "Act" means the Indian Act, R.S.C. 1985, c. I-5;
- (d) "AFN" means the National Indian Brotherhood and the Assembly of First Nations;
- (e) "Agents" mean the servants, contractors, agents, officers and employees of Canada and the operators, managers, administrators and teachers and staff of each of the Residential Schools;
- (f) "Canada" means the Defendant, the Government of Canada as represented in this proceeding by the Attorney General of Canada;
- (g) "Churches" mean the religious entity or religious organization Defendants, enumerated at Schedule "A" attached hereto;
- (h) "Claim" means this Fresh as Amended Statement of Claim;
- (i) "Class" or "Class Members" means all members of the Survivor Class, the Deceased Class and the Family Class;
- (j) "Class Period" means January 1, 1920 to December 31, 1997;
- (k) "Class Proceedings Legislation" or "CPL" means:
  - (i) in respect of the Alberta Court of Queen's Bench, the *Class Proceedings Act*, S.A. 2003, c. C-16.5;
  - (ii) in respect of the British Columbia Supreme Court, the *Class Proceedings Act*, R.S.B.C. 1996, c.50;
  - (iii) in respect of the Manitoba Court of Queen's Bench, the *Class Proceedings Act*, C.C.S.M. c. C130;
  - (iv) in respect of the Supreme Court of the Northwest Territories, Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg. 010-96;

- (v) in respect of the Nunavut Court of Justice: Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg 010-96, as adopted by the Territory by operation of Section 29 of the *Nunavut Act*, S.C. 1993, c. 28;
  - (vi) in respect of the Ontario Superior Court of Justice, the *Class Proceedings Act*, 1992 (Ontario) S.O. 1992, c. 6;
  - (vii) the Province of Québec, Articles 999–1051 of the *Civil Code of Procedure (Québec)*;
  - (viii) in respect of the Saskatchewan Court of Queen’s Bench, the *Class Actions Act*, S.S. 2001, c.C-12.01;
  - (ix) in respect of Supreme Court of the Yukon Territory: Rule 5(11) of the *Supreme Court Rules (British Columbia)* B.C. Reg. 220/90 as adopted by the Territory by operation Section 38 of the *Judicature Act (Yukon)* R.S.Y. 2002, c. 128;
- (l) "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the cultural, linguistic, spiritual and social customs, practices and way of life and to community and individual security and well being of Aboriginal Persons;
- (m) "Deceased Class" means all persons who resided at a Residential School in Canada between 1920 and 1997, who died before May 30, 2005, and who were, at their date of death, residents of
- (i) Alberta, for the purposes of the Alberta Court of Queen’s Bench;
  - (ii) British Columbia, for the purposes of the British Columbia Supreme Court;
  - (iii) Manitoba, for the purposes of the Manitoba Court of Queen’s Bench;
  - (iv) the Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;
  - (v) Nunavut, for the Nunavut Court of Justice;
  - (vi) Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;
  - (vii) Québec, for the purposes of the Quebec Superior Court;
  - (viii) Saskatchewan, for the purposes of the Saskatchewan Court of Queen’s Bench;

(ix) Yukon, for the purposes of the Supreme Court of the Yukon Territory;  
but excepting Excluded Persons.

(n) "Excluded Persons" means all persons who attended the Mohawk Institute Residential School in Brantford, Ontario, between 1922 and 1969, and their parents, siblings, spouses and children;

(o) "Family Class" means:

(i) the spouse, child, grandchild, parent, grandparent or sibling of a Survivor Class Member;

(ii) the spouse of a child, grandchild, parent, grandparent or sibling of a Survivor Class Member;

(iii) a former spouse of a Survivor Class Member;

(iv) a child or other lineal descendent of a grandchild of a Survivor Class Member;

(v) a person of the same or opposite sex to a Survivor Class Member who cohabited for a period of at least one year with that Survivor Class Member immediately before his or her death;

(vi) a person of the same or opposite sex to a Survivor Class Member who was cohabiting with that Survivor Class Member at the date of his or her death and to whom that Survivor Class Member was providing support or was under a legal obligation to provide support on the date of his or her death;

(vii) any other person to whom a Survivor Class Member was providing support for a period of at least three years immediately prior to his or her death; and,

(viii) such other persons as the Court recognizes or directs,

and who, as of the date hereof, are resident in:

(i) Alberta, for the purposes of the Alberta Court of Queen's Bench;

(ii) British Columbia, for the purposes of the British Columbia Supreme Court;

(iii) Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

(iv) Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;

(v) Nunavut, for the purposes of the Nunavut Court of Justice; and

- (vi) Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;
- (vii) Québec, for the purposes of the Quebec Superior Court;
- (viii) Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan;
- (ix) Yukon, for the purposes of Supreme Court of the Yukon Territory;

but excepting Excluded Persons.

- (p) "Forum" means the Alberta Court of Queen's Bench, the British Columbia Supreme Court, the Manitoba Court of Queen's Bench, the Supreme Court of the Northwest Territories, the Nunavut Court of Justice, the Ontario Superior Court of Justice, the Quebec Superior Court, the Court of Queen's Bench for Saskatchewan and the Supreme Court of the Yukon Territory, and "Fora" refers to them all;
- (q) "Representative Plaintiffs" means those Plaintiffs referred to in the title of proceedings of the Amended Statement of Claim;
- (r) "Residential School(s)" means the following:
  - (i) institutions listed on List "A" to OIRSRC's Dispute Resolution Process attached to the Agreement as Schedule "E";
  - (ii) institutions listed in Schedule "F" of the Agreement ("Additional Residential Schools") which may be expanded from time to time in accordance with Article 12.01 of the Agreement; and
  - (iii) any institution which is determined to meet the criteria set out in Sections 12.01(2) and (3) of the Agreement;
- (s) "Residential Schools Policy" means the policy of Canada with respect to Residential Schools;
- (t) "Survivor Class" means:

All persons who resided at a Residential School in Canada between January 1, 1920 and December 31, 1997, who are living, or who were living as of May 30, 2005, and who, as of the date hereof, or who, at the date of death resided in:

- (i) Alberta, for the purposes of the Alberta Court of Queen's Bench;
- (ii) British Columbia, for the purposes of the British Columbia Supreme Court;
- (iii) Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

- (iv) Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;
- (v) Nunavut, for the purposes of the Nunavut Court of Justice; and
- (vi) Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;
- (vii) Québec, for the purposes of the Quebec Superior Court;
- (viii) Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan;
- (ix) Yukon, for the purposes of Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

- (u) "Treaty Obligations" means those recognized and codified by the *United Nations Convention on the Rights of the Child, the United Nations Genocide Convention, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, Convention Against Torture and Other Civil, Inhuman or Degrading Treatment or Punishment, and Treaties Numbers 1 through 11, including the James Bay Treaty, Peace and Friendship Treaties, Upper Canada Treaties, Robinson-Superior Treaty, Robinson-Huron Treaty, the Manitoulin Treaty, Vancouver Island Treaties and the Williams Treaties.*

## **B. RELIEF SOUGHT BY THE PLAINTIFFS AGAINST CANADA**

### **The Survivor Class**

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

- (a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPL and appointing them as Representative Plaintiffs for the Survivor Class and any appropriate subgroup thereof;
- (b) a Declaration that Canada owed and was in breach of non-delegable, fiduciary, statutory and common law duties to the Plaintiffs and the other Survivor Class Members in relation to the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the Indian Residential School system and the Residential Schools throughout Canada;
- (c) a Declaration that Canada was negligent in the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class

Members to, obligatory attendance of Survivor Class Members at and support of the Residential Schools throughout Canada;

- (d) a Declaration that Canada was or is in breach of its statutory duties pursuant to the Act and its Treaty obligations to the Plaintiffs and the other Survivor Class Members as a consequence of its establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the Residential Schools throughout Canada;
- (e) a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Survivor Class;
- (f) a Declaration that Canada is liable to the Plaintiffs and other Survivor Class Members for the damages caused by its breach of non delegable, fiduciary, statutory and common law duties and for negligence in relation to the establishment, funding, operation, supervision, control maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the Residential Schools throughout Canada;
- (g) non-pecuniary general damages for negligence, loss of language and culture, breach of non-delegable, fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (h) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, breach of non delegable fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (i) exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (j) prejudgment and post-judgment interest pursuant to the provisions of the CJA, sections 128 and 129 as amended, and its equivalent statutes, if any, in other provinces and territories in Canada; and
- (k) the costs of this action on a substantial indemnity scale.

### **The Family Class**

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



- (a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPL and appointing them as representative Plaintiffs for the Family Class and any appropriate subgroup thereof;
- (b) a Declaration that Canada owed and was in breach of non-delegable, fiduciary, statutory and common law duties to the Plaintiffs and the other Family Class Members in relation to the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members and Deceased Class Members to, obligatory attendance of Survivor Class Members and Deceased Class Members at and support of the Residential Schools throughout Canada;
- (c) a Declaration that Canada was negligent in the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members and Deceased Class Members to, obligatory attendance of Survivor Class Members and Deceased Class members at and support of the Residential Schools throughout Canada;
- (d) a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Family Class;
- (e) a Declaration that Canada was or is in breach of its statutory duties pursuant to the Act and its Treaty obligations to the Plaintiffs and the other Family Class Members as a consequence of its establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members and Deceased Class Members to, obligatory attendance of Survivor Class Members and Deceased Class Members at and support of the Residential Schools throughout Canada;
- (f) a Declaration that Canada is liable to the Plaintiffs and other Family Class Members for the damages caused by its breach of non-delegable, fiduciary, statutory and common law duties and for negligence in relation to the establishment, funding, operation, supervision, control maintenance, confinement in, transport of Survivor Class Members and Deceased Class Members to, obligatory attendance of Survivor Class Members and Deceased Class Members at and support of the Residential Schools throughout Canada;
- (g) pecuniary general damages and special damages for negligence, loss of language and culture, breach of non delegable fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (h) exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (i) damages in the amount of four billion dollars (\$4,000,000,000.00), or such other sum as this Honourable Court finds appropriate, pursuant to the FLA, section 61,

as amended, and its predecessors, and the equivalent statutes, if any, in other provinces and territories in Canada;

- (j) prejudgment and postjudgment interest pursuant to the provisions of the CJA, sections 128 and 129 as amended, and its equivalent statutes, if any, in other provinces and territories in Canada; and,
- (k) the costs of this action on a substantial indemnity scale.

### **The Deceased Class**

9. The Representative Plaintiffs, on behalf of the members of the Deceased Class who died before May 30, 2005, claim:

- (a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPL and appointing them as representative Plaintiffs for the Deceased Class and any appropriate subgroup thereof;
- (b) a Declaration that Canada owed and was in breach of non delegable, fiduciary, statutory and common law duties to the Plaintiffs and the other Deceased Class Members in relation to the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Deceased Class Members to, obligatory attendance of Deceased Class Members at and support of the Residential Schools throughout Canada;
- (c) a Declaration that Canada was negligent in the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Deceased Class Members to, obligatory attendance of Deceased Class Members at and support of the Residential Schools throughout Canada;
- (d) a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Deceased Class;
- (e) a Declaration that Canada was or is in breach of its statutory duties pursuant to the Act and its Treaty obligations to the Plaintiffs and the other Deceased Class Members as a consequence of its establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members and Deceased Class Members at and support of the Residential Schools throughout Canada;
- (f) a Declaration that Canada is liable to the Plaintiffs and other Deceased Class Members for the damages caused by its breach of non delegable, fiduciary, statutory and common law duties and for negligence in relation to the establishment, funding, operation, supervision, control maintenance, confinement in, transport of Deceased Class Members to, obligatory attendance of Deceased Class Members at and support of the Residential Schools throughout Canada;

- (g) non-pecuniary general damages for negligence, loss of language and culture, breach of non delegable, fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (h) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, breach of non delegable fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (i) exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (j) prejudgment and postjudgment interest pursuant to the provisions of the CJA, sections 128 and 129 as amended, and its equivalent statutes, if any, in other provinces and territories in Canada; and,
- (k) costs of this action on a substantial indemnity scale.

### **C. RELIEF SOUGHT BY THE PLAINTIFFS AGAINST THE CHURCHES**

#### **The Survivor Class**

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

- (a) as Order certifying this proceeding as a Class Proceeding pursuant to the CPL and appointing them representative Plaintiffs for the Survivor Class and any appropriate subgroup thereof;
- (b) a Declaration that the Churches owed and were in breach of non-delegable, fiduciary and common law duties to the Plaintiffs and the other Survivor Class Members in relation to the operation, supervision, maintenance and administration of the Residential Schools throughout Canada;
- (c) a Declaration that the Churches were negligent in the operation, and administration in the transport of Survivor Class Members to obligatory attendance of Survivor Class Members at and support of the Residential Schools throughout Canada;
- (d) a Declaration that the Churches are liable to the Plaintiffs and other Survivor Class Members for the damages caused by its breach of non-delegable, fiduciary, statutory and common law duties and for negligence in relation to the operation, supervision, maintenance, administration and confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the Residential Schools throughout Canada;

- (e) non-pecuniary general damages for negligence, breach of non delegable, fiduciary and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (f) pecuniary general damages and special damages for negligence, breach of non delegable fiduciary and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (g) exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (h) prejudgment and postjudgment interest pursuant to the provisions of the CJA, sections 128 and 129 as amended, and its equivalent statutes, if any, in other provinces and territories in Canada; and,
- (i) the costs of this action on a substantial indemnity scale.

### **The Family Class**

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

- (a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPL and appointing them as representative Plaintiffs for the Family Class and any appropriate subgroup thereof;
- (b) a Declaration that the Churches owed and were in breach of non-delegable, fiduciary and common law duties to the Plaintiffs and the other Family Class Members in relation to the funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members and Deceased Class Members to attendance of Survivor Class Members and Deceased Class Members at and support of the Residential Schools throughout Canada;
- (c) a Declaration that the Churches were negligent in the funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members and Deceased Class Members to attendance of Survivor Class Members and Deceased Class members at and support of the Residential Schools throughout Canada;
- (d) a Declaration that the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Family Class;
- (e) a Declaration that the Churches are liable to the Plaintiffs and other Family Class Members for the damages caused by its breach of non-delegable, fiduciary and common law duties and for negligence in relation to the funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class

Members and Deceased Class Members to, attendance of Survivor Class Members and Deceased Class Members at and support of the Residential Schools throughout Canada;

- (f) pecuniary general damages and special damages for negligence, loss of language and culture, breach of non delegable fiduciary and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (g) exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (h) damages in the amount of four billion dollars (\$4,000,000,000.00), or such other sum as this Honourable Court finds appropriate, pursuant to the FLA, section 61, as amended, and its predecessors, and the equivalent statutes, if any, in other provinces and territories in Canada
- (i) prejudgment and postjudgment interest pursuant to the provisions of the CJA sections 128 and 129 as amended, and its equivalent statutes, if any, in other provinces and territories in Canada; and,
- (j) the costs of this action on a substantial indemnity scale.

### **The Deceased Class**

12. The Representative Plaintiffs, on behalf of the members of the Deceased Class who died before May 30, 2005, claim:

- (a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPL and appointing them as representative Plaintiffs for the Deceased Class and any appropriate subgroup thereof;
- (b) a Declaration the Churches owed and were in breach of non-delegable, fiduciary and common law duties to the Plaintiffs and the other Deceased Class Members in relation to the funding, operation, supervision, control, maintenance, confinement in, transport of Deceased Class Members to attendance of Deceased Class Members at and support of the Residential Schools throughout Canada;
- (c) a Declaration that the Churches were negligent in the funding, operation, supervision, control, maintenance, confinement in, transport of Deceased Class Members to, attendance of Deceased Class Members at and support of the Residential Schools throughout Canada;
- (d) a Declaration that the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Deceased Class;
- (e) a Declaration that the Churches are liable to the Plaintiffs and other Deceased Class Members for the damages caused by its breach of non-delegable, fiduciary

and common law duties and for negligence in relation to the funding, operation, supervision, control maintenance, confinement in, transport of Deceased Class Members to attendance of Deceased Class Members at and support of the Residential Schools throughout Canada;

- (f) non-pecuniary general damages for negligence, loss of language and culture, breach of non delegable, fiduciary and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (g) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, breach of non delegable fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (h) exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (i) prejudgment and postjudgment interest pursuant to the provisions of the CJA, sections 128 and 129 as amended, and its equivalent statutes, if any, in other provinces and territories in Canada; and,
- (j) the costs of this action on a substantial indemnity scale.

#### **D. THE PLAINTIFFS**

13. The Plaintiff, Chief Larry Philip Fontaine ("Chief Fontaine"), is the National Chief of the Assembly of First Nations, the national organization representing First Nations citizens in Canada, which includes approximately 700,000 citizens living in 633 First Nations communities. He was born on September 20, 1944. Chief Fontaine is a member of the Sagkeeng First Nation and is an Indian as defined in section 6 of the Act. Chief Fontaine resides in Ottawa, Ontario. Chief Fontaine was taken from his family when he was 6 years old and resided at the Fort Alexander Residential School in Fort Alexander, Manitoba from 1951 to 1958. Chief Fontaine's experience at Residential School involved, but was not limited to, being removed from the care of his parents, family, and community, being actively discouraged from speaking his native language, Ojibway, being repeatedly sexually and physically abused by being made to disrobe and bathe in the presence of the priest, being slapped, strapped and poked, being repeatedly told

by nuns and priests that he, and his peers were, "savages" and "evil", being repeatedly made to eat food off the floor in the presence of his peers, while being taunted by the nun, and being given inadequate food, health care, and education.

14. The Plaintiff Michelline Ammaq ("Ammaq"), was born on August 30, 1957 and is an Inuk. Ammaq presently lives in Igloolik, Nunavut. Ammaq was taken from her family when she was seven (7) years old and attended Sir Joseph Bernier Federal Day School in Chesterfield Inlet and resided in Turquetil Hall from 1964 to 1969. Ammaq's experience at Residential School involved, but was not limited to, being removed from the care of her parents, family and community, not being allowed to speak her native language, Inuktitut, being sexually, physically and emotionally abused, being given inadequate food, health care and education.

15. The Plaintiff, Percy Archie ("Archie"), resides in Kamloops, British Columbia. Archie is a member of the Canum Lake Band and is an Indian as defined in the Act. Archie was born on May 22, 1950 and attended the St. Joseph's Indian Residential School in Williams Lake, British Columbia between 1963 and 1965.

16. The Plaintiff, Charles Baxter Senior ("Baxter Snr."), was born on November 24, 1950, and is a member of the Marten Falls First Nation, Ogoki Post, and is an Indian as defined in section 6 of the Act. Baxter Snr. is now a member of, and presently lives on the Constance Lake First Nation near Calstock, Ontario, where he is employed as the Residential School Coordinator. He resided at the Pelican Falls Residential School near Sioux Lookout from 1958 to 1966, and the Shingwauk Hall Residential School in Sault Ste. Marie from 1966 to 1968. Baxter Snr.'s experiences at these Residential Schools involved, but was not limited to, being removed from the care of his parents, family and community, having his hair cut off, being required to do physical labour in a barn, being physically abused, often for speaking his native language,

Ojibway, being given inadequate food and supplies, being provided with a sub-standard education and being repeatedly sexually molested by dormitory supervisors, other staff at Pelican Falls and other students.

17. The Plaintiff, Elijah Baxter ("Baxter"), was born on January 27, 1923 and is a member of the Marten Falls First Nation, Ogoki Post, and is an Indian as defined in section 6 of the Act. Baxter presently lives in the Town of Geraldton in the Province of Ontario and is father to eleven (11) children. He resided at the Pelican Falls Residential School near Sioux Lookout from approximately 1933 to 1936. Baxter's experience at the Residential School included, but was not limited to, being removed from the care of his parents, family and community, being required to do physical labour on a farm, being inadequately educated resulting in illiteracy, being physically abused, often for speaking his native language and being sodomized on more than one occasion by a member of the staff at Pelican Falls while on school property. Even after having to endure such an experience, Baxter was forced to send his own children to Residential Schools where they were also physically, emotionally and sexually abused.

18. The Plaintiff Evelyn Baxter ("E. Baxter") resides in Thunder Bay, Ontario. E. Baxter is a member of the Marten Falls First Nation. E. Baxter was born on April 12, 1967 and her mother attended the Pelican Falls Indian Residential School and Shingwauk Residential School. E. Baxter's grandparents, uncle, Elijah Baxter, and her cousin, Charles Baxter Snr., also attended Indian Residential School. E. Baxter is a proposed representative plaintiff for the Family Class.

19. The Plaintiff Donald Belcourt ("Belcourt") resides in Swan Hills, Alberta. Belcourt is a member of the Sucker Creek First Nation and is an Indian as defined in the Act. Belcourt was born on September 26, 1939, and attended the St. Bruno's Residential School in Alberta from 1946 to 1954.



20. The Plaintiff Nora Bernard ("Bernard") resides at the Millbrook First Nation Reserve, in Nova Scotia. Bernard is a Mi'kmaq and a Status Indian. Bernard was born on September 22, 1935 and attended the Shubencadie Indian Residential School in the 1940s.

21. The Plaintiff John Bosum ("Bosum") resides in the City of Montreal, Quebec. Bosum is a Cree and a Status Indian. Bosum attended the La Tuque Indian Residential School in Quebec between 1962 and 1973.

22. The Plaintiff Janet Brewster ("Brewster") resides in Igalut, Nunavut. Brewster is an Inuk enrolled under the Nunavut Land Claims Agreement. Brewster's mother attended the Akaitcho Hall Indian residential School in Yellowknife between 1964 and 1969. Brewster is a proposed representative plaintiff for the Family Class.

23. The Plaintiff Rhonda Buffalo ("Buffalo") resides in the City of Regina, Saskatchewan. Buffalo is a member of the Day Star First Nation and is an Indian as defined in the Act. Buffalo resided at the Gordon's Residential School in Punnichy, Saskatchewan from 1971 to 1980.

24. The Plaintiff Ernestine Caibaiosai-Gidmark ("Gidmark") resides in Wiwkemikeng, Ontario. Gidmark is a member of the Sagamok First Nation and is an Indian as defined in the Act. Gidmark attended the Spanish Hills Residential School in Ontario between 1961 and 1962.

25. The Plaintiff Michael Carpan ("Carpan") resides in Edmonton, Alberta. Carpan is a member of the Slave Lak First Nation and is an Indian as defined in the Act. Carpan attended St. Mary's Residential School in Alberta between 1964 and 1976.

26. The Plaintiff Brenda Cyr ("B. Cyr") resides in Regina, Saskatchewan. B. Cyr is a member of the Gordon's First Nation and is an Indian as defined in the Act. B. Cyr attended the

Lebret Indian Residential School between 1966 and 1969 and the Muscowequan Indian Residential School between 1969 and 1975.

27. The Plaintiff Dawson ("Dawson") resides in Whitehorse in the Yukon. Dawson is a member of Kwanlin Dun First Nation and is an Indian as defined in the Act. Dawson was born on January 1, 1942 and attended the Whitehorse Baptist Mission School, in the Yukon between 1946 and 1955.

28. The Plaintiff Ann Dene ("Dene") resides in Huntington, Quebec. Dene is a member of the Mikisew Cree First Nation and is an Indian as defined in the Act. Dene attended the Holy Angels Residential School in Alberta between 1968 and 1972.

29. The Plaintiff, Vincent Bradley Fontaine ("Bradley") was born on October 11, 1960, and is the son of James Fontaine. Bradley is a member of the Sagkeeng First Nation and is an Indian as defined in section 6 of the Act. Bradley resides on the Sagkeeng Reserve in Manitoba and resided at the Fort Alexander Residential School in Manitoba from 1965 to 1969.

30. The Plaintiff, James Fontaine ("Fontaine") was born on August 15, 1930. He is a member of the Sagkeeng First Nation, and is an Indian as defined in section 6 of the Act. Fontaine presently lives on the Sagkeeng Reserve in Manitoba. Fontaine was taken from his family when he was six (6) years old and resided at the Fort Alexander Residential School in Manitoba from 1936 to 1944. Fontaine's experience at the Residential School involved, but was not limited to, being removed from the care of his parents, family, and community, being actively discouraged from speaking his native language, being physically abused by being slapped and strapped, and by being given inadequate food, health care, and education.

31. The Plaintiff Agnes Mary Fontaine (nee Spence) ("Spence") was born on June 28, 1912 and died on August 10, 1988. Spence was a member of the Sagkeeng First Nation and was an Indian as defined in section 6 of the Act. Spence was taken from her family when she was seven (7) years old and resided at the Fort Alexander Residential School in Manitoba from 1919 to 1928. Spence's experience at the Residential School included being removed from the care of her parents, family, and community, not being allowed to speak her native language, or practice traditional spiritual ways, being sexually, physically and emotionally abused by Canada's Agents, being given inadequate food, health care, and education.

32. The Plaintiff Dana Eva Marie Francey ("Francey") resides in Inuvik, Northwest Territories. Francey is a member of the Inuvialuit Society and a beneficiary of the Inuvialuit Final Agreement, 1985. Francey's mother attended the Sir Alexander MacKenzie Indian Residential School between kindergarten and grade six, and then resided in Stringer Hall, in Inuvik between 1962 and 1971. Francey is a proposed representative plaintiff for the Family Class.

33. The Plaintiff Peggy Good ("Good") resides in Victoria, British Columbia. Good is a member of the Nanaimo First Nation and is an Indian as defined in the Act. Good attended the Port Alberni Residential School in British Columbia between 1954 and 1964.

34. The Plaintiff, Fred Kelly ("Kelly") was born on April 13, 1942. Kelly is a member of the Ojibways of Onigaming First Nation and is an Indian as defined in section 6 of the Act. Kelly resides in Winnipeg, Manitoba. Kelly was taken from his family when he was five (5) years old and resided at the St. Mary's Indian Residential School in Kenora, Ontario from 1947 to 1956 and again from 1958 to 1959. Kelly also resided at the St. Paul's Residential High School in Lebret, Saskatchewan from 1956 to 1958.

35. The Plaintiff Rosemarie Kuptana ("Kuptana"), was born on March 24, 1954 and is Inuvialuit. Kuptana presently lives in Inuvik, Northwest Territories. She was taken from her family when she approximately seven (7) years old and attended Sir Alexander Mackenzie School and Samuel Hearne Secondary School while residing at Stringer Hall from approximately 1961 to 1971. Kuptana's experience at Residential School involved, but was not limited to, being removed from the care of her parents, family and community, not being allowed to speak her native language, Inuinaktun, or practice traditional spiritual ways, being sexually, physically and emotionally abused, being given inadequate food, health care and education.

36. The Plaintiff Elizabeth Kusiak ("Kusiak") resides in Edmonton, Alberta. Kusiak is a member of the Athabasca Chipewyan First Nation and is an Indian as defined in the Act. Kusiak was born on October 10, 1941 and attended the Holy Angels Residential School in Fort Chipewyan, Alberta from 1950 to 1958.

37. The Plaintiff Theresa Larocque ("Larocque") resides in Edmonton, Alberta. Larocque is Cree, a Statue Indian and a member of the Bigstone Cree First Nation. Larocque was born on December 19, 1953 and attended the St. Martin's Mission in Desmaris, Alberta from 1959 to 1969.

38. The Plaintiff Jane McCallum ("McCallum") resides in Prince Albert, Saskatchewan. McCallum is a member of the Peter Ballantyne First Nation and is an Indian as defined in the Act. McCallum attended the Guy Hill Residential School in Manitoba between 1949 and 1958.

39. The Plaintiff Cornelius McComber ("McComber") resides in Kahnawake, Quebec. McComber is a member of the Mohawk First Nation and is an Indian as defined in the Act.

McComber resided at the St. Charles Garnier Residential School in Quebec between 1946 and 1952.

40. The Plaintiff Veronica Marten ("Marten") resides in Edmonton, Alberta. Marten is a member of the Mikisaw Cree First Nation. Marten was born on February 9, 1972 and her mother attended the Holy Angels Indian Residential School in Fort Chipewyan, Alberta between 1951 and 1967. Marten's uncles and aunt also attended Indian Residential School. Marten is a proposed representative plaintiff for the Family Class.

41. The Plaintiff Stanley Thomas Nepetaypo ("Nepetaypo") resides in Thompson, Manitoba. Nepetaypo is a member of the Fox Lake First Nation and is an Indian as defined in the Act. Nepetaypo attended the Norway House Gordon's Residential School in Saskatchewan between 1954 and 1959.

42. The Plaintiff Flora Northwest ("Northwest") resides in Hobbema, Alberta. Northwest is a member of the Samson First Nation and is an Indian as defined in the Act. Northwest attended the Hobbema/Ermineskin Residential School in Alberta between 1951 and 1961.

43. The Plaintiff Norman Pauchay ("Pauchay") resides in the City of Yorkton, Saskatchewan and is forty-three (43) years old. Pauchay is a member of the Yellow Quill First Nation and is an Indian as defined in section 6 of the Act. Pauchay attended Gordon's Residential School near Punnichy, Saskatchewan between 1971 and 1973.

44. The Plaintiff Camble Quatell ("Quatell") resides in Campbell River, British Columbia. Quatell is a member of the Campbell River Indian Band First Nation and is an Indian as defined in the Act. Quatell attended the St. Michael's Residential School in British Columbia, between 1952 and 1962.

45. The Plaintiff, Alvin Barney Saulteaux ("Saulteaux"), resides in the City of Indian Head, Saskatchewan and is thirty-seven (37) years old. Saulteaux is a member of the Carry the Kettle First Nation and is an Indian as defined in section 6 of the Act. Saulteaux resided at the Lebret Indian Residential School near Lebret, Saskatchewan between 1983 and 1986.

46. The Plaintiff Christine Semple ("Semple") resides in Watson Lake, in the Yukon. Semple is a member of the Grand Rapids First Nation and is an Indian as defined in the Act. Semple attended the Mackay Residential School in Manitoba between 1957 and 1962.

47. The Plaintiff Dennis Smokeyday ("Smokeyday") resides in Kinistin, Saskatchewan. Smokeyday is a member of the Kinistin First Nation and is an Indian as defined in the Act. Smokeyday resided at the Muscowegan Residential School in Saskatchewan between 1970 and 1978.

48. The Plaintiff Kenneth Sparvier ("Sparvier") resides in the City of Regina, Saskatchewan. Sparvier is a member of the Cowessess First Nation and is an Indian as defined in the Indian Act. Sparvier resided at the Marievel Residential School in Saskatchewan and the Lebret Residential School from 1949 to 1958 and 1958 and 1961, respectively.

49. The Plaintiff Edward Tapiatic ("Tapiatic") resides in the City of Chisasibi, Quebec. Tapiatic is a member of the Cree Nation of Chisasibi and is an Indian as defined in the Act. Tapiatic was born on February 21, 1951 and attended the St. Phillips Indian Residential School in Quebec between 1956 and 1966 and La Tuque Residential School between 1967 and 1968.

50. The Plaintiff Helen Winderman ("Winderman") resides in Fort Nelson, British Columbia. Winderman is a member of the Fort Nelson First Nation and is an Indian as defined in the Act.

Winderman attended the Lower Post Residential School in British Columbia between 1963 and 1968.

51. The Plaintiff Adrian Yellowknee ("Yellowknee") resides in Wabasca, Alberta. Yellowknee is a member of the Bigston Cree First Nation and is an Indian as defined in the Act. Yellowknee attended the St. Martin and St. Bruno's Residential Schools between 1953 and 1963 and 1963 and 1964, respectively.

#### **E. THE DEFENDANTS**

52. The Defendant, the Federal Government of Canada, is being represented in this proceeding by the Attorney General of Canada.

53. The General Synod of the Anglican Church of Canada ("the General Synod") is a corporation originally incorporated under the name "The General Synod of the Church of England in Canada" by *An Act to Incorporate the General Synod of the Church of England in Canada*, S.C. 1921, c. 82. In 1956, the name of the General Synod was changed to "The General Synod of The Anglican Church of Canada" by S.C. 1956, c.57.

54. The Missionary Society of the Anglican Church of Canada ("the Missionary Society") is a corporation under the laws of Canada. It was originally incorporated under the name "The Missionary Society of the Church of England in Canada" by *An Act to Incorporate the Missionary Society of the Church of England in Canada*, S.C. 1903, c. 155. In 1956, the name of the Missionary Society was changed to "The Missionary Society of the Anglican Church of Canada" by S.C. 1956, c.57.

55. From 1902 to 1969, the Missionary Society was established to undertake the general missionary work of the General Synod and overseas.

56. The Dioceses of the Anglican Church of Canada listed in Schedule "A" to this Statement of Claim were involved in the operation of Indian Residential Schools up to and including 1969.

57. The United Church of Canada was founded pursuant to a covenant formed between the members of its founding churches, and was incorporated between 1924 and 1926 by the Parliament of Canada and the Legislatures of the various provinces. The statutes adopted the said covenant and were and are each known as *The United Church of Canada Act*.

58. The Methodist Church of Canada was one of the founding churches of The United Church of Canada, and was described in *The United Church of Canada Act* as including "the body corporate known as the Methodist Church and all bodies corporate established or created by The Methodist Church or any Conference thereof under the provisions of any statute of the Parliament of Canada, or the Legislature of any Province thereof ... and all Methodist congregations separately incorporated under any statute of any Province of the Dominion of Canada". Pursuant to *The United Church of Canada Act*, the several corporations described as "The Methodist Church" merged in the corporation of The United Church of Canada.

59. The Board of Home Missions of the United Church of Canada was established in 1925 as an unincorporated internal administrative division of The United Church of Canada. The Board of Home Missions had responsibility for supervision and administration of all the missionary work of The United Church within Canada, including work with First Nations' people and Indian Residential Schools. In an internal restructuring of The United Church of Canada in 1971, the mandate and work of the Board of Home Missions was merged into the Division of Mission in Canada.



60. The Women's Missionary Society of The United Church of Canada came into existence in 1925 as an unincorporated internal organization for women within The United Church of Canada. Its mandate included the appointing of missionaries and associate workers in Canada, recruiting and training women church workers, producing missionary periodicals, carrying through mission education programs for all ages in the church, and fund-raising for all its mission activities. In 1962, the Women's Missionary Society joined with the Women's Society of The United Church of Canada to form the United Church Women.

61. The Missionary Society of the Methodist Church of Canada existed as part of the Methodist Church of Canada, formed in 1874, and the Methodist Church (Canada), formed in 1884. The objects of the Society were the support of domestic, Aboriginal, immigrant, new Canadian, French Canadian, and other missions carried on under the direction of a central committee and board, and later also under the Conferences. The work covered the entire mission field including work with Aboriginal People in Ontario, Quebec and Western Canada. In 1925, pursuant to *The United Church of Canada Act*, the body corporate of which the Missionary Society was part merged in the corporation of The United Church of Canada.

62. During the period referenced in the Statement of Claim, the General Synod consisted of the Primate and Bishops of the Anglican Church of Canada, and of members chosen from clergy and laity elected by the several dioceses of the Anglican Church of Canada in accordance with the Constitution of the General Synod.

63. The Defendant, The Presbyterian Church in Canada (the "PCC"), is an unincorporated association which includes congregations, members and adherents of The Presbyterian Church in Canada who did not become part of the United Church of Canada on June 10, 1925, together with persons who have since that date joined The Presbyterian Church in Canada as members or

adherents. The PCC was referred to in *An Act to Incorporate The Trustee Board of The Presbyterian Church in Canada*, S.C. 1939, c. 64 and *An Act respecting the United Church in Canada*, S.C. 1939, c. 65.

64. The Defendant, The Trustee Board of The Presbyterian Church in Canada (the “Trustee Board”), is a body corporate. The Trustee Board was incorporated by a Special Act of Parliament entitled *An Act to Incorporate The Trustee Board of The Presbyterian Church in Canada* S.C. 1939, c. 64 and was recognized by the Ontario Legislature in *An Act respecting the Trustee Board of The Presbyterian Church in Canada*, S.O. 1939, c. 69.

65. The Defendant, The Foreign Mission of The Presbyterian Church in Canada entered into agreements dated April 1, 1911 with His Majesty the King, represented by the Superintendent General of Indian Affairs of Canada, for the operation of the Cicilia Jeffrey Boarding School and the Birtle Boarding School and reported annually to The General Assembly of The Presbyterian Church in Canada and had oversight of, inter alia, missionary work to aboriginal peoples.

66. The Defendant, The Women's Missionary Society of The Presbyterian Church in Canada, entered into agreements dated May 22, 1962, with Her Majesty the Queen in Right of Canada, for the operation of the Cecilia Jeffrey Indian Residential School and the Birtle Indian Residential School and reported annually to The General Assembly of The Presbyterian Church.

67. The balance of the Defendants are listed and described at Schedule "A" of this Claim.

**F. THE RESIDENTIAL SCHOOL SYSTEM AND SYSTEMIC CHILD ABUSE, NEGLECT AND MALTREATMENT**

68. Residential Schools were established by Canada as early as 1874, for the education of Aboriginal children. These children were taken from their homes and their communities and transported to Residential Schools where they were confined and deprived of their heritage, their

support networks and their way of life, forced to adopt a foreign language and a culture alien to them.

69. Commencing in 1911, Canada entered into formal agreements with the Churches for the operation of such Schools. Pursuant to these agreements, Canada controlled, regulated, supervised and directed all aspects of the operation of the Residential Schools. The Churches assumed the day-to-day operation of the Residential Schools under the control, supervision and direction of Canada, for which the Canada paid the Churches a per capita grant calculated to cover part of the cost of the Residential School operation.

70. As of 1920, the Residential School Policy included compulsory attendance at Residential Schools for all Aboriginal children aged 7 (seven) to 15 (fifteen).

71. This approach to the control and operation of the Residential Schools system continued throughout the Class Period until April 1, 1969, at which time Canada assumed the sole operation and administration of the Residential Schools from the Churches, excepting certain cases where Churches continued to act as agents of Canada until the end of the Class Period.

72. Canada removed Aboriginal Persons, usually young children, from their homes and Aboriginal communities and transported them to Residential Schools which were often long distances away. Canada controlled all aspects of the admission of Aboriginal Persons to the Residential Schools including arrangements for the care of such persons over holiday periods and the methods of transporting children to and from Residential Schools.

73. Aboriginal Persons were often taken from their families without the consent of their parents or guardians. While the stated purpose of the Residential Schools from their inception was the education of Aboriginal children, their true purpose was the complete integration and

assimilation of Aboriginal children into mainstream Canadian society and the obliteration of their traditional language, culture and religion.

74. In addition to the inherent cruelty of the Residential School Policy itself, many children attending Residential Schools were also subject to repeated and extreme physical, sexual and emotional abuse, all of which continued until the year 1997, when the last Federally operated Residential School was closed.

75. There were in excess of one hundred (100) Residential Schools in operation in Canada in every Province and Territory except New Brunswick and Prince Edward Island during the Class Period, with a peak of 74 schools in operation in 1920. Canada has estimated that, as of 2005, there were approximately eighty-five thousand (85,000) survivors of Residential Schools in Canada, representing the potential size of the Survivor Class.

76. During the Class Period, children were subjected to systemic child abuse, neglect and maltreatment. They were forcibly confined in Residential Schools and were systematically deprived of the essential components of a healthy childhood. They were subjected to physical, emotional, psychological, cultural, spiritual and sexual abuse by those who were responsible for their well being.

77. Their accommodation was crowded, cold, and sub-standard. They were underfed and ill nourished. They were forbidden to speak their native languages and to practice the customs and traditions of their culture. They were deprived of love and affection from their families and of the support that a child would normally expect to have from those in positions of trust and authority. They were subjected to corporal punishment, assaults, including physical and sexual, and systematic child abuse.

78. Canada has a fiduciary relationship with Aboriginal People in Canada and owed and owes fiduciary duties to the Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated all Residential Schools in Canada during the Class Period.

79. Furthermore, Canada was responsible for the operation and administration of each Residential School during the Class Period. Prior to April 1, 1969, Canada paid the Churches to carry out this operation and administration on its behalf and under its guidance, supervision and control. Canada carried out that operation and administration directly after April 1, 1969. These operative and administrative responsibilities, carried out on behalf of Canada by its Agents or the Churches and its Agents, included:

- (a) the operation and maintenance of Residential Schools during the Class Period;
- (b) the care and supervision of all members of the Survivor Class, and for supplying all the necessities of life to Survivor Class members *in loco parentis*;
- (c) the provision of educational and recreational services to the Survivor Class while in attendance at Residential Schools and control over all persons allowed to enter Residential School premises at all material times;
- (d) the selection, supply and supervision of teaching and non-teaching staff at the Residential Schools and reasonable investigation into the character, background and psychological profile of all individuals employed to teach or supervise the Class;
- (e) inspection and supervision of Residential Schools and all activities taking place therein, and for full and frank reporting to Canada respecting conditions in the Residential Schools and all activities taking place therein;
- (f) transportation of Survivor Class members to and from Residential Schools; and
- (g) communication with and reporting to the Family Class respecting the activities and experiences of Survivor Class members while attending Residential Schools.

80. Attempts to provide educational opportunities to children confined to Residential Schools were ill-conceived and poorly executed by inadequately trained teaching staff. The result was to

effectively deprive the children of any useful or appropriate education. Very few survivors of Residential Schools went on to any form of higher education.

81. The conditions and abuses in the Residential Schools during the Class Period were well-known to Canada. Information about the misconduct of the persons operating and employed at the Residential Schools was suppressed and covered up.

82. Canada began to close schools and by 1979 only twelve (12) schools remained with a total resident population of one thousand, eight hundred and ninety nine (1,899) students.

#### **G. CANADA'S STATEMENT OF RECONCILIATION**

83. In fact, in January of 1998, Canada issued a Statement of Reconciliation acknowledging and apologizing for the failures of the Residential School Policy. Moreover, Canada admitted that the Residential School system was wrongly and inappropriately designed to assimilate Aboriginal Persons. The Plaintiffs plead that the Statement of Reconciliation by Canada is an admission by Canada of the facts and duties set out in paragraphs \* and \* and the allegations set out in paragraphs \* and \* herein and is relevant to the Plaintiffs' claim for damages, particularly punitive damages. The Statement of Reconciliation stated, in part, as follows:

Sadly, our history with respect to the treatment of Aboriginal people is not something to which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self sustaining nations that were desegregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the *Indian Act*. We must acknowledge that the results of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.

Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our

profound regret for past actions of the Federal Government which have contributed to these difficult pages in the history of our relationship together.

One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School System. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continued to reverberate in Aboriginal communities to this date. Tragically, some children were the victims of physical and sexual abuse.

The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at Residential Schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at Residential Schools, we are deeply sorry. In dealing with the legacies of the Residential School program, the Government of Canada proposes to work with First Nations, Inuit, Metis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of the sad era of our history...

Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong community...

#### **H. CANADA'S BREACH OF DUTIES TO THE CLASS MEMBERS**

84. The Defendant Canada, as represented by the Attorney General of Canada, has a fiduciary relationship with Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated all Residential Schools in Canada during the Class Period.

85. Canada, the Churches and their respective servants and agents compelled members of the Survivor Class to leave their homes, families and communities, and forced members of the Survivor Class to attend and live in Residential Schools, all without lawful authority or the

permission and consent of Survivor Class members or that of their parents. Such confinement was wrongful, arbitrary and for improper purposes.

86. Survivor Class members were systematically subjected to the institutional conditions, regime and discipline of Residential School without the permission and consent of Survivor Class members or that of their parents, and were also subjected to wrongful acts at the hands of Canada and the Churches while confined therein.

87. All Aboriginal Persons who attended Residential Schools did so as Wards of Canada, with Canada as their guardian, and were persons to whom Canada owed the highest non delegable, fiduciary, moral, statutory and common law duties, which included, but were not limited to, the duty to ensure that reasonable care was taken of the Survivor Class while at Residential School, the duty to protect the Survivor Class while at Residential School, the duty to protect the Survivor Class from intentional torts perpetrated on them while at a Residential School. These non delegable and fiduciary duties were performed negligently and tortuously by Canada, in breach of its special responsibility to ensure the safety of the Survivor Class while at a Residential School. Canada was responsible for:

- (a) the administration of the Act and its predecessor statutes as well as any other statutes relating to Aboriginal Persons and all Regulations promulgated under these Acts and their predecessors during the Class Period;
- (b) the promotion of the health, safety and well being of Aboriginal Persons in Canada during the Class Period;
- (c) the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments during the Class Period;
- (d) decisions, procedures, regulations promulgated, operations and actions taken by the Department of Indian Affairs and Northern Development, its employees, servants, officers and Agents in Canada and their predecessors during the Class Period;



- (e) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of Residential Schools in Canada and for the creation, design and implementation of the program of education for Aboriginal Persons confined therein during the Class Period;
- (f) the selection, control, training, supervision and regulation of the designated operators, including the Church Defendants listed in Schedule "B" hereto and other Religious organizations, and their employees, servants, officers and agents, and for the care and education, control and well being of Aboriginal Persons confined in Residential Schools in Canada during the Class Period;
- (g) the provision of all educational services and opportunities to Aboriginal Persons in Canada, including Survivor Class members, pursuant to the provisions of the Act and any other statutes relating to Aboriginal Persons during the Class Period;
- (h) transportation of Survivor Class Members and Deceased Class Members to and from Residential Schools and to and from their homes while attending Residential Schools during the Class Period;
- (i) complying with the various treaties outlined below, where applicable, and for providing an appropriate education and educational environment in compliance with the various treaties;
- (j) preserving, promoting, maintaining and not interfering with Aboriginal Rights, including the right to retain and practice their culture, spirituality, language and traditions and the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities;
- (k) the care and supervision of all members of the Survivor Class while they were in attendance at Residential Schools during the Class Period and for the supply of all the necessities of life to Survivor Class Members, *in loco parentis*, during the Class Period;
- (l) the provision of educational and recreational services to the Survivor Class while in attendance at Residential Schools during the Class Period;
- (m) inspection and supervision of Residential Schools and all activities that took place therein during the Class Period and for full and frank reporting to Canada and to the Family Class Members with respect to conditions in the Residential Schools and all activities that took place therein during the Class Period; and
- (n) communication with and reporting to the Family Class with respect to the activities and experiences of Survivor Class Members while attending Residential Schools during the Class Period.

88. During the Class Period, male and female Aboriginal children were subjected to gender specific, as well as non-gender specific, systematic child abuse, neglect and maltreatment. They

were forcibly confined in Residential Schools and were systematically deprived of the essential components of a healthy childhood. They were subjected to physical, emotional, psychological, cultural, spiritual and sexual abuse by those who were responsible for their well being. Their accommodation was crowded, cold, and sub-standard. They were underfed and malnourished. They were forbidden to speak their native language and to practice the customs and traditions of their culture. They were deprived of love and affection from their families and of the support that a child would normally expect to have from those in positions of trust and authority. They were subjected to corporal punishment, assaults, including physical and sexual assault. Canada's Residential School Policy was in breach of the *United Nations Genocide Convention*, ratified by Canada in September 1952, and in particular Article 2(b), (c) and (e) of that convention. The forced removal of Aboriginal children from their homes, residences and communities was a violation of this convention.

89. In contravention of the Treaties between the Government and First Nations and in contravention of the *United Nations Genocide Convention*, particularly Article 2(e) thereof to which the Government is a signatory, the Plaintiffs and other children of First Nations heritage were to be systemically assimilated into white society. In pursuance of that plan, they were forced to attend Residential Schools and contact with their families was restricted. Their cultures and languages were taken from them with sadistic punishment and practices.

90. Further, at all material times, Canada was bound by the rules of customary international law reflected and codified in the *Geneva Declaration of the Rights of the Child*, adopted by the League of Nations in 1924, including, but not limited to, the following:

- (a) the child must be provided with the means necessary for his/her normal development, both materially and spiritually;

- (b) the child must be put in a position to earn a livelihood and must be protected against every form of exploitation.

91. The effects from the Residential School policy further violated the *International Covenant on Civil and Political Rights*, in particular Articles 1 and 27 of that convention, ratified by Canada in May, 1976.

92. The effects from the forced integration and assimilation of the Aboriginal Persons has caused a profound and permanent cultural, psychological, emotional and physical injury and is in breach of the *United Nations Genocide Convention* in particular Article 2(b), (c) and (e) of the convention, ratified by Canada in September, 1952. The effects from the Residential School policy also violates the *International Covenant on Civil and Political Rights*, in particular Articles 1 and 27 of the convention, ratified by Canada in May, 1976, because it has interfered with the Survivor Class Members' and the Family Class Members' rights including but not limited to: the right to retain and practice their culture, spirituality, language and traditions, the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities and the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities

93. Breached the *International Covenant on Civil and Political Rights*, in particular Articles 1 and 27 of the convention, ratified by Canada in May 1976, by interfering with the class, or one or more sub-class's rights to:

- (i) retain and practice their culture, spirituality, language and traditions;
- (ii) fully learn their culture, spirituality, language and traditions from their families, extended families and communities;
- (iii) teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities;

94. The systemic child abuse, neglect and maltreatment sustained by the children at Residential Schools during the Class Period, the effect and impact of which is still being felt by Survivor Class Members and Family Class Members, was in violation of the rights of children, specifically, but not limited to, the following rights set out in the *United Nations Convention on the Rights of the Child*, adopted by the United Nations in 1989, and ratified by Canada in December of 1991:

- (a) Freedom from discrimination – Canada breached its duties to protect children from any form of discrimination or punishment based on Family’s status, activities or beliefs;
- (b) Best interest of child – Canada breached its duty to ensure the establishment of institutional standards for the care and protection of children and breached its duty to have considered the best interest of the child in all legal and administrative decisions;
- (c) Respect for parental responsibility – Canada breached its duty to protect the rights of parents or guardians to provide direction to their children in the exercise of their rights;
- (d) Survival and development – Canada breached its duty to ensure the survival and maximum development of the child;
- (e) Name and nationality – Canada breached its duty to recognize the right to a name and to acquire a nationality and the right to know and be cared for by parents;
- (f) Preservation of identity – Canada breached its duty to recognize the right to preserve or re-establish the child’s identity (name, nationality and family ties);
- (g) Parental care and non-separation – Canada breached its duty to recognize the right to live with parents and maintain contact with both parents unless these are deemed incompatible with the child’s best interests;
- (h) Free expression of opinion – Canada breached its duty to recognize the child’s right to express an opinion in matters affecting the child and to have that opinion heard;
- (i) Freedom of thought, conscience and religion – Canada breached its duty to recognize the right to determine and practice any belief and ought to have respected the rights of parents or guardians to provide direction and the exercise of this right;
- (j) Freedom of association – Canada breached its duty to recognize the right to freedom of association and freedom of peaceful assembly;

- (k) Protection of privacy – Canada breached its duty to recognize the right to protection from arbitrary or unlawful interference with privacy, family, home, or corresponding attacks on honour and reputation;
- (l) Parental responsibilities – Canada breached its duty to recognize the principal that both parents are responsible for the upbringing of their children and that parents or guardians have primary responsibility;
- (m) Abuse and neglect – Canada breached its duty to protect children from all forms of abuse, neglect and exploitation by parents or others and ought to have undertaken preventative and treatment programs in this regard;
- (n) Health care – Canada breached its duty to recognize the right to the highest attainable standards of health and access to medical services and breached its duty to attempt to diminish infant and child mortality, combat disease and malnutrition, ensure health care for expectant mothers, provide access to health education, develop preventative health care and abolish harmful traditional practices;
- (o) Periodic review – Canada breached its duty to recognize the right of children placed by Canada for reasons of care, protection or treatment to have all aspects of that placement reviewed regularly;
- (p) Education – Canada breached its duty to recognize the right to education by providing free and compulsory primary education, ensuring equal access to secondary and higher education and ensuring that school discipline does not threaten the child's human dignity;
- (q) Aims of education – Canada breached its duty to direct education at developing the child's personality and talents, preparing the child for a responsible life in a free society and developing respect for the child's parents, basic human rights, the natural environment and the child's own cultural and national values and those of others;
- (r) Children of minorities – Canada breached its duty to recognize the right of children of minority communities and indigenous populations to enjoy their own culture, practice their own religion and use their own language;
- (s) Leisure and recreation – Canada breached its duty to recognize the right to leisure, play and participation in cultural and artistic activities;
- (t) Child labour – Canada breached its duty to protect children from economic exploitation and from engaging in work that constitutes a threat to health, education and development;
- (u) Sexual exploitation – Canada breached its duty to protect children from sexual exploitation and abuse;
- (v) Other exploitation – Canada breached its duty to protect children from all other forms of exploitation; and,

- (w) Torture, capital punishment and deprivation of liberty – Canada breached its duty to protect children from torture or other cruel, inhumane or degrading treatment.

95. Through its servants, officers, employees and agents, Canada was negligent and in breach of its non-delegable fiduciary, moral, statutory, and common law duties of care to the Survivor Class, the Family Class and the Deceased Class during the Class Period. Particulars of the negligence and breach of duty of Canada include the following:

- (a) it systematically, negligently, unlawfully and wrongfully delegated its fiduciary and other responsibility and duties regarding the education of and care for Aboriginal children to others, including the Churches and other Religious organizations;
- (b) it systematically, negligently, unlawfully and wrongfully admitted and confined Aboriginal children to Residential Schools;
- (c) it acted without lawful authority and not in accordance with any statutory authority pursuant to or as contemplated by the provisions of the Act or any other statutes relating to Aboriginal Persons as:
  - (i) said provisions are and were *ultra vires* the Parliament of Canada and of no force and effect in law;
  - (ii) The conduct of Canada in placing the Aboriginal children in Residential Schools, confining them therein, and treating or permitting them to be treated there as set forth herein was in breach of Canada's fiduciary obligations to the Survivor Class and Family Class Members, which was not authorized or permitted by any applicable legislation and was, to the extent such legislation purported to authorize such fiduciary breach, of no force and effect and/or *ultra vires* the Parliament of Canada; and
  - (iii) Canada routinely and systematically failed to act in accordance with its own laws, regulations, policies and procedures with respect to the confinement of Aboriginal children in Residential Schools, which confinement was wrongful.
- (d) it delegated to and contracted with the Churches and other Religious organizations to implement its program of forced integration, confinement and abuse;
- (e) it failed to adequately screen and select the organizations and individuals to which it delegated the implementation of its Residential School program;
- (f) it failed to adequately supervise and control Residential Schools and its agents operating same under its jurisdiction in Canada;

- (g) it deliberately and chronically deprived the Survivor Class Members of the education they were entitled to or were led to expect from the Residential Schools or of any adequate education;
- (h) it designed, constructed, maintained and operated Residential School buildings which were sub-standard, inadequate to the purpose for which they were intended and detrimental to the emotional, psychological and physical health of the Survivor Class;
- (i) it failed to provide funding for the operation of Residential Schools that was sufficient or adequate to supply the necessities of life to Aboriginal children confined to them;
- (j) it failed to respond appropriately or at all to disclosure of abuses in the Residential Schools during the Class Period;
- (k) it conspired with the operators of the schools to suppress information about abuses taking place in the Residential Schools during the Class Period;
- (l) it assaulted and battered the Survivor Class Members and permitted them to be assaulted and battered during the Class Period;
- (m) it permitted an environment to which permitted and allowed student-upon-student abuse;
- (n) it forcibly confined the Survivor Class Members and permitted them to be forcibly confined during the Class Period;
- (o) it was in breach of its fiduciary duty to its Wards the Survivor Class Members by reason of the misfeasances, malfeasances and omissions set out above;
- (p) it failed to inspect or audit the Residential Schools adequately or at all;
- (q) it failed to implement an adequate system of evaluation, monitoring and control of teachers, administrators and non-teaching staff of the Residential Schools during the Class Period;
- (r) (it failed to periodically reassess its regulations, procedures and guidelines for Residential Schools when it knew or ought to have known of serious systemic failures in the Residential Schools during the Class Period;
- (s) it failed to close the Residential Schools in Canada and otherwise protect and care for those persons confined therein when it knew or ought to have known that it was appropriate and essential to do so in order to preserve the health, welfare and well being of the Survivor Class Members;
- (t) it delegated, attempted to delegate, continued to delegate and improperly delegated its non delegable duties and responsibility for the Survivor Class when

it was incapable to do so and when it knew or ought to have known that these duties and responsibilities were not being met;

- (u) it failed to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed;
- (v) (it conspired with various Religious organizations including the Churches to eradicate Aboriginal culture in Canada through the implementation of a Residential Schools program in Canada;
- (w) it undertook a systematic program of forced integration and assimilation of the Aboriginal Persons through the institution of Residential Schools when it knew or ought to have known that doing so would cause profound and permanent cultural, psychological, emotional and physical injury to the members of the Survivor Class during and following the Class Period;
- (x) the effects from the forced integration and assimilation of the Aboriginal Persons violated the *International Covenant on Civil and Political Rights*, in particular Articles 1 and 27 of the convention, ratified by Canada in May, 1976, because it has interfered with the Survivor Class Members', the Family Class Members' and the Deceased Class Members' rights, including, but not limited to:
  - (i) the right to retain and practice their culture, spirituality, language and traditions;
  - (ii) the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities; and,
  - (iii) the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities.
- (y) it was in breach of its obligations to the Survivor Class Members, Family Class Members and Deceased Class Members as set out in the Act and its Treaties with various First Nations providing a right to education at a school to be established and maintained by Canada and which implicitly included the right to education in a safe environment free from abuse and the right to an education which would recognize Aboriginal beliefs, traditions, culture, language and way of life in a way that would not denigrate or eliminate these beliefs, traditions, culture, language and way of life. The Treaties relied on by the Plaintiffs include, but are not limited to, the following Treaties referred to below and the excerpts from these Treaties also provided below, but not limited to the excerpted portions provided:
  - (i) Treaty No. 1 – “And further, Her Majesty agrees to maintain a school on each reserves hereby made, whenever the Indians of the reserve should desire it.”;



- (ii) Treaty No. 2 – “And further, Her Majesty agrees to maintain a school in each reserves hereby made, whenever the Indians of the reserves shall desire it.”;
- (iii) Treaty No. 3 – “And further, Her Majesty agrees to maintain the schools for instruction in such reserves hereby made as Her Government of Her Dominion of Canada may seem advisable whenever the Indians of the reserves shall desire it.”;
- (iv) Treaty No. 4 – “And further Her Majesty agrees to maintain a school in the reserves allotted to each band as soon as they settle on said reserve and are prepared for a teacher.”;
- (v) Treaty No. 5 – “And Further Her Majesty agrees to maintain the schools for instruction in such reserves hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it.”;
- (vi) Treaty No. 6 – “And Further, Her Majesty agrees to maintain the schools for instruction in such reserves hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserves shall desire it.”;
- (vii) Treaty No. 7 – “Further, Her Majesty agrees to pay the salary of such teachers to instruct the children of said Indians as to Her Government of Canada may seem advisable, when said Indians are settled on their Reserves and shall desire teachers.”;
- (viii) Treaty No. 8 – “Further, Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as to Her Majesty’s Government of Canada may seem advisable.”;
- (ix) Treaty No. 9 (The James Bay Treaty) – “Further, His Majesty agrees to pay such salaries of teachers to instruct the children of said Indians, and also to provide such school buildings and educational equipment as may seem advisable to His Majesty’s Government of Canada.”;
- (x) Treaty No. 10 – “Further His Majesty agrees to make such provision as made from time to time be deemed advisable for the education for the Indian children.”; and,
- (xi) Treaty No. 11 “Further, His Majesty agrees to pay the salaries of teachers to instruct the children of said Indians in such manner as His Majesty’s Government may deem advisable.”

96. Through its servants, officers, contractors, agents and employees, for those conduct and breaches it is in law responsible, Canada was negligent and in breach of its non delegable,

fiduciary, statutory, moral and common law duties to the Survivor Class, the Deceased Class and the Family Class during the Class Period. Particulars of the negligence and breach of duty (including breach of non-delegable duties) of Canada are as follows:

- (a) the selection and employment of incompetent and immoral persons as teaching and non-teaching staff in Residential Schools during the Class Period;
- (b) the failure to adequately train or supervise teaching and non-teaching staff employed at Residential Schools;
- (c) the failure to report to the proper authorities the physical, psychological, emotional, cultural and sexual abuses to which children in their care were being subjected at Residential Schools during the Class Period;
- (d) the failure to provide the necessities of life to Survivor Class Members in their care in Residential Schools during the Class Period;
- (e) the knowing cover up of the existence of systematic and widespread abuse of Aboriginal Persons at Residential Schools during the Class Period;
- (f) the deprivation of Survivor Class Members in their care of their languages, as well as their religious and cultural beliefs and practices;
- (g) the failure to provide Survivor Class Members with an adequate or useful education;
- (h) the deprivation of Survivor Class members of contact with their families and of the essential elements of a healthy childhood;
- (i) the conspiracy to eradicate aboriginal culture through the Residential School System;
- (j) the failure to adequately or properly administer, manage and operate the Residential Schools;
- (k) the assault and battery of Survivor Class Members during the Class Period;
- (l) the breach of its fiduciary duties to the Survivor Class members and Family Class members by reason of the misfeasances, malfeasances and omissions set out above;
- (m) the failure to inspect or audit the Residential Schools adequately or at all;
- (n) the failure to implement an adequate system of evaluation, monitoring and control of teachers, administrators and non-teaching staff of the Residential Schools during the Class Period;

- (o) the failure to periodically reassess their procedures and guidelines for Residential Schools when they knew or ought to have known of serious systemic failures in the Residential Schools during the Class Period;
- (p) the deprivation and reduction of the Class' capacity to parent and maintain normal marital and family ties;
- (q) the making of agreements with its agents to suppress information about abuses occurring in the Residential Schools; and
- (r) the failure to advance claims against Canada for compensation on behalf of infant Aboriginal persons or deceased Aboriginal persons in a timely manner, or at all.

97. Canada, through its employees, agents or representatives breached its duty of care to protect the Class from sexual abuse by the student perpetrators while those particular Plaintiffs and the Class were attending and residing at the school in the care of a particular Defendant with the result that the student perpetrators did in fact commit sexual abuse upon certain Plaintiffs and the Class.

98. Canada breached its fiduciary duties to the Plaintiffs and the Class and their families by failing to take the steps set out in the preceding paragraph to protect the Class from sexual abuse.

99. In breach of its ongoing fiduciary duty to the Class, Canada failed and continues to fail, to adequately remediate the damage caused by its failures and omissions set out herein. In particular, Canada has failed to take adequate measures to ameliorate the cultural, linguistic and social damage suffered by the class, and further has failed to provide compensation for the physical, sexual and emotional abuse suffered by the Class.

#### **I. CHURCHES' BREACH OF DUTIES TO THE CLASS MEMBERS**

100. From the inception of the Residential School system, and until 1969, many Residential Schools throughout Canada were controlled and operated by the Churches. The Churches were responsible for the day-to-day operation and administration of the Residential Schools, including, but not limited to:

- (a) admission and transportation of Class Members to the Residential Schools;
- (b) the living conditions within the Residential Schools;
- (c) the selection, hiring, supervision, discipline and dismissal of staff employed at the Residential Schools;
- (d) academic, religious and moral teaching of the Survivor Class Members and the Deceased Class Members;
- (e) school curriculum at the Residential Schools; and
- (f) the supervision, day to day care, guidance and discipline of the Survivor Class Members and the Deceased Class Members.

101. The Plaintiffs plead and rely upon the allegations contained in paragraphs \* through \* above with respect to the liability of the Churches.

102. In particular, the Churches:

- (a) breached their duties in *loco parentis*;
- (b) breached their fiduciary duties by,
  - (i) permitting unqualified individuals to hire servants, agents and employees to administer and operate the residential school;
  - (ii) failing to properly supervise and train their servants, agents and employees to administer and operate the residential school;
  - (iii) failing to have a policy or guidelines, or periodically reassess their procedures and guidelines, for residential schools;
  - (iv) failing to establish procedures governing the care, custody, control and supervision by their servants, agents and employees over the Plaintiffs;
  - (v) failing to adequately observe the gross misconduct of agents, servants or employees of the residential school;
  - (vi) employing incompetent and immoral servants, agents and employees ;
  - (vii) failing to protect the Class Members from harm;
  - (viii) depriving the Class Members of contact with their families and the necessities of life;
  - (ix) failing to protect the Class Members from physical, psychological, emotional and sexual abuses;

- (x) failure in general to take proper and reasonable steps to prevent injury to the Plaintiffs physical health and mental well being and moral safety while at the residential schools;
- (xi) failing to educate the Class Members in even the most basic of academic skills;
- (xii) using the Class Members for manual labour;
- (xiii) conspiring with the Crown to remove the Class Members entirely from their aboriginal cultural;
- (xiv) failing to adequately inspect or audit the residential schools;
- (xv) failing to monitor, supervise, detect or report abuse or, alternatively, suppressed information concerning abuse;
- (xvi) breached the Aboriginal Rights and Treaty Rights of the Class Members; and
- (xvii) breached their duties of trust they owed to the Class Members.

## **J. DAMAGES**

103. As a consequence of the negligence and breach of duty and breach of a non-delegable or fiduciary duty and intentional infliction of harm by Canada and its agents, for whom Canada is vicariously liable, and the Churches for whom Canada is in law responsible, the Survivor Class Members and the Deceased Class Members, including the Representative Plaintiffs, suffered injury and damages including:

- (a) isolation from family and community;
- (b) prohibition of the use of Aboriginal language and the practice of Aboriginal religion and culture and the consequential loss of facility and familiarity with Aboriginal language, religion and culture;
- (c) forced confinement;
- (d) assault and battery;
- (e) sexual abuse;
- (f) emotional abuse;
- (g) psychological abuse;

- (h) deprivation of the fundamental elements of an education;
- (i) an impairment of mental and emotional health amounting to a severe and permanent disability;
- (j) an impaired ability to trust other people or to form or sustain intimate relationships;
- (k) a propensity to addiction;
- (l) an impaired ability to participate in normal family life;
- (m) an impaired ability to control anger and rage;
- (n) alienation from family, spouses and children;
- (o) an impaired ability to enjoy and participate in recreational, social, athletic and employment activities;
- (p) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
- (q) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the Residential School experience;
- (r) sexual dysfunction;
- (s) depression, anxiety and emotional dysfunction;
- (t) suicidal ideation;
- (u) pain and suffering;
- (v) deprivation of the love and guidance of parents and siblings;
- (w) loss of self-esteem and feelings of degradation;
- (x) sense of shame, fear and loneliness;
- (y) nightmares, flashbacks and sleeping problems;
- (z) fear, humiliation and embarrassment as a child and adult, and sexual confusion and disorientation as a child and young adult;
- (aa) impaired ability to express emotions in a normal and healthy manner;
- (bb) loss of ability fulfill cultural duties;
- (cc) loss of ability to live in community; and
- (dd) constant and intense emotional, psychological pain and suffering.

104. As a consequence of the negligence and breach of duty and breach of a non-delegable or fiduciary duty and intentional infliction of harm by Canada and its agents, for whom Canada is vicariously liable, and the Churches and their agents, for whom Canada is in law responsible, the Family Class Members, including the Representative Plaintiffs, suffered injury and damages including:

- (a) they were separated and alienated from Survivor Class Members and the Deceased Class Members for the duration of their confinement in Residential Schools;
- (b) their relationships with Survivor Class Members and Deceased Class Members were impaired, damaged and distorted as the result of the experiences of Survivor Class members and the Deceased Class Members in Residential Schools;
- (c) they suffered abuse from Survivor Class members and Deceased Class members as a direct consequence of their Residential School experience;
- (d) they were unable to resume normal family life and experience with Survivor Class Members and Deceased Class Members after their return from Residential Schools;
- (e) they were deprived of pecuniary support from Survivor Class Members and Deceased Class Members as the direct and indirect consequence of impairments caused by the Residential School experience;
- (f) they incurred special and out-of-pocket expenses in their care of Survivor Class Members and Deceased Class Members and were required to provide support and medical care to Survivor Class Members and Deceased Class Members as a direct or indirect consequence of the Residential School experience; and,
- (g) their culture and language was undermined and in some cases eradicated by, amongst other things, as pleaded herein, the forced assimilation of Survivor Class Members and Deceased Class Members into non-aboriginal culture through the Residential Schools.

#### **K. VICARIOUS LIABILITY**

105. The Plaintiffs state that the Canada and the Churches are vicariously liable for the negligence, malfeasances and misfeasances of their servants, contractors, agents, officers and employees.

**L. LIABILITY FOR BREACH OF TREATIES**

106. The Plaintiffs plead that Canada was in breach of its various treaty obligations set out above through the Residential School System and experience and is liable for such breaches.

**M. GROUNDS FOR PUNITIVE & EXEMPLARY DAMAGES**

107. The Plaintiffs plead that Canada and the Churches, including their senior officers, directors, bureaucrats, ministers and executives, had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses of Survivor Class Members which were occurring at Residential Schools during the Class Period. Despite this knowledge, Canada and the Churches continued to operate the schools and permit the perpetration of grievous harm to the Survivor Class Members.

108. In addition, Canada and the Churches deliberately planned the eradication of the language, religion and culture of Survivor Class Members and Family Class Members. Their actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

**N. CONSTITUTIONALITY OF SECTIONS OF THE INDIAN ACT**

109. The Plaintiffs plead that any section of the Act and its predecessors and any Regulation passed there under and any other statutes relating to Aboriginal Persons that provides or purports to provide the statutory authority for the forcible removal of the Survivor Class Members and Deceased Class Members from their families and communities or for the obligated attendance of the Survivor Class at Residential Schools is, in addition to the reasons set out in paragraph \* above, in violation of sections 1 and 2 of the *Canadian Bill of Rights*, R.S.C. 1985, as well as sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* and should therefore be treated as having no force and effect. In particular, the Plaintiffs challenge the constitutionality



of sections 9 and 10 of the Act and superseded by subsequent legislation, and any Regulations past pursuant to section 113 through 118 of the Act and sections 114 through 122 of the Act.

**O. APPROPRIATENESS OF A CLASS PROCEEDING**

110. As described *supra*, the claims of the Class Members disclose reasonable causes of action against Canada and the Churches. Moreover, their collective claims raise a number of common issues, including, but not limited to:

- (a) by their operation or management of Residential Schools during the Class Period, did the Defendants breach a duty of care they owed to the Survivor Class and the Deceased Class to protect them from actionable physical or mental harm?
- (b) by their purpose, operation or management of Residential Schools during the Class Period, did the Defendants breach a fiduciary duty they owed to the Survivor Class and the Deceased Class or the aboriginal or treaty rights of the Survivor Class and the Deceased Class to protect them from actionable physical or mental harm?
- (c) by their purpose, operation or management of Residential Schools during the Class Period, did the Defendants breach a fiduciary duty they owed to the Family Class?
- (d) if the answer to any of these common issues is yes, can the Court make an aggregate assessment of the damages suffered by all Class members of each class as part of the common trial?

111. Further, a class proceeding is a preferable procedure for the resolution of the common issues as in the vast majority of cases, it would be prohibitively expensive for individual members of the Class to be required to bring separate actions.

112. As there are thousands of Class Members, individual litigation would be repetitive for the parties, especially for Canada and the Churches. Individual litigation would also place an unworkable burden on the judicial system.

113. A class proceeding will greatly increase efficiency for the Class Members, Canada, the Churches and the court, since, in this way, the common issues can be determined in one

proceeding in a court-managed setting with all relevant expert witnesses being required to attend and testify once as opposed to each plaintiff having to prove liability through the calling of experts in multiple actions. The enormous cost savings of proceeding by way of a class proceeding are obvious. Further, the prosecution of several separate individual actions would create the risk of inconsistent or varying adjudications.

114. The claims pursued within this class proceeding are of such a nature that, in the absence of a class proceeding, it is likely that most Class Members would not have access to justice in any meaningful way. It is anticipated that many would not bring their claims forward because of the risks, costs, delays and, in many cases, the amount of damages involved. Moreover, in this case, the Class Members, are by definition, vulnerable and disadvantaged individuals, which further hampers their individual ability pursue their claims on case by case basis.

115. The proposed representatives, who reside in every jurisdiction in which a Residential School operated during the Class Period, and who were subjected to a vast variety of actionable breaches by Canada and the Churches, can fairly and adequately represent the Class and do not have an interest in conflict with the interests of the other Class Members. Their claims are typical of the class as a whole.

116. The Plaintiffs plead and rely upon the following:

*Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, ss. 3, 21, 22, and 23;

*Canadian Charter of Rights and Freedoms*, ss. 7, 15 and 24;

*Constitution Act, 1982*, s. 35(1), being Schedule "B" to the *Canada Act, 1982* (U.K.), c. 11.

*The Family Law Act (Ontario)*, R.S.O. 1990, c. F. 3, s. 61;

*Fatal Accidents Act (Manitoba)*, C.C.S.M., c. F50, s.2;

- Fatal Accidents Act (Saskatchewan)*, R.S.S. 1978, c F-11, ss. 3 and 4;
- Fatal Accidents Act (Alberta)*, R.S.A. 2000, c. F-8, ss. 2 and 3;
- Family Compensation Act (British Columbia)*, R.S.B.C. 1996, c. 126, ss. 2 and 3;
- Fatal Accidents Act (Yukon)*, R.S.Y. 2002, c. 86, ss. 2 and 3;
- Fatal Accidents Act (Northwest Territories and Nunavut)*, R.S.N.W.T. 1988, c. F-3, ss. 2 and 3;
- Civil Code of Québec*, Articles 1457, 1607 and 1611 C.C.Q.;
- The Negligence Act (Ontario)*, R.S.O. 1990, c. N. 1;
- The Tortfeasors and Contributory Negligence Act (Manitoba)*, C.C.S.M. c. T90;
- Contributory Negligence Act (Saskatchewan)*, R.S.S. 1978, c. C-31;
- Contributory Negligence Act (Alberta)*, R.S.A. 2000, c. C-27;
- Negligence Act (British Columbia)*, R.S.B.C. 1996, c. 333;
- Contributory Negligence Act (Yukon)*, R.S.Y. 2002, c. 42;
- Contributory Negligence Act (Northwest Territories and Nunavut)*, R.S.N.W.T. 1988, c. C-18;
- The Canadian Bill of Rights*, R.S.C. 1985, App. III, Preamble, ss. 1 and 2;
- Code of Civil Procedure (Québec)*, R.S.Q. c. C-25, Articles 999-1051;
- Class Proceedings Act, (Ontario)*, S.O. 1992, c. 6;
- The Class Proceedings Act (Manitoba)*, C.C.S.M., c. C130;
- The Class Actions Act (Saskatchewan)*, S.S. 2001, c. C-12.01;
- Class Proceedings Act (Alberta)*, S.A. 2003, c. C-16.5;
- Class Proceedings Act (British Columbia)*, R.S.B.C. 1996, c. 50;
- Judicature Act (Yukon)*, R.S.Y. 2002, c. 128, s. 38;
- Court Rules Act (British Columbia)*, R.S.B.C. 1996, C.80; *Supreme Court Rules*, B.C. Reg. 221/90, Rule 5(11);
- Judicature Act (Northwest Territories)*, R.S.N.W.T. 1998, c. J-1; *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg. 010-96; and

*Nunavut Act (Canada)*, S.C. 1993, c. 28, s. 29.

*The Indian Act*, S.C. 1951, c. 29, ss. 113-118;

*The Indian Act*, R.S.C. 1927, c. 98, ss. 9-10; and,

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

#### **International Treaties:**

***Convention on the Prevention and Punishment of the Crime of Genocide***, Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 *entry into force* 12 January 1951, in accordance with article XIII;

***Convention on the Rights of the Child***, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 *entry into force* 2 September 1990, in accordance with article 49; and,

***International Covenant on Civil and Political Rights***, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, *entry into force* 23 March 1976, in accordance with Article 49.

#### **Numbered Treaties in Canada**

- Treaty No. 1 – August 1871 (*Post-Confederation*)
- Treaty No. 2 – August 1871 (*Post-Confederation*)
- Treaty No. 3 – October 1873 (*Post-Confederation*)
- Treaty No. 4 – September 1874 (*Post-Confederation*)
- Treaty No. 5 – September 1875 (*Post-Confederation*)
- Treaty No. 6 – August-September 1876 (*Post-Confederation*)
- Treaty No. 7 – September 1877 (*Post-Confederation*)
- Treaty No. 8 – June 1899 (*Post-Confederation*)
- Treaty No. 9 – James Bay Treaty – July 1905 (*Post-Confederation*)
- Treaty No. 10 – August 1906 (*Post-Confederation*)
- Treaty No. 11 – June 1921 (*Post-Confederation*)

#### **Named Treaties in Canada**

- Peace and Friendship Treaties (1725-1779) (*Pre-Confederation*)
- Upper Canada Treaties (1764-1836) (*Pre-Confederation*)
- Robinson-Superior Treaty, 1850 (*Pre-Confederation*)
- Robinson-Huron Treaty, 1850 (*Pre-Confederation*)
- The Manitoulin Treaty, 1862 (*Pre-Confederation*)
- Vancouver Island Treaties (1850-1854 the Douglas Treaties) (*Pre-Confederation*)
- The Williams Treaties (1923): The Chippewa Indians and The Mississauga Indians (*Post-Confederation*)

**Place of Trial**

117. The Plaintiffs propose that this action be tried at the City of Toronto, in the Province of Ontario.

July 31, 2006

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THIS IS EXHIBIT   J    
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO

ON JULY 27, 2006

*Josephine C. Bishop*

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Curtis,  
Barrister and Solicitor.  
Expires November 10, 2007.

**DRAFT**

**APPLICATION FOR COMMON EXPERIENCE PAYMENT  
FOR FORMER STUDENTS WHO RESIDED AT  
INDIAN RESIDENTIAL SCHOOL(S)**

1. <b>ESTATE</b> If you are applying for a person who died after May 30, 2005 or for someone who resided at Mohawk Institute who died after October 15, 1996 please use form XXX.					
2. <b>INFORMATION ABOUT YOU</b>		First and Middle Name	Current Last Name	Language Preference	
<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms				<input type="checkbox"/> English <input type="checkbox"/> French	
NAME AT BIRTH (IF DIFFERENT FROM ABOVE)					
ANY OTHER NAMES (YOU MAY HAVE USED IN RESIDENTIAL SCHOOL (MAIDEN NAME, NICKNAMES))					
3. <b>HOME ADDRESS</b> (No., Street, Apt., R.R.)			City		
Province or Territory	Country	Postal Code	Telephone number ( ) -		
MAILING ADDRESS (if different from home address (No., Street, Apt., P.O. Box R.R.))			City		
Province or Territory	Country	Postal Code			
4. <b>DATE OF BIRTH</b> (PROOF OF AGE REQUIRED, SEE PAGE 4)			5. <b>SOCIAL INSURANCE NUMBER</b> (NOT MANDATORY)		
DAY / MONTH / YEAR			<input type="text"/>		
6. <b>HAVE YOU STARTED / RESOLVED A CLAIM IN:</b>			7. <b>DID YOU RECEIVE AN ADVANCE PAYMENT?</b>		
INDEPENDENT ASSESSMENT PROCESS	LITIGATION	ALTERNATIVE DISPUTE RESOLUTION	NOT APPLICABLE	YES	NO
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
8. <b>INDIAN REGISTRY NUMBER</b> (IF APPLICABLE)			<input type="text"/>		
<b>INUIT DISK NUMBER</b> (IF APPLICABLE)			<input type="text"/>		

For general assistance please call 1-800-622-6232

For assistance from the National Survivors Support Line, 24 Hours, 7 Days a week  
please call 1-866-925-4419

Canada



**9. INDIAN RESIDENTIAL SCHOOL(S) AT WHICH YOU RESIDED**

Please tell us, to the best of your recollection, about all of the schools at which you resided. You will need to indicate the number of your school(s) from the list on Page 6 and tell us when you started and when you left.

School #	<input type="text"/>	From	<u>          </u> / <u>          </u> <u>          </u>	To	<u>          </u> / <u>          </u> <u>          </u>
			MONTH / SEASON YEAR		MONTH / SEASON YEAR
School #	<input type="text"/>	From	<u>          </u> / <u>          </u> <u>          </u>	To	<u>          </u> / <u>          </u> <u>          </u>
			MONTH / SEASON YEAR		MONTH / SEASON YEAR
School #	<input type="text"/>	From	<u>          </u> / <u>          </u> <u>          </u>	To	<u>          </u> / <u>          </u> <u>          </u>
			MONTH / SEASON YEAR		MONTH / SEASON YEAR
School #	<input type="text"/>	From	<u>          </u> / <u>          </u> <u>          </u>	To	<u>          </u> / <u>          </u> <u>          </u>
			MONTH / SEASON YEAR		MONTH / SEASON YEAR
School #	<input type="text"/>	From	<u>          </u> / <u>          </u> <u>          </u>	To	<u>          </u> / <u>          </u> <u>          </u>
			MONTH / SEASON YEAR		MONTH / SEASON YEAR
School #	<input type="text"/>	From	<u>          </u> / <u>          </u> <u>          </u>	To	<u>          </u> / <u>          </u> <u>          </u>
			MONTH / SEASON YEAR		MONTH / SEASON YEAR
School #	<input type="text"/>	From	<u>          </u> / <u>          </u> <u>          </u>	To	<u>          </u> / <u>          </u> <u>          </u>
			MONTH / SEASON YEAR		MONTH / SEASON YEAR

If you couldn't find the name of your school on the list, write the name here \_\_\_\_\_  
 Because you resided at a school that is not on the list, you may not receive any payment for the years that you resided at that school. We will verify your application and let you know as soon as possible.

**10. DIRECT DEPOSIT (In Canada Only)**

*For deposits outside Canada, please contact us.*

Do you want your Common Experience Payments deposited into your account at a financial institution?

- No (Go to question 11)
- Yes (Complete this section)

If you have a Chequing Account, please attach an unsigned personalized cheque. Write the word "VOID" on the front of the cheque and your Social Insurance Number on the back.

If you have a Savings Account, complete the boxes below (you may wish to contact your financial institution to obtain this information):

<i>Branch Number</i>	<i>Institution Number</i>	<i>Account Number</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<i>Name(s) on the account</i>	<i>Telephone number of your financial institution</i>
<input type="text"/>	<input type="text"/>

For general assistance, please call 1-800-622-6232  
 For assistance from the National Survivors Support Line, 24 Hours, 7 Days a week  
 please call 1-866-925-4419

**11. SIGNATURE**

My signature/mark indicates the information I have provided in this application is true and accurate to the best of my knowledge. I acknowledge that knowingly making a false or fraudulent application could result in criminal prosecution.

Applicant's Signature

Day

Month

Year



\_\_\_\_\_

(FOR SIGNATURE WITH A MARK SEE PAGE 11)

**12. FORMS MUST BE MAILED TO THE FOLLOWING ADDRESS:**

**Service Canada**

**FOR OFFICE USE ONLY**

\_\_\_\_\_  
Recommended by

DD

MM

YY

\_\_\_\_\_  
Approved for payment by

DD

MM

YY

For general assistance, please call 1-800-622-6232  
For assistance from the National Survivors Support Line, 24 Hours, 7 Days a week  
please call 1-866-925-4419

**Canada**



Service Canada

## PROOF OF AGE AND IDENTITY REQUIREMENTS FOR QUESTION 3

PAGE 4 OF 11

**BIRTH DOCUMENT**

1. You must submit your Birth Certificate with your application form. You may submit an original document. It will be returned to you. If you submit a photocopy, it must be signed and dated by one of the people listed below to indicate that they have seen the original.
2. You must present your Birth Certificate, along with a legible photocopy of that document, to one of the following people to certify your photocopy. Please note that you cannot certify a photocopy of your own document, and you cannot ask a relative to do it for you.

- |   |   |
|---|---|
| • Accountant  | • Minister of Religion  |
| • Chief or Councillor of an Indian Band or First Nation Band  | • Municipal Clerk   |
| • Employee of Social Development Canada Centres acting in an official capacity  | • Notary  |
| • Funeral Director  | • Official of a Federal government department or Provincial government department, or one of its agencies   |
| • Justice of the Peace  | • Official of an Embassy, Consulate or High Commission  |
| • Lawyer  | • Police Officer  |
| • Magistrate  | • Postmaster  |
| • Manager of a Financial Institution  | • Professional Engineer   |
| • Medical and Health Practitioners: Chiropractor, Dentist, Doctor, Pharmacist, Psychologist, Nurse Practitioner, Registered Nurse | • Social Worker   |
| • Member of Parliament or their staff   | • Teacher   |
| • Member of Provincial Legislature or their staff   | • Council of the Métis Settlements General Council and members of the Saskatchewan Provincial Métis Council |

For general assistance, please call 1-800-622-6232  
 For assistance from the National Survivors Support Line, 24 Hours, 7 Days a week  
 please call 1-866-925-4419



3. People who certify photocopies must compare the original document to the photocopy and provide the following information on the back of the photocopy:

- State their official position or title;
- Sign and print their name;
- Provide their phone number; and
- Include the date they certified the document(s).

**Supporting Documents** - in the event that the applicant does not have an original birth certificate, in addition to completing the "Declaration of Request to Verify Identity" the applicant will be requested to provide one or more original supporting documents to assist in the verification of identity. While these documents will not be sufficient on their own to verify the applicant's identity, they will be used with the other personal information provided to assist Service Canada in verifying the applicant's identity.

Possible acceptable supporting documents include:

- Certificate of Indian Status (issued by Indian and Northern Affairs Canada);
- Provincial/Territorial Driver's Licence;
- Provincial/Territorial Health Card;
- Canadian Passport;
- Employee Identification Card.

For general assistance, please call 1-800-622-6232  
For assistance from the National Survivors Support Line, 24 Hours, 7 Days a week  
please call 1-866-925-4419



### INDIAN RESIDENTIAL SCHOOL IDENTIFICATION

Complete Question 9 by entering the number corresponding to the school(s) at which you resided.

#### Residential Schools

##### YUKON RESIDENTIAL SCHOOLS

01	Carcross (Choooutla)	Carcross
02	Coudert Hall (Whitehorse Hostel/Student Residence – Predecessor to Yukon Hall)	Whitehorse
03	Frobisher Bay	Frobisher Bay
04	Shingle Point (Predecessor to all Saints, Aklavik)	Shingle Point
05	Whitehorse Baptist	Whitehorse
06	Yukon Hall (Whitehorse/Protestant Hostel)	Whitehorse

##### NORTHWEST TERRITORIES RESIDENTIAL SCHOOLS

07	Aklavik (Immaculate Conception)	Aklavik
08	Aklavik (All Saints)	Aklavik
09	Coppermine (Tent Hostel)	Coppermine
10	Fort McPherson (Flemming Hall)	Fort McPherson
11	Fort Providence (Sacred Heart)	Fort Providence
12	Fort Resolution (St. Joseph's)	Fort Resolution
13	Fort Simpson (Bompas Hall)	Fort Simpson
14	Fort Simpson (Lapointe Hall)	Fort Simpson
15	Fort Smith (Breynat Hall)	Fort Smith
16	Hay River (St. Peter's)	Hay River
17	Inuvik (Grollier Hall)	Inuvik
18	Inuvik (Stringer Hall)	Inuvik
19	Yellowknife (Akaitcho Hall)	Yellowknife

##### NUNAVUT RESIDENTIAL SCHOOLS

20	Chesterfield Inlet (Turquetil Hall)	Chesterfield Inlet
21	Small Federal Hostel at Baker Lake	Qamanit'uaq, Qamanittuaq
22	Small Federal Hostel at Belcher Islands	Sanikiluaq
23	Small Federal Hostel at Broughton Island	Qikiqtarjuaq
24	Small Federal Hostel at Cambridge Bay	Cambridge Bay
25	Small Federal Hostel at Cape Dorset	Kinngait
26	Small Federal Hostel at Eskimo Point	Arviat
27	Small Federal Hostel at Igloodik	Igloodik/Iglulik

For general assistance, please call 1-800-622-6232

For assistance from the National Survivors Support Line, 24 Hours, 7 Days a week

please call 1-866-925-4419

**INDIAN RESIDENTIAL SCHOOL IDENTIFICATION**

Complete Question 9 by entering the number corresponding to the school(s) at which you resided.

**Residential Schools****NUNAVUT RESIDENTIAL SCHOOLS**

28	Small Federal Hostel at Lake Harbour	Kimmirut
29	Small Federal Hostel at Pangnirtung (Pangnirtang)	Pangnirtung / Panniqtuug
30	Small Federal Hostel at Pond Inlet	Mittimatalik

**BRITISH COLUMBIA RESIDENTIAL SCHOOLS**

31	Ahousaht	Ahousaht
32	Alberni	Port Alberni
33	Cariboo (St. Joseph's, Williams Lake)	Williams Lake
34	Christie (Clayoquot, Kakawis)	Tofino
35	Coqualeetza	Chilliwack / Sardis
36	Cranbrook (St. Eugene's, Kootenay)	Cranbrook
37	Kamloops	Kamloops
38	Kitimaat	Kitimaat
39	Kuper Island	Chemainus
40	Lejac (Fraser Lake)	Fraser Lake
41	Lower Post	Lower Post
42	Port Simpson (Crosby Home for Girls)	Port Simpson
43	St. George's (Lytton)	Lytton
44	St. Mary's (Mission)	Mission
45	St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)	Alert Bay
46	Sechelt	Sechelt
47	St. Paul's (Squamish, North Vancouver)	North Vancouver

**ALBERTA RESIDENTIAL SCHOOLS**

48	Assumption (Hay Lakes)	Hay Lakes Indian Reserve
49	Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)	St. Paul
50	Crowfoot (Blackfoot, St. Joseph's, Ste. Trinite)	Cluny, Blackfoot Reserve
51	Desmarais (Wabiscaw Lake, St. Martin's, Wabasca RC)	Desmarais
52	Edmonton (Poundmaker, post Red Deer Industrial)	St. Albert

For general assistance, please call 1-800-622-6232

For assistance from the National Survivors Support Line, 24 Hours, 7 Days a week  
please call 1-866-925-4419

**INDIAN RESIDENTIAL SCHOOL IDENTIFICATION**

Complete Question 9 by entering the number corresponding to the school(s) at which you resided.

**Residential Schools****ALBERTA RESIDENTIAL SCHOOLS**

53	Ermineskin (Hobbema)	Hobbema, Ermineskin Reserve
54	Fort Vermilion (St. Henry's)	Fort Vermilion
55	Grouard (St. Bernard's, Lesser Slave Lake RC)	Grouard
56	Holy Angels (Fort Chipewyan)	Fort Chipewyan
57	Joussard (St. Bruno's)	Joussard
58	Lac la Biche (Notre Dame de la Victoire)	Lac la Biche
59	Lesser Slave Lake (St. Peter's)	Lesser Slave Lake
60	Morley (Stony/Stoney, McDougall Orphanage)	Morley
61	Old Sun (Blackfoot)	Gleichen, Blackfoot Reserve
62	Sacred Heart (Peigan, Brocket)	Brocket, Peigan Reserve
63	St. Albert (Youville, Sturgeon River)	St. Albert
64	St. Augustine (Smoky River)	Smoky River
65	St. Cyprian (Victoria Home, Peigan)	Brocket, Peigan Reserve
66	St. Joseph's (High River, Dunbow)	High River
67	St. Mary's (Blood, Immaculate Conception)	Blood Indian Reserve
68	St. Paul's (Blood CE)	Blood Reserve
69	Sarcee	Sarcee Junction
70	Sturgeon Lake (Calais, St. Francis Xavier)	Calais
71	Wabasca (St. John's)	Wabasca
72	Whitefish Lake (St. Andrew's)	St. Andrew's Mission

**SASKATCHEWAN RESIDENTIAL SCHOOLS**

73	Beauval (Lac Laplonge)	Beauval
74	Crowstand	Kamsack
75	File Hills	Balcarres
76	Gordon's	Gordon's Reserve, Punnichy
77	Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)	Lebret
78	Marieval (Cowesses, Crooked Lake)	Grayson
79	Muscowequan (Lestock, Touchwood)	Lestock
80	Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)	Prince Albert

For general assistance, please call 1-800-622-6232

For assistance from the National Survivors Support Line, 24 Hours, 7 Days a week  
please call 1-866-925-4419

**INDIAN RESIDENTIAL SCHOOL IDENTIFICATION**

Complete Question 9 by entering the number corresponding to the school(s) at which you resided.

**Residential Schools****SASKATCHEWAN RESIDENTIAL SCHOOLS**

81	Regina	Regina
82	Round Lake	Stockholm
83	St. Anthony's (Onion Lake, Sacred Heart)	Onion Lake
84	St. Michael's (Duck Lake)	Duck Lake
85	St. Philip's	Kamsack
86	Sturgeon Landing (Predecessor to Guy, MB)	Sturgeon Landing
87	Thunderchild (Delmas, St. Henri)	Delmas

**MANITOBA RESIDENTIAL SCHOOLS**

88	Assiniboia (Winnipeg)	Winnipeg
89	Birtle	Birtle
90	Brandon	Brandon
91	Churchill Vocational Centre	Churchill
92	Cross Lake (St. Joseph's, Norway House, Jack River)	Cross Lake
93	Dauphin (McKay)	The Pas / Dauphin, MB
94	Elkhorn (Washakada)	Elkhorn
95	Fort Alexander (Pine Falls)	Fort Alexander
96	Fort Pelly	Fort Pelly
97	Guy (Clearwater, The Pas, formerly Sturgeon Landing, SK)	The Pas
98	Norway House	Norway House
99	Pine Creek (Camperville)	Camperville
100	Portage la Prairie	Portage la Prairie
101	Sandy Bay	Marius

**ONTARIO RESIDENTIAL SCHOOLS**

102	Bishop Horden Hall (Moose Fort, Moose Factory)	Moose Island
103	Cecilia Jeffrey (Kenora, Shoal Lake)	Kenora
104	Chapleau (St. Joseph's)	Chapleau
105	Fort Frances	Fort Frances
106	Fort William (St. Joseph's)	Fort William

For general assistance, please call 1-800-622-6232

For assistance from the National Survivors Support Line, 24 Hours, 7 Days a week

please call 1-866-925-4419



**INDIAN RESIDENTIAL SCHOOL IDENTIFICATION**

Complete Question 9 by entering the number corresponding to the school(s) at which you resided.

**Residential Schools****ONTARIO RESIDENTIAL SCHOOLS**

107	McIntosh (Kenora)	McIntosh
108	Mohawk Institute	Brantford
109	Mount Elgin (Muncey, St. Thomas)	Munceytown
110	Pelican Lake (Pelican Falls)	Sioux Lookout
111	Poplar Hill	Poplar Hill
112	St. Anne's (Fort Albany)	Fort Albany
113	St. Mary's (Kenora, St. Anthony's)	Kenora
114	Shingwauk	Sault Ste. Marie
115	Spanish Boys School (Charles Garnier, St. Joseph's, formerly Wikwemikong Industrial)	Spanish
116	Spanish Girls School (St. Joseph's, St. Peter's, St. Anne's formerly Wikwemikong Industrial)	Spanish

**QUEBEC RESIDENTIAL SCHOOLS**

117	Amos (St. Marc de Figuerly)	Amos
118	Pointe Bleue	Pointe Bleue
119	La Tuque	La Tuque
120	Fort George (St. Philip's)	Fort George
121	Fort George (St. Joseph's Mission, Residence Couture, Ste-Thérèse de l'enfant de Jésus)	Fort George
122	Sept-Iles (Notre Dame, Maliotenam)	Sept-Iles
123	Small Federal Hostel at George River	George River
124	Small Federal Hostel at Great Whale River (Poste-de-la-Baleine)	Kuujuaraapik / Whapmagoostui
125	Small Federal Hostel at Payne Bay (Bellin)	Kangirsuk
126	Small Federal Hostel at Port Harrison (Inoucdjouac, Innoucdouac)	Inukjuak

**NOVA SCOTIA RESIDENTIAL SCHOOLS**

127	Shubenacadie	Shubenacadie
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For general assistance, please call 1-800-622-6232

For assistance from the National Survivors Support Line, 24 Hours, 7 Days a week

please call 1-866-925-4419



### SIGNATURE WITH A MARK

If the applicant signed with a mark (for example "X"), the mark must be made in the presence of a witness who may be a relative.

The witness must provide the following information:

**Witness's first name, initial and last name**

**Relationship to the applicant**

**ADDRESS (No., Street, Apt., R.R.)**

**City**

**Province or Territory**

**Country**

**Postal Code**

**Telephone number**

( ) -

If the applicant signed with a mark, the witness must also sign the following declaration:

I have read the content of this application to the applicant who understands and confirms the complete contents and who made his or her mark in my presence.

Signature of witness

▶ \_\_\_\_\_

Date \_\_\_\_\_

Year

Month

Day

For general assistance, please call 1-800-622-6232  
 For assistance from the National Survivors Support Line, 24 Hours, 7 Days a week  
 please call 1-866-925-4419

Canada

THIS IS EXHIBIT K  
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO  
ON JULY 27, 2006

*Josephine C. Bishop*

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Courtis,  
Barrister and Solicitor.  
Expires November 10, 2007.



Department of Justice  
Canada

Ministère de la Justice  
Canada

01767

Edmonton Office  
211 Bank of Montreal Bldg  
10199 - 101 Street  
Edmonton, Alberta  
T5J 3Y4

Région des Prairies  
Edifice de la Banque de Montréal  
211 rue 101 - 10199  
Edmonton, Alberta  
T5J 3Y4

Telephone: (780) 495-2975  
Facsimile: (780) 495-3834

Internet: catherine.coughlan@justice.gc.ca

Our File:  
Notre dossier:

Your File:  
Votre dossier:

May 23, 2006

**BY FAX**

Field LLP  
2000 Oxford Tower  
10235 101 Street  
Edmonton, AB T5J 3G1

Attention: Jon Faulds

Dear Sir:

**Re: Social Services Benefits**

Your letter of May 16, 2006 and addressed to John Terry has been forwarded to me for response.

I can advise that all provinces, with the exception of Newfoundland, have agreed to take steps to exempt the CEP and IAP monies from consideration in the administration of their social assistance programs. That said, I would also note that at this time, not all provinces have actually enacted the planned changes. As a result, this could have some impact on the Advance Payments. Moreover, any portion of the IAP that is specifically income replacement may be taxable as such in some provinces.

With respect to Newfoundland, I understand that provincial officials have made no determination as to an exemption for the CEP and IAP awards.

I trust this is the information you require.

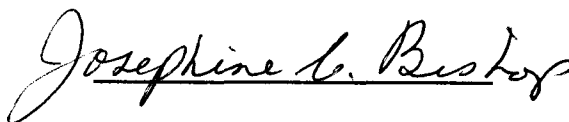
Yours truly,

Catherine A. Coughlan  
General Counsel  
Aboriginal Law Services  
Prairie Region  
Justice Canada

CAC/rw  
c.c. John Terry  
c.c. Paul Vickery  
c.c. Jeff Hutchinson

**Canada**

THIS IS EXHIBIT L  
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO  
ON JULY 27, 2006

A handwritten signature in cursive script that reads "Josephine Clare Bishop". The signature is written in black ink and is positioned above a horizontal line.

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Curtis,  
Barrister and Solicitor.  
Expires November 10, 2007.

**LALIVE**  
Attorneys-at-Law

**PRELIMINARY EXPERT OPINION**  
**Concerning Fundamental Principles Underlying**  
**the Government of Canada's Individual Assessment Process**  
**Proposal for Compensation of Victims of the Indian Residential**  
**School System**

The undersigned has been requested by Counsel representing the plaintiffs to provide a preliminary expert opinion on the fundamental principles underlying the Government of Canada's individual assessment process proposal for compensation of victims of the Indian residential school system (the "IAP" or the "Proposal"). In particular, I have been requested to review the Proposal in light of international standards and the best practice of international mass claims resolution, in order to assess whether the Proposal is compatible with these standards.

1. Qualifications

I am currently Counsel with LALIVE Attorneys-at-Law, an independent law firm based in Geneva, Switzerland. I specialize in international arbitration and international law, in particular international claims. I hold a bachelors (LL.B.) degree and a masters (LL.Lic.) degree from the University of Helsinki and a masters (LL.M.) degree and a doctorate (S.J.D.) from Harvard Law School.

Over the last fifteen years, I have been involved in various capacities, including as legal adviser, manager, adjudicator and counsel, in almost all of the important international mass claims programs during this period. These include the Iran-United States Claims Tribunal,<sup>1</sup> the United Nations Compensation Commission,<sup>2</sup> the Eritrea-Ethiopia Claims Commission,<sup>3</sup> Housing and Property Claims Commission in Kosovo,<sup>4</sup> the German Foundation "Remembrance, Responsibility and Future,"<sup>5</sup> the Holocaust Victim Assets Programme of the

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<sup>1</sup> The Tribunal arbitrates claims arising out of the Iranian Islamic Revolution in 1979-1980. I served as Legal Adviser to the Chairman of Chamber One (1990) and Legal Adviser to the President of the Tribunal (1992-94).

<sup>2</sup> The Commission dealt with more than 2.6 million claims arising out of Iraq's invasion and occupation of Kuwait and the First Persian Gulf War (1990-91). I served as Deputy Chief of the Commission's Legal Service.

<sup>3</sup> The Commission deals with claims arising out of the border war between the two countries in 1998-99. I advised the Government of Ethiopia during the negotiations leading to the establishment of the Commission and, subsequently, the Commission itself on issues relating to mass claims processing and data management.

<sup>4</sup> The Commission deals with property restitution and repossession claims arising out of the circumstances surrounding the NATO air campaign in Kosovo and the discriminatory policies of the Milosevic regime in Kosovo during the period 1989-99. I have served as Commissioner of the Commission since 2000.

<sup>5</sup> The Foundation was established to oversee the processing of more than 1 million slave labor, personal injury and property claims arising out of the Holocaust, following an international agreement between the Governments of Germany and the United States. I served as Deputy Director, Claims Processing, of one of the implementing organizations, International Organization for Migration.

International Organization for Migration,<sup>6</sup> and the Claims Resolution Tribunal for Dormant Accounts in Switzerland.<sup>7</sup> Over the past two years I have provided advice to one of the parties to the Middle East peace process on issues relating to property restitution and compensation claims.

I am member of the Steering Committee for International Mass Claims of the Permanent Court of Arbitration since 2000.

I have written and lectured extensively on international claims, including international mass claims. In 2002, I gave a course at the Hague Academy of International Law on the subject "The United Nations Compensation Commission."

## 2. Basis of Opinion

I understand from the materials I have reviewed and from those who have instructed me that, if the IAP is limited to serious abuse claims, it will deal with approximately 8,000 claims. However, I understand that it is also envisaged that all of the approximately 80,000 former students of Indian residential schools will be entitled to a lump sum payment, the amount of which remains to be determined.<sup>8</sup>

In view of its nature and scope, the IAP qualifies as a "mass claims" program. First, the claims to be covered by the process arise out of same or very similar circumstances and during (roughly) the same period of time, which is one of the relevant criteria.<sup>9</sup> Second, the number of claims is such that the process will face issues and challenges that characterize mass claims processing. Generally, a claims process qualifies as a mass claims process when the number of claims arising out of the same event or circumstance exceeds approximately 2,000 – 5,000 claims.

One of the key challenges in mass claims processing is the heightened need for equal treatment of claimants and for consistency and greater efficiency in decision-making. Equal treatment and consistency are important because, since the claims arise out of same or similar circumstances, the claimants are similarly situated.<sup>10</sup>

The heightened need for efficiency is a consequence of the high number of claims and their similarity. As the number of claims is high, and the claimants are similarly situated, it is important that the claims are processed quickly and efficiently, in order to ensure that those whose claims are processed at the end of the queue are not denied justice as a result of unreasonable delay.

The need for greater efficiency is one of the principal drivers for the increasing reliance in modern mass claims processing on information technology and computer-aided claims

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<sup>6</sup> The Programme processed slave labor and refugee claims arising out of the Holocaust and the refusal of the Swiss Government to allow Holocaust refugees to enter into Switzerland, and their mistreatment in Switzerland. I was the officer in charge of the Programme.

<sup>7</sup> The Tribunal is responsible for processing claims to assets held by Holocaust victims in Swiss bank accounts, as well as certain insurance claims. I served as Secretary-General and Senior Claims Judge of the Tribunal in 2001-02.

<sup>8</sup> It is estimated that there are approximately 80,000 alive today who attended Indian residential schools.

<sup>9</sup> In the present case, this relevant time period is unusually long, since I understand it will cover a period of tens of years, until 1996, when the last Indian residential school was closed.

<sup>10</sup> This does not necessarily exclude the prioritization of certain types of claims (e.g., for humanitarian reasons).

processing, as well as related methods and techniques such as grouping of claims and statistical validation tools.

However, equal treatment of claimants and cost-efficiency are not ends in themselves. They are usually designed to serve a higher and more general purpose: closure of the event or the practice out of which the claims arise. International experience shows that, from this broader perspective, mass claims programs tend to be more successful when based on a constituting document that settles conclusively the issue of liability, without requiring a case-by-case adjudication of the liability issue in the context of each individual claim.

Settling the issue of liability in the constituting document (in this case, the Settlement Agreement) not only contributes to the sense of closure; it also ensures that the distribution process will be more effective and efficient. This is because, if the liability issue is settled in advance, the claims process may be organized in an administrative (rather than quasi-judicial) manner.

### 3. Sources of Information

In addition to the information provided to me orally by the plaintiffs' Counsel, I have reviewed the following documentation in preparing this opinion:<sup>11</sup>

- Dispute Resolution Model for Indian Residential School Abuse Claims, 6 November 2003
- Independent Assessment Process (IAP) for Continuing Indian Residential School Abuse Claims, 7 October 2005
- DR Revisions: Principal Policy Issues
- Searching for Justice: An Independent Review of Nova Scotia's Response to Reports of Institutional Abuse, by The Honorable Fred Kaufman, January 2002
- The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors, Canadian Bar Association, February 2005
- Assembly of First Nations Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools

I have also reviewed the information available on two websites, <http://www.irsr-rqpi.gc.ca> and <http://www.thomsonrogers.com/classaction.htm>.

### 4. Assessment of the Proposal

I understand that the Proposal is intended to be part of a broader Settlement Agreement between the plaintiffs and the Canadian Government that will comprise, in addition to compensation claims, a truth and reconciliation process; commemoration; a community based healing program; as well as a formal apology by the Canadian Government for its involvement in the creation and maintenance of the Indian residential school system.

I understand that a separate negotiation track has been established to discuss payment of a lump sum in a broader individual assessment program.

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<sup>11</sup> Due to time constraints, I have not been able to perform a thorough review of all of this documentation; this is one of the reasons why this report is submitted as a "preliminary opinion."



The comprehensive approach adopted by the negotiators is commendable and, if properly designed and effectively implemented, will contribute to a prompt and just closure of the Indian residential school legacy.

However, the IAP, as designed, raises several issues that create a substantial risk that this goal will not be achieved.

#### 4.1 Scope of the IAP Process

It appears that the scope of the claims process outlined in the IAP is limited to “abuse” claims. While the creation of a separate negotiation track for discussing the possibility of a lump sum compensation should not necessarily mean that the implementation of this process will also be separated from the IAP, I understand that this is in fact what is being contemplated. In other words, it appears that the idea is to create a separate administrative process to distribute the lump sum payments.

The creation of two separate processes for payment of compensation – one dealing with the lump sum payments and the other with abuse claims – is not to be recommended. It would be much more efficient, both in terms of time and resources, if all the various types of claims – whether for the payment of a lump sum based on the simple fact of presence in the schools, or for payment of individualized compensation based on physical or psychological abuse – are consolidated into one claims process.

It appears that the perceived need to create two separate processes is a consequence of the Government’s particular understanding of the meaning of its recognition of liability and of the nature of the abuse claims process. These issues are addressed below.

#### 4.2 Achieving Closure

While the IAP is intended to be part of a comprehensive settlement of the Indian residential school legacy, it is, quite surprisingly, not based on an unambiguous acceptance by the Government of Canada of its responsibility for the creation and maintenance of the Indian residential school system. The IAP is based on a case-by-case adjudication model in which each claimant is required to establish that a wrongful act had in fact occurred, and that it was committed by a person whose acts are attributable to the staff of the school, and thus by extension to the Government.<sup>12</sup> In other words, the Government does not seem to accept that the abuses in the Indian residential schools were widespread and of a systemic nature. It also appears that the Government intends to participate as a “defendant” in the claims process, thus effectively reserving its right to challenge its liability in the context of each individual claim.<sup>13</sup> This has wide-reaching consequences on the process design.

The approach adopted in the IAP is not compatible with the premise that the Government’s liability for the abuses committed in the Indian residential schools is recognized and accepted

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<sup>12</sup> Thus, claimants are required to provide evidence sufficient “to identify or permit the identification” of the perpetrator or their role in the school (p. 1). The Independent Assessment Process (IAP) for Continuing Indian Residential School Abuse Claims (the “Revised Proposal”) expands the scope of the Government’s liability, but nonetheless requires the claimant to prove that the abuse was committed by an adult employee of the government or a church entity, or another adult lawfully in the premises of the school.

<sup>13</sup> That the Government will participate in the process on a case-by-case basis is implicit in the references in the Revised Proposal to the “parties” and the “defendant.” See, e.g., Revised Proposal, at 7, section III(a)(ii) (stating that “the defendants may be represented by their employees on the same basis as by counsel.”)

definitively and without reservations in the Settlement Agreement, and that the purpose of the claims process is simply to give effect to this recognition of liability by distributing compensation to those who meet the established eligibility criteria.

It would be surprising if the Government's reservation of its right to challenge its liability in each individual case did not create friction and resentment in the course of the implementation of the process.

#### 4.3 Institutional Framework

According to the Proposal, claims will be resolved by "adjudicators," headed by a "Chief Adjudicator," under the supervision of an "IAP Oversight Committee" and with the support of a secretariat.<sup>14</sup>

The institutional design of the process, as envisaged in the Proposal, is quasi-judicial rather than administrative. The process is proposed to be staffed and managed by "adjudicators" rather than administrative staff working under the supervision and guidance of an executive manager. The quasi-judicial design is a logical consequence of the Government's intention to participate in the process as a defendant.

Based on experiences gained in international mass claims processing, a quasi-judicial design may be justified and even required if the claims to be processed are complex and of a high monetary value. However, it is known to be less effective and more costly than an administrative process and therefore is not usually considered suitable for processing claims of a humanitarian nature.<sup>15</sup>

The Indian residential schools claims process falls under the latter category. Therefore, a quasi-judicial design, in particular if applied across the board to all types of claims, is not to be recommended.

#### 4.4 Burden of Proof and Evidentiary Standard

According to the IAP, "allegations and damages must be proven on the standard used by the civil courts for matters of like seriousness."<sup>16</sup> In other words, the applicable evidentiary standard would be the balance of probabilities.<sup>17</sup>

While there are some indications in the Revised Proposal that the adjudicators are intended to have the discretion to relax the applicable evidentiary standard, in particular in the less complex claims,<sup>18</sup> the applicable standard will be in most cases very high. This is not line with the tendency in recent international mass claims programs to relax the applicable

<sup>14</sup> *Id.* at 15.

<sup>15</sup> For example, the Claims Resolution Tribunal for Dormant Accounts in Switzerland, which is in charge of processing claims for accounts in held Swiss banks since the Holocaust, was forced to abandon the quasi-judicial model for the administrative one as part of its restructuring in 2001.

<sup>16</sup> Revised Proposal, section III(h)(i).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* section III(h)(ii) ("The adjudicator may receive, and base a decision on, evidence adduced in the proceedings and considered credible or trustworthy in the circumstances thereof.") See also section III(b)(v) ("In the standard track, consequential harms and consequential loss of opportunity must be proven to be plausibly linked to one or more proven continuing claims. *A plausible link is one that seems reasonable in light of all of the evidence accepted by the adjudicator.*") (emphasis added)

standard of proof and require only that the claim be “plausible,” or that the evidence submitted in support of the claim be “satisfactory.”<sup>19</sup>

Relaxation of the applicable evidentiary standard in mass claims processing is justified by the circumstances in which these claims generally arise, and by the often significant lapse of time between the date the claim arose and the date the decision is taken. As a result of these circumstances, full evidence is often no longer available, as it may have been destroyed or lost.

For these same reasons, as well as the fact that the claims are similar and arise out of similar circumstances, presumptions are often used to fill in gaps in the evidence.

There is no indication in the IAP that the use of presumptions would be allowed.<sup>20</sup>

#### 4.5 Verification

The Proposal emphasizes that it is based on an “inquisitorial” rather than “investigative” model.<sup>21</sup> According to the Proposal, “[t]his means that while the adjudicator must bring out and test the evidence of witnesses, only the parties can call witnesses or produce evidence, other than expert evidence.”<sup>22</sup> Expert evidence may be produced, but this is the responsibility of the claimants.<sup>23</sup>

The Proposal is not compatible with the practice of most international mass claims programs, which have adopted an investigative approach to the verification of claims. This means that the administrative entity in charge of the process seeks and obtains evidence *ex officio*, on its own motion, in order to determine whether the claim is valid. An investigative approach has been adopted in particular, but not exclusively, in claims programs that are designed to deal with claims brought by individuals. This is justified by the particular nature of mass claims processing: as a result of the circumstances in which the claims arose, as well as the lapse of time, claimants often no longer have sufficient documentation to prove their claims.

The lapse of time is likely to be a particular issue in the present process. This fact alone, as well as the Government’s recognition of its liability, justify the adoption of an investigative approach in which the claims process takes on a role in searching for and collecting evidence that may be available in governmental and school archives and that may be used in the verification of the claims. This includes school attendance and staff records, as well as (possibly) medical records and other contemporaneous documents.

To the extent feasible, this data should be computerized, and together with the evidence submitted by the claimants, stored in a separate “verification database” against which the claims may be matched for verification purposes. This would enable computerized or at least computer-aided claims processing, which is a critical verification tool in any mass claim program.

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<sup>19</sup> See, e.g., the rules of procedure of the Claims Resolution Tribunal for Dormant Accounts in Switzerland, the United Nations Compensation Commission and the Property Claims Commission of the German Foundation “Remembrance, Responsibility and Future.”

<sup>20</sup> On the contrary, the IAP makes an attempt to restrict the use of “extra-curial knowledge.” See Appendix X of the Revised Proposal.

<sup>21</sup> *Id.* at 9.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 10.

Most modern mass claims processes also use grouping of claims as an additional processing technique to increase the efficiency of claims processing. Effective use of the grouping technique requires computerization of claims data and the supporting evidence. Creating of groups of claims based on legal and legal factual issues allows the decision-maker to resolve claims on a "wholesale" rather than "retail" basis: to the extent that the claims in a particular group turn on the particular issue that is used as a basis of creating the group, they all can be resolved by resolving the issue that they all share in common.

No such group processing is envisaged in the IAP.

It would also be more in line with the investigative approach if, instead of requiring claimants to provide expert evidence, the necessary medical and other expertise should be provided by the claims process itself. This can be done, e.g., by hiring experts as staff members or consultants of the claims process.

#### 4.6 Hearings

The IAP proposes to employ individual hearings as the main tool in the verification of claims.

While hearings may be a useful tool in mass claims processing in certain specific circumstances, in particular where the decision on the claim turns essentially on the credibility of oral evidence, they are known to be both time and resource consuming. Reliance on hearings also tends to shift the burden of proof on the claimants, and thus tends to accentuate the adversarial rather than investigative aspects of the process.

For all these reasons, hearings are used only rarely in international mass claims processing.

Instead of hearings, international mass claims programs tend to take their decisions on the basis of documents submitted by the claimants or obtained by the program's own verification efforts. If hearings are held, they are limited to fact-finding purposes and for clarifying specific evidentiary issues in cases where the decision effectively turns on those issues.

#### 4.7 Compensable Claims

The Proposal defines three types of compensable categories of claims:

- (a) Sexual and physical abuse committed by employees of the school or other adults lawfully in the premises of the school;
- (b) Sexual and physical abuse committed by other students where the employees of the school had or should have reasonably had knowledge that such abuse of was occurring; and
- (c) Any other wrongful acts committed by employees or other adults lawfully on the premises that have caused serious psychological harm for the claimant.<sup>24</sup>

An award may be made to assist with future case and, if income loss is proven, this may also be compensated.<sup>25</sup>

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<sup>24</sup> *Id.* section I.

<sup>25</sup> *Id.* at 5-6.

The IAP proposes detailed “compensation rules,” based on “compensation points” to be achieved on acts proven, to quantify the claims.<sup>26</sup>

The limitations on the scope of compensable claims have been commented upon above in section 4.1.

It would be more efficient, as noted above, to define only the basic criteria of eligibility in the Settlement Agreement and to leave the development of detailed quantification criteria for the program management, under the supervision of a policy oversight committee. If delegated to the program management, detailed compensation criteria may be developed on the basis of the claims and evidentiary data submitted by the claimants, which would ensure a better fit between the compensation criteria and the circumstances of the claims.

However, if in the view of the Parties it is too late to reopen the discussion on the compensation criteria, I would recommend that the managers of the process be provided with sufficient flexibility in administering these criteria. While the Proposal does envisage that one of the duties of the IAP Oversight Committee will be to “[a]pprove any proposed instructions from the Chief Adjudicator on the interpretation and application of the IAP model, and as appropriate, issue its own instructions,”<sup>27</sup> this may not be sufficient. It would be safer to make it clear in the Settlement Agreement that the detailed compensation rules and other claims processing criteria outlined in the IAP are subject to review and amendment in the course of its implementation.

#### 5. The Risk of Fraudulent Claims

I understand that one of the motivating factors behind the proposed elaborate validation process is the risk of fraudulent claims, which is apparently perceived to be high. I understand that this concern is at least in part due to criticisms of former employees who feel their reputations have been tarnished.<sup>28</sup>

While the concerns of former employees are likely to have some validity, they must be weighed against the available evidence, which shows (and which I understand is not disputed by the Government) that there were widespread and systematic abuses in the Indian residential schools. In such circumstances, the policy choice seems clear, in particular because there are ways to ensure the confidentiality of the process and the evidence submitted by the claimants. Moreover, if the IAP is conceived of as an administrative process designed to distribute compensation to former students and those physically or psychologically abused, rather than as a quasi-judicial process designed to establish, in each individual case, the identity of the perpetrator as a condition for compensation, the concerns of former employees will be alleviated.

In any event, it appears that the Kaufman report did not discover any evidence of widespread fraud in its review of one of the existing ADR programs.<sup>29</sup>

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<sup>26</sup> *Id.* section II.

<sup>27</sup> *Id.* section III(s)(iii).

<sup>28</sup> As described in The Honorable Fred Kaufman, “Searching for Justice: An Independent Review of Nova Scotia’s Response to Reports of Institutional Abuse,” January 2002 (the “Kaufman Report”).

<sup>29</sup> *Id.* at 284 & passim.

The risk of fraudulent and frivolous claims exists in any mass claims program. I am not aware of any factors that would make the Indian residential school claims process unique in this regard. There are also ways in which potentially fraudulent claims can be identified and dealt with in a mass claims context. One of these is reliance on statistical tools, which allows program managers to identify "outlier" claims that do not fit the overall claim population.<sup>30</sup> These "suspect" claims can then be subjected to stricter scrutiny than other claims; such scrutiny may include additional verification such as oral hearings. Another procedure that is often used is a preliminary "screening" process, which could be applied to all claims or only to those that have been identified as "suspect" based on a statistical or computerized analysis of claims data.

At the same time, a certain margin of error must be accepted in the IAP, as it must be accepted in any mass claims process. A risk of error is simply a fact of life that comes with the territory – the high number of claims. When considering what is an acceptable margin of error, one must weigh the need for accuracy in decision-making against its costs, including the consequences of delaying the resolution of non-fraudulent claims. The overall purpose of the process must also be taken into account: the more intrusive the claims resolution process, the less likely it is that the process will be seen as one designed to promote reconciliation and justice.

## 6. Conclusions

The IAP falls in several respects short of international standards and best practices of mass claims resolution, as applied in modern international mass claims programs. Based on the preliminary analysis I have conducted, the Process has several weaknesses.

First, there appears to be a contradiction between the ambitious and comprehensive nature of the overall Settlement Agreement, which I understand will include elements such as a truth and conciliation commission and a formal apology by the Government of Canada, and the design philosophy of the IAP. While this may be its stated purpose, the IAP is not, in effect, based on the Government's unambiguous and unconditional recognition of its liability for the Indian residential school legacy. The Government has effectively reserved its right to challenge its liability in each individual claim by participating in the claims process as a defendant and by requiring that the claimants establish in each case that a wrongful act was committed, and that this act is attributable to the employees of the school and, by extension, to the Government.

Second, apparently as a result of an unstated concern for fraudulent claims, the Proposal lays down a highly complex, inefficient and time consuming claims resolution process. This includes an unnecessary separation of the abuse claims process and the distribution of lump sum payments; the Government's participation in each claim as a defendant; a quasi-judicial rather than administrative model of claims processing; a standard of proof that is likely to be unreasonably high in many cases; and extensive use of hearings. As a result, it is probable that the claims process, as designed, will not be efficient and will result in unreasonable delays in claims processing and in unreasonably high administration costs.

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<sup>30</sup> This is one of the reasons why a proper design of the claim form and computerization of claims and evidentiary data are critical in mass claims processing, as computerization greatly facilitates the use of statistical tools.

In conclusion, the Process, as designed, is unlikely to achieve the two principal goals that it is intended to achieve:

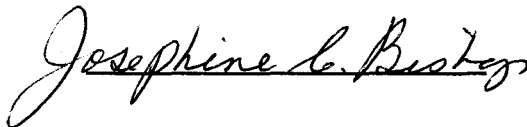
- (a) Compensation of victims of Indian residential schools in a manner that promotes reconciliation and healing and creates the sense that justice has been done; and
- (b) A speedy and cost-effective resolution of all claims.

Geneva, 2 November 2005



Dr Veijo Heiskanen

THIS IS EXHIBIT   M    
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO  
ON JULY 27, 2006



Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Curtis,  
Barrister and Solicitor.  
Expires November 10, 2007.



**Estimating the Residential School Attendee  
Population**

**For the Years 2001, 2005 and 2006**

**Prepared By:**

**Siggner & Associates Inc.**

## Table of Contents

	<u>Page</u>
Acknowledgements	4
Executive Summary	5
1. Introduction	7
2. Data Sources	7
3. Estimation Methodology	
10	
3.1 Data Limitations and Other Caveats	11
3.2 2001 Base Year for the Aboriginal Population	11
3.2.1 NAI Estimate of the RSA Population Living On-Reserve in 2001	12
3.2.2 NAI Estimate of the RSA Population Living Off-Reserve in 2001	14
3.2.3 Métis Estimate of the RSA Population in 2001	15
3.2.4 Inuit Estimate of the RSA Population in 2001	16
3.2.5 RSA Estimate for Those Who Report Aboriginal Ancestry, But Who Do Not Self-identify as Aboriginal	16
3.2.6 RSA Estimate for Aboriginal Persons in Correctional Institutions	17
3.2.7 RSA Estimate for Registered Indians Outside of Canada	17
3.2.8 Summary of the 2001 RSA Estimates	18
4. Surviving the RSA Population to the Year 2005 and 2006	19
4.1 Estimating the On-Reserve North American Indian RSA Population for 2005 and 2006	19
4.2 Estimating the North American Indian RSA Population Off-Reserve for 2005 and 2006	20
4.3 Estimating the Métis RSA Population for 2005 and 2006	21
4.4 Inuit Estimate of the RSA Population in 2005 and 2006	22
	2

4.5 Estimating the RSA Population of Those Who Report Aboriginal Ancestry, But Who Do Not Self-identify as Aboriginal in 2005 and 2006	22
4.6 Estimating the RSA Population of Aboriginal Inmates in 2005 and 2006	22
4.7 Estimating the RSA Population Outside of Canada in 2005 and 2006	23
4.8 Estimating the RSA Population Aged 65+ in 2005 and 2006	23
References	24
APPENDIX A	25

### **Acknowledgements**

The author wishes to acknowledge those who commented on the first draft report of the RSA population estimates and methodology. Comments were received by members of the Working Group, as well as staff of the Indian Residential School Resolutions Canada Department. In addition, Stewart Clatworthy of Four Directions Project Consultants, an expert on Aboriginal demography, provided assistance in the development of the revised methodology. Mary Jane Norris of Canadian Heritage, a fellow demographer, also provided help with the revised methodology.

## Executive Summary

The Alternative Dispute Resolution Process for former "Residential School Attendees" (hereafter, RSAs) involved developing a Canada level set of estimates for former RSAs who were alive in 2001 and will be alive in 2005 and 2006. Since there are no comprehensive data sources on RSAs, a variety of existing data sources were used. Accordingly, assumptions were developed to cover off the data gaps in the existing data sources used.

There are important differences in rates of residential school attendance among Aboriginal groups living in on- and off-reserve locations and these differences were taken into account. Estimates were then developed for the domestic population, for those out-of-country and for those in correctional institutions. Those in chronic care institutions were not included as no data could be found for this population in the short timeline we had for this report. RSA numbers for people in these institutions are expected to be small. The major sources of data used in the development of the RSA estimates for 2001, 2005 and 2006 were the 1991 and 2001 Aboriginal Peoples Surveys (APS), the 2001 Census, and minor other data sources described in the main report. In addition, the Aboriginal mortality rates developed for a recent set of projections for the Aboriginal population developed by Statistics Canada were also used to survive the 2001 RSAs by age group to 2005 and 2006.

Overall, the estimated Aboriginal former Residential School Attendee population in **2001** who were aged 15 and over and are still alive is **83,695**. Due to mortality of this already-born and aging population, their numbers are expected to decline to **80,012 by 2005, and to 78,994 by 2006**— see Table 1.

The accuracy of the estimation procedure does not sustain the RSA estimates which are calculated to the unit level – see Table 1. It is more likely that the RSA estimates would vary by plus or minus a thousand.

**Table 1 – Summary of Estimated Former Residential School Attendees Alive in 2001, 2005 and 2006**

RSA Component Groups	YEAR		
	2001	2005	2006
NAI On-Reserve	44,172	42,188	41,641
NAI Off-Reserve	23,743	22,747	22,470
Métis	6,879	6,552	6,464
Inuit	3,619	3,486	3,448
Aboriginal Origins Only	3,346	3,187	3,144
Inmates	877	860	855
Outside Canada	1,059	992	973
<b>TOTAL</b>	<b>83,695</b>	<b>80,012</b>	<b>78,994</b>
<b>AGE 65+ (1)</b>		<b>14,032</b>	<b>13,396</b>

(1) The age group data for Aboriginal inmates aged 65+ were not available to estimate the share of RSAs.

## Estimating Residential School Attendees For the Years 2001, 2005 and 2006

### 1. Introduction

In order to estimate the Residential School Attendees (hereafter, RSAs) for 2005 and 2006, we need to establish an estimate of the living RSAs as of 2001, the base year for the estimation process. Unfortunately, no single database exists containing a comprehensive count of the RSA population.<sup>1</sup> This being the case, it is necessary to develop an estimated population of former RSAs still alive based on a variety of sources. In addition, it is necessary to make a number of assumptions in order to estimate the residual RSA population where no data exist. Empirical evidence will be employed using knowledge gained from existing data sources that provide useful insights and support for the assumptions made to carry out the population estimation procedures.

### 2. Data Sources

Three relatively large sample surveys have been conducted on the Aboriginal population in Canada. These include the 2001 Aboriginal Peoples Survey (APS), the 1991 APS, and the First Nations Regional Health Survey in 2002-2003. These surveys contained questions which asked their respondents if they had ever attended residential schools.

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<sup>1</sup> Staff from IRSRC confirmed in a telephone conversation on September 1, 2005, that no complete database on residential school attendees exists. Archival and other historical enrolment records by school exist, but may have years of information missing, former attendees have died, had name changes, etc.

The first two surveys were post-censal surveys, which were conducted by Statistics Canada following the 1991 and 2001 Censuses of Canada.<sup>2</sup> Typically, a post-censal survey uses the census as a sampling frame to find a smaller target population, in this case the Aboriginal population. The 2001 APS selected a sample of over 100,000 Aboriginal people both on- and off-reserve across the entire country. There was an adult questionnaire for those 15 years and over. The sample size represented about 13% of the overall Aboriginal population as counted in the 2001 Census and had a very high response rate of between 84% and 88%.

However, there were some limitations with this survey. While the survey covered the off-reserve Aboriginal population quite well, there were a large number of small reserves which were not covered by this survey. The 2001 survey did cover the larger reserves (123) which represented almost 50% of the total on-reserve population. On the other hand, the 1991 APS covered many smaller sized reserves (538) compared to the 2001 APS. Therefore, the 1991 APS was used in the revised RSA estimation methodology to adjust for the sampling bias in the 2001 APS.

Both the 1991 and 2001 APS had questions dealing with residential school attendance. There were two 1991 APS RSA questions, one directed at the population aged 15-49 and the other at the population aged 50-64. By contrast, the 2001 APS question on residential school attendance was addressed to the total Aboriginal population aged 15+ years. These age differences in the coverage of the residential school population between the two surveys was also accounted for in the revised RSA estimation methodology.

For the purposes of this estimation methodology, we were unfortunately unable to use a third major survey, the First Nations Regional Health Survey (hereafter, RHS) which

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<sup>2</sup> Statistics Canada, *Aboriginal Peoples Survey 2001: Concepts and Methods Guide*, Cat. No. 89-591-XIE, Ottawa, September, 2003, pp.11-14



was conducted in 2002-2003.<sup>3</sup> This survey was carried out by the First Nations Centre in the National Aboriginal Health Organization. It had a smaller sample size than that of the APS at just under 11,000 adults 18 years and over. It was largely an on-reserve First Nations community survey. It was hoped that we could obtain residential school attendance data from the RHS for communities which were uniquely sampled by RHS, as well as for communities overlapping with APS. Given the timeline for producing the RSA estimates, RHS data could not be acquired in time for use in this methodology. However, based on preliminary results released a few months ago from the RHS on residential school attendance, almost the same percentage for RSAs was obtained for their on-reserve population (**19.3%**) as was found in the APS selected reserve population (**20%**). This is encouraging, but the outstanding question is the overlap in the surveyed reserves covered by the two surveys.

Aboriginal age-specific mortality rates developed by Statistics Canada for a recent set of Aboriginal population projections were used for surviving the RSA population alive in 2001 to the years 2005 and 2006 in the revised estimation methodology.<sup>4</sup>

APS did not cover the Aboriginal inmate population in the correctional system. In order to estimate this population, we have used data from the Canadian Centre for Justice Statistics of Statistics Canada.<sup>5</sup> This centre maintains counts of people in various stages of the correctional systems, both federal and provincial/territorial. Their data identify if those in the respective systems are Aboriginal, although these databases do

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<sup>3</sup> National Aboriginal Health Organization, First Nations Centre, *Regional Health Survey 2002-03 Preliminary Results (Adults)* Sept 9, 2004 Updated Nov. 2004, p.8.  
[http://www.naho.ca/firstnations/english/pdf/RHS\\_prelim\\_results\\_nov8.pdf](http://www.naho.ca/firstnations/english/pdf/RHS_prelim_results_nov8.pdf)

<sup>4</sup> Statistics Canada, Demography Division, *Projections of the Aboriginal Populations, Canada, provinces and territories, 2001 to 2017*, June 28, 2005, on-line at: [http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089\\_en.htm?](http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089_en.htm?)

<sup>5</sup> Statistics Canada, Canadian Centre for Justice Statistics, custom tabulations

not contain information on residential school attendance. Assumptions were made to estimate RSA attendance and these are discussed below.

Not included in the estimation procedure were estimates of Aboriginal people in chronic care institutions, as no data were found to provide a basic count, let alone a count of those who were former RSAs.

The Indian Register System (IRS) of the Department of Indian and Northern Affairs Canada (INAC)<sup>6</sup> provided the estimation process with the number of Registered Indians living outside the country. It is not known how many of these persons attended residential schools. Some caution should be exercised in the use of this data source, due to problems associated with the timely reporting of both births and deaths and residency of the on- and off-reserve populations. However, it is the only source known which obtains a count of a major group of Aboriginal people living outside Canada, some of whom would have attended residential schools, and who may well come forward in a settlement process. Accordingly, assumptions were developed for the estimation process and are discussed below.

### **3. Estimation Methodology**

As noted above, there are no complete databases which provide a count of RSAs, surviving or deceased. This report is focusing on estimating those RSAs who were still alive in 2001 and who are expected to survive to 2005 and 2006. In order to do so, it is necessary to identify areas where Aboriginal peoples are to be found and then, with either empirical data or an estimation procedure, determine how many of those were RSAs. These areas where Aboriginal people can be found include those residing on Indian reserves, in off-reserve locations, those out-of-country, and those in correctional facilities. There are also important differences in residential school attendance among

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<sup>6</sup> Indian and Northern Affairs Canada, Indian Registry System, custom tabulations

Aboriginal groups, as First Nations peoples (both Status Indians and Non-Status Indians), Métis and Inuit attended such schools while they were in operation.

### **3.1 Data Limitations and Other Caveats**

There are several important data limitations and caveats that affect the methodology and data used in the estimation process. Most will be covered below when discussing the methodology for the estimation of the individual RSA components of population. However, at this point it is worth noting one general caveat. There has been speculation, largely based on anecdotal evidence, that RSAs have higher mortality rates than do non-attendees. There are no comprehensive empirical sources that can substantiate these speculations.

### **3.2 2001 Base Year for the Aboriginal Population**

In order to develop the base year 2001 estimates of RSAs, several different components of the population need to be estimated independently. These include the following groups:

1. North American Indians who self-identified as such on the 2001 APS and were living on reserves.
2. North American Indians who self-identified as such on the 2001 APS and were living off reserves.
3. Métis people who primarily are living in non-reserve locations along with a very small population living on reserves.
4. Inuit population
5. A group of people who reported on a supplementary survey to the 2001 APS that they did not self-identify as an Aboriginal person, but did report they had Aboriginal ancestry.<sup>7</sup>
6. Inmates in federal and provincial/territorial correctional institutions.

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<sup>7</sup> This group was added to the component groups of RSAs after the first draft set RSA estimate were developed.

## 7. Registered Indians living outside of Canada.

Each component RSA group and the methodology in estimating their size are described below.

### 3.2.1 – NAI Estimate of the RSA Population Living On-Reserve in 2001

Ideally, it would have been helpful to have one source of data for the 2001 North American Indian population (hereafter, NAI) who attended residential schools. Our major data source, the 2001 APS, surveyed only selected Indian reserves with relatively large populations, thus containing a sampling bias by not covering the smaller reserves which may have different rates of residential school attendance. As a result, we used data from the **1991 Aboriginal Peoples Survey (APS)** to adjust for the potential sampling bias in the **2001 APS** in order to see its impact on the rates for the smaller reserves. There were also concerns that regional differences in RSA rates, especially for the on-reserve populations by region in the 2001 APS, may also have a differential affect on the estimates of the RSA population. Again, using the 1991 APS, with its broader sampling coverage of Indian reserves, allowed for this factor to be taken into account.<sup>8</sup>

The methodology essentially compared the 1991 APS sample reserves which were unique to that survey to those reserves which were surveyed in both the 1991 and 2001 APS. This allowed us to test the hypothesis that the smaller reserves had higher attendance rates than the larger ones. This analysis used the 1991 APS, which contained a much larger set of sampled reserves compared to the 2001 APS. The 1991 APS actually showed that the RSA rates for the smaller and larger reserves, i.e. those unique reserves in the 1991 APS and those in common with the reserves surveyed in the 2001 APS, were almost the same at the Canada level.

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<sup>8</sup> Stewart Clatworthy of Four Directions Project Consultants, a colleague and expert in Aboriginal demographic issues, prepared much of the estimation methodology for the on-reserve segment of the RSA population. His assistance on this is gratefully acknowledged.

A weighting procedure was used to adjust for the reserve size differences. It uses the ratio of the rates for the 1991 only to 1991/2001 common reserves and applies this ratio to the 2001 rates for the common reserves to provide a 2001 estimate for those reserve not covered in 2001. The total rate is then computed by weighting the two sets of rates (i.e. the 2001 rate for reserves covered in 2001 and the estimated 2001 rate for those not covered) according to the relative size of the populations of these two groups of reserves as identified by the 2001 census. Two age cohorts, ages 15-24 and 75+ were adjusted independently for the 2001 estimate because the 15-24 year olds in 2001 were out of scope in 1991 (i.e., they were too young to be asked the RSA question in the 1991 APS), and the 1991 APS only asked the RSA questions of those up to age 64 years old.<sup>9</sup> Therefore, these rates also took into account age and regional factors.

The next step applied these adjusted rates to the 2001 base year NAI on-reserve population by region and age group. We had the good fortune of being able to use a recent set of Aboriginal population projections which were produced by the Demography Division of Statistics Canada.<sup>10</sup> The projection's base year also was the year 2001, and the methodology made several adjustments to the base year 2001. Using the 2001 Census as their primary data source, they adjusted the Aboriginal populations for:

- incompletely enumerated Indian reserves in the Census (there were 30 reserves containing an estimated population of about 31,000);
- general undercoverage in the Census for on-reserve locations based on a special undercoverage study conducted after the Census was completed.

The resulting overall Canada level RSA rate was 20.2% for the on-reserve population, yielding an overall estimate of 44,172 – see Table 2.

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<sup>9</sup> A special study from Statistics Canada comparing the age characteristics of APS surveyed reserves to all reserves, using the 2001 Census data, was used for this purpose.

<sup>10</sup> Statistics Canada, Demography Division, *Projections of the Aboriginal Populations, Canada, provinces and territories, 2001 to 2017*, June 28, 2005, on-line at: [http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089\\_en.htm?](http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089_en.htm?)

**Table 2**

<b>2001 - Estimated Residential School Attendees (RSAs) Alive in 2001 Residing Both On and Off Reserves, Canada Level</b>					
Age Group	NAI <sup>1</sup> On-Reserve BaseYr. 2001 Pop. for Projn's	Prop'n RSAs from APS: NAI On Selected Reserves <sup>2</sup>	Estimated RSA On-Reserve Pop. 2001	Actual RSA Numbers from APS for NAI Off-Reserve <sup>3</sup>	Est. RSA NAI Total = (On-Res. + APS Actual #s for Off-Reserves) 2001
<b>Total 15+</b>	217,800	0.202	44,172	23,743	67,915

**NOTES:**  
<sup>1</sup> NAI = North American Indians and includes both Status & Non-Status Indians;  
<sup>2</sup> Proportion derived from 2001 APS residential school question based on the sum of Attendees+Non-Attendees, and excludes "Refusals" and "Not Stated" in the APS question.  
<sup>3</sup> The proportion of North American Indians (age-adjusted) who are RSAs living Off-Reserve = .081  
 This proportion is used later in calculation of the On and Off -Reserve RSAs in 2006 - see Table 3

**Sources:**  
 Statistics Canada, "Projections of the Aboriginal populations, Canada, provinces and territories, 2001 to 2017", Demography Division. [http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089\\_en.htm](http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089_en.htm)  
 Statistics Canada, 1991 and 2001 Aboriginal Peoples Survey, custom tabulations

### 3.2.2 - NAI Estimate of the RSA Population Living Off-Reserve in 2001

For the NAI population estimate of residential school attendees residing in off-reserve locations, we decided to use the 2001 Aboriginal Peoples Survey results. This is based on a representative random sample of the off-reserve Aboriginal population and is considered reasonably accurate when it is weighted up to represent the whole off-reserve Aboriginal population, unlike the 2001 APS on-reserve sample which was limited to the larger reserves.

We chose to use the actual count of North American Indians who stated in APS that they attended residential schools, rather than follow the procedure used for the on-reserve NAI estimate of the RSA population. As it turns out, the APS count was larger than the estimate that would be derived from the Aboriginal base year population used in the Aboriginal projections also developed by Statistics Canada. This is due to the

fact that more people living off-reserve self-identified as Aboriginal in APS, than did in the census. In addition, we adjusted the APS 2001 count for undercoverage using the 2001 Census net undercoverage rates by province and territory since the APS sample was drawn from the 2001 Census which contains a certain amount of undercoverage of the population.<sup>11</sup>

However, as will be discussed later, we do use the proportion of age-adjusted RSAs (8.1 %) in the 2001 APS in estimating the 2005 and 2006 RSA populations who are North American Indians off-reserve. Thus, based on the APS, there were **23,743** NAIs living off-reserve in 2001 who reported that they attended residential schools – see Table 3.

### **3.2.3 Métis Estimate of the RSA Population in 2001**

Like the procedure used for the NAIs residing off-reserve, the 2001 APS was used to obtain the number of Métis who reported attending residential schools. This RSA count represented 2.6% of the non-reserve Métis population in 2001. In addition, APS indicated that, among the of the Métis population aged 15+ residing on Indian reserves, **12%** reported attending residential schools. Because APS did not cover all reserves, and the Statistics Canada Aboriginal projections did not produce a base year count of on-reserve Métis for 2001, the 2001 Census count of Métis on-reserve was used and the RSA rate from APS applied to it. This yielded a small additional estimate of **574** Métis who attended residential schools. This on-reserve number is added to the off-reserve 2001 RSA Métis. As with the NAI off-reserve estimate, the Métis estimate was further adjusted for Census undercoverage, which brings the total 2001 Métis RSA population estimate to **6,879** – see Table 3.

### **3.2.4 Inuit Estimate of the RSA Population in 2001**

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<sup>11</sup> Statistics Canada: Table 5.1- Estimated 2001 Census Population Net Undercoverage and Standard Errors, Various Characteristics, 2001 Reverse Record Check, [http://www12.statcan.ca/english/census01/Products/Reference/tech\\_rep/coverage/tab5-1.cfm](http://www12.statcan.ca/english/census01/Products/Reference/tech_rep/coverage/tab5-1.cfm)

The 2001 APS was used to obtain the number of Inuit who reported attending residential schools. The RSA Inuit rate was 12.35%. This rate was applied to the 2001 base year population from the Aboriginal projection series of Statistics Canada. Because the Inuit is a small population not evenly distributed across Canada, their numbers were suppressed in the APS in several regions. This meant that we could not apply the census undercoverage rates directly to the APS Inuit population, as was done for the Métis and NAI off-reserve estimates. On the other hand, the base year count for the Inuit from the Statistics Canada projection series was adjusted for census undercoverage. The resulting Inuit RSA estimate for 2001 is **3,619** – see Table 3.

### **3.2.5 - RSA Estimates for Those Who Report Aboriginal Ancestry, But Who Do Not Self-identify as Aboriginal**

Unlike the 1991 Aboriginal Peoples Survey, the 2001 APS surveyed a group of people who reported on their Census forms that they had an Aboriginal ancestor but they themselves did not self-identify as an Aboriginal person. Most had mixed Aboriginal and non-Aboriginal ancestries. A small portion of this population indicated on APS that they had attended residential schools. Most were located off-reserve, but a very small number were also living on-reserve (216). After adjusting this population for census undercoverage, a total of **3,346** attendees were added to the RSA population estimates – see Table 3.

### **3.2.6 - RSA Estimate for Aboriginal Persons in Correctional Institutions**

APS did not cover the Aboriginal population in correctional institutions. Census, while obtaining counts of the overall population in correctional institutions, did not specifically



identify Aboriginal people in those institutions. It was assumed that there would be residential school attendee populations among the Aboriginal inmate population. For the institutionalized Aboriginal population, data were obtained from the Canadian Centre for Justice Statistics of Statistics Canada. They provided an estimated one-day count of Aboriginal people in federal and provincial/territorial correctional institutions for 2001. The assumption used to estimate the RSA population within the correctional system was to apply the age-specific RSA rates at the Canada level to the Aboriginal inmate population.<sup>12</sup> Those percentages were applied to the CCJS estimate of overall Aboriginal admissions to correctional institutions to get the RSA estimate for this group (877) – see Table 3.

### 3.2.7 - RSA Estimate for Registered Indians Living Outside of Canada

While no reliable data could be found for all Aboriginal people, as a whole, residing outside of Canada, Indian and Northern Affairs Canada does maintain a count of registered or status Indians outside Canada. Data by age group for the 2001 figure was obtained for this population. Using the NAI off-reserve age-specific rates of those who attended residential schools, an estimated **1,059** were considered as RSAs – see Table 3.

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<sup>12</sup> A separate study by Trevethan et al of Aboriginal inmates in Prairie institutions provided an estimate of the percentage of Aboriginal inmates (20%) who reported attending residential schools. However, it was decided not to use this information since the numbers were very small and the age distribution of those reporting residential school attendance was skewed to the youngest age group (18-24) for whom the vast majority of residential schools would have been closed when they were old enough to enter school.

### 3.2.8 - Summary of the 2001 RSA Estimates

Our total revised estimate of RSAs for 2001 is 83,695. This estimate seems to be in line with the overall estimated range of 80,000-90,000 that has been used for the last several years, supported by the Aboriginal Healing Foundation and Statistics Canada.<sup>13</sup>

**Table 3 – Estimated Former Residential School Attendees Alive in 2001**

RSA Group Components	Base Year 2001
NAI On-Reserve	44,172
NAI Off-Reserve	23,743
Métis	6,879
Inuit	3,619
Aboriginal Origins Only	3,346
Inmates	877
Outside Canada	1,059
<b>TOTAL</b>	<b>83,695</b>

Notes: <sup>1</sup> NAI = North American Indians and includes both Status & Non-Status Indians; and 2001 base year population adjusted for net census undercount and incompletely enumerated reserves.

<sup>2</sup> Métis estimate of RSAs includes an estimate for Métis RSAs living on-reserve in 2001.

**Sources:**

Statistics Canada, "Projections of the Aboriginal populations, Canada, provinces and territories, 2001 to 2017", Demography Division. [http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089\\_en.htm?](http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089_en.htm)

Statistics Canada, 2001 Aboriginal Peoples Survey, custom tabulations

Statistics Canada, Canadian Centre for Justice Statistics, "Adult Correctional Services Survey" 2000/01 to 2002/03;

Indian and Northern Affairs Canada, Custom tabulation, "Registered Indians Outside Canada - Dec. 31, 2001", Indian Registry System

<sup>13</sup> Statistics Canada, Aboriginal Peoples Survey 2001- Initial findings: Well-being of the non-reserve Aboriginal population (89-589-XIE), released on-line September 24, 2003. <http://www.statcan.ca/Daily/English/030924/d030924b.htm>

#### 4. Surviving the RSA Population to Years 2005 and 2006

The next step in the estimation process was to survive the 2001 estimates of RSA forward to 2005 and 2006. An additional request was made to provide an estimate of those former attendees who will be 65 years of age and over. As the new methodology used age-specific survival rates in the forecast, it was possible to estimate this particular age group. It should be noted, however, that Aboriginal inmates age 65+ in correctional institutions were not estimated, given the lack of appropriate age data for this population in 2001. The numbers are expected to be extremely small.

##### 4.1 - Estimating the On-Reserve North American Indian RSA Population in 2005 and 2006

As was noted above in the RSA estimates for the North American Indian population on-reserve, the estimates took into account regional age-specific differences in the RSA rates. Consequently, when we were surviving the RSA population to 2005 and 2006, a consistent approach was used regionally and age-specifically.

The Statistics Canada Aboriginal projection model developed mortality rate assumptions for each Aboriginal group by place of residence. As our RSA population was already born and at least 15 years old in 2001, it should only decrease over time due to mortality. Thus, fertility was not included in our use of these population projections. As mortality changes very slowly over a five year period, only one assumption was used:

“We developed just one assumption for the future trend in Aboriginal mortality for our projection model. Based on past experience, it seems unlikely that the trend in mortality would undergo significant changes over the relatively short projection period of 16 years, making the choice of just one scenario a reasonable decision.”<sup>14</sup>

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<sup>14</sup> Ibid. Mortality Assumptions section.

The mortality rates were then converted to survival rates for forecasting purposes. They were applied to the estimated RSA North American Indian population on-reserve in 2001 to obtain the survived RSA population in both 2005 and 2006. It should be noted that in surviving the RSA on-reserve population **age 15+** from 2001 to 2005 and 2006 they will be four and five years older, i.e. **aged 19+ and 20+ years old**, respectively. This is because the population who is 15-18 in 2005, was only 11-14 years old in 2001, and that age group was “**out of scope**” for residential school attendance in 2001. They were too young and, therefore, not asked the residential school question on APS.

Although several projection scenarios were built by the Statistics Canada model, the major differences were driven by different fertility assumptions. As we are dealing with an already-born population for the RSA group, the medium growth scenario from the Statistics Canada projections, Scenario B, was used for the base year population estimates by age group and region. The RSA estimates in 2001 by age group and region were survived independently, using the NAI on-reserve mortality schedule, to 2005 and 2006. The resulting RSA population in 2005 when rolled up to the Canada level turned out to be **42,188** in 2005 and **41,641** in 2006 – see Table 4.

#### **4.2 - Estimating the North American Indian RSA Population Off-Reserve in 2005 and 2006**

To estimate the NAI population residing off-reserve who attended residential schools in 2005 and 2006, the 2001 APS estimate of RSAs by age group at the Canada level was used. The 2001 estimates were survived based on the mortality schedule from the Statistics Canada projection model for NAIs residing off reserves.<sup>15</sup> The total RSA population for NAIs off-reserve is projected to be **22,747** in 2005 and down to **22,470** by 2005 – see Table 4.

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<sup>15</sup> As the survival rates for the NAIs living off reserves from the Aboriginal projection model were developed originally on a regional and place of residence specific basis, they were subsequently modified by S. Clatworthy to get a Canada level NAI off-reserve set of survival rates. Note this adjustment was also done for the other Aboriginal groups, Métis and Inuit.

Table 4 - Projected Former Residential School Attendees Alive in 2005 and 2006

RSA Group Components	RSA Population Projected to 2005	RSA Population Projected to 2006
NAI On-Reserve <sup>1</sup>	42,188	41,641
NAI Off-Reserve <sup>1</sup>	22,747	22,470
Métis	6,552	6,464
Inuit	3,486	3,448
Aboriginal Origins Only	3,187	3,144
Inmates	860	855
Outside Canada	992	973
<b>TOTAL</b>	<b>80,012</b>	<b>78,994</b>
<b>AGE 65+<sup>2</sup></b>	<b>14,032</b>	<b>13,396</b>

**NOTES:**

<sup>1</sup> NAI = North American Indians and includes both Status & Non-Status Indians.

<sup>2</sup> The age group data for Aboriginal inmates aged 65+ were not available to estimate the share of RSAs.

**Sources:**

Statistics Canada, "Projections of the Aboriginal populations, Canada, provinces and territories, 2001 to 2017",

Demography Division. [http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089\\_en.htm?](http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089_en.htm?)

Statistics Canada, 2001 Aboriginal Peoples Survey, custom tabulations

**4.3 - Estimating the Métis RSA Population for 2006**

Like the procedure used for the NAIs residing off reserves, the 2001 APS estimate of Métis RSAs by age group at the Canada level was used. The 2001 estimates were survived based on the mortality schedule from the Statistics Canada projection model for the Métis. The RSA population is projected to be **6,552** in 2005 and down to **6,464** by 2006 – see Table 4.

#### **4.4 - Estimating the Inuit RSA Population in 2005 and 2006**

The 2001 APS estimate of Inuit RSAs by age group at the Canada level was used. The 2001 estimates were survived based on the mortality schedule from the Statistics Canada projection model for the Inuit. This total RSA population is projected to be **3,486** in 2005 and down to **3,448** by 2006 – see Table 4.

#### **4.5 - Estimating the RSA Population of Those Who Report Aboriginal Ancestry, But Who Do Not Self-identify as Aboriginal in 2005 and 2006**

The 2001 APS estimate of RSAs for the Aboriginal ancestry/no Aboriginal identity group was used. Because this population is predominantly of mixed ancestry, the age distribution of the Métis RSA population was applied to the total 2001 estimate for this group in order to survive the group by age to 2005 and 2006. The 2001 estimates were survived based on the mortality schedule for the Métis from the Statistics Canada projection model. This total RSA population is projected to be **3,187** in 2005 and down to **3,144** by 2006 – see Table 4.

#### **4.6 - Estimating the RSA Population of Aboriginal Inmates in 2005 and 2006**

The 2001 APS estimate of RSAs for the Aboriginal inmate population was used. In the absence of Aboriginal group specific data, we assumed the RSA age rates of the on-reserve NAI population. These rates were then applied to the 2001 estimate of inmates by age group in order to survive the group by age to 2005 and 2006. The 2001 estimates were survived based on the mortality schedule for the NAIs on-reserve from the Statistics Canada projection model. This total RSA population is projected to be **860** in 2005 and down to **855** by 2006 – see Table 4.

#### **4.7 - Estimating the RSA Population Outside of Canada in 2005 and 2006**

The estimated RSA population by age group based on the Indian Register data from 2001 for registered Indians living outside Canada was used. The 2001 estimate was survived based on the mortality schedule for the on-reserve NAI attendees from the Statistics Canada projection model. This total RSA population is projected to be **992** in 2005 and down to **973** by 2006 – see Table 4.

#### **4.8 - Estimating the RSA Population Aged 65+ in 2005 and 2006**

As all the RSA component groups were survived by age group independently, these data were rolled up to get the total Aboriginal RSA population aged 65 years and older in 2005 and 2006. This total RSA age group is projected to be **14,032** in 2005 and down to **13,396** by 2006 – see Table 4.

**References:**

Statistics Canada, "Projections of the Aboriginal populations, Canada, provinces and territories, 2001 to 2017", Demography Division. [http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089\\_en.htm?](http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089_en.htm?)

Statistics Canada, 2001 Aboriginal Peoples Survey, custom tabulations.

Statistics Canada, Canadian Centre for Justice Statistics, "Adult Correctional Services Survey" 2000/01 to 2003: Integrated Correctional Services Survey

Trevathan, S., et al., "The Effect of Family Disruption on Aboriginal & Non-Aboriginal Inmates", Sept. 2001, [http://www.csc-scc.gc.ca/text/rsrch/reports/r113/r113\\_e.pdf](http://www.csc-scc.gc.ca/text/rsrch/reports/r113/r113_e.pdf); custom tabulations from the Research Branch, Correctional Service Canada.

Indian and Northern Affairs Canada, Custom tabulation, "Registered Indians Outside Canada - Dec. 31, 2001" Indian Registry System



**APPENDIX A**

Custom tabulations were run on the 2001 and 1991 APS databases to retrieve the population cross-tabulated by Aboriginal group, 10-year age groups, and residential school attendance status, based on the following questions.

***In the 2001 APS:***

*Part 2, A.35: "Were you ever a student at a federal residential school or industrial school? Answer:*

- Yes
- No

*Refused*

***In the 1991 APS:***

*Section F, Qu. F2b asked of adults aged 15-49 for both elementary school and secondary school attendance: Who were you living with when you went to school? Was it...*

	<i>Answer:</i>		
	<i>Yes</i>	<i>No</i>	<i>Don't remember</i>
• <i>With your family?</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
• <i>At a residential school?</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
• <i>With a non-Aboriginal family?</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
• <i>With an Aboriginal family?</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
• <i>With someone else?</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

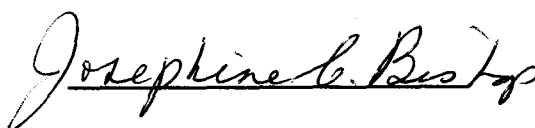
*Section F, Qu. F17 asked of adults aged 50-64 only: "When you went to school, did you go to a residential school?"*

*Answer:*

- Yes
- No
- *Never went to school*

THIS IS EXHIBIT W  
TO THE AFFIDAVIT OF  
RICHARD COURTIS  
SWORN BEFORE ME IN  
THE PROVINCE OF ONTARIO

ON JULY 27, 2006

A handwritten signature in cursive script that reads "Josephine Clare Bishop". The signature is written in black ink and is positioned above a horizontal line.

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Curtis,  
Barrister and Solicitor.  
Expires November 10, 2007.

Court File No. 00-CV-192059 CP  
THIS IS EXHIBIT 7 REFERRED

TO IN THE AFFIDAVIT OF \_\_\_\_\_

ONTARIO

Richard Curtis

SUPERIOR COURT OF JUSTICE SWORN BEFORE ME ON THE 25<sup>th</sup>

DAY OF July, 2003

BETWEEN:

CHARLES BAXTER, SR.  
and ELIJAH BAXTER

Josephine C. Bishop  
A COMMISSIONER etc.

Josephine Clare Bishop, a  
Commissioner, etc., Province of  
Ontario, for Richard W. Curtis,  
Barrister and Solicitor, Plaintiffs  
Expires November 10, 2004.

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under the Class Proceedings Act, 1992

**PLAINTIFFS' LITIGATION PLAN**

L. CRAIG BROWN  
ALAN FARRER  
RICHARD COURTIS  
DARCY MERKUR

CO-COUNSEL FOR THE PLAINTIFFS

**SERVICE OF ALL DOCUMENTS  
SHOULD BE C/O:**

THOMSON, ROGERS  
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Tel: 416-868-3176  
Fax: 416-868-3134

**BAXTER V. A.G. OF CANADA**  
(National Class Action)

**LITIGATION PLAN INDEX**

	<u>Page/Tab</u>
Overview/Preamble	1
Definitions	2
Part I – Pre Certification Process	5
Part II – Post Certification Process	9
Part III – Post Common Issues Decision Process	16
Schedule A – Plaintiffs' Proposed Timetable for the Pre Certification Process	A
Schedule B – List of Common Issues	B
Schedule C – Certification Notice	C
Schedule D – Opt Out Forms	D
Schedule E – Common Issues Notice	E
Schedule F – Anticipated Expert Evidence Required at Trial of Common Issues	F
Schedule G – Claim Forms	G
Schedule H – Individual Damage Assessment Election Form	H
Schedule I – Individual Damage Assessment Form	I
Schedule J – Aggregate Damage Distribution Process	J
Schedule K – Individual Damage Assessment Process	K
Schedule L – Individual Damage Assessment Compensation Matrix	L
Schedule M – List of Class Counsel	M
Schedule N – List of All Aboriginal Residential Schools in Canada	N
Schedule O – Map of All Aboriginal Residential Schools in Canada (note: legend at Tab N)	O
Schedule P – Pre Certification Process Schematic	P
Schedule Q – Post Certification Process Schematic	Q
Schedule R – Post Common Issues Decision Process Schematic	R

Court File No. 00-CV-192059 CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**CHARLES BAXTER, SR.**  
**and ELIJAH BAXTER**

Plaintiffs

- and -

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**Proceeding under the Class Proceedings Act, 1992**

**PLAINTIFFS' LITIGATION PLAN**

**L. CRAIG BROWN**  
**ALAN FARRER**  
**RICHARD COURTIS**  
**DARCY MERKUR**

**CO-COUNSEL FOR THE PLAINTIFFS**

**SERVICE OF ALL DOCUMENTS**  
**SHOULD BE C/O:**

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**Toronto, Ontario M5H 1W2**  
**Attention: Darcy Merkur**  
**Tel: 416-868-3176**  
**Fax: 416-868-3134**

Court File No. 00-CV-192059 CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHARLES BAXTER, SR.  
and ELIJAH BAXTER

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

**Proceeding under the Class Proceedings Act, 1992**

**PLAINTIFFS' LITIGATION PLAN**

*(filed pursuant to s.5(1)(e)(ii) of the Class Proceedings Act, 1992)*

**OVERVIEW**

This Litigation Plan is composed of three Parts:

- I. Pre Certification Process;
- II. Post Certification Process; and,
- III. Post Common Issues Decision Process.

**PREAMBLE**

*The proposed representative Plaintiffs, Charles Baxter, Sr. and Elijah Baxter, seek compensation from the Defendant, the Attorney General of Canada, on behalf of all Aboriginal Persons in Canada and their parents and children who suffered the common wrong of being subjected to the Residential School System. The Plaintiffs allege that the Attorney General of Canada breached its duty to the Survivor Class Members and Family Class Members through systemic institutional child abuse, systemic wrongful confinement and by the systemic suppression of Aboriginal languages, culture, customs and traditions.*

## DEFINITIONS

The following definitions will be used throughout this Litigation Plan:

*Aboriginal, Aboriginal People(s) or Aboriginal Persons(s)*--means a person whose rights are recognized and affirmed by the *Constitution Act, 1982*, s. 35;

*Aboriginal Residential School(s) or Indian Residential School(s) or Residential School(s)*—means a residential, boarding or industrial school(s), residence or hostel, however designated, established or recognized by Canada from time to time under the purported authority of the *Indian Act*, regulations and orders-in-council pursuant thereto and/or other legislation relating to *Aboriginal Persons*, and, without limiting the foregoing, those institutions listed in Schedule N and shown on Schedule O to this Litigation Plan;

*Aboriginal Right(s)*--means rights recognized and affirmed by the *Constitution Act, 1982*, s. 35;

*Aggregate Damage Distribution Process*—means the system set out in Schedule J to this Litigation Plan for distributing a proportion of Aggregate Damages to *Approved Class Members*, as may be subsequently amended and as approved by the Court;

*Appointed Firm*—means a firm of chartered accountants or any other appropriate firm appointed by the Court to assist in the administration of the class proceeding;

*Approved Class Member(s)*—means *Approved Family Class Members* and/or *Approved Survivor Class Members*;

*Approved Family Class Member(s)*—means a *Family Class Member* who has been approved by the *Appointed Firm* as meeting the criteria for being a *Family Class Member* and whose approval as a *Family Class Member* has not been successfully challenged;

*Approved Survivor Class Member(s)*—means a *Survivor Class Member* who has been approved by the *Appointed Firm* as meeting the criteria for being a *Survivor Class Member* and whose approval as a *Survivor Class Member* has not been successfully challenged;

*Certification Notice*—means the information set out in Schedule C to this Litigation Plan, as may be subsequently amended and as approved by the Court;

*Claim Form(s)*—means the *Survivor Class Claim Form* and/or the *Family Class Claim Form*;

*Class Counsel*---means the consortium of law firms acting as co-counsel in this class proceeding as outlined in Schedule M to this Litigation Plan and as may be

subsequently amended, with the firms of Thomson, Rogers and Richard Courtis as Solicitors of Record in this class proceeding;

*Class Member(s)*—means an individual who falls within the definition of the *Survivor Class* and/or the *Family Class*;

*Class Period*—means the period from January 1, 1920, to December 31, 1996;

*Common Issues*—means the issues listed in Schedule B to this Litigation Plan, as may be subsequently amended and as approved by the Court;

*Common Issues Notice*—means the information set out in Schedule E to this Litigation Plan, as may be subsequently amended and as approved by the Court;

*Crown*—means the Defendant, the Attorney General of Canada;

*Churches*—means the Third Party Defendant Church organizations named as defendants in the Third Party Claim commenced by the *Crown*;

*Family Class*—means a group comprised of parents and children of *Survivor Class Members* or as defined by the Court;

*Family Class Claim Form*—means the form set out in Schedule G to this Litigation Plan used by *Family Class Members* to submit a claim, as may be subsequently amended and as approved by the Court;

*Family Class Opt Out Form*—means the form set out in Schedule D to this Litigation Plan used by *Family Class Members* to opt out of the class proceeding, as may be subsequently amended and as approved by the Court;

*Individual Damage Assessment Form*—means the form set out in Schedule I to this Litigation Plan used by *Approved Survivor Class Members* to commence an individual damage assessment under the *Individual Damage Assessment Process*, as may be subsequently amended and as approved by the Court;

*Individual Damage Assessment Compensation Matrix*—means the system set out in Schedule L to this Litigation Plan for calculating compensation to *Approved Survivor Class Members* proceeding in the *Individual Damage Assessment Process*, as may be subsequently amended and as approved by the Court;

*Individual Damage Assessment Election Form*—means the form set out in Schedule H to this Litigation Plan used by *Approved Survivor Class Members* to elect an individual assessment of their damages, as may be subsequently amended and as approved by the Court;



*Individual Damage Assessment Process*—means the system set out in Schedule K and Schedule L of this Litigation Plan used to assess and distribute damages to *Approved Survivor Class Members* who have elected an individual damage assessment by submitting an *Individual Damage Assessment Election Form* and *Individual Damage Assessment Form*, as may be subsequently amended and as approved by the Court;

*Notice Program*—means the process, set out in the Litigation Plan, for communicating the *Certification Notice* and/or the *Common Issues Notice* to *Class Members*, as may be subsequently amended and as approved by the Court.

*Opt Out Form(s)*—means either the *Survivor Class Opt Out Form* and/or the *Family Class Opt Out Form*;

*Opt Out Period*—means the deadline, proposed by the plaintiffs as 180 days post Certification or as determined by the Court, to opt out of the class proceeding;

*Opt Out Procedures*—means the procedures, set out in the Litigation Plan, for *Class Members* to opt out of the class proceedings, as may be subsequently amended and as approved by the Court.

*Qualifying Relative(s)*—means the father, mother, son(s) or daughter(s) of any individual who would qualify as a *Survivor Class Member* (regardless of whether the *Survivor Class Member* is alive), or as set out by the Court;

*School Attendance Information*—means information to be provided by the *Crown* to the *Appointed Firm* regarding attendance/enrolment at *Residential Schools* as set out herein.

*Special Opt Out Procedures*—means the procedures, set out in the Litigation Plan, for *Class Members* who have already issued a civil proceeding in Canada or who are known by the *Crown* to have already retained legal counsel to opt out of the class proceedings, as may be subsequently amended and as approved by the Court.

*Survivor Class*—means a group comprised of all persons who attended an *Aboriginal Residential School* during the *Class Period* or as defined by the Court;

*Survivor Class Claim Form*—means the form set out in Schedule G to this Litigation Plan used by *Survivor Class Members* to submit a claim, as may be subsequently amended and as approved by the Court; and,

*Survivor Class Opt Out Form*—means the form set out in Schedule D to this Litigation Plan used by *Survivor Class Members* to opt out of the class proceeding, as may be subsequently amended and as approved by the Court.

**I. PRE CERTIFICATION PROCESS****A. The Parties****1. The Plaintiffs**

- a) The Plaintiffs have proposed two separate classes:
  - i) A *Survivor Class*, represented by Charles Baxter, Sr.; and,
  - ii) A *Family Class*, represented by Elijah Baxter.

**2. The Defendant**

- a) The Defendant is the *Crown*.
- b) The *Crown* has commenced Third Party proceedings for contribution and indemnity against the *Churches*.

**3. The Third Parties and Additional Parties**

- a) The *Churches* are Third Party Defendants. It is possible that the *Churches* will commence Fourth Party proceedings against their alleged insurers or others.

**B. The Pleadings****1. Statement of Claim**

- a) The Plaintiffs have delivered a Fresh as Amended Statement of Claim.

**2. Statement of Defence**

- a) The Defendant has delivered a Statement of Defence.

**3. Third Party Claim**

- a) The Defendant has issued a Third Party Claim against the *Churches* for contribution and indemnity. The *Churches* have not delivered any pleadings.

**C. Third Party Proceedings****1. Stay of Third Party Proceedings or Separate Proceedings**

- a) The Plaintiffs will be asking the Court either to stay the Third Party Claim pending resolution of the *Common Issues* or to Order that the Third Party Claim proceed as a separate action. In this regard, the Plaintiffs will bring a motion pursuant to Rules 29.09 and 29.10 of the *Rules of Civil Procedure*, Rule 13 of the *Class Proceedings Act, 1992*, S.O. 1992, c.6, as amended, and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

**2. Motion for Stay of Third Party Proceedings or Separate Proceedings**

- a) The Plaintiffs intend to have this Motion heard at the Motion for Certification or as directed by the Court.
- b) In the event that the Third Party proceedings are not stayed nor ordered to be tried separately, the Plaintiffs will be challenging the Third Parties standing at the Motion for Certification.

**D. Other Preliminary Motions****1. Plaintiffs' Motion regarding Communication by the Crown**

- a) The Plaintiffs have served a motion requesting certain restrictions/relief associated with the *Crown's* communication, directly or indirectly, with putative *Class Members*, especially in relation to a Government proposed Dispute Resolution Program that the *Crown* expects to launch in the fall of 2003.
- b) Justice Winkler has requested that the *Crown* arrange a case conference prior to announcing the Dispute Resolution Program to allow the Court and the Plaintiffs an opportunity to review the proposal and, if necessary, schedule the Plaintiffs' motion or address the matters raised therein.

**2. Motions by Third Parties**

- a) The issue of a stay of the Third Party proceedings should be determined prior to, or at the same time as, the hearing of any preliminary motions by Third Parties.

**3. Crown's Motion to Strike**

- a) Justice Winkler, by Order dated February 24, 2003, has already ordered that the *Crown's* motion to strike parts of the Plaintiffs' Fresh as Amended Statement of Claim be heard at the Motion for Certification.

**4. All other Preliminary Motions**

- a) The Plaintiffs propose that all other preliminary motions be dealt with at the Motion for Certification or as directed by the Court.

**E. Pre Certification Communication Strategy****1. Responding to Inquiries from *Class Members***

- a) Both prior to and since this class proceeding was commenced, *Class Counsel* has received many communications from affected *Class Members* who wish to be included in the class proceeding.
- b) *Class Counsel* and their staff have responded to, and will continue to respond to, each inquiry as appropriate.
- c) With respect to each inquiry, the individual's name, address and telephone number will be added to a database.

**2. Pre Certification Status Reports**

- a) In addition to responding to individual inquiries, *Class Counsel* have created a webpage concerning the class proceeding (see [www.thomsonrogers.com](http://www.thomsonrogers.com), under the heading "Class Action"). The most current information on the status of the class proceeding is posted and is updated regularly.
- b) Copies of the publicly filed court documents and court decisions are accessible from the webpage. In addition, a toll-free phone number and email contact information is provided.
- c) *Class Counsel* continues to send update reports to *Class Members* who have provided their contact information and have indicated an interest in being notified of further developments in the class proceeding. These update reports will continue to be sent as necessary.

**F. Settlement Conference****1. Pre Certification Settlement Conference**

- a) The Plaintiffs will participate in a pre Certification Settlement Conference with all the parties to determine whether any of the issues arising in the class proceeding can be resolved.
- b) The Plaintiffs propose that a pre Certification Settlement Conference be conducted at least one week prior to the Motion for Certification or as directed by the Court.

**G. Timetable**

**1. Plaintiffs' Proposed Timetable for the Pre Certification Process**

a) The Plaintiffs' propose that the pre Certification process timetable set out at Schedule A to this Litigation Plan be imposed by Court Order at the case conference on September 9, 2003.

## II. POST CERTIFICATION PROCESS

### A. Timetable

#### 1. Plaintiffs Timetable for the Post Certification Process

a) The Plaintiffs propose that the following post Certification process timetable, as explained in detail below, be imposed by the Court upon Certification:

	Post Certification Completion Deadline
<i>Certification Notice to Class Members commences</i>	Upon Certification
Exchange Affidavits of Documents by	30 days
Motions for Production of Documents, Multiple Examinations of Crown representatives or for Examinations of Non-Parties to be conducted within	60 days
Examinations for Discovery to be conducted by	90 days
<i>Certification Notice to Class Members completed by</i>	90 days
Trial Management Conference re: Expert Evidence	100 days
Motions arising from Examinations for Discovery by	120 days
Undertakings answered by	135 days
Further Examinations, if necessary, by	150 days
<i>Common Issues Pre-Trial to be conducted</i>	150 days
<i>Opt Out Period deadline</i>	180 days
<i>Common Issues Trial to be conducted</i>	240 days

### B. *Certification Notice, Notice Program and Opt Out Procedures*

#### 1. *Certification Notice*

a) The *Certification Notice* provided by the Plaintiffs will, once finalized and approved by the Court, be translated into French and into the following languages (note: the languages below are the five most commonly spoken *Aboriginal* Languages according to the 1996 Canada Census data):

- Cree;
- Inuktitut;
- Ojibway;
- Motagnais-Naskapi; and,
- Micmac.

b) The *Certification Notice* will, subject to further amendments, be in a form similar to that set out in Schedule C to this Litigation Plan.

**2. Notice Program**

a) The Plaintiffs propose to communicate the *Certification Notice* to *Class Members* through the following *Notice Program*.

b) The Plaintiffs will provide *Certification Notice* to *Class Members* by arranging to have the *Certification Notice* (and its translated versions whenever possible) communicated/published in the following national, regional and local mediums in the 90 days post Certification, as frequently as may be reasonable or as directed by the Court, namely:

- Circulated by the Assembly of First Nations to its membership of 633 First Nations bands across Canada.
- In Aboriginal newspapers/publications such as, The Windspeaker, First Perspectives, Tansi, Aboriginal Times, MicMac/Maliseet News, Sweetgrass and Weetamah;
- On radio such as Aboriginal radio CFWE-FM, CBC national and CBC regional; and,
- On television such as on The Aboriginal Peoples Television Network.

c) The Plaintiffs will send the *Certification Notice* to all plaintiffs' lawyers involved in Residential School litigation based on the list previous provided by the *Crown* or as updated by the *Crown*

d) The Plaintiffs will issue a press release within 15 days of the certification order being issued.

e) The Plaintiffs will publish the *Certification Notice* on the webpage being maintained by *Class Counsel* at [www.thomsonrogers.com](http://www.thomsonrogers.com).

f) The Plaintiffs will send the *Certification Notice* to all *Class Members* who have provided their contact information to *Class Counsel*.

g) In addition, the Plaintiffs have requested that the *Crown* be ordered to provide a list of all known *Class Members'* names and last known addresses using all the information in the *Crown's* possession or under its control. The

*Certification Notice* will be sent by the *Crown* or by the Plaintiffs to all such *Class Members* identified by the *Crown*. In the event that such a list cannot be prepared, the Plaintiffs propose, if deemed necessary by the Court, that the *Certification Notice* be sent by the *Crown* to the last known addresses of all Status Card holders in Canada.

### **3. Opt Out Procedures**

- a) The Plaintiffs propose *Opt Out Procedures*, set out below, for *Class Members* who do not wish to participate in the class proceeding.
- b) The *Certification Notice* will include information about how to Opt Out of the class proceeding and will provide information about how to obtain and submit the appropriate *Opt Out Forms* to the *Appointed Firm* and/or Thomson, Rogers.
- c) There will be two standard *Opt Out Forms*:
  - i) A *Survivor Class Opt Out Form*—see draft at Schedule D; and,
  - ii) A *Family Class Opt Out Form*—see draft at Schedule D.
- d) *Class Members* will be required to file the appropriate *Opt Out Forms* with the *Appointed Firm* and/or Thomson, Rogers within the *Opt Out Period*, proposed by the plaintiffs as 180 days post Certification or as directed by the Court.
- e) The *Appointed Firm* shall, within 30 days after the expiration of the *Opt Out Period*, deliver to the Court and the parties an Affidavit listing the names of all persons who have opted out of the Class Action.

### **4. Special Opt Out Procedures**

- a) The Plaintiffs propose *Special Opt Out Procedures*, set out below, for *Class Members* who are either named party plaintiffs in a civil proceeding in Canada or who are known by the *Crown* to have retained legal counsel.
- b) As stated above, the *Certification Notice* will be sent to all lawyers involved in *Residential School* litigation based on the list previously provided by the *Crown* or as updated by the *Crown*. The plaintiffs, when sending the *Certification Notice* will advise such counsel that they may opt out any of their clients by providing the *Appointed Firm* within the *Opt Out Period* with a list of clients including their address and date of birth that have instructed them to opt out of the class action.



c) Ongoing civil actions by *Class Members* who do not opt out of the Class Action should be dealt with in a manner to be determined by this Court or by the Court in which such proceedings are brought.

**C. Identifying and Communicating with *Class Members***

**1. Identifying *Class Members***

a) As stated above, the Plaintiffs have requested that the *Crown* be ordered to provide a list of all known *Class Members*' names and last known addresses using all the information in the *Crown*'s possession or under its control.

b) Where *Class Members* are known to be represented by counsel, only their name should be provided along with their counsel's name and address.

c) The *Crown* need not provide the names and addresses of any and all putative *Class Members* who have signed valid releases and who have completely resolved any claims that would otherwise be covered by this class proceeding. Instead, the *Crown* will provide a list of these putative *Class Members* to the *Appointed Firm* who will ensure that no such putative *Class Members* are accepted as *Class Members*, except with leave of the Court.

d) The Court may be asked to order production of additional data or information from the *Crown* regarding the identity and location of *Class Members*.

**2. Database of *Class Members***

a) *Class Counsel* will maintain a database of all *Class Members* who contact *Class Counsel*. The database will include the individual's name, address and telephone number.

**3. Responding to Inquiries from *Class Members***

a) *Class Counsel* and their staff will respond to each inquiry by *Class Members*.

b) *Class Counsel* will have in place a system to have regional *Class Counsel* respond to inquiries by *Class Members* in their language of choice whenever possible.

**4. Post Certification Status Reports**

- a) In addition to responding to individual inquiries, *Class Counsel* will continually update their webpage with information concerning the status of the class proceeding (at [www.thomsonrogers.com](http://www.thomsonrogers.com), under the heading "Class Action").
- b) *Class Counsel* will send update reports to *Class Members* who have provided their contact information. These update reports will be sent as necessary or as directed by the Court.

**D. Documentary Production****1. Affidavits of Documents**

- a) The parties will be required to deliver an Affidavit of Documents within 30 days post Certification.
- b) The parties are expected to serve Supplementary Affidavits of Documents as additional relevant documents are located.

**2. Production of Documents**

- a) All parties are expected to provide, at their own expense, copies of all Schedule A productions at the time of delivering their Affidavit of Documents.
- b) All parties are entitled to inspect documents in accordance with the Rules of Civil Procedure.

**3. Motions for Documentary Production**

- a) Any motions for documentary production shall be made within 60 days post Certification

**4. Document Management**

- a) The Parties will each manage their productions with a compatible document management system, or as directed by the Court.
- b) All productions should be numbered and, if possible, scanned electronically to enable quick access and efficient organization of documents.

**E. Examinations for Discovery****1. Examination of Named Parties**

- a) Examinations for Discovery will take place within 90 days post Certification.
- b) The Plaintiffs expect to request the *Crown's* consent to examine more than one Crown representative. In the event that a dispute arises in this regard, the Plaintiffs propose to bring a motion within 60 days post Certification.
- c) The Plaintiffs anticipate that the Examination for Discovery of a properly selected and informed officer of the Defendant will take approximately 20 days, subject to refusals and undertakings.
- d) The Plaintiffs anticipate that the Examination for Discovery of the representative Plaintiffs will take approximately 5 days, subject to refusals and undertakings.

**2. Examinations of Non-Parties**

- a) All parties would be expected to comply with the Ontario *Class Proceedings Act, 1992* and the Ontario Rules of Civil Procedure with respect to examinations of non-parties.
- b) Any such Examinations of Non-Parties and any motions relating to Examinations of Non-Parties will be heard within 60 days post Certification.

**F. Interlocutory Matters****1. Motions for Refusals and Undertakings**

- a) Specific dates for motion for undertakings and refusals that are expected to arise from the Examinations for Discovery will be requested from the Court upon Certification. Motions for refusals and undertakings will be heard within 120 days post Certification.

**2. Undertakings**

- a) Undertakings are to be answered within 135 days post Certification.

**3. Re-attendances and Further Examinations for Discovery**

- a) Any re-attendances or further Examinations for Discovery required as a result of answers to undertakings or as a result of the outcome of the motions for

refusals and undertakings should be completed within 150 days post Certification.

**G. Expert Evidence**

**1. Identifying Experts and Issues**

a) A Trial Management Conference will take place following Examinations for Discovery at which guidelines for identifying experts and their proposed evidence at trial will be determined.

**2. Anticipated Expert Evidence Required**

a) At the trial of the *Common Issues*, the Plaintiffs currently anticipate requiring expert evidence in the areas set out in Schedule F to this Litigation Plan and will identify and retain required experts forthwith post Certification.

**H. Determination of the *Common Issues***

**1. Pre-Trial of the *Common Issues***

a) Upon Certification, the Court will be asked to assign a date for a Pre-Trial relating to the *Common Issues* trial.

b) The Plaintiffs expect that a full or half day would be required for a Pre-Trial and would request that the Pre-Trial be held 150 days post Certification and, in any event, 90 days prior to the date for the *Common Issues* Trial.

**2. Trial of the *Common Issues***

a) Upon Certification, the Court will be asked to assign a date for the *Common Issues* Trial.

b) The Plaintiffs propose that the trial of the *Common Issues* be held 240 days post Certification.

c) The length of time required for the trial of *Common Issues* will vary depending on a multitude of factors and will be determined at the Trial Management Conference. At this time, the Plaintiffs would estimate that a trial of the *Common Issues* would take 50 days.

### III. POST COMMON ISSUES DECISION PROCESS

#### A. Timetable

##### 1. Plaintiffs Timetable for the Post *Common Issues* Decision Process

a) The Plaintiffs propose that the following post *Common Issues* decision process timetable, as explained in detail below, be imposed by the Court upon the Court's decision on the *Common Issues*:

	Post <i>Common Issues</i> Decision Completion Deadline
Third Party proceedings resume (ie. stay lifted)	Upon <i>Common Issues</i> decision
<i>Common Issues Notice</i> provided	Within 90 days of decision
Individual Issue Hearings begin	120 days after decision
Individual Damage Assessments begin	240 days after decision
Deadline to Submit <i>Claim Forms</i> (as of right)	Within 1 year of decision
Deadline to Submit <i>Claim Forms</i> (as of right in prescribed circumstances or with leave of the Court)	After 1 year of decision

#### B. Third Party Proceedings

##### 1. Third Party Proceedings Commence

- a) After a decision on the *Common Issues* is rendered, the Court will be asked to immediately lift the stay of the Third Party Claims.
- b) The Third Party Claims will then be dealt with in accordance with a Third Party Litigation Plan to be prepared by the *Crown* and the Third Parties and approved by the Court.

#### C. *Common Issues Notice*

##### 1. Notifying *Class Members*

- a) In the event that individual issues requiring individual determination remain after a decision on the *Common Issues* is rendered by the Court or that aggregate damages are awarded by the Court, the Plaintiffs will notify *Class Members* by circulating a *Common Issues Notice*.
- b) The *Common Issues Notice* will, subject to further amendments, be in a form similar to that set out in Schedule E to this Litigation Plan.
- c) The Plaintiffs propose to circulate the *Common Issues Notice* within 90 days post *Common Issues* decision.

d) The *Common Issues Notice* will be circulated in the same manner as set out above dealing with the *Certification Notice* or as directed by the Court.

#### **D. Claim Forms**

##### **1. Use of Claim Forms**

a) The Court will be asked to approve the use of standardized *Claim Forms* under subsection 24(6) of the *Ontario Class Proceedings Act, 1992* by *Class Members* who may be entitled to a portion of the aggregate damage award or who may be entitled to have an individual assessment.

##### **2. Obtaining and Filing Claim Forms**

a) The procedure for obtaining and filing *Claim Forms* will be set out in the *Common Issues Notice*.

b) The Plaintiffs propose using two standard *Claim Forms*, available in various *Aboriginal* languages as set out above, subject to further amendments and as approved by the Court:

- i) A *Survivor Class Claim Form*—see draft at Schedule G; and,
- ii) A *Family Class Claim Form*—see draft at Schedule G.

c) The Plaintiffs propose that counselling be made available to *Class Members* in need of support and assistance when completing the *Claim Forms*.

d) Before completing a *Claim Form*, *Class Members* will be able to review the following *School Attendance Information* that will be provided by the *Crown* to the *Appointed Firm*:

- **Registered Indian Record**-The Registered Indian Record contains information about the claimant if they are registered as a status Indian. It gives information about their name, band, and band number when they were a child. This information helps to identify the claimant in school records.
- **Treaty Pay Lists**-Treaty pay lists can be reviewed to confirm the identity of the claimant and their family members. Treaty pay lists show persons who were paid annuities by the government, and they sometimes show when a child attended a school;
- **Quarterly Returns**-Quarterly Returns are documents that list the students who lived at a residential school. These returns were completed by a residential school principal or by other staff every three months. Students were identified on Quarterly Returns by their names, student register number, band, and date of birth. Many of the returns before the 1960's showed when a student was learning a trade; for example sewing or farming.

In the 1960s, the returns sometimes included a list of day students who received noon-day lunches at the residential school. Information about day school lunch students is usually limited to the student's name;

- **Daily Registers**-Daily Registers are documents that show the attendance of students who were in class at a residential school. Only the students' names are shown in the Daily Registers;
- **Student Lists**-Student lists are sometimes found which include some or all of the information found in Quarterly Returns, except for information related to trade learning;
- **Admission and Discharge Records**-The main document that was supposed to trigger a student's admission in residential school is called an "Application for Admission". When a student left the school, a "Discharge" form was supposed to be filled out by school staff. There are also lists of "Admissions and Discharges" which can show the students who entered or left a school, their parents' names, their band memberships, and the reasons why the student entered the school;
- **Principal's Monthly Reports**-The Principal's Monthly Reports were written by school principals (or residential school administrators) every month and contain lists of students and staff who were away from a school in that month;
- **Nominal Roll**-The Nominal Roll system lists students who attended schools after 1969; and,
- **Miscellaneous Documents**-Miscellaneous or loose documents can sometimes be found that give information about one or more students. An example includes school publications or yearbooks.

e) *Class Members* will be required to file the appropriate *Claim Forms* with the *Appointed Firm* and/or Thomson, Rogers within the deadlines set out below or as directed by the Court.

f) The *Appointed Firm* and/or Thomson, Rogers will be responsible for receiving all *Claim Forms*.

### 3. **Deadline for Filing *Claim Forms***

a) *Class Members* will be advised of the deadline for filing *Claim Forms* in the *Common Issues Notice*.

b) The Plaintiffs propose that *Class Members* be given one year post *Common Issues* decision to file *Claim Forms* as of right, or such period as set out by the Court.

c) The Plaintiffs propose that *Class Members* be entitled to file *Claim Forms* as of right after one year post *Common Issues* decision in certain circumstances

prescribed by the Court (ie. lack of awareness of entitlement, etc.) or with leave of the Court (ie. mental or physical health issues, etc.).

**E. Determining and Categorizing Class Membership**

**1. Approving *Survivor Class Members* and Determining Attendance**

a) The *Appointed Firm* will determine whether an individual submitting a *Survivor Class Claim Form* properly qualifies as a *Survivor Class Member*.

b) In addition, the *Appointed Firm* will determine and categorize the duration of the *Approved Survivor Class Member's* attendance at *Residential School(s)* as either:

- Up to 3 years;
- More than 3 years and up to 7 years; or,
- More than 7 years.

c) The *Appointed Firm* will make these determinations by referring to the information set out in the *Claim Form* with respect to the years and the *Residential School(s)* attended and available *School Attendance Information*, described above, provided to the *Appointed Firm* by the *Crown*.

d) The *Appointed Firm* will, where appropriate and necessary, request in writing further information from the individual filing the *Survivor Class Claim Form* to make these determinations.

**2. Approving *Family Class Members* and Determining Relatives**

a) The *Appointed Firm* will determine whether an individual submitting a *Family Class Claim Form* properly qualifies as a *Family Class Member*.

b) In addition, the *Appointed Firm* will determine and categorize the number of *Qualifying Relatives* the *Approved Family Class Member* has as either:

- One;
- Two;
- Three; or,
- Four or more.



c) These determinations will be made by the *Appointed Firm* by referring to the information set out in the *Family Class Claim Form* with respect to the number of *Qualifying Relatives* and the *Residential School(s)* attended and available *School Attendance Information*, described above, provided to the *Appointed Firm* by the *Crown*.

d) The *Appointed Firm* will, where appropriate and necessary, request in writing further information from the individual filing the *Claim Form* to make these determinations.

### **3. Deceased Class Members**

a) The estate of a deceased *Class Member* may submit a *Claim Form* if the deceased *Class Member* died on or after June 13, 1998 (within two years prior to June 13, 2000, the date the original Statement of Claim was issued in this class proceeding).

b) If the deceased *Class Member* would otherwise have qualified as an *Approved Class Member*, the estate will be entitled to be compensated in accordance with the *Aggregate Damage Distribution Process*. The estate will not have the option to elect to proceed under the *Individual Damage Assessment Process* except with leave of the Court.

### **4. Notifying Class Members, Challenging and Recording Decisions**

a) Within 30 days of receipt of a *Claim Form*, the *Appointed Firm* will notify the individual of their decision on whether the individual is an *Approved Survivor Class Member* and/or *Family Class Member* and their determined categorization as set out above. Individuals who are not approved as *Class Members* will be provided with information on the procedures to follow to challenge the decision of the *Appointed Firm*. The Plaintiffs propose that these procedures include an opportunity to resubmit an amended *Claim Form* with supporting documentation capable of verifying attendance.

b) The *Appointed Firm* will keep records of all *Approved Survivor Class Members* and their respective *Claim Forms* and will provide this information to the *Crown* and other interested parties on a monthly basis. The *Crown* and/or other interested parties will have 30 days after receiving this information to

challenge the *Appointed Firm's* decision by advising the *Appointed Firm* and the individual in writing the basis for their challenge. The individual will be given 30 days thereafter to respond in writing to the challenge at which time the *Appointed Firm* will reconsider their decision and advise all parties.

c) All interested parties will be provided with the ability to appeal a decision by the *Appointed Firm* to the Court or in a manner to be prescribed.

**F. Aggregate Damage Distribution Process**

**1. Distribution of Aggregate Damages**

a) The *Appointed Firm* will distribute the aggregate damages to all *Approved Class Members* in a manner set out in Schedule J as may be subsequently amended or as directed by the Court.

b) As set out in Schedule J, the Plaintiffs propose that *Approved Survivor Class Members* be entitled to a proportion of the aggregate damages based on their duration of attendance at *Residential School(s)* as determined by the *Appointed Firm* and that *Approved Family Class Members* be entitled to a proportion of the aggregate damages depending on the number of *Qualifying Relatives* they have as determined by the *Appointed Firm*

c) The *Appointed Firm*, upon advising *Approved Class Members* of their decisions on membership and categorization as set out above, will set out the quantum of aggregate damages owing to the *Approved Class Member* under the *Aggregate Damage Distribution Process*.

d) In addition, the *Appointed Firm* will provide *Approved Class Members* with a package of materials including: information on the *Survivor Class Members* option to elect to instead proceed through the *Individual Damage Assessment Process*, copies of the *Individual Damage Assessment Election Form* and the *Individual Damage Assessment Form* along with a guide on how to complete these forms, contact information for obtaining free independent legal advice and counselling, and information on how to proceed to collect their *Aggregate Damage awards*.

e) Individuals who wish to collect their Aggregate Damage award will do so in a manner to be prescribed.

## **2. Electing an Individual Damage Assessment**

a) *Approved Survivor Class Members*, when notified of their entitlement to aggregate damages, will be given information on their option to forego their entitlement to their proportion of aggregate damages and instead have their compensation individual assessed under the *Individual Damage Assessment Process* set out below.

b) The Plaintiffs propose that an election be made by sending an *Individual Damage Assessment Election Form* as set out in Schedule H to the *Appointed Firm*.

c) The Plaintiffs propose that an election be made by *Approved Survivor Class Members* within 90 days of being notified of approval as a *Class Member* or as directed by the Court.

d) In the event that an *Approved Survivor Class Member* elects to proceed under the *Individual Damage Assessment Process*, the amount of aggregate damages foregone will be transferred to the *Individual Damage Assessment Process*.

## **G. Individual Damage Assessment Process**

### **1. Individual Damage Assessment Forms**

a) When *Approved Survivor Class Members* are notified of their Aggregate Damage entitlement and information on their right to elect to proceed under the *Individual Damage Assessment Process*, they will be provided with an *Individual Damage Assessment Form* as set out in Schedule I.

b) Only those individuals who wish to elect to proceed through the *Individual Damage Assessment Process* need send in their *Individual Damage Assessment Form* to the *Appointed Firm*.

## **2. Individual Damage Assessments**

a) The Court will be asked to approve the use of the *Individual Damage Assessment Process* set out in Schedule K and Schedule L as may be subsequently amended after a decision on the *Common Issues* or otherwise or as directed by the Court.

b) The *Individual Damage Assessment Process* will be available to all *Approved Survivor Class Members* except those who have instead accepted their proportion of the aggregate damage award through the *Aggregate Damage Distribution Process* set out above.

## **3. Individual Issue Hearings**

a) The Court will be asked to provide directions, or to appoint persons to conduct references under section 25 of the *Ontario Class Proceedings Act, 1992* or to appoint a judge to conduct test cases involving selected *Approved Survivor Class Members* who are proceeding under the *Individual Damage Assessment Process* to assist with the following matters that may or may not remain in issue after the determination of the *Common Issues*:

- i Limitation Defences—provide directions relating to the application of any remaining limitation defences;
- ii Defining Key Terms—Assist in resolving disputes relating to the definitions of key terms such as “physical abuse”, “sexual abuse” and “cultural and language impacts”;
- iii Approve Legal Fees—Approve payment of Plaintiffs’ legal fees from Individual Assessment amounts; and,
- iv Other Matters—address other matters raised by any party.

## **H. Class Proceeding Funding and Fees**

### **1. Plaintiffs’ Legal Fees**

a) The Plaintiffs’ fees are to be paid on a contingency basis, as provided for in the *Ontario Class Proceedings Act, 1992*, and are subject to the Court’s approval.

b) The agreement between the representative plaintiffs and *Class Counsel* states that legal fees and disbursements to be paid to *Class Counsel* shall be the sum of the contribution by the Defendant towards the plaintiffs' legal fees and disbursements plus an amount not exceeding 15% of the amounts recovered by the *Classes* under any judgment, order or settlement.

**2. Funding of Disbursements**

a) Funding of legal disbursements for the representative Plaintiffs has been, and will continue to be, available through *Class Counsel*.

**I. Settlement Issues**

**1. Settlement Offers and Negotiations**

a) The Plaintiffs will serve an Offer to Settle.

b) If it appears worthwhile the Plaintiffs will conduct settlement negotiations with the *Crown* from time to time.

**2. Mediation and Other Non-Binding Dispute Resolution Mechanisms**

a) The Plaintiffs will participate in mediation or other non-binding dispute resolution mechanisms in an effort to try to narrow the issues in dispute between the parties.

**J. Review of the Litigation Plan**

**1. Flexibility of the Litigation Plan**

a) This Litigation Plan will be reconsidered on an ongoing basis and may be revised under the continued case management authority of the Court after the determination of the *Common Issues* or as the Court sees fit.

**K. Schematics of Litigation Plan**

**1. Pre Certification Process Schematic**

a) Attached as Schedule P to this Litigation Plan is a schematic showing the Pre Certification Process.

**2. Post Certification Process Schematic**

a) Attached as Schedule Q to this Litigation Plan is a schematic showing the Post Certification Process.

**3. Post Common Issues Decision Process Schematic**

a) Attached as Schedule R to this Litigation Plan is a schematic showing the Post Common Issues Decision Process.

DATE: JULY 25, 2003

L. CRAIG BROWN  
ALAN FARRER  
RICHARD COURTIS  
DARCY MERKUR

CO-COUNSEL FOR THE PLAINTIFFS

SERVICE OF ALL DOCUMENTS  
SHOULD BE C/O:

**THOMSON ROGERS**  
Barristers and Solicitors  
Suite 3100, 390 Bay Street  
Toronto, Ontario  
M5H 1W2  
**Attention: Darcy Merkur**  
Tel: 416-868-3176  
Fax: 416-868-3134

**Schedule A**  
(insert tab here)

**SCHEDULE A****Plaintiffs Proposed Timetable for the Pre Certification Process**

1. The Plaintiffs propose that the following pre certification process timetable be imposed by Court Order at the case conference on September 9, 2003.

	<b>Deadline</b>
Plaintiffs to Serve Certification Material	August 1, 2003
Next Case Conference	September 9, 2003
Defendant to Serve Responding Certification Materials	September 26, 2003
Plaintiffs to Serve Reply Materials, if any	October 7, 2003
Cross-Examinations on Affidavits completed by	October 24, 2003
Undertakings answered before	November 5, 2003
Motions arising from Cross-Examinations heard by	November 7, 2003
Further cross-examinations, if necessary, completed by	November 14, 2003
Settlement Conference, if any, held on or before	December 1, 2003
Factums and Books of Authority served by	December 1, 2003
Motion for Certification and all other Motions commencing	December 8, 2003

\*Plaintiffs motion regarding Crown's communication with putative *Class Members*—to be scheduled if and as necessary



**Schedule B**  
(insert tab here)

SCHEDULE B

## LIST OF COMMON ISSUES

- A) The following is a list of *Common Issues* relating to the *Survivor Class*:
- 1) Was the conduct of the *Crown* with respect to the purpose, operation, management or supervision of the *Residential School* system in breach of the *Aboriginal Rights* of the *Survivor Class* to sustain, enjoy, practice and transmit their languages, culture, customs and traditions?
  - 2) Was the conduct of the *Crown* with respect to the purpose, operation, management or supervision of the *Residential School* system in breach of the *Crown's* fiduciary duty to the *Survivor Class*?
  - 3) Was the *Crown* systemically negligent and/or in breach of its non-delegable duty in failing to take reasonable measures to:
    - a) protect the health, safety and well being of the *Survivor Class*?
    - b) protect the language, culture, customs and traditions of the *Survivor Class*? and,
    - c) provide an education or education services to the *Survivor Class*?
  - 4) Was the conduct of the *Crown* with respect to the purpose, operation, management or supervision of the *Residential School* system in breach of the *Survivor Class'* treaty rights by failing to maintain "schools" within the meaning of the treaties?
  - 5) Was the apprehension and confinement of the *Survivor Class* in *Residential Schools*, by the *Crown*, and the consequential separation from family and community, unlawful and in breach of the *Crown's* fiduciary duty to the *Survivor Class*?
  - 6) If the answer to any of the above is yes, as a question of law, is the suppression of language and culture while in attendance at *Residential School* compensable as a head of damage and, if so, what is the proper measure of damages?
  - 7) As a question of law, was the *Crown's* duty to the *Survivor Class* delegable and, if it was delegable, is the *Crown* vicariously liable for the wrongful acts and omission of its employees, servants, contractors or agents?
  - 8) Are the limitation periods pleaded in paragraph 46 of the Statement of Defence applicable (constitutionally or otherwise) so as to bar the *Survivor Class'* claims?
  - 9) As a question of law, are the defences of laches and acquiescence available to the *Crown*?
  - 10) Do the various International Conventions set out in paragraphs 36-38 of the Statement of Defence give rise to a cause of action against the *Crown* and, if so, was there a breach?
  - 11) Does the Statement of Reconciliation constitute an admission of liability for the *Survivor Class'* claims and, if so, which claims?
  - 12) If the Defendant is liable for any of the causes of action outlined above, was the Defendant guilty of conduct warranting punitive and/or aggravated damages to the *Survivor Class* and, if so, in what amount?
  - 13) Can the damages for any of the above breaches be measured in the aggregate and, if so, in what amount?

B) The following is a list of *Common Issues* relating to the *Family Class*:

- 1) Was the conduct of the *Crown* with respect to the purpose, operation, management or supervision of the *Residential School* system in breach of the *Aboriginal Rights* of the *Family Class*, including the right to sustain, enjoy, practice and transmit their languages, culture, customs and traditions?
- 2) Was the conduct of the *Crown* with respect to the purpose, operation, management or supervision of the *Residential School* system in breach of the *Crown's* fiduciary duty to the *Family Class*?
- 3) Was the apprehension and confinement of the *Survivor Class* in *Residential Schools*, by the *Crown*, unlawful and in breach of the *Crown's* fiduciary duty to the *Family Class*?
- 4) If the answer to question A3 above with respect to the *Survivor Class* is yes, does the scope of the *Crown's* duty of care include the *Family Class*?
- 5) If the Defendant is liable for any of the causes of action outlined above, was the Defendant guilty of conduct warranting punitive and/or aggravated damages to the *Family Class* and, if so, in what amount?
- 6) Can the damages for any of the above breaches be measured in the aggregate and, if so, in what amount?

**Schedule C**  
(insert tab here)

**SCHEDULE C****CERTIFICATION NOTICE**  
(to be translated into other languages)**NOTICE TO RESIDENTIAL SCHOOL SURVIVORS AND THEIR RELATIVES**

A National Class Action (the "Baxter National Class Action") has been certified in the Ontario Superior Court of Justice on behalf of *Aboriginal Residential School* Survivors throughout Canada and their children and parents.

**About the Class Action**

The proposed representative Plaintiffs, Charles Baxter, Sr. and Elijah Baxter, seek compensation from the Defendant, The Attorney General of Canada, on behalf of all *Aboriginal Persons* in Canada and their parents and children who suffered the common wrong of being subjected to the *Aboriginal Residential School* System. The Plaintiffs have alleged that the Attorney General of Canada breached its duty to the *Survivor Class Members* and *Family Class Members* through systemic institutional child abuse, systemic wrongful confinement and by the systemic suppression of *Aboriginal* languages, culture, customs and traditions.

**The Class definition**

You qualify as a member of the Baxter National Class Action and may be entitled to benefits therein if you:

- a) Attended an *Aboriginal Residential School* anywhere in Canada between 1920 and 1996 (the "*Survivor Class*"); or,
- b) Are a parent or child of someone who attended an *Aboriginal Residential School* anywhere in Canada between 1920 and 1996 (the "*Family Class*").

All those who qualify as members have the right to participate in the proceeding and some people may qualify as members in both classes.

**The Representative Plaintiffs**

The addresses for the representative plaintiffs are:

Charles Baxter Sr.,  
Box 7, Constance Lake Reserve,  
Calstock, Ontario,  
P0L 1B0

Elijah Baxter,  
204 Wardrope Ave.,  
Geraldton, Ontario,  
P0T 1M0

**How to Opt Out**

If you qualify as a member of the Baxter National Class Action but do not wish to be part of it, you may opt out of the Baxter National Class Action. To do so, you must obtain an Opt Out Form from: (insert the *Appointed Firm's* full contact information and/or) Thomson, Rogers (contact information below). You must then complete the Opt Out Form by providing your full name, date of birth and mailing address and send the Opt Out Form to (the *Appointed Firm* and/or) Thomson, Rogers at the address below.

If you would like to opt out of the Baxter National Class Action you must send in a completed Opt Out Form by \_\_\_\_\_ (insert Opt Out deadline).

**Decision will Bind *Class Members***

Please be advised that any judgment, whether favourable or not, in the Baxter National Class Action will bind all *Class Members* who do not opt out of the proceeding.

**Legal Costs and Disbursements**

Subject to the approval of the Court, the agreement between the representative plaintiffs and *Class Counsel* states that legal fees and disbursements to be paid to *Class Counsel* shall be the sum of the contribution by the Defendant towards the plaintiffs' legal fees and disbursements plus an amount not exceeding 15% of the amounts recovered by the *Classes* under any judgment, order or settlement.

**For More Information**

If you would like more information about the Baxter National Class Action or would to obtain an Opt Out Form, please go to [www.thomsonrogers.com](http://www.thomsonrogers.com) or contact:

{Insert *Appointed Firm's* contact information and/or}

Thomson, Rogers  
Barristers and Solicitors  
390 Bay Street  
Toronto, Ontario  
M5H 1W2  
Toll free: 1-888-223-0448

**Schedule D**  
(insert tab here)

**SCHEDULE D**

***SURVIVOR CLASS OPT OUT FORM***  
**(to be translated into other languages)**

TO: (*Appointed Firm* and/or) THOMSON, ROGERS

I, \_\_\_\_\_ (insert full name(s), including maiden name), have received Notice of the Baxter National Class Action. My date of birth is \_\_\_\_\_ (insert day, month, year of birth).

I believe that I am a *Survivor Class Member*.

I do NOT wish to participate in the Baxter National Class Action and I hereby Opt Out of the Baxter National Class Action.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Insert Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**SCHEDULE D**

**FAMILY CLASS OPT OUT FORM**  
**(to be translated into other languages)**

TO: (*Appointed Firm* and/or) THOMSON, ROGERS

I, \_\_\_\_\_ (insert full name(s), including maiden name), have received Notice of the Baxter National Class Action. My date of birth is \_\_\_\_\_ (insert day, month, year of birth).

I believe that I am a *Family Class Member*.

I do NOT wish to participate in the Baxter National Class Action and I hereby Opt Out of the Baxter National Class Action.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Insert Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Schedule E**  
(insert tab here)

**SCHEDULE E****COMMON ISSUES NOTICE**  
(to be translated into other languages)**NOTICE TO RESIDENTIAL SCHOOL SURVIVORS AND THEIR FAMILIES**

A National Class Action (the "Baxter National Class Action") has been certified in the Ontario Superior Court of Justice on behalf of *Aboriginal Residential School Survivors* throughout Canada and their parents and children.

**About the Class Action**

The proposed representative Plaintiffs, Charles Baxter, Sr. and Elijah Baxter, seek compensation from the Defendant, The Attorney General of Canada, on behalf of all *Aboriginal Persons* in Canada and their parents and children who suffered the common wrong of being subjected to the *Aboriginal Residential School System*. The Plaintiffs have alleged that the Attorney General of Canada breached its duty to the *Survivor Class Members* and *Family Class Members* through systemic child abuse, systemic wrongful confinement and by the systemic suppression of *Aboriginal* languages, culture, customs and traditions.

**The Class definition**

You qualify as a member of the Baxter National Class Action and may be entitled to compensation if you either:

- a) Attended an *Aboriginal Residential School* anywhere in Canada between 1920 and 1996 (the "*Survivor Class*"); or,
- b) Are the parents or child of someone who attended an *Aboriginal Residential School* anywhere in Canada between 1920 and 1996 (the "*Family Class*").

All those who qualify as members have the right to participate in the proceeding, except those who have previously opted out of the Baxter National Class Action.

**Decision on the Common Issues and Individual Relief**

The Court has recently decided *Common Issues* in favour of the class. As a result, *Class Members* may be entitled to individual relief consisting of a portion of the aggregate damages awarded and/or an individual damage assessment.

To make a claim for individual relief *Class Members* must fill out and submit a *Claim Form*. *Claim Forms* are available by contacting (the *Appointed Firm* and/or) Thomson, Rogers at, toll-free, 1-888-223-0448 or \_\_\_\_\_ or may be obtained and submitted online at [www.thomsonrogers.com](http://www.thomsonrogers.com) or \_\_\_\_\_. *Claims Forms* must be submitted by \_\_\_\_\_ (insert *Claim Form* deadlines).

Failure on the part of a *Class Member* to submit a *Claim Form* by \_\_\_\_\_ (insert *Claim Form* deadlines) will result in the *Class Member* not being entitled to claim their individual relief except with leave of the court.

**For More Information**

If you would like more information about the Baxter National Class Action, please go to [www.thomsonrogers.com](http://www.thomsonrogers.com) or contact:

Thomson, Rogers  
Barristers and Solicitors  
390 Bay Street  
Toronto, Ontario  
M5H 1W2  
Toll free: 1-888-223-0448

**Schedule F**  
(insert tab here)

SCHEDULE F**ANTICIPATED EXPERT EVIDENCE REQUIRED AT TRIAL OF COMMON ISSUES**

The following chart is an outline, subject to further amendment before or after Certification, of some of the key elements of the *Common Issues* and the anticipated expert and other evidence that may be required for addressing these issues at the trial of the *Common Issues*.

Issue	Required Expert and other Evidence
Scope of Aboriginal Rights	<ul style="list-style-type: none"> <li>• anthropological evidence as to the significant pre-contact practices of First Nations people and whether it constitutes an <i>Aboriginal Right</i> within the meaning of the <i>Van der Peet</i> test</li> <li>• evidence of systematic infringement of these rights</li> <li>• direct evidence of being punished for exercising these rights while at the schools</li> <li>• expert evidence of generality of experience and the policy of prohibiting and undermining the carrying out of aboriginal practices (ie. Assimilation objective)</li> <li>• Statement of Reconciliation admissions</li> <li>• policy documents</li> </ul>
Scope of Treaty Rights	<ul style="list-style-type: none"> <li>• evidence of each treaty and its references to schooling/teaching</li> <li>• oral and traditional evidence of proper interpretation of educational obligations under the treaties and these provisions</li> <li>• historical evidence of schools in general and curriculum</li> <li>• educational experts to assess the quality of education provided</li> </ul>
Systemic Failures of Residential School System	<ul style="list-style-type: none"> <li>• historical evidence of failure to provide a system of providing: adequate funding, necessities of life, supervision, adequate standards, qualified teachers, etc.</li> <li>• policy documents</li> <li>• child care and child welfare experts to assess the nature and quality of care provided at <i>Residential Schools</i></li> </ul>
Unlawful Apprehension	<ul style="list-style-type: none"> <li>• evidence of apprehension</li> <li>• evidence of criminal charges against parents preventing apprehension</li> <li>• evidence of policies preventing students from leaving schools (incarceration)</li> <li>• evidence of prison like settings and wiring around schools</li> <li>• evidence of punishments for trying to leave schools</li> <li>• evidence of guardianship moving to principal of school upon admission (ie. Admission slips)</li> </ul>
International Conventions	<ul style="list-style-type: none"> <li>• evidence relating to Canada's consideration of the various International Conventions</li> </ul>
Conduct warranting punitive/aggravated damages	<ul style="list-style-type: none"> <li>• evidence of intentional disregard of obligations to protect First Nations and their aboriginal rights</li> <li>• psychological experts to describe the impacts of institutional child abuse and of isolation from family, band and community</li> </ul>
Aggregate Damages	<ul style="list-style-type: none"> <li>• evidence of calculations and rationale</li> <li>• Statistical and actuarial evidence regarding the number of <i>Class Members</i></li> </ul>

**Schedule G**  
(insert tab here)

**SCHEDULE G****SURVIVOR CLASS CLAIM FORM**  
(to be translated into other languages)

TO: (Appointed Firm and/or) THOMSON, ROGERS

I, \_\_\_\_\_ (insert full name(s), including maiden name), have received Notice of the Baxter National Class Action. My date of birth is \_\_\_\_\_ (insert day, month, year of birth).

I believe that I am a *Survivor Class Member* and I wish to participate in the Baxter National Class Action.

The following chart summarizes my attendance at *Residential School(s)*.

<i>Residential School(s) attended</i> (including Province/Territory)	Years attended

Based on the information above, I attended at a *Residential School* in Canada for a total length of (circle one)?

- Up to 3 year;
- More than 3 year and up to 7 years; or,
- More than 7 years.

My mailing address is:

---

Street Name, Apt #

---

City, Province

---

Postal Code

---

Telephone Number(s)

Signed: \_\_\_\_\_ Date: \_\_\_\_\_



**SCHEDULE G****FAMILY CLASS CLAIM FORM**  
(to be translated into other languages)

TO: (Appointed Firm and/or) THOMSON, ROGERS

I, \_\_\_\_\_ (insert full name(s), including maiden name), have received Notice of the Baxter National Class Action. My date of birth is \_\_\_\_\_ (insert day, month, year of birth).

I believe that I am a *Family Class Member* and I wish to participate in the Baxter National Class Action.

The following chart summarizes my familial relationship to individuals who attended *Residential School(s)*.

Full name of relative (including other names and/or maiden name)	Relatives date of birth (day, month, year)	Your relationship to attendee (either son, daughter, father, mother)	<i>Residential School(s)</i> attended by relative (including Province/Territory)	Years attended

My mailing address is:

\_\_\_\_\_  
Street Name, Apt #\_\_\_\_\_  
City, Province\_\_\_\_\_  
Postal Code\_\_\_\_\_  
Telephone Number(s)

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**Schedule H**  
(insert tab here)

**SCHEDULE H****INDIVIDUAL DAMAGE ASSESSMENT ELECTION FORM**  
(to be translated into other languages)TO: (*Appointed Firm* and/or) THOMSON, ROGERS

I, \_\_\_\_\_ (insert full name(s), including maiden name), have been notified that I am an *Approved Survivor Class Member*. My claim number is \_\_\_\_\_ (insert assigned claim #).

I have been provided with a package of information outlining and explaining my option to either claim the amount of aggregate damages awarded to me or instead request an individual damage assessed in accordance with the *Individual Damage Assessment Process*.

I am also aware that I can obtain independent legal advice with respect to this election and can obtain assistance to complete an *Individual Damage Assessment Form* at no charge to me by contacting \_\_\_\_\_ (insert assigned contact #).

I wish to elect to proceed with an Individual Damage Assessment and have enclosed a completed *Individual Damage Assessment Form*.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**Schedule I**  
(insert tab here)

**SCHEDULE I****INDIVIDUAL DAMAGE ASSESSMENT FORM  
(to be translated into other languages)**

TO: (*Appointed Firm* and/or) THOMSON, ROGERS

I, \_\_\_\_\_ (insert full name(s), including maiden name), have been notified that I am an *Approved Survivor Class Member*. My claim number is \_\_\_\_\_ (insert assigned claim #)

I have elected to proceed through the *Individual Damage Assessment Process* and have sent in my *Individual Damage Assessment Election Form*.

Below is information relating to my experience at *Residential School* and the impacts and harms that resulted from my experience:

*{The Individual Damage Assessment Form will be designed after a decision on the Common Issues The goal of the Individual Damage Assessment Form though will be to obtain the following information from Approved Survivor Class Members:*

- ◆ *Information relating to each incident of a compensable harm/wrong, such as the dates, places, times of the incidents and information about the alleged perpetrator for each incident;*
- ◆ *Information relating to compensable impacts, including cultural and language impacts;*
- ◆ *A narrative relating to the experience of the individual at Residential School;*
- ◆ *The categories under which damages will be sought under the Individual Damages Assessment Compensation Matrix;*
- ◆ *Whether expert evidence will be provided to support a claim for certain consequential harms such as past and future income loss;*
- ◆ *Information on the treatment records including records of customary or traditional counsellors or healers they will be submitting to assist in proving either the abuse or the harm suffered or both;*
- ◆ *Information relating to any remaining Limitation Defences;*
- ◆ *Authorizations for the Crown to obtain documents; and,*
- ◆ *Such further and other information that is deemed necessary and appropriate.}*

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**Schedule J**  
(insert tab here)

SCHEDULE J**AGGREGATE DAMAGE DISTRIBUTION PROCESS****a) Distributing Aggregate Damages to Approved Survivor Class Members**

The Plaintiffs propose the following system for distributing aggregate damages to the *Approved Survivor Class Members*:

Attended at <i>Residential School</i> for up to 3 years	\$20,000
Attended at <i>Residential School</i> for more than 3 years and up to 7 years	\$30,000
Attended at <i>Residential School</i> for more than 7 years	\$40,000

**b) Distributing Aggregate Damages to Approved Family Class Members**

The Plaintiffs propose the following system for distributing aggregate damages to the *Approved Family Class Members*:

One <i>Qualifying Relative</i>	\$2,000
Two <i>Qualifying Relatives</i>	\$3,000
Three <i>Qualifying Relatives</i>	\$4,000
Four or more <i>Qualifying Relatives</i>	\$5,000

**Schedule K**  
(insert tab here)



SCHEDULE K**INDIVIDUAL DAMAGE ASSESSMENT PROCESS**

The Plaintiffs propose the following system for conducting individual damage assessments for *Approved Survivor Class Members* who have elected to proceed to an individual assessment rather than accept their proportion of the aggregate damages award through the *Aggregate Damage Distribution Process*:

**Overview of the Individual Damage Assessment Process**

- ◆ A Hearing will take place before an Adjudicator.
- ◆ The claimant will testify about his/her *Residential School* experience and will review the information in his/her *Claim Form*.
- ◆ The claimant may call evidence to substantiate the abuse or the harms/impacts.
- ◆ The Adjudicator will ask questions to test to credibility of the claimant and to evaluate the extent of the claim including the extent of the abuse and the extent of the harms and impacts.
- ◆ The Adjudicator will also make inquiries into any other necessary areas of investigation, such as remaining limitation defences, using criteria established by the Court through the Individual Issue Hearing process.
- ◆ The adjudicator will evaluate the claim based on the *Individual Damage Assessment Compensation Matrix* and award damages accordingly.

**The Specifics of the Individual Damage Assessment Process****Adjudicators**

- ◆ There will be a Chief Adjudicator and Adjudicators appointed in each province/region.
- ◆ The Chief Adjudicator will be appointed by agreement of the parties or will be picked by the Court from a list of possible Chief Adjudicators put forward by the parties.
- ◆ A roster of adjudicators will be picked on agreement of the parties from each province/region. Where a dispute arises, the Chief Adjudicator will pick the adjudicators from a list provided by the parties.
- ◆ Adjudicators will be provided with an orientation package on residential schools and child abuse issues and will be given training on issues relevant to hearing *Residential School* claims.

**Advancing a Claim**

- ◆ *Approved Survivor Class Members* will send in the *Individual Damage Assessment Form* (see Schedule I for an outline of the information that will be requested in the *Individual Damage Assessment Form*) to the *Appointed Firm* and the *Appointed Firm* will see that the form is provided to the adjudicator in advance of the hearing.
- ◆ In response to the *Individual Damage Assessment Form*, the Crown will be entitled/required to:
  - ◆ Request that the claimant obtain and provide treatment reports, at the Crown's expense, or alternatively request the claimant to sign specific authorizations so that the Crown can obtain documents they require;
  - ◆ Provide documents already in their possession that are relevant to the allegations made by the claimant; and,

- ◆ Attempt to locate the alleged perpetrator, provide them with the information they require to be in a position to respond to the allegations made against them and ascertain and advise all parties whether they have a desire to respond to the allegations.
- ◆ Parties will be given an opportunity to request an interview with the alleged perpetrator and request a witness statement. Interview notes with an alleged perpetrator will be admissible if they do are unwilling to provide a witness statement. If the alleged perpetrator provides a witness statement they will be eligible to be heard by the adjudicator as a witness.
- ◆ Any party calling a witness will be required to provide witness statements in advance of the hearing.

### The Hearing

- ◆ A Hearing will be conducted before the adjudicator.
- ◆ Each Hearing will take no more than one day save and except in exceptional circumstances as determined by the Adjudicator
- ◆ Prospective locations within a province will be developed by the parties and claimants will have a choice of setting from an agreed-upon list, subject to hearings being scheduled to promote economy.
- ◆ Hearings will be closed to the public.
- ◆ Claimant and witnesses will give evidence under oath, by affirmation or in another way that binds their conscience.
- ◆ Claimants will be entitled to bring a support person with them to the hearing.
- ◆ Ready access to counselling services will be available.
- ◆ Cultural ceremonies such as an opening prayer or smudging will be incorporated at the request of the claimant to the extent possible.
- ◆ Reports from treating doctors or counsellors will be admissible without the requirement of defence medicals, but the *Crown* can require the treatment professional to testify. If the treatment professional is not available, the report remains admissible, but the adjudicator can give it less weight.
- ◆ Where the adjudicator requires evidence of an injury or consequential harm, or of the causation of an injury or consequential harm, the adjudicator may order that the claimant be examined by a professional chosen by the adjudicator if they believe that so doing is necessary to determine the case. Having reviewed the resulting report, the parties can require that the professional give evidence and be subject to questioning by the adjudicator.
- ◆ Before a hearing counsel may identify particular areas of concern or issues that they believe require extra scrutiny and may provide additional suggested questions. Adjudicator retains discretion on what questions to put, but must explore the area proposed by counsel unless the adjudicator rules it to be irrelevant to credibility, liability or compensation.
- ◆ Uniform inquisitorial process for all claims to assess credibility, determine which allegations and consequential harms are proven and result in compensation, and set damages within the *Individual Damage Assessment Compensation Matrix*.
- ◆ Inquisitorial model wherein the adjudicator is responsible for managing the hearing, questioning all witnesses, except expert witnesses, and preparing reports with his or her conclusions and reasons. Only the parties though can call witnesses or produce evidence.
- ◆ Claimant can tell story in their own words in narrative form and is subject to questioning by the adjudicator.

- ◆ Claimant can refer to documents that are before the adjudicator.
- ◆ Counsel are permitted to attend all hearings, but need not do so. Where counsel attend hearing, they may meet with adjudicator at intervals to suggest questions or lines of inquiry. The adjudicator must explore the proposed lines of inquiry unless he or she rules them to be irrelevant to credibility, liability or compensation, but the adjudicator retains the discretion on the questions to put to a witness.
- ◆ Parties may require the adjudicator to hear any witness who is willing to appear and who has evidence relevant to credibility, liability or compensation including expert witnesses, provided notice and a witness statement are given two weeks before hearing.
- ◆ Where the claimant has submitted treatment records and reports including records of customary or traditional counsellors or healers, the *Crown* may require that the person who provided the treatment give oral evidence and that they be subject to questioning by the adjudicator.
- ◆ Alleged perpetrators may be heard as of right, provided they provide a witness statement.
- ◆ The Adjudicator will also make inquiries into any other necessary areas of investigation, such as remaining limitation defences, using criteria established by the Court through the Individual Issue Hearing process;
- ◆ At the conclusion of the evidence, counsel, if participating, may make brief oral submissions.
- ◆ Where compensable abuse and/or harm is proven, damages are awarded for acts and impacts within the *Individual Damage Assessment Compensation Matrix*.
- ◆ Allegations and damages must be proven on the standard used by the civil courts. The adjudicator may receive, and base a decision on, evidence adduced in the proceedings and considered credible or trustworthy in the circumstances of the case. Relevant findings in previous criminal or civil trials, where not subject to appeal, can be accepted without further proof.

#### **Assessment Decisions**

- ◆ The adjudicator will produce a report in a standard format outlining key factual findings and providing a rationale for findings of compensability within the *Individual Damage Assessment Compensation Matrix* for the damages assessed.
- ◆ The report will be delivered to the claimant and appropriate supports will be made available.

#### **Review**

- ◆ The claimant only will have the right to have a second adjudicator review the decision.
- ◆ The review would be on the record (with new evidence permitted to be filed by the claimant only and only in certain prescribed circumstances) and without oral submissions.
- ◆ The claimant could provide a short written statement of their objections to the decision (not to exceed 1500 words) and the *Crown* could provide a brief reply (not to exceed 1000 words).
- ◆ The original decision would stand unless the second adjudicator found a palpable and overriding error of fact, in which case they could substitute their own decision.
- ◆ All parties would maintain the normal right of judicial review where the adjudicator acted outside their jurisdiction.

**Quantums**

- ◆ A compensation matrix (see *Individual Damage Assessment Compensation Matrix* at Schedule L) will set the ranges of compensation to be paid having regard to the duration of attendance, seriousness of the proven act(s), any proven aggravating factors, and, provided a plausible link to the abuse suffered has been demonstrated to the satisfaction of the adjudicator, specific impacts such as consequential harm, consequential cultural and language impacts, income loss or loss of opportunity. An award can also be made to assist with future care.

**Schedule L**  
(insert tab here)

SCHEDULE L**INDIVIDUAL DAMAGE ASSESSMENT COMPENSATION MATRIX**

The following chart summarizes the Plaintiffs proposed compensation matrix to be used in the *Individual Damage Assessment Process*:

**EACH COMPENSATION POINT=\$1,000.**

Harm Level	Acts	Compensation Points
WC1	<ul style="list-style-type: none"> <li>Wrongful confinement evidenced by duration of attendance at <i>Residential Schools</i></li> </ul>	5-10

Harm Level	Acts Proven	Compensation Points
SL5	<ul style="list-style-type: none"> <li>Repeated or persistent, characterized as "chronic" or "severe" incidents of anal or vaginal intercourse.</li> </ul>	45-60
SL4	<ul style="list-style-type: none"> <li>One or more incident of anal or vaginal intercourse</li> <li>Repeated or persistent incidents of oral intercourse</li> </ul>	36-44
SL3	<ul style="list-style-type: none"> <li>One or more incidents of oral intercourse</li> <li>One or more incidents of digital anal/vaginal penetration</li> <li>Repeated or persistent incidents of masturbation</li> </ul>	26-35
PL3	<ul style="list-style-type: none"> <li>One or more incidents of physical assault, at least one causing an injury that led to or should have led to hospitalization or serious medical treatment by a physician, or permanent or demonstrated long-term injury, or impairment or disfigurement, or loss of consciousness or broken bones. Examples include severe beating, whipping, second-degree burning.</li> </ul>	21-25
SL2	<ul style="list-style-type: none"> <li>One or more incidents of simulated intercourse.</li> <li>One or more incidents of masturbation.</li> <li>Repeated or chronic or persistent fondling under clothing.</li> </ul>	11-25
PL2	<ul style="list-style-type: none"> <li>One or more incidents of physical assault, at least one causing an injury requiring (or that should have required) medical treatment, or causing an injury lasting more than a few weeks.</li> </ul>	11-20
SL1	<ul style="list-style-type: none"> <li>One or more incidents of sexual abuse or sexual assault</li> </ul>	5-10
PL1	<ul style="list-style-type: none"> <li>One or more incidents of physical abuse or physical assault</li> </ul>	1-10

Harm Level	Consequential Harm	Compensation Points
H5	<b>Continued harm resulting in serious dysfunction</b> Evidenced by: psychotic disorganization, loss of ego boundaries, personality disorders, self-injury, suicidal tendencies, inability to form or maintain personal relationships, chronic post-traumatic state, sexual dysfunction, eating disorders or any other recognized psychiatric or psychological effect	20-25
H4	<b>Harm resulting in some dysfunction.</b> Evidenced by: frequent difficulties with interpersonal relationships, development of obsessive-compulsive and panic states, severe anxiety, occasional suicidal tendencies, permanent physical injury, overwhelming guilt, self-blame, lack of trust in others, severe post-traumatic stress disorder, some sexual dysfunction, eating disorders or any other recognized psychiatric or psychological effect	16-19
H3	<b>Continued detrimental impact.</b> Evidenced by: difficulties with interpersonal relationships, occasional obsessive-compulsive and panic states, some post-traumatic stress disorder, occasional sexual dysfunction, and/or long-term physical injury, or <i>extreme and consistent</i> anxiety, guilt, self-blame, lack of trust in others, nightmares, bed-wetting, aggression, hyper-vigilance, anger, retaliatory rage and possibly self-inflicted injury.	11-15
H2	<b>Some detrimental impact:</b> Evidenced by: occasional difficulty with personal relationships, some mild post-traumatic stress disorder, self-blame, lack of trust in others, and low self-esteem; and/or <i>several occasions and several symptoms of</i> , anxiety, guilt, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.	6-10
H1	<b>Modest Detrimental Impact:</b> <i>Occasional short-term</i> , one of: anxiety, nightmares, bedwetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.	1-5

Harm Level	Consequential Cultural and Language Impacts	Compensation Points
C2	<b>Serious Cultural and Language Impacts</b> Evidenced by establishing an association between your <i>Residential School</i> experience and your inability to effectively communicate in your native language and/or practice, partake or teach your cultural traditions, customs and heritage	11-20
C1	<b>Modest Cultural and Language Impacts</b> Evidenced by establishing an association between your <i>Residential School</i> experience and compromise of your ability to effectively communicate in your native language and/or practice, partake or teach your cultural traditions, customs and heritage	1-10

<b>Aggravating Factors</b>	
Add 5-15% of points for Act and Harm combined (rounded up to nearest whole number)	
Verbal abuse	Intimidation/inability to complain/oppression
Failure to provide adequate food, shelter and/or necessities of life	Racist acts
Threats	Humiliation
Sexual abuse accompanied by violence	Degradation
Failure to provide care or emotional support following abuse requiring such care.	Age of the Victim

<b>Future Care</b>	<b>Compensation Points</b>
General – medical treatment, counselling	1-25
If psychiatric treatment required	1-25

<b>Consequential Loss of Economic Opportunity</b>	<b>Compensation Points</b>
Proven Impairment of Income Earning Capacity with Pecuniary Losses (past and/or future)	16-99
Chronic inability to obtain or retain employment	11-15
Inability to undertake/complete education or training resulting in underemployment, and or unemployment	6-10
Diminished work capacity – physical strength, attention span, etc.	1-5



**Schedule M**  
(insert tab here)

SCHEDULE M

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# **Schedule N**

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**SCHEDULE N****LIST OF ALL ABORIGINAL RESIDENTIAL SCHOOLS IN CANADA**

The following is a list of all *Aboriginal Residential Schools* in Canada provided through the Aboriginal Healing Foundation. This list may be subsequently amended.

The references in the Label column below are to the *Aboriginal Residential Schools* as shown on the map attached at Schedule O to the Litigation Plan.

Label	Group Description	School Name	A.K.A.	City	Prov
AB-1	Assumption Indian Residential School	Assumption Indian Residential School	Hay Lakes Indian Residential School	Hay Lakes	AB
AB-2a	Blue Quill's Indian Residential School	Lac la Biche Boarding School	Hospice St. Joseph	Lac la Biche	AB
AB-2b	Blue Quill's Indian Residential School	Sacred Heart Indian Residential School	Saddle Lake Boarding School	Brocket	AB
AB-2c	Blue Quill's Indian Residential School	Blue Quill's Indian Residential School	St. Paul's Residential School	St. Paul	AB
AB-3	Convent of Holy Angels Boarding School	Convent of Holy Angels Boarding School	Holy Angels Residential School, Our Lady of Victoria	Fort Chipewyan	AB
AB-4	Crowfoot Boarding School	Crowfoot Boarding School		Cluny	AB
AB-5	Dunbow Industrial School	St. Joseph's Industrial School	Dunbow Industrial School, St. Joseph's Dunbow Industrial School; High River Industrial School	High River	AB
AB-6	Edmonton Industrial School	Edmonton Industrial School	Edmonton Boarding School	St. Albert	AB
AB-7	Ermineskin Boarding School	Ermineskin Boarding School	Ermineskin Indian Residential School	Hobbema	AB
AB-8	Fort Smith Indian Residential School	Fort Smith Indian Residential School		Fort Smith	AB
AB-9a	Immaculate Conception Boarding School	Immaculate Conception Boarding School	Blood Indian Residential School	Stand-Off	AB
AB-9b	Immaculate Conception Boarding School	St. Mary's Mission Boarding School	Blood Indian Residential School	Cardston	AB
AB-10	McDougall Orphanage	McDougall Orphanage and Residential School	Morley Boarding School, Morley Residential School	Morley	AB
AB-11a	Old Sun's Boarding School	Old Sun's Boarding School	North Camp School; White Eagle's Boarding School; Short Robe Boarding School	Gleichen	AB
AB-11b	Old Sun's Boarding School	Old Sun's Boarding School	North Camp School; White Eagle's Boarding School; Short Robe Boarding School	Gleichen	AB

AB-12	Peigan Indian Boarding School	Peigan Indian Boarding School	Peigan Reserve School; Victoria Jubilee Home	Brocket	AB
AB-13	Red Deer Industrial School	Red Deer Industrial School	Red Deer Boarding School	Red Deer	AB
AB-14	Sarcee Boarding School	Sarcee Boarding School		Calgary	AB
AB-15	St. Albert's Indian Residential School	St. Albert's Indian Residential School		St. Albert	AB
AB-16	St. Andrew's Boarding School	St. Andrew's Boarding School		Athabasca (White Fish Lake)	AB
AB-17	St. Barnabas Boarding School	St. Barnabas Boarding School		Sarcee	AB
AB-18	St. Bernard Indian Residential School	St. Bernard Indian Residential School	Grouard Indian Residential School	Grouard	AB
AB-19	St. Bruno Boarding School	St. Bruno Boarding School	Joussard Indian Residential School	Joussard	AB
AB-20	St. Cyprian's Boarding School	St. Cyprian's Boarding School	St. Cyprian's Indian Residential School	Brocket	AB
AB-21	St. Francis Xavier Boarding School	St. Francis Xavier Boarding School		Calais	AB
AB-22	St. Henri Boarding School	St. Henri Boarding School	Fort Vermillion Indian Residential School	Fort Vermillion	AB
AB-23	St. John Boarding School	St. John's Boarding School	Wabasca Residential School	Wabasca	AB
AB-24	St. Martin Boarding School	St. Martin Boarding School	Wabasca Boarding School	Wabasca	AB
AB-25	St. Paul Des Metis Boarding School	St. Paul Des Metis Boarding School		St. Paul	AB
AB-26	St. Paul's Boarding School	St. Paul's Boarding School		Cardston	AB
AB-27	St. Peter's Indian Residential School	St. Peter's Indian Residential School	Lesser Slave Lake Indian Residential School	Lesser Slave Lake	AB
AB-28	Sturgeon Lake Indian Residential School	Sturgeon Lake Indian Residential School		Sturgeon Lake	AB
AB-29	Youville Indian Residential School	Youville Indian Residential School		Edmonton	AB
BC-1	Aberni Indian Residential School	Aberni Indian Residential School	Port Alberni Indian Residential School	Port Alberni	BC
BC-2	Ahousaht Indian Residential School	Ahousaht Indian Residential School		Ahousaht	BC
BC-3	All Hallows Indian Residential School	All Hallows Indian Residential School		Yale	BC
BC-4a	Christie Indian Residential School	Christie Indian Residential School	Kakawis Indian Residential School	Tofino (Meares Island)	BC
BC-4b	Christie Indian Residential School	New Christie Indian Residential School	Kakawis Indian Residential School	Tofino (Meares Island)	BC
BC-5	Cowichan Catholic Convent School	Cowichan Catholic Convent School		Cowichan	BC



BC-6	Friendly Cove School	Friendly Cove Day School		Yuquot	BC
BC-7	Greenville Mission Boy's Boarding School	Greenville Mission Boy's Boarding School		Naas River	BC
BC-8a	Kamloops Indian Residential School	Kamloops Indian Residential School	St. Ann's Academy (ran by the sister's of St. Ann)	Kamloops	BC
BC-8b	Kamloops Indian Residential School	Kamloops Indian Residential School	St. Louis Mission (after the Oblates who ran it)	Kamloops	BC
BC-9	Kitimaat Indian Residential School	Kitimaat Indian Residential School	Elizabeth Long Memorial (Kitimaat School for Girls)	Kitimaat	BC
BC-10	Kootenay Indian Residential School	Kootenay Indian Residential School	St. Eugene's Indian Residential School; St. Mary's Indian Residential School	Cranbrook (St. Mary's Reserve)	BC
BC-11	Kuper Island Indian Residential School	Kuper Island Indian Residential School		Chemainus	BC
BC-12	Lejac Indian Residential School	Lejac Indian Residential School		Fraser Lake / Fort Fraser	BC
BC-13	Lower Post Indian Residential School	Lower Post Indian Residential School		Lower Post	BC
BC-14	Methodist - Coqualeetza Institute	Coqualeetza Methodist Institute		Chilliwack (Sardis)	BC
BC-14	Lower Post Industrial School	Lower Post Industrial School		Lower Post	BC
BC-15	Metlakatla Indian Residential School	Metlakatla Indian Residential School	Metlakatla Indian Girl's School	Metlakatla	BC
BC-16	Port Simpson Methodist Girl's School	Port Simpson Methodist Girl's School		Port Simpson / Fort Simpson	BC
BC-17	Presbyterian - Coqualeetza Indian Residential School	Coqualeetza Presbyterian Indian Residential School		Chilliwack (Sardis)	BC
BC-18	Roman Catholic - Coqualeetza Indian Residential School	Coqualeetza Roman Catholic Indian Residential School		Chilliwack (Sardis)	BC
BC-19	Sechelt Indian Residential School	Sechelt Indian Residential School		Sechelt	BC
BC-20	Squamish Indian Residential School	Squamish Indian Residential School	St. Francis Indian Residential School	North Vancouver	BC
BC-21	St. George's Indian Residential School	St. George's Indian Residential School	Lytton	Lytton	BC
BC-22	St. Mary's Mission Indian Residential School	St. Mary's Mission Indian Residential School		Mission	BC
BC-23	St. Michael's Indian Residential School	St. Michael's Indian Residential School	Alert Bay Indian Residential School	Alert Bay	BC
BC-24a	Thomas Crosby Indian Residential School	Thomas Crosby Girls Home Indian Residential School		Port Simpson / Fort Simpson	BC
BC-24b	Thomas Crosby Indian Residential School	Thomas Crosby Home for Boys Indian Residential School		Port Simpson / Fort Simpson	BC

BC-25	Victoria Catholic Convent School	Victoria Catholic Convent School		Victoria	BC
BC-26	Williams Lake Indian Residential School	Williams Lake Indian Residential School	Williams Lake Industrial School; Cariboo Indian Residential School; St. Joseph's Mission	Williams Lake	BC
BC-27	Yale Indian Residential School	Yale Indian Residential School		Yale	BC
BC-28	Yuquot Indian Residential School	Yuquot Indian Residential School		Yuquot	BC
MB-1	Assiniboia Indian Residential School	Assiniboia Indian Residential School	Assiniboine Hostel	Winnipeg	MB
MB-2	Birtle Indian Residential School	Birtle Indian Residential School	Birtle Boarding School	Birtle	MB
MB-3	Brandon Indian Residential School	Brandon Indian Residential School	Brandon Industrial School	Brandon	MB
MB-4	Cross Lake Indian Residential School	Cross Lake Indian Residential School	Norway House Roman Catholic Indian Residential School	Cross Lake	MB
MB-5a	Elkhorn Indian Residential School	Elkhorn Industrial School	Washakada Indian Residential School	Elkhorn	MB
MB-5b	Elkhorn Indian Residential School	Elkhorn Indian Residential School	Washakada Indian Residential School	Elkhorn	MB
MB-6	Fort Alexander Indian Residential School	Fort Alexander Indian Residential School		Fort Alexander	MB
MB-7	Guy Hill Indian Residential School	Guy Hill Indian Residential School		The Pas	MB
MB-8	Lake St. Martin Indian Residential School	Lake St. Martin Indian Residential School		Fisher River	MB
MB-9a	MackKay Indian Residential School	MackKay Indian Residential School		The Pas	MB
MB-9b	MackKay Indian Residential School	MackKay Indian Residential School		Dauphin	MB
MB-10	Norway House Indian Residential School	Norway House Indian Residential School		Norway House	MB
MB-11	Pine Creek Indian Residential School	Pine Creek Indian Residential School	Camperville Indian Residential School	Camperville	MB
MB-12	Methodist - Portage la Prairie Indian Residential School	Portage la Prairie Methodist Indian Residential School		Portage la Prairie	MB
MB-13	Presbyterian - Portage la Prairie Indian Residential School	Portage la Prairie Presbyterian Indian Residential School		Portage la Prairie	MB
MB-14	Sandy Bay Indian Residential School	Sandy Bay Indian Residential School		Sandy Bay First Nation	MB
MB-15	St. Boniface Industrial School	St. Boniface Industrial School		St. Boniface	MB
MB-16	St. Paul's Industrial School	St. Paul's Industrial School	St. Rupert's Land Industrial School	Selkirk County	MB
MB-17	Waterhen Indian Residential School	Waterhen Indian Residential School		Waterhen	MB
NS-1	Shubenacadie Indian Residential School	Shubenacadie Indian Residential School		Shubenacadie	NS

NT-1	Aklavik Anglican Indian Residential School	Aklavik Anglican Indian Residential School	All Saints School	Aklavik	NT
NT-2	Aklavik Catholic Indian Residential School	Aklavik Catholic Indian Residential School	Inuvik Indian Residential School	Aklavik	NT
NT-3	Fort McPherson Indian Residential School	Fort McPherson Indian Residential School		Fort McPherson	NT
NT-4	Fort Providence Indian Residential School	Fort Providence Indian Residential School	Providence Mission Indian Residential School	Fort Providence	NT
NT-5	Fort Resolution Boarding School	Fort Resolution Boarding School		Fort Resolution	NT
NT-6a	Fort Simpson Indian Residential School	Fort Simpson Boarding School		Fort Simpson	NT
NT-6b	Fort Simpson Indian Residential School	Fort Simpson Indian Residential School		Fort Simpson	NT
NT-7	Hay River Boarding School	Hay River Boarding School	St. Peter's Mission Boarding School	Hay River	NT
NT-8	Yellowknife Indian Residential School	Yellowknife Indian Residential School	Rocher River Day School	Yellowknife	NT
NU-1	Chesterfield Inlet Hostel	Chesterfield Inlet Hostel		Chesterfield Inlet	NT
NU-2	Frobisher Bay Hostel	Frobisher Bay Hostel		Frobisher Bay, Baffin Island	NT
ON-1	Albany Mission Indian Residential School	Albany Mission Indian Residential School	Fort Albany Residential School	Fort Albany	ON
ON-2	Alexandra Industrial School for Girls	Alexandra Industrial School for Girls		Toronto	ON
ON-3	Alnwick Industrial School	Alnwick Industrial School	Alnwick Day School	Alderville	ON
ON-4	Bishop Horden Memorial School	Bishop Horden Memorial School	Moose Factory Indian Residential School; Moose Fort Indian Residential School	Moose Factory	ON
ON-5	Cecilia Jeffrey Indian Residential School	Cecilia Jeffrey Indian Residential School		Kenora	ON
ON-6	Chapleau Indian Residential School	Chapleau Indian Residential School	Saint John's School	Chapleau	ON
ON-7	Fort Frances Indian Residential School	Fort Frances Indian Residential School	St. Margaret's Indian Residential School	Fort Frances	ON
ON-8	Kenora Indian Residential School	Kenora Indian Residential School		Kenora	ON
ON-9	McIntosh Indian Residential School	McIntosh Indian Residential School		Kenora	ON
ON-10	Mohawk Institute Residential School	Mohawk Institute Residential School	Mohawk Manual Labour School; Mush Hole Indian Residential School	Brantford	ON
ON-11	Mount Elgin Indian Residential School	Mount Elgin Indian Residential School		Muncey Town	ON
ON-12a	Singwauk Indian Residential School	Singwauk Indian Residential School		Garden River	ON
ON-12b	Singwauk Indian Residential School	Singwauk Indian Residential School		Sault Ste Marie	ON

ON-12c	Singwauk Indian Residential School	Wawanosh School for Girls		Sarnia	ON
ON-12d	Singwauk Indian Residential School	Singwauk Indian Residential School		Sault Ste Marie	ON
ON-13	Sioux Lookout Indian Residential School	Sioux Lookout Indian Residential School	Pelican Lake Day School	Sioux Lookout	ON
ON-14	Spanish Indian Residential School	Spanish Indian Residential School		Spanish	ON
ON-15	St. Anne's Residential School	St. Anne's Indian Residential School		Fort Albany	ON
ON-16	St. Joseph's Indian Boarding School	St. Joseph's Indian Boarding School	Fort William Indian Residential School	Fort William	ON
ON-17	St. Mary's Indian Residential School	St. Mary's Indian Residential School		Kenora	ON
ON-18a	Wikwemikong Indian Residential School	Wikwemikong Day School		Manitowaning, Manitoulin Island	ON
ON-18b	Wikwemikong Indian Residential School	Wikwemikong Indian Residential School	Wikwemikong Manual Labour School	Manitowaning, Manitoulin Island	ON
QC-1	Amos Indian Residential School	Amos Indian Residential School	Pensionnat St. Marc; St. Marc's Indian Residential School	Amos	PQ
QC-2	Fort George Anglican Indian Residential School	Fort George Anglican Indian Residential School	St. Phillip's Indian Residential School	Fort George	PQ
QC-3	Fort George Catholic Indian Residential School	Fort George Catholic Indian Residential School		Fort George	PQ
QC-4	La Tuque Indian Residential School	La Tuque Indian Residential School		La Tuque	PQ
QC-5	Pointe Bleue Indian Residential School	Pointe Bleue Indian Residential School		Pointe Bleue	PQ
QC-6	Sept-Iles Indian Residential School	Sept-Iles Indian Residential School	Pensionnat Indien de Sept-Iles	Sept-Ilse	PQ
SK-1	Battleford Industrial School	Battleford Industrial School		Battleford	SK
SK-2	Beauval Indian Residential School	Beauval Indian Residential School		Beauval	SK
SK-3	Cowesses Indian Residential School	Cowesses Indian Residential School	Marieval Indian Residential School	Marieval	SK
SK-4	Crowstand Boarding School	Crowstand Boarding School		Kamsack	SK
SK-5	St. Michael's Indian Residential School	St. Michael's Indian Residential School	Duck Lake Indian Residential School	Duck Lake	SK
SK-6	Emmanuel College	Emmanuel College		Prince Albert	SK
SK-7	File Hills Boarding School	File Hills Boarding School	File Hills Colony School	Okanese Reserve	SK
SK-8	Gordon Indian Residential School	Gordon Indian Residential School		Punnichy (Gordon's First Nation)	SK
SK-9	Guy Indian Residential School	Guy Indian Residential School	Guy Roman Catholic Indian Residential School	Sturgeon Landing	SK

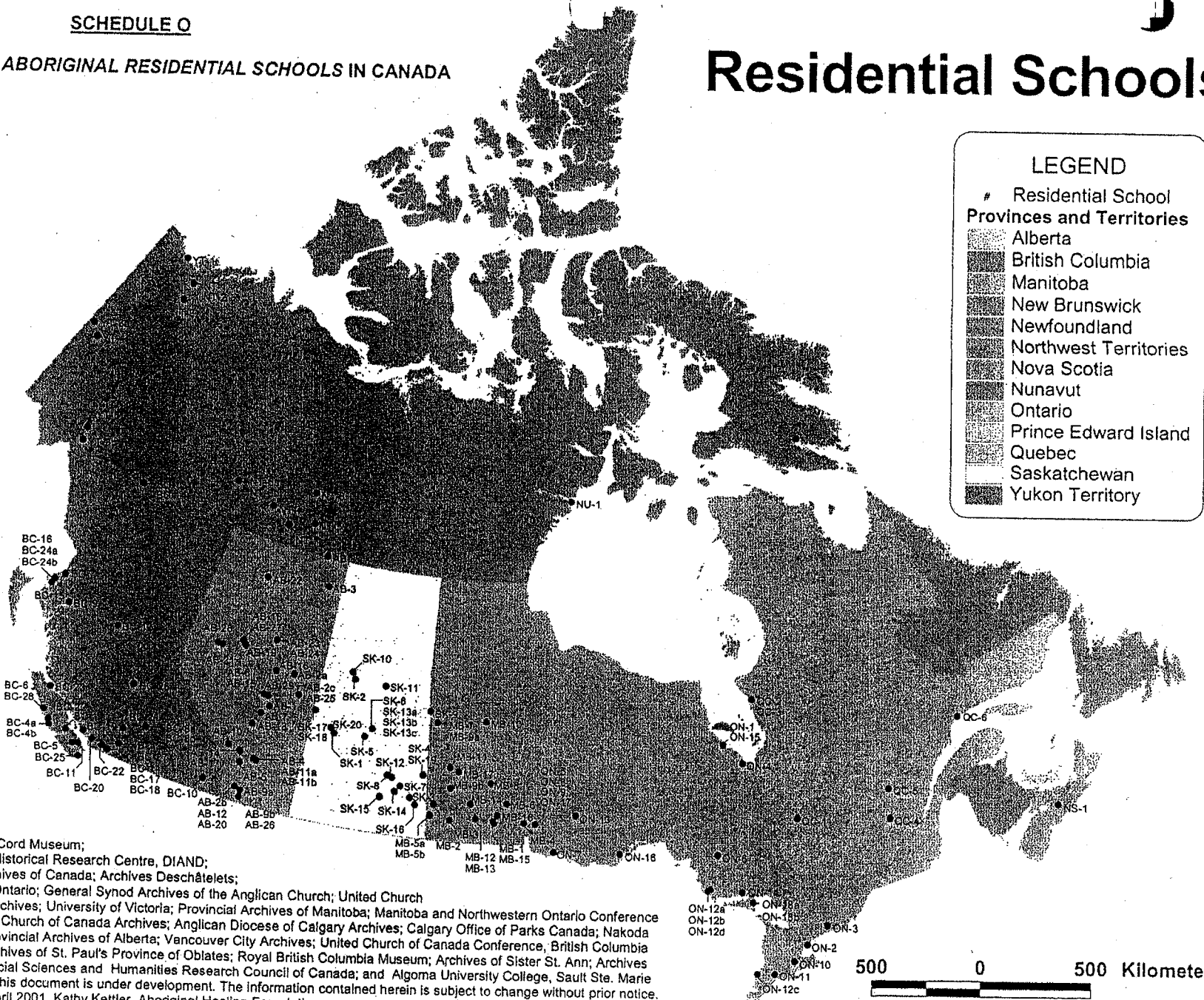
SK-10	Ile-a-la-Crosse Indian Residential School	Ile-a-la-Crosse Indian Residential School		Ile-a-la-Crosse	SK
SK-11	Lake La Ronge Mission School	Lake La Ronge Mission School		La Ronge	SK
SK-12	Muscowequan Indian Residential School	Muscowequan Indian Residential School		Lestock	SK
SK-13a	Prince Albert Indian Residential School	St. Albans Indian Residential School		Prince Albert	SK
SK-13b	Prince Albert Indian Residential School	All Saints Indian Residential School		Prince Albert	SK
SK-13c	Prince Albert Indian Residential School	Prince Albert Indian Residential School		Prince Albert	SK
SK-14	Qu'Appelle Indian Residential School	Qu'Appelle Industrial School	Fort Qu'Appelle Indian Residential School; Lebret Indian Residential School	Lebret	SK
SK-15	Regina Indian Residential School	Regina Industrial School	Regina Indian Residential School	Regina	SK
SK-16	Round Lake Indian Residential School	Round Lake Indian Residential School		Whitewood	SK
SK-17	St. Anthony's Boarding School	St. Anthony's Boarding School	Onion Lake Catholic Boarding School	Onion Lake	SK
SK-18	St. Barnabas Boarding School	St. Barnabas Boarding School	Onion Lake Residential School	Onion Lake	SK
SK-19	St. Phillips Indian Residential School	St. Phillips Indian Residential School	Keeseekoose Day School	Kamsack	SK
SK-20	Thunderchild Indian Residential School	Thunderchild Indian Residential School	Delmas Indian Residential School	Delmas	SK
YT-1	Aklavik Anglican Indian Residential School	Aklavik Anglican Indian Residential School	All Saints School	Shingle Point	Yukon
YT-2	Baptist Indian Residential School	Baptist Indian Residential School	Yukon Indian Hostel	Whitehorse	Yukon
YT-3a	Carcross Indian Residential School	Forty Mile Boarding School		Forty Mile (North of Dawson)	Yukon
YT-3b	Carcross Indian Residential School	Carcross Indian Residential School	Chooutla School; Caribou Crossing	Carcross	Yukon
YT-4	St. Paul's Hostel	St. Paul's Hostel	St. Paul's Hall	Dawson	Yukon
YT-5	Yukon Hostel	Yukon Hostel		Whitehorse	Yukon

**Schedule O**  
(insert tab here)

**SCHEDULE O**

**MAP OF ALL ABORIGINAL RESIDENTIAL SCHOOLS IN CANADA**

# Residential Schools



**LEGEND**

- # Residential School
- Provinces and Territories
- Alberta
- British Columbia
- Manitoba
- New Brunswick
- Newfoundland
- Northwest Territories
- Nova Scotia
- Nunavut
- Ontario
- Prince Edward Island
- Quebec
- Saskatchewan
- Yukon Territory

Sources: McCord Museum; Claims and Historical Research Centre, DIAND; National Archives of Canada; Archives Deschâtelets; Archives of Ontario; General Synod Archives of the Anglican Church; United Church of Canada Archives; University of Victoria; Provincial Archives of Manitoba; Manitoba and Northwestern Ontario Conference of the United Church of Canada Archives; Anglican Diocese of Calgary Archives; Calgary Office of Parks Canada; Nakoda Archives; Provincial Archives of Alberta; Vancouver City Archives; United Church of Canada Conference, British Columbia Archives; Archives of St. Paul's Province of Oblates; Royal British Columbia Museum; Archives of Sister St. Ann; Archives of Yukon; Social Sciences and Humanities Research Council of Canada; and Algoma University College, Sault Ste. Marie

Disclaimer: This document is under development. The information contained herein is subject to change without prior notice.

Produced: April 2001, Kathy Kettler, Aboriginal Healing Foundation

500 0 500 Kilometers

Lambert Conformal Conic Projection, Standard Parallels 49° N and 77° N

01882

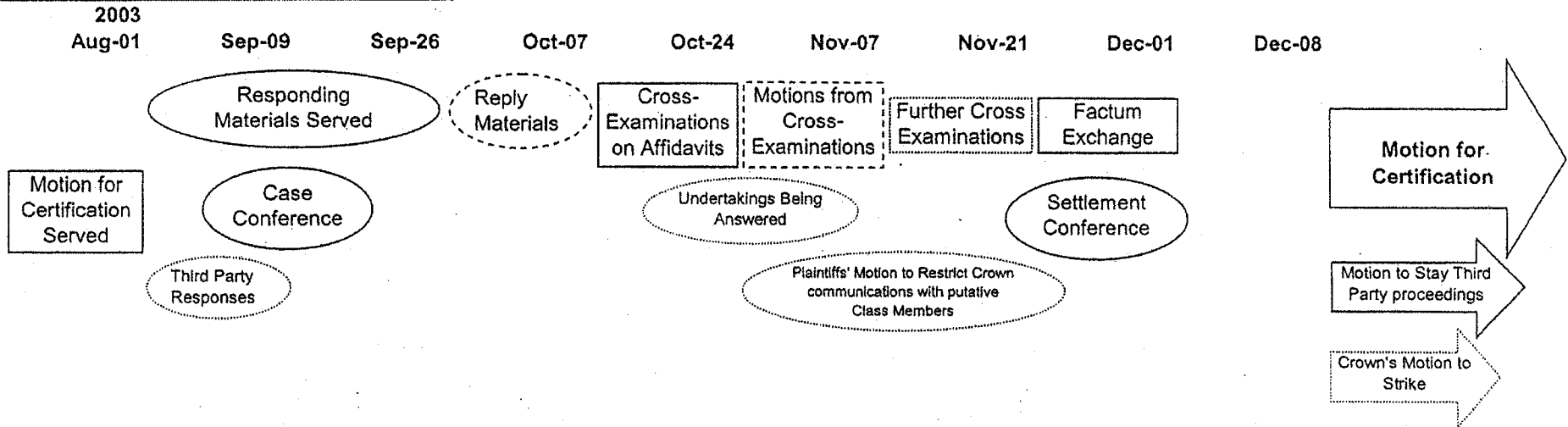
**Schedule P**  
(insert tab here)



SCHEDULE P

PRE CERTIFICATION PROCESS SCHEMATIC

PRE CERTIFICATION PROCESS SCHEMATIC



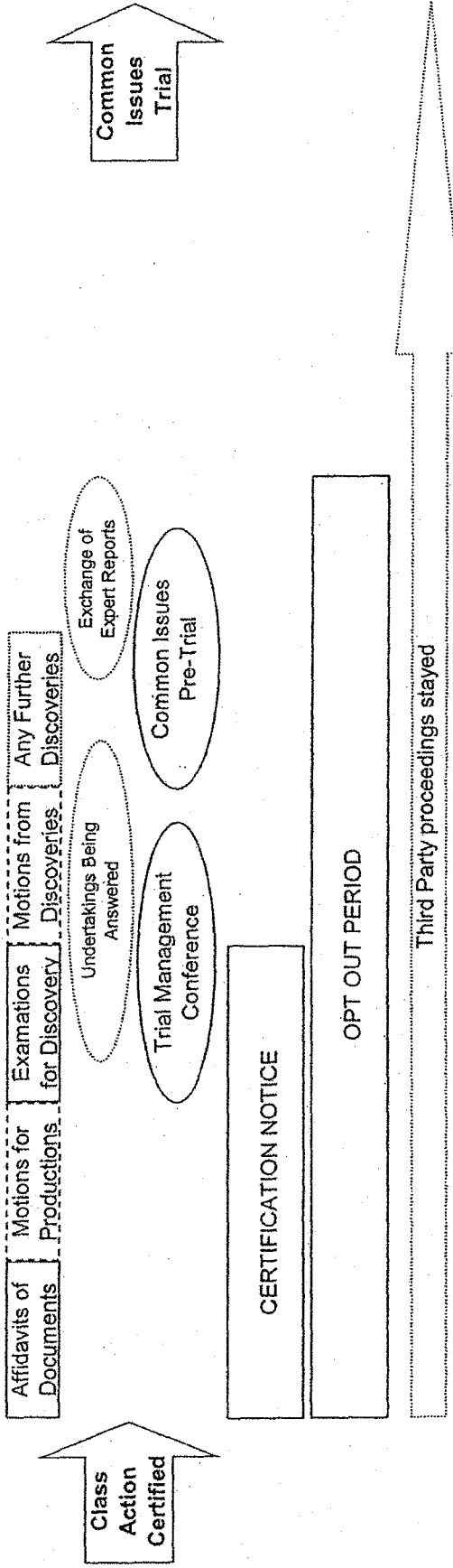
**Schedule Q**  
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SCHEDULE Q

POST CERTIFICATION PROCESS SCHEMATIC

POST CERTIFICATION PROCESS SCHEMATIC

DAY: 0 30 60 90 120 150 180 210 240 270



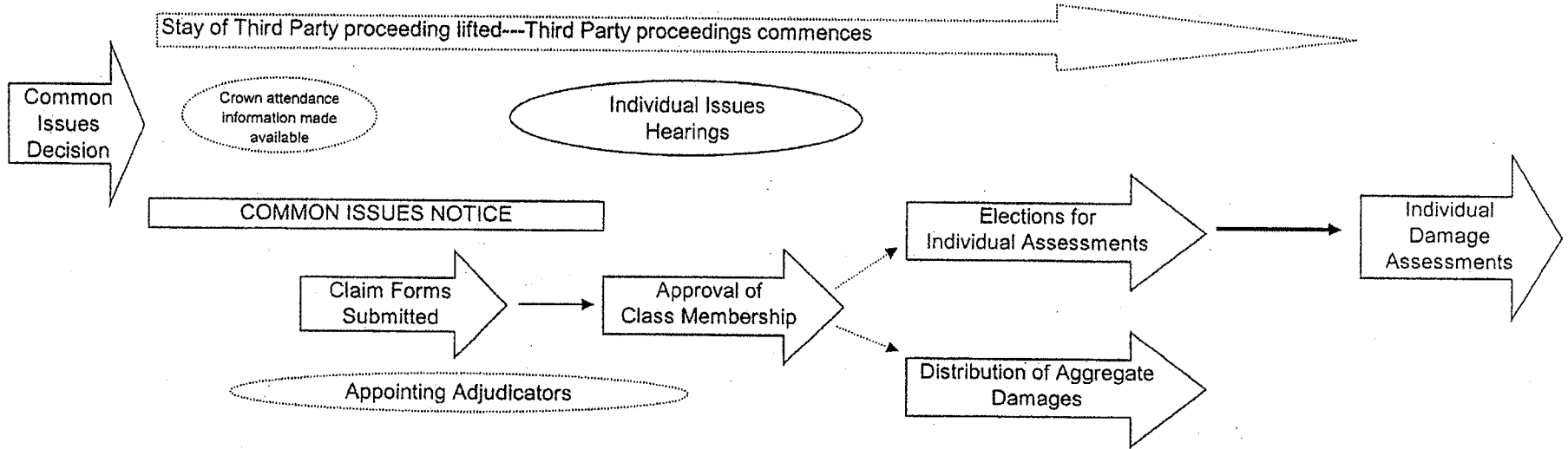
**Schedule R**  
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SCHEDULE R

**POST COMMON ISSUES DECISION PROCESS SCHEMATIC**

POST COMMON ISSUES DECISION PROCESS SCHEMATIC

DAY:      0                      30                      60                      90                      120                      150                      180                      210                      240                      270



**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**PLAINTIFFS' LITIGATION PLAN**

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Fax No. 416-868-3134

Solicitors for the Plaintiffs

(89/622 /drm)

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**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**AFFIDAVIT OF RICHARD COURTIS  
SWORN JULY 25, 2003**

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CHARLES BAXTER, SR. AND ELIJAH BAXTER - and - ATTORNEY GENERAL OF CANADA

Court File No. 00-CV-192059 CP

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**MOTION RECORD  
(Motion for Certification)**

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**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**AFFIDAVIT OF RICHARD COURTIS  
SWORN JULY 27, 2006**

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01892

Sworn by Donald David Belcourt  
on the 14 day of July, 2006

Action No. 9901 15362

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY**

**IN THE MATTER OF CERTAIN CLAIMS ARISING  
AT INDIAN RESIDENTIAL SCHOOLS**

**AND IN THE MATTER OF CASE MANAGEMENT  
OF INDIAN RESIDENTIAL SCHOOL CLAIMS**

Action No. 0501 09167

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY**

**BETWEEN:**

**FLORA NORTHWEST, ADRIAN YELLOWKNEE, MICHAEL CARPAN,  
KENNETH SPARVIER, DENNIS SMOKEYDAY, RHONDA BUFFALO, MARIE  
GAGNON, SIMON SCIPIO, as representatives and claimants on behalf of themselves  
and all other individuals who attended Residential Schools in Canada, including but not  
limited to all Residential Schools' clients of the proposed Class Counsel, Merchant Law  
Group, as listed in part in Schedule 1 to this Claim, and the John and Jane Does named  
herein, and such further John and Jane Does and other individuals belonging to the  
proposed class, including JOHN DOE I, JANE DOE I, JOHN DOE II, JANE DOE II,  
JOHN DOE III, JANE DOE III, JOHN DOE IV, JANE DOE IV, JOHN DOE V, JANE  
DOE V, JOHN DOE VI, JANE DOE VI, JOHN DOE VII, JANE DOE VII, JOHN  
DOE VIII, JANE DOE VIII, JOHN DOE IX, JANE DOE IX, JOHN DOE X, JANE  
DOE X, JOHN DOE XI, JANE DOE XI, JOHN DOE XII, JANE DOE XII, JOHN  
DOE XIII, JANE DOE XIII, being a Jane and John Doe for each Canadian province  
and territory, and other John and Jane Does Individuals, Estates, Next-of-Kin and  
Entities to be added**

**Plaintiffs**

**- and -**

**ATTORNEY GENERAL OF CANADA**

**Defendant**

**Proceedings under the *Class Proceedings Act***

**AFFIDAVIT OF DONALD BELCOURT**

I, DONALD DAVID BELCOURT, of Swan Hills, Alberta, MAKE OATH AND SAY  
THAT:

1. I am one of the representative Plaintiffs in this proceeding. As such, I bring this action on my own behalf and on behalf of all survivor class members in the Province of Alberta as described and defined in the Master Claim of Claim (the "Master Claim").

### **Personal Background**

2. I am Cree, a status Indian and a member of the Sucker Creek Indian Band located near Jousard, Alberta.

3. I was born on September 26, 1939, to Louisa and Julian Belcourt. I was the third youngest of 10 children, five boys and five girls. My mother was a status Indian and a member of the Sucker Creek Indian Band; my father was considered to be a half-breed. I was placed on the Sucker Creek Band list at birth and treated as a status Indian, but was removed from the Band list and Indian status when I was two years old. I did not regain my Indian status until 1988.

4. During my early childhood, my father farmed during the summer months and trapped for furs in winter while my mother was a full time homemaker. We spoke Cree at home and my father taught me how to hunt and trap, while my mother taught me about traditional aboriginal herbs and medicines.

5. My siblings and I were happy and well-cared for in my parent's house. There was no reason why I needed to be removed from my home.

### **Placement in St. Bruno's Residential School**

6. I was placed in St. Bruno's Residential School in September, 1946 when I was seven years old. My brothers and sisters also attended the school starting about the same age. Although there were two non-Residential Schools within a short distance of our family home,

my family understood that if we were not sent to the Residential School the Priest or the Police would take us away.

7. Although I was not recognized by Canada as a status Indian at the time, I was registered in the school as an Indian. The records disclosed in the course of the Residential School litigation show that Canada paid the school a per capita grant for my attendance as though I were a status Indian.

8. The Residential School was located about three miles away from my family's home. Despite this, I was placed in the school for the entire year and was not allowed to go home except at Christmas and during the summer. My parents were only allowed to visit for about an hour every two weeks.

9. I ran away from the school repeatedly to go home. Each time I was returned to the school by the RCMP and strapped on my bare buttocks by the Principal in front of the assembled student body. The same punishment was administered to other students who attempted to run away.

#### **Conditions at St. Bruno's**

10. All of the children at St. Bruno's school lived in large dormitories. There were more than 60 boys ranging in age from about six to sixteen in the main boys' dormitory. We were all expected to sleep with our hands outside the bed covers. Anyone found sleeping with their hands under the covers lost their bed covers for the rest of the night, no matter what the temperature. In winter, the dormitory was cold at night.

11. The indoor toilet facilities at St. Bruno's were primarily for the Priests and Nuns. All of the male students used outdoor toilets both winter and summer. The toilets were often filthy and in the winter they would overflow to the seats and freeze. Usually the boys bathed only once a week with all of us having a bath in water that was changed infrequently.

12. Boys and girls were strictly separated and were not allowed to talk or play with each other even if they were brother and sister. We were not allowed to speak in Cree or any other aboriginal language.

13. Every day at the Residential School began with religious services at 7:00 o'clock a.m. There were numerous other religious services and prayers throughout the day. All of these services were Roman Catholic. None of them involved aboriginal religious or spiritual practices or beliefs.

14. Life at St. Bruno's was highly regimented. All students were assigned a number.. Every day followed a strict schedule that was highly organized. There was virtually no privacy for students like me at St. Bruno's.

15. The food we were served was repetitive and of poor quality. Better quality food including fresh meat and vegetables was reserved for the Priest and Nuns who ate separately. If students wished to have fruit they had to purchase it.

16. The education I received at St. Bruno's did not prepare me for life after school. Records from St. Bruno's School show that while I was there most of the teachers had no professional teaching qualifications whatsoever. In fact, the records show that there were years when none of the teachers at St. Bruno's had any qualifications.

#### **Mistreatment and Abuse**

17. I and other students were not allowed to speak Cree or other aboriginal languages and were punished if we did so. For example, I was forced to kneel on a hardwood floor for extended periods of time until, on one occasion, I collapsed. I was also struck on the hands and head with a wooden clapper, or a yardstick.

18. Such punishment was frequently accompanied by racial slurs and other demeaning statements. Nuns at the school called students, including myself, "dumb Indians", "animals" and "dirty animals".

19. When I was ten or eleven years old, I was anally raped by the Priest who was the Principal of the school. The Priest had asked me to accompany him to a Church in a nearby community to serve as an altar boy during a service. Following the service, he took me into a private room in the Church, asked me to rest with him on the bed there, and had forced anal intercourse causing me to bleed from my rectum.

20. The Priest warned me not to tell anyone what had occurred. Approximately three weeks later he attempted to rape me again and I fought back. This time I resisted successfully and there were no further attempts.

21. In addition to the punishment I received for running away described above, I also had my hair cut extremely short. This was done each time I was returned to the school. As an aboriginal person I found this to be hurtful and demeaning. I would rather have been beaten than to have my hair cut this way.

#### **Life After Residential School**

21. I was removed from the Residential School in the spring of 1954. The records from the school that I have seen imply that I was forced to leave the school because I was out of treaty. However, I had been out of treaty the entire eight years I spent at the school.

22. While at the Residential School I had received, at best, a Grade 8 education which did not fit me for any meaningful employment. The next eighteen years I worked at many menial and manual labour jobs. I moved frequently, abused alcohol and experienced lengthy periods of unemployment.

23. Finally, after approximately seventeen years, I pursued vocational upgrading and eventually obtained a journeyman mechanic qualification in 1976. I worked as a mechanic thereafter until 1994 when I was forced to retire after suffering a heart attack.

24. I married in 1965 and had five children. My wife and I separated in 1981 then divorced. I have been in a long-term relationship since 1984 and my partner and I have one child.

### **Effects of residential School**

25. I continue to suffer the effects of the mistreatment and abuse that I suffered at Residential School. I suffer from a chronic anger about my sexual victimization. I also suffer from depression, sleep disturbance, loss of appetite and general anxiety. I have a tendency to be solitary and withdrawn which I believe stems in part from my experience at Residential School.

26. I abused alcohol, particularly in the first years following my release from the school. I remain angry and resentful about the way that I was taken away from family and my home, prevented from speaking my own language, forced to attend religious services that I did not believe in and ridiculed and called names because I was an aboriginal person.

27. Dr Richard Berry, Chartered Psychologist, who assessed me for the purposes of my legal claim summarized his clinical impression of me as follows:

Mr. Belcourt is subject to intense feelings of anger in respect to his sexual victimization by Fr. [ ]. This is accompanied with a chronic state of anger and outrage over the injustices that were perpetrated against Aboriginal people. These dynamics manifest in the form of chronic brooding and rumination that contribute to ongoing low-grade depression. Mr. Belcourt's anger takes expression in periodic rage reaction and emotional outbursts. His depression is manifest in the form of self-isolation and elective mutism. The combination of depression and anger outbursts has negatively impacted on the quality of the marital relationship with Mrs. Belcourt experiencing the same as personal rejection.

...

Don presents with intense feelings of anger, resentment and frustration over his experience of being forced to attend a residential school that prevented him from maintaining continuity of lifestyle and ongoing day-to-day contact with his parents and siblings. Aside from Christmas and summer breaks his parents were restricted to one hour "family visits" with their children every second Sunday. In the school setting Don was not permitted ease of access with his sisters or other girls from the community. He experiences deep seated resentment over not being permitted to openly communicate in his native tongue while resident of the school, in spite of the fact that outside of that setting Cree was then and now a matter of personal choice. Don is resentful of the fact that he was made to feel like a second-class citizen wherein his beliefs were cast aside and he was forced to actively participate in religious rituals that he did not subscribe to and wherein the representatives of such beliefs subjected himself and his fellow students to ongoing humiliations and degradations that were clearly in conflict with the values they supposedly endorsed and taught.

Dr Berry's clinical impression is an accurate description of me.

### **My Legal Claim**

28. After I became aware that it was possible to advance a legal claim for my Residential School experiences, I contacted legal counsel and was referred to the Field Law Firm. I retained them in April, 1999 to bring a claim on my behalf against the Government of Canada and the Church organizations involved in St. Bruno's School.

29. Due to the very large number of persons bringing Residential School claims, the Chief Justice of the Court of Queen's Bench of Alberta directed that all Residential School cases be placed in case management, and appointed Justices T.F. McMahon and R.E. Nation to manage all Residential School claims in common. The first case management meeting was held in Calgary on July 6, 1999. Attached as Exhibit "A" is a copy of the Order establishing the universal case management program for residential school litigation in Alberta.



30. I understand from my legal counsel, P. Jon Faulds, Q.C., and believe, that the unified judicial case management program employed in Residential School litigation was developed in the absence of any effective class action procedure in Alberta. I understand that Alberta Class Action Legislation did not come into force until 2004. The case management model employed in Residential School litigation in Alberta was discussed by the Alberta Law Reform Institute in its December, 2000 report on class actions. An extract from that report is attached as Exhibit "B".

31. A Statement of Claim in which I was named as Plaintiff was filed by my Counsel in October, 1999 and became subject to the case management system. Throughout 1999 and 2000, various preliminary applications were brought before the case management Judge. These included:

- (a) an application by the Defendants to sever claims brought by more than one Plaintiff. This resulted in an Order directing that multi-Plaintiff claims be broken down by school;
- (b) an application by Defendants for further and better particulars, some of which were ordered and some of which were denied;
- (c) an unsuccessful application by Church Defendants to strike out breach of treaty claims plead against them;
- (d) a successful application by Defendants to strike out certain causes of action based upon allegations of genocide;
- (e) an application brought by certain Defendants to strike out the Defendant "The Roman Catholic Church". This application was denied by the case management Justice. Her decision was successfully appealed to the Alberta Court of Appeal, which struck out The Roman Catholic Church as a party.

32. Throughout this time, regular case management meetings were held throughout the Province in Edmonton, Calgary and Lethbridge to address issues relating to the timing of pleadings, production of documents and other pre-trial matters. My counsel was a leading participant in all of these proceedings.

#### **Selection of Test Cases**

33. In April, 2000 my counsel brought forward a plan to move the Alberta residential school litigation ahead in an organized fashion. The plan contemplated pre-trial discovery to be conducted in common on behalf of all Plaintiffs, the establishment of a common document production system and the selection of a number of "sample" or "test" cases to be fast tracked towards trial. This proposal was, in essence, adopted by the Court. Copies of the proposal and the Reasons of the case management Judge adopting it are attached as Exhibits "C" and "D".

34. As a result, it was determined that fifty Plaintiffs would be selected from the pool of all Plaintiffs in Alberta -- thirty by the Plaintiffs and twenty by the Defendants -- and that each of these Plaintiffs would undergo a preliminary examination for discovery by counsel for the Defendants. It was anticipated that out of this group of fifty Plaintiffs, a smaller group would then be selected whose claims would then proceed to trial as test cases. I was selected by my counsel as one of the thirty Plaintiffs' choices.

35. I understand from my counsel that of the fifty Plaintiffs ultimately selected, they represented fifteen. Each of those fifteen persons, including myself, underwent a preliminary examination for discovery. The shortest of these discoveries was two days. The longest occurred over a period of five days.

36. In addition to these examinations for discovery, each of the fifty Plaintiffs, including myself, was required to answer a lengthy series of written interrogatories posed by the Defendants. Each of the fifty Plaintiffs was also required to produce extensive documentation.

37. Following the completion of these preliminary examinations for discovery and the production of records, further applications were made to the case management Judge to pick a smaller group of Plaintiffs out of the pool of fifty whose cases could then proceed to trial. The case management Judge directed that six cases go forward as test cases. My claim was one of those six. A copy of the Decision of the case management Judge identifying the test cases is attached as Exhibit "E".

### **Pre-Trial Proceedings**

38. Because examination for discoveries and document production were intended to be applicable to all residential school Plaintiffs in Alberta, who then numbered approximately 4,000, document production and examinations for discovery were unusually extensive. My counsel played the leading role in the conduct of examinations and the review of documents.

39. I understand from my counsel that between January of 2000 and June, 2005, Canada alone had produced approximately 105,000 documents relating to residential schools. These documents were broken down into a five collections: national, regional (Alberta), district, school specific and plaintiff specific. In addition various church defendants had produced thousands more documents. The organization and review of these materials was an enormous undertaking.

40 I also understand from my counsel that between January, 2002 and June of 2005, they conducted or participated in examinations for discovery as follows:

- conducted 110 days of examination for discovery of Canada's deponents,
- conducted or participated in 14 days of examination for discovery of church defendants' representatives,
- represented test case plaintiffs or prospective test case plaintiffs at 58 days of examination for discovery conducted by Canada and the church defendants,

- appeared and conducted cross-examination at 11 days of evidence taken *de bene esse*.

in addition to preparing extensive interrogatories to be answered by the defendants, and assisting me and the other test case plaintiffs and prospective test case plaintiffs in answering interrogatories posed by the defendants.

41. Of the six test case Plaintiffs designated by Justice McMahon, three ultimately withdrew in order to pursue settlement. I, Theresa Larocque and Betty Kusiak, who were all clients of Field LLP, continued to pursue our claims toward trial.

42. My counsel arranged for the preparation of extensive expert reports for the test case trial and understand that these included the following expert opinions:

- Dr. Richard Berry, clinical psychologist, who performed psychological assessments of the test case Plaintiffs. Dr. Berry's assessment of myself is set out above;
- Gordon Smith, C.A., who prepared assessments of the financial impact of residential schools upon the test case plaintiffs;
- Dr. Joel Spring, professor of education at City University of New York and himself of aboriginal descent. Dr. Spring's opinion is that the institutional conditions and "de-culturalizing" intent of Residential Schools involved a denial of proper education and alienation from Aboriginal cultural values. This had negative consequences for Residential School students attempting to re-integrate into Aboriginal communities upon their release, and severe impacts on the plaintiffs' ability to develop self-identity.
- Dr Jean LaFrance, professor of social work at the University of Calgary. It is his opinion that Canada's residential school policy was one of assimilation and was a

calculated attempt to destroy Aboriginal societies that could not be justified under standards employed at any relevant times. Canada provided inadequate financial support to residential schools, was unfettered by any sense of responsibility for the quality of the child care services they purchased, and were consistently content to delegate responsibility for the care of these children to other entities. In his opinion Canada failed to meet then prevailing child care standards in almost every respect.

- Dr. Rick Enns, professor of social work at the University of Calgary. Dr. Enns describes residential schools as “total institutions” that regulated every aspect of the lives of the children placed in them and that were capable of enormous impact on the lives of those children, including loss of identity, that was particularly harmful to aboriginal children. He also found:
  - (a) Admissions policies were not being complied with, either by Canada or by the Church management;
  - (b) Adequate and competent care was not being provided to Aboriginal children;
  - (c) Staff members did not receive effective training to carry out their child care and welfare responsibilities;
  - (d) No policies were developed to guide and promote child care and welfare practices within the schools; and
  - (e) No administrative structures were put in place to ensure adequate levels of care and oversight.
- Bob Beal, historian and teacher at Athabasca University. Mr. Beal expresses the opinion that the residential school system violated the education promises contained in Treaties 6, 7 and 8 which contemplated Indian children being educated at local schools upon their reserves rather than being removed to residential institutions.

- Dr. Robert Robson, associate professor of history at Lakehead University. Dr. Robson's opinion is that Residential Schools were primarily intended to execute Canada's policy of assimilation, a policy that was carried out in a collaborative venture between Canada and the Churches. Canada's financial control over the school system, and the inadequate funding provided to support that system, led to its deficiencies and outright failures. Both Canada and the Churches were well aware of the chronic underfunding, as well as its ramifications, but took no meaningful steps to rectify the problem. The result was a system designed to fail, at the expense of the Aboriginal children caught within it.
- Dr. Brian Titley, professor of education at the University of Lethbridge. Dr. Titley's opinion is that while the post-World War II period was generally marked by a massive expansion in the quantity and quality of public schooling the Residential Schools remained mired in the traditional mode of Indian schooling based on religious and missionary principles. Many school principals lacked educational training, and few of the teachers (who were drawn primarily from religious Orders) were properly qualified. The religious ideals of the Churches, combined with Canada's chronic underfunding, led to a deficient education for the plaintiffs.

43. Having completed the foregoing steps, the trial of my claim and that of the other two test case Plaintiffs was scheduled to commence in January, 2006.

#### **The Iacobucci Negotiations**

44. In early June of 2005 my counsel advised me that the Honourable Frank Iacobucci had been appointed as Canada's representative to try and negotiate a settlement of all residential school claims and related issues. As a result, Mr. Justice McMahon agreed to Canada's request to adjourn the test case trial for three months, to April, 2006, to allow parties to concentrate on negotiations.

45. My counsel was a leading participant in the negotiation process. As the negotiations unfolded I understand it became clear that any settlement would be implemented through a class action settlement and that such a settlement would involve the approval of the courts in a number of provinces including Alberta.

46. Because of our role as test case Plaintiffs, my counsel asked me and my co-Plaintiffs if we would agree to be representative Plaintiffs in a class proceeding to be started in Alberta which would be used in the settlement. I agreed to do so.

47. I understand an Agreement in Principle for the settlement of the residential school claims and related issues was reached on November 20, 2005 and that a Final Agreement has now been concluded and approved by the federal Cabinet. I further understand that steps to implement the settlement through the class action proceedings are now under way.

#### **I Am Prepared to Act as a Representative Plaintiff**

48. I am prepared to act as representative plaintiff of the Survivor Class in this proceeding. I believe that I will fairly and adequately represent the interests of the Class should this Court appoint me as representative plaintiff. I appreciate that my role is to protect the interests of the Class.

49. I believe that the Defendants have breached their obligations to myself and to the other members of the Class as set out in the Claim, and that the Class is entitled to compensation

50. I am informed by my counsel and believe that the major steps in this class action can be summarized as follows:

- The action was started by the issuance of the statement of claim, and has subsequently been amended;

- The Court is now being asked to certify the action as a class proceeding by this motion for certification and to approve the settlement contained in the Final Agreement;
- Similar applications are being brought before the Courts in other Canadian jurisdictions and if the settlement is to proceed all the applications must be allowed on the same terms. Class Members will have the right to object to the proposed settlement should they wish to do so.
- If the Court certifies the action as a class proceeding and approves the settlement, notice will be sent to Class Members who will be given the opportunity to opt out of the class action if they wish within a fixed period;

51. If the proposed settlement is approved by the Court, and by the Courts in the other jurisdictions where approval is being sought, and if no more than 5000 persons opt out of the settlement, Class Members who do not opt out will receive the benefits set out in the settlement agreement.

52. I understand that, in agreeing to seek and accept an appointment as a representative plaintiff, it is my responsibility, among other things, to be familiar with this action, and to review the Claim and any further amendments; to assist in the preparation and execution of an affidavit such as this one in support of the motion for certification and settlement approval; to attend, if necessary, with Class Counsel for cross examination on my affidavit; if necessary to attend with Class Counsel at the settlement approval hearing and give evidence regarding the case; to receive briefings from and to instruct Class Counsel; to seek the court's approval of agreements respecting fees and disbursements; and to communicate with Class Members as required.

53. To date, I have taken steps to fairly and adequately represent the Class Members, including my role as a test case Plaintiff in the Alberta litigation, agreeing to commencing a class proceeding with myself as a representative Plaintiff, discussing with counsel the nature of this class action, including the risks and costs of same, assisting in preparing the Claim,



obtaining documents and other information at the request of counsel, meeting with counsel as required, and instructing counsel as necessary.

### **Identifiable Class**

54 I have reviewed the Claim and discussed it with my legal counsel. I agree with the proposed definitions of the Classes and believe that they will allow individuals to determine whether they qualify as a Class member.

### **Common Issues**

55 I have reviewed the common issues set out in the Claim. While I do not have legal expertise, I believe these issues would need to be addressed by virtually every individual Class Member if this matter did not proceed by way of a class action and that a resolution of these common issues will significantly advance this litigation.

### **Preferable Procedure**

56 I believe that a class action is the preferable procedure to resolve the common issues. The class action will provide access to justice for me and other Class Members. I am aware that many Aboriginal Persons live in remote communities, are not in a position to retain counsel due to geographic, logistic and financial reasons, suffer from psychological and emotional problems often as a result of their Residential School experiences, which included various forms of institutional child abuse, and suffer from poverty and often from substance abuse. I believe that thousands of Residential School survivors and their families would not be able to advance their legal rights without this class action.

### **No Conflict of Interest**

57 I do not believe that I have any interest that is in conflict with the interest of any other Class Members. I believe that I can fairly and adequately represent the interest of the

Survivor Class and I am committed to fulfilling my responsibilities as a representative plaintiff.

### **The Proposed Settlement**

58. The proposed settlement was reached following years of litigation in Alberta and elsewhere in Canada and is the product of a lengthy process of negotiation between the Honourable Frank Iacobucci Q.C. as Federal Representative, legal counsel, and aboriginal representatives from the Assembly of First Nations, among others. The negotiations were held in various cities across Canada during the summer and fall of 2005. I am informed by my counsel and believe that they were complex, difficult and threatened to break down on more than one occasion. Because of the number of parties and interests involved and their differing objectives the settlement required the reconciliation of many competing points of view.

59. I believe that this settlement package is beneficial to the Survivor Class Members. First and foremost it provides compensation for every aboriginal person alive as of May 30, 2005, who attended a residential school. This is one of the key objectives my legal counsel and I have been fighting for since we commenced my original lawsuit in 1999. I am advised by my counsel and believe that it has also been a key objective of most legal counsel and residential school survivors in Alberta.

60. The settlement agreements provides such compensation, called the Common Experience Payment (CEP), as follows. Each residential school survivor alive as of May 30, 2005 will be entitled to receive the sum of \$10,000 for the first year or part thereof they attended a residential school and a further \$3,000.00 per year for each year thereafter. In my case this means that I will be entitled to receive \$31,000 under the settlement. In addition, if there is sufficient surplus in the CEP fund after all payments have been made, I and other members of the Survivor Class may also be entitled to receive a personal credit of up to \$3,000.00 which can be used for educational purposes and which I may transfer to my children or grandchildren.

61. The second major benefit to the Survivor Class contained in the settlement agreement is a new and improved Alternative Dispute Resolution Process now called the Independent Assessment Process (IAP) for determining claims of sexual abuse, serious physical abuse and certain types of severe psychological abuse.

62. The IAP has numerous improvements and advantages over the original ADR program initiated by Canada in 2003. These include:

- Independent Adjudicators
- Court Supervision of the process
- Timelines and completion rates for hearings to ensure hearings are concluded expeditiously
- 100% recovery of awards in all cases (rather than 70% for many claims under the old ADR)
- A single national scale of awards using the highest scale previously available
- Higher potential recovery for claimants

In addition to these improvements persons who settled their claims for 70% under the old ADR will be entitled to receive the remaining 30% without any further hearing and in certain cases may also be entitled to apply to have their compensation adjusted upwards to the levels available under the new IAP.

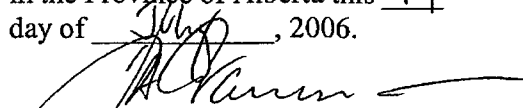
63. The settlement includes a truth and reconciliation aspect, as well as a commemorative aspect, both of which are necessary to ensure that the issue of residential schools becomes a part of the public record in Canada, and that its legacy is never repeated. This settlement package also includes a significant amount of money to be put towards reconciliation and healing programs, and ensures the continuation of the Aboriginal Healing Foundation.

64. I am satisfied with this settlement package and believe that it is fair and reasonable for Survivor Class members. I believe it is very important that this settlement be approved. Without it, litigation will continue for many more years and many more residential school

survivors will die without seeing any resolution or compensation for the pain and injury they have suffered

65. I make this Affidavit in support of an application for certification of the within action as a class proceedings for the purpose of implementing the settlement described above.

SWORN before me at Edmonton )  
in the Province of Alberta this 14 )  
day of July, 2006. )

  
\_\_\_\_\_  
A COMMISSIONER FOR OATHS IN AND )  
FOR THE PROVINCE OF ALBERTA )

  
\_\_\_\_\_  
DONALD DAVID BELCOURT

**DEREK A. CRANNA**  
Barrister & Solicitor

I hereby certify this to be a true copy of the original *[Signature]* Dated this *14* day of *July*, 2000 for Clerk of the Court *[Signature]*

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY

IN THE MATTER OF CERTAIN CLAIMS ARISING  
AT INDIAN RESIDENTIAL SCHOOLS

AND IN THE MATTER OF CASE MANAGEMENT  
OF INDIAN RESIDENTIAL SCHOOL CLAIMS

Before the Honourable ) At the City of Calgary  
Mr. Justice T. F. McMahon ) in the Province of Alberta,  
Justice of the Court of ) on Tuesday, the 6th day  
Queen's Bench of Alberta ) of July, 1999.

CASE MANAGEMENT ORDER

WHEREAS the Honourable Chief Justice W. Kenneth Moore, has designated by memorandum dated June 23, 1999 that the Honourable Justice T. F. McMahon and in the alternative, Honourable Justice Rosemary Nation are to case manage all actions filed against the Defendants for wrongful treatment of the Plaintiffs in Indian Residential Schools; AND UPON it appearing that it is appropriate to establish procedures for the orderly and efficient conduct of such actions; AND UPON the convening of a meeting on July 6, 1999 by Justice T. F. McMahon and attendance by all known counsel for the Defendants and all known Counsel for the Plaintiffs; AND UPON it appearing that the notice of this meeting has been given to all known Counsel for all parties; AND UPON representations made by counsel, IT IS HEREBY ORDERED AS FOLLOWS:

PART I - GENERAL MATTERS

- 1. That this Order shall apply to all parties in all actions of a similar nature commenced in the Court of Queen's Bench of Alberta (the "Actions"). All actions are to be cited in Schedule "A" attached hereto

(a) Schedule "A" shall be comprised of five columns which shall include This is Exhibit "A" referred to in the Affidavit of Donald Belcourt from left to right the following information; Action number, Judicial District, Plaintiff's names, the residential school or schools, and the Plaintiff's law firm.

Sworn before me this 14 day of July, A.D., 2000

[Signature]  
BARRISTER & SOLICITOR  
DEREK A. CRANNA  
A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

- (b) Plaintiff's counsel for each filed action shall provide the above information to Merchant Law Group, Calgary, Alberta, who will be responsible for the maintenance of the Schedule "A" including amendments, additions and deletions.
2. All motions, applications, pre-trial proceedings and case management ("Pre-Trial Proceedings") in connection with the Actions shall be heard, conducted, and determined by the Honourable Justice McMahon or in the alternative, the Honourable Justice Rosemary Nation (the "Case Management Judges").
  3. The venue of the Case Management meetings will be determined by the Case Management Judges.
  4. The Clerk of the Court shall open a file to be entitled "In the Matter of Certain Claims Arising out of Indian Residential Schools and in the Matter of Case Management of Residential School Claims" ("Master File") upon which this Order and all proceedings and subsequent Orders and directions concerning the case management of these Actions shall be filed.
  5. All Orders and directions respecting the Case Management of the Actions shall apply to all the Actions unless otherwise ordered by the Court, and a copy of these and all proceeding and subsequent Orders and directions shall be placed upon the Master File.
  6. Counsel shall advise the Case Management Judges promptly of any new action of a similar nature to these Actions either commenced by counsel or commenced against a defendant represented by counsel, providing the particulars as set out in Schedule "A".
  7. The terms of this Order, or any of them, may be varied upon application by any party, in accordance with the protocols and procedures set out in this Order, or on the direction of the Case Management Judges.

## **PART II SERVICE PROTOCOL**

1. The firm of McCuaig Desrochers is directed to maintain an address list of all counsel involved in Residential School claims (the "Master List"). Counsel are responsible for advising McCuaig Desrochers of any changes to the Master List, and McCuaig Desrochers shall issue revised lists from time to time as required. The initial Master List is attached to this service protocol.

2. Service by facsimile copier, or by certified mail, on the address shown on the Master List will be deemed to be good and sufficient service.
3. Service by e-mail will not be permitted, unless specifically agreed to by the counsel being served.
4. The production of a confirmation sheet produced by the sending facsimile machine will be considered to be satisfactory proof of service.
5. This service protocol does not apply to documents which are required by the Rules of Court to be served personally.

**PART 111 MOTIONS PROTOCOL**

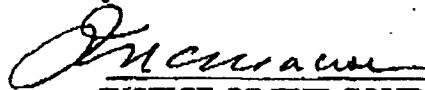
1. A motion brought by an applicant shall be filed in the Judicial District where the underlying action is filed and shall contain a list of all the action numbers and Judicial Districts to which that motion applies.
2. Where the same firm has filed multiple actions in a given Judicial District, a motion need only be filed in one of such actions.
3. The Service Protocol shall apply and each counsel who has made an appearance in these actions and whose name appears on the counsel list maintained by McCuaig Desrochers, shall be provided with copies of correspondence to the case management judge, notices of motion, affidavits, supporting materials, briefs and written submissions.
4. If the relief in a motion relates only to the action in which the motion is filed, the motion shall be heard in the Judicial District where the Notice of Motion and underlying action have been filed.
5. If the relief in a motion relates to Actions filed in more than one Judicial District, the Case Management Judges shall designate the Judicial District in which the motion is to be heard.
6. Plaintiffs and Defendants in residential school actions throughout the Province who have an interest in the outcome of any motion, may intervene at the hearing of such motion in which case they are to notify all counsel in writing, pursuant to the Service Protocol.
7. In any motion where a party has given notice that they intend to intervene, the intervener is only required to file written submissions in the form of a letter

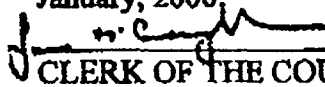
rather than a brief, unless they prefer to file a brief in which case they may do so.


- 8. Cross examination on affidavits and the filing of affidavits in response and reply, shall be governed by the Rules of Court unless otherwise directed by the Case Management Judges.
- 9. Where a motion is to be heard by the Case Management Judges, then, in addition to filing the materials with the clerk at the appropriate courthouse, counsel are to provide directly to the Case Management Judge, by fax or delivery, copies of the notices of motion, affidavits, supporting materials, briefs and written submissions which are intended to be relied upon at the hearing, all in accordance with the following time lines:
  - (a) **Applicants:** 21 days before hearing date.
  - (b) **Interveners supporting Applicants:** 16 days before hearing date.
  - (c) **Respondents:** 11 days before hearing date.
  - (d) **Interveners supporting Respondents:** 6 days before hearing date.
  - (e) **Replies:** 2 days before hearing date.

AND IT IS FURTHER ORDERED

- 1. Those Defendants who have made an appearance and are represented by counsel in an Action, shall not be noted in default without leave of the Court and proper notice to all concerned Defendants. The burden remains on such Defendant to show cause why it ought not be required to file a defense and ought not be noted in default. **PROVIDED HOWEVER**, that this relaxation of the Rules of Court shall not apply to any Defendant who has not made an appearance or is not represented by counsel in an Action.

  
 JUSTICE OF THE COURT OF QUEEN'S  
 BENCH OF ALBERTA

Entered this 8 day of  
 January, 2000.  
  
 CLERK OF THE COURT





Feb. 8. 2000 2:45PM

01916

No. 6166 P. 9/10

**SCHEDULE "A" AS OF JANUARY 5th, 2000.**  
**(SEE THE ATTACHED BINDER)**

Action No. 9901-15362 2000

**IN THE COURT OF QUEEN'S BENCH  
OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY**

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**IN THE MATTER OF CERTAIN CLAIMS  
ARISING AT INDIAN RESIDENTIAL  
SCHOOLS**

**AND IN THE MATTER OF CASE  
MANAGEMENT OF INDIAN  
RESIDENTIAL SCHOOL CLAIMS**

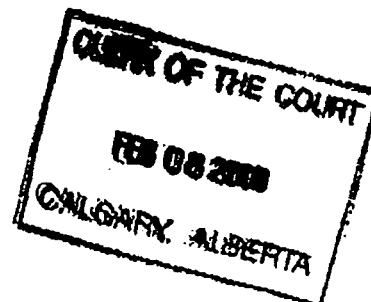
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**CASE MANAGEMENT ORDER**

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**MERCHANT LAW GROUP  
Barristers and Solicitors  
200, 521 - 3 Avenue S.W.  
Calgary, Alberta  
T2P 3T3  
(403) 237-9777**

Solicitor: Jane Ann Summers





ALBERTA  
LAW REFORM  
INSTITUTE

# CLASS ACTIONS

Final Report No. 85

December 2000

This is Exhibit " B " referred to in the Affidavit of

Donald Belcourt

Sworn before me this 14 day

of July A.D., 2006

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

Derek A. Cranina  
**DEREK A. CRANNA**  
Barrister & Solicitor

ALBERTA LAW REFORM INSTITUTE

EDMONTON, ALBERTA

**CLASS ACTIONS**

Final Report No. 85

December 2000

ISSN 0317-1604  
ISBN 1-896078-03-6

duplication of litigation. A stay of one case may be ordered where the issues in two cases are substantially the same, such that an adjudication in one action will automatically dispose of the issues in the second action.<sup>52</sup>

However, a stay must be fair to both plaintiffs and defendants. For example, it ought not be used to delay the disposition of litigation involving other issues.

**Capacity to sue and be sued.** Representative action may be "ideal for groups like unincorporated associations such as first nations, unions, or yacht clubs or, as rule 43 tells us, beneficiaries of an estate who can sue or be sued through the executor or administrator."<sup>53</sup> It enables collective entities that lack formal legal personalities to bring proceedings under the authority of a representative order. However, many issues are not addressed by such a provision. For example, for rule 42 to apply, the association itself must have a cause of action against the defendant.<sup>54</sup>

#### 4. Judicial case management of multiple-plaintiff similar-claim litigation

##### a. Growing use of judicial case management

[44] Generally speaking, judicial case management is a relatively new phenomenon in Canada.<sup>55</sup> It is employed in cases where there is a need for judicial supervision or intervention on an ongoing basis. It can lead to streamlined procedures, faster timelines and earlier settlement. Other possibilities are: the diversion of cases to alternative dispute resolution where this is likely to be beneficial; the encouragement of a spirit of cooperation between the parties and

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<sup>51</sup> (...continued)  
53 A.R. 277.

<sup>52</sup> Allan A. Fradsham, *Alberta Rules of Court, Annotated, 1999* (Carswell: Toronto, 1999) at 437.

<sup>53</sup> Stevenson and Cote (2), *supra* note 29 at 52.

<sup>54</sup> *Holtslag v. The Queen*, *supra* note 38 at para. [25]: "Finally, I agree with the position of the Crown that the Association is not a proper Plaintiff since it has no cause of action of its own, no cause of action has been assigned to it, and it came into existence after the cause of action arose."

<sup>55</sup> For a summary of the sources of authority for judicial case management in Alberta, see c. 4, heading H.2.

the avoidance of unnecessary combativeness; the identification and reduction of issues; and the reduction of cost.<sup>56</sup>

**b. Use in multiple-plaintiff similar-claim litigation**

[45] Judicial case management has been used effectively in Alberta cases involving multiple plaintiffs, either in conjunction with or independently of rule 42. Indeed, the Alberta Court of Appeal has expressed the view that "[s]ome of the problems encountered [under rule 42] could be dealt with through strict case management."<sup>57</sup>

**i. The emerging Alberta model**

[46] An Alberta model for "unified" judicial case management is emerging. It can be employed in cases involving many plaintiffs having the same or similar claims against the same defendant or defendants or against different defendants. This model makes creative use of a range of procedural tools that are available under the existing law, including those previously described. It had its genesis in the wrongful sterilization litigation, which was settled in 1999.<sup>58</sup> A similar unified

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<sup>56</sup> Woolf Report, *supra* note 12.

<sup>57</sup> *Western Canadian Shopping Centres v. Dutton*, *supra* note 23 at 193.

<sup>58</sup> The following account is based on information gathered from the Hon. Allan H.J. Wachowich, Associate Chief Justice of the Court of Queen's Bench of Alberta, Mr. Jonathan P. Faulds, one of the plaintiffs' counsel; and Ms. Donna L. Molzan, counsel with Alberta Justice:

After 200 or more wrongful sterilization claims had been commenced against the Alberta government, Chief Justice Moore appointed a case management judge (Justice Wachowich) to handle them. Later, a trial judge (Justice Belzil) was appointed to deal with procedural matters relating to the eventual trial.

Defence counsel requested that a plaintiff committee be formed so that defence counsel would not have to deal with 60 or 70 individual lawyers. The plaintiff committee consisted of three counsel. Two of the counsel represented the majority of the claims and the third counsel communicated with the remaining individual lawyers, some 30 or 40 handling mainly smaller claims. A fourth counsel was appointed to handle claims for dependent adults who were under public trusteeship; these were all very similar and settled early. The judge and counsel set regular case meeting and target dates. The plaintiff committee also met regularly.

In order to bring as many claimants as possible into the process, potential claimants were served with notice asking them to come to court by a certain date if they wanted to be included. Many contacted did not want to claim (in effect, "opting out").

The situations of the plaintiffs were not all the same. For example, some of the plaintiffs were adults who had consented to the sterilization, some had children prior to the sterilization and some

(continued...)

judicial case management process is being followed in the residential schools cases now being litigated.<sup>59</sup> As well, counsel have been directed to consider how the thousands of actions in the pine shakes litigation should be managed.<sup>60</sup>

ii. How it works

[47] The Chief Justice of the Court of Queen's Bench appoints one judge to case manage claims of a similar nature made in separate actions, and another judge to hear pre-trial applications.

[48]. Similar to group litigation in which parties group for their own purposes presumably to their own advantage, under the unified judicial case management model, the case management judge may require the plaintiffs (and the defendants, if there are several) to form a committee. The committees select the lawyers who will speak on their behalf, thereby reducing the number of lawyers who actively participate in the case management conferences.

[49] Case management conferences are scheduled as required. The conferences are held in open Chambers to allow the claimants and other members of the public to attend and view the process. In the residential school litigation, conferences have been held in Calgary, Edmonton and Lethbridge.

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<sup>58</sup> (...continued)

were children whose parents had consented or requested the sterilization. With the concurrence of the case management judge, defence counsel and the plaintiff committee chose 17 or so cases to go forward and concentrated on the procedures necessary to deal with them. They set up a parallel track for other claims in order to keep them running. When the government appointed a negotiator for the defence, the plaintiff committee participated in the negotiations.

The case management required about a year of the judge's time. The Rules of Court were construed liberally for the purpose of expediting the proceedings. Interlocutory applications to the Court of Appeal objecting to some of the case management rulings slowed the process down, but overall, the process can be considered a success. It led to a satisfactory outcome for most claims (a few were not settled and may still be outstanding).

<sup>59</sup> See, e.g., case management orders issued by Justice T.F. McMahon, *In the matter of Certain Claims Arising From Indian Residential Schools and In the Matter of Case Management of the Residential School Claims*, Action No. 9901-15362 (Alta. Q.B.).

<sup>60</sup> *Holtslag v. The Crown in right of Alberta*, *supra* note 38 at para. [28]: "That is not to say that the impossibility of the Court being able to administer thousands of actions need not be addressed. On the contrary, it must. As the case management Judge, I direct counsel to address the matter, consult with one another, and advise the Court of the status of those discussions at the next case management meeting."

24

[50] Measures are taken in an effort to bring as many similar-claim plaintiffs as possible into the process. In the wrongful sterilization litigation, potential claimants were served with notice asking them to come to court by a certain date if they wanted to be included.

[51] The case management judge may ask plaintiff and defence counsel to identify a smaller number of cases that raise issues which are characteristic of those raised in other cases. From these cases, counsel and the judge select certain cases to go forward in advance of the others. The idea is that resolution of the issues in these cases will establish precedents on issues common to the other actions. These precedents will be available to assist the resolution of the remaining cases through negotiation and settlement.

[52] Other economies are also possible. For example, the case management judge may give directions for the cooperative and efficient sharing of discovery material.

***c. Adequacy of Alberta's unified judicial case management model***

[53] Some people think that the utilization of judicial case management in this way adequately serves the needs of Alberta litigants and that no additional procedural routes are needed. Indeed, many characteristics of this approach and the modern class actions reform adopted elsewhere in Canada and beyond are closely analogous.

[54] One advantage of Alberta's emerging unified judicial case management model is the flexibility it allows the parties to design their own procedure. Another advantage is that the parties continue to be represented by the lawyers of their choice. Individual representation, rather than reliance on a representative plaintiff, preserves the right of litigants to choose their own lawyer and participate in the proceedings.<sup>61</sup>

[55] Disadvantages include: each plaintiff must commence an individual action; it may not be possible to obtain the cooperation of all or a substantial number of

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<sup>61</sup> Individual representation is also possible in a class actions regime in that potential class members have the option of pursuing relief on their own rather than joining the class action.



plaintiffs and defendants; there is lack of procedural certainty at the outset – for example, it may be premature to make decisions on joinder or consolidation until after discovery of many claimants; and the process of coming to agreement on how the group will conduct itself may be ponderous and time-consuming. The process does not permit the simplification that comes with designated representation of claims, nor does it bind litigants to the results of other actions. The innovations are strictly procedural; they do not include substantive law reform (e.g., each litigant must file an individual claim so that limitation periods do not continue to run against them).

[56] The emerging Alberta unified judicial case management approach is a welcome procedural innovation. In an appropriate case, judicial case management can offer some of the advantages of a class proceeding. The degree of judicial economy achieved is difficult to gauge. Moreover, like the practice under rule 42, the case management practice is uneven, being re-created case by case.

### **C. Precedents for Reform: Modern Class Action Laws**

#### **1. What is a class action?**

[57] In an ordinary action, each litigant is a party in their own right. In a class action, one party commences an action on behalf of other persons who have a claim to a remedy for the same or a similar perceived wrong. That party conducts the action as “representative plaintiff.” Only the “representative plaintiff” is a party. Other persons having claims that share questions of law and fact in common with those of the representative plaintiff are members of the “class.” Once the class has been determined, the class members are bound by the outcome of the litigation even though, for the most part, they do not participate in the proceedings. A number of statutory safeguards and an expanded role for the court help to ensure that the interests of the class members are protected. Instead of multiple separate proceedings deciding the same issues against the same defendant or defendants in proceedings brought by different plaintiffs, class actions decide common issues in one courtroom at one time. Under modern Canadian legislation a court must approve (“certify”) a proceeding as a class proceeding before it can go forward. These are the essential differences between an ordinary action and a class action.

Action No. 9901 15362

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY

IN THE MATTER OF CERTAIN CLAIMS  
ARISING FROM INDIAN RESIDENTIAL SCHOOLS

AND IN THE MATTER OF CASE MANAGEMENT  
OF THE RESIDENTIAL SCHOOL CLAIMS

PROPOSAL OF PLAINTIFFS FOR THE CONDUCT  
OF RESIDENTIAL SCHOOL LITIGATION

This is Exhibit "C" referred to in the  
Affidavit of

Donald Belcourt

Sworn before me this 14 day

of July A.D., 2006

[Signature]  
A COMMISSIONER FOR OATHS IN AND FOR  
THE PROVINCE OF ALBERTA

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Barrister & Solicitor

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10235 - 101 Street  
Edmonton AB T5J 3G1

P. Jon Faulds/Dan P. Carroll  
Phone: (780) 423-3003  
Fax: (780) 428-9329

Action No. 9901 15362

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY**

**IN THE MATTER OF CERTAIN CLAIMS  
ARISING FROM INDIAN RESIDENTIAL SCHOOLS**

**AND IN THE MATTER OF CASE MANAGEMENT  
OF THE RESIDENTIAL SCHOOL CLAIMS**

**PROPOSAL OF PLAINTIFFS FOR THE CONDUCT  
OF RESIDENTIAL SCHOOL LITIGATION**

**TABLE OF CONTENTS**

<b><u>Page No.</u></b>	<b><u>Heading</u></b>
1	Summary
2	Background
3	Proposed Schedule and Procedure for Examinations for Discovery and Document Production
5	Plaintiffs' Submissions Concerning the Defendants' Trial Proposals
6	Non-Residential School Claims

Action No. 9901 15362

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY**

**IN THE MATTER OF CERTAIN CLAIMS  
ARISING FROM INDIAN RESIDENTIAL SCHOOLS**

**AND IN THE MATTER OF CASE MANAGEMENT  
OF THE RESIDENTIAL SCHOOL CLAIMS**

**PROPOSAL OF PLAINTIFFS FOR THE CONDUCT  
OF RESIDENTIAL SCHOOL LITIGATION**

**I. SUMMARY**

1. At the January 31, 2000 Residential School Litigation Case Management Meeting, Mr. Justice McMahon asked counsel for all parties to come forward with proposals on "how to move this matter forward, both document and oral discovery" for discussion at the April 7, 2000 Case Management Meeting.

2. These Plaintiffs' proposal encompasses four key elements:

- (i) the establishing of target dates for certain pre-trial procedures such as document production, selection of officers for discovery and commencement of examinations for discovery;
- (ii) the adoption to the extent possible of a system of common document production and discovery applicable to all actions;

- (iii) the selection of a sample group of cases to be fast tracked towards an early trial date in order to create a body of precedent that will be useful in the resolution of claims generally;
- (iv) the possibility for cases to be redefined as "non-Residential School claims" and withdrawn from Case Management where no issues specific to the Residential School system arise.

3. The Plaintiffs note that the proposals put forward by the Church Defendants and by Canada do not provide any significant suggestions with respect to the first two elements. While the Defendants' proposals do adopt the concept of having a sample of Plaintiffs' claims fast tracked for trial, the main thrust of the proposals is to carve up the Plaintiffs' claims in various ways. These Plaintiffs submit that the effect of such proposals would be to drag out any proceedings unnecessarily and postpone the resolution of many of the central issues.

## II. BACKGROUND

4. Case Management proceedings to date have largely been dominated by procedural applications brought by the Defendants. There has not yet been any production of documents or examinations for discovery.

5. While the format of trial proceedings is a matter which will require early consideration, final decisions on these matters cannot be made until the parties have learned more about each other's cases through the discovery and document production processes.

6. Accordingly, these Plaintiffs submit that priority must be given to the early and orderly commencement of examinations for discovery and document production, taking into account the following realities:

- (i) there are more than 2,000 individual Plaintiffs represented by approximately twenty counsel, and the number of claims continues to grow;
- (ii) it will not be possible to try all claims and it is uncertain that even examinations for discovery or document production can be completed for all claims;
- (iii) while different Plaintiffs' counsel have framed the claims in somewhat different fashions, and not all causes of actions are plead by all Plaintiffs, there is a broad range of factual and legal issues common to all, or to large groups, of the Plaintiffs.

### III. PROPOSED SCHEDULE AND PROCEDURE FOR EXAMINATIONS FOR DISCOVERY AND DOCUMENT PRODUCTION

7. These Plaintiffs propose that the following schedule be implemented immediately for examinations for discovery and document production:

ACTION	TARGET DATE
Defendants will identify their officers for examinations for discovery. Those Defendants associated with more than one school may select more than one officer and shall identify the school or schools with which each officer is concerned.	May 1, 2000
Plaintiffs will identify a pool of 50 Plaintiffs drawn from a cross section of the schools, time periods and causes of actions reflected in the Plaintiffs' group, who will be made available for examination for discovery on a priority basis.	May 1, 2000
Counsel for Plaintiffs and Defendants will agree on a format for document production.	May 1, 2000
Defendants shall provide the initial stage of their document production in the agreed format.	June 1, 2000

Examinations for discovery of the Defendants' officers to commence.	July 1, 2000
Initial production of documents relating to the identified Plaintiffs.	August 1, 2000
Commencement of preliminary examinations for discovery of identified Plaintiffs.	October 1, 2000
Subsequent stages of production of Defendants' and Plaintiffs' documents.	To be determined immediately following the first stage of production.

8. With respect to the examination of Defendants' officers, the Plaintiffs propose that two lead counsel be identified for the discovery of each officer. Counsel for other Plaintiffs with claims involving the Defendant represented by that officer shall be at liberty to conduct further, non-repetitive examination of the officer in relation to their clients' claim. All examinations conducted by Plaintiffs' counsel shall be available to any Plaintiffs' counsel to the extent that it is relevant.

9. With respect to the examination of the identified Plaintiffs, it is proposed that Defendants would identify one lead counsel to conduct the examination for discovery. Counsel for other Defendants named by the Plaintiff shall be at liberty to conduct, non-repetitive examination of that Plaintiff.

10. All examinations for discovery conducted pursuant to the foregoing would be available for use at the trial by any party adverse in interest to the party under examination, subject to the ordinary Rules of Evidence.

11. Defendants' production of documents shall be divided into three categories:

- (i) general;
- (ii) school specific;

(iii) Plaintiff specific;

and shall be identified so as indicate the identity of the Defendant producing the document and into which of the foregoing categories the document falls. Plaintiffs' documents shall be designated to identify the Plaintiff by whom the document is produced.

#### **IV. PLAINTIFFS' SUBMISSIONS CONCERNING THE DEFENDANTS' TRIAL PROPOSALS**

12. These Plaintiffs concur with the concept of some form of early trial for a sample of claims drawn from the Plaintiff group. However, the Defendants' various proposals for the conduct of such trial would defeat its purpose.

13. With respect to the proposal of the Church Defendants, their suggestion that a trial be severed into various free standing issues would produce a multiplicity of proceedings and appeals that could delay the proper resolution of the claim for years or even decades.

14. The suggestion that the limitation issue be resolved as a preliminary matter is the subject of two overwhelming objections. First, given the nature of the claims and the novelty of some of the causes of action which have been plead, the Plaintiffs would be obligated to call their entire case in order to provide the proper evidentiary basis for deciding that issue. In other words, the issue can only be decided at trial. Second, conducting the trial in bits and pieces entails an enormous risk of unnecessary delay. The proceedings could be stalled for years if the limitation defence was upheld on a preliminary motion and then set aside after two rounds of Appeals. As the Court is aware, a significant number of Plaintiffs are elderly or frail and ought not to be subjected to the risk of such delays in the resolution of their claims.

15. With respect to the proposal of Canada that the "conventional" causes of action – sexual and physical abuse – be tried before the "residential school" causes of action



– wrongful confinement, breach of Treaty rights and failure to educate – is backwards. It is the latter causes of action of which the guidance of the Court is more urgently needed and priority should be given to cases which include such claims in addition to the abuse causes of action.

16. These Plaintiffs submit that while it is premature to arrive at any final conclusions concerning the format of a sample trial, a single unified proceeding is the fairest, more efficient and most effective way of proceeding. The size and composition of the sample trial group should properly be addressed once the parties have had the chance to discover each other's cases. The Plaintiffs propose the following schedule:

ACTION	TARGET DATE
Determination of sample Plaintiffs.	January 15, 2001
Commencement of Trial	September 15, 2001

#### V. NON-RESIDENTIAL SCHOOL CLAIMS

17. It is conceivable that certain claims currently captured by the Case Management process may not involve any issues specific or unique to the Residential School System. For example, if a Plaintiff wishes to advance a narrow claim for sexual or physical abuse which happened to occur at a Residential School but does not allege any damages on account of the Residential School setting or raise issues that are peculiar to Residential School claims, then it may be reasonable to permit that Plaintiff to withdraw from the Case Management process and pursue their claim in the ordinary course. These Plaintiffs submit that in such cases, that option should be available to Plaintiffs' counsel. However, it would be clearly understood that by withdrawing from the Case Management process, that Plaintiff

would lose its benefits, including any priority in scheduling of pre-trial proceedings or in obtaining a trial date.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this \_\_\_\_ day of April, 2000.**

**FIELD ATKINSON PERRATON**

**Per: \_\_\_\_\_  
P. JON FAULDS**

Action No. 9901 15362

A.D. 2000

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**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY**

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**IN THE MATTER OF CERTAIN CLAIMS  
ARISING FROM INDIAN RESIDENTIAL SCHOOLS**

**AND IN THE MATTER OF CASE MANAGEMENT  
OF THE RESIDENTIAL SCHOOL CLAIMS**

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**PROPOSAL OF PLAINTIFFS FOR THE CONDUCT  
OF RESIDENTIAL SCHOOL LITIGATION**

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File No. 838-1

P. JON FAULDS

LB

**Indian Residential Schools - Sample cases, 2000 ABQB**

Date: 20000426  
Action No. 9901 15362

This is Exhibit "D" referred to in the Affidavit of.

Donald Belcourt IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY

Sworn before me this 14 day  
of July A.D., 2006

[Signature] IN THE MATTER OF CERTAIN CLAIMS  
A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA ARISING FROM INDIAN RESIDENTIAL SCHOOLS;

**DEREK A. CRANNA** AND IN THE MATTER OF CASE MANAGEMENT  
Barrister & Solicitor OF THE RESIDENTIAL SCHOOL CLAIMS

---

REASONS FOR DECISION  
of the  
HONOURABLE MR. JUSTICE T.F. McMAHON

---

**INTRODUCTION**

[1] More than 2,000 former residents of what were once called Indian Residential Schools have in approximately 1,000 actions in Alberta sued the Crown in Right of Canada and several religious bodies for alleged abuses and wrongful confinement, breach of Treaty obligations as well as other claims.

[2] In the context of case management of those actions, the parties have proposed various methods of focussing on a series of sample or test cases to be moved forward towards trial. The expectation is that such cases, if they represent a reasonable cross-section of all of the cases, will assist in the eventual settlement or other disposition of the balance of the claims. From the representations made to me this process meets with virtually unanimous support. The proposed methods of accomplishing this objective, however, vary.

Page: 3

me a recent Saskatchewan decision, *First Choice Capital Fund Ltd. v. First Canadian Capital Corp.* [1999] 11 W.W.R. 249 which contains a useful discussion of the use of test cases. Given that none of the parties before me object to a test case procedure, I do not need to canvass its merits in detail. It is apparent that not all of these cases can proceed to trial in the near future and that all parties have an interest in determining the parameters for potential settlement by the determination of the significant common issues. Those common issues include:

- a) limitation defences,
- b) — breach of Treaty rights,
- c) cultural deprivation,
- d) linguistic deprivation,
- e) educational malpractice,
- f) wrongful confinement,
- g) degrees of responsibility between the defendants, if any,
- h) issues of vicarious liability.

[7] I conclude that a test case or cases procedure can be crafted which will protect the interests of all parties and will permit significant savings of time and expense. The decisions on these common issues are likely to be at least persuasive and probably determinative of the same issues in non-test cases. I conclude further that the test case process should begin now rather than after Examinations for Discovery in order to minimize that costly and lengthy process. It remains now to consider which model to use.

#### **THE PROPOSAL OF THE RELIGIOUS DEFENDANTS**

[8] These defendants propose that because the events in question occurred decades ago, the limitations issues should be brought to the forefront. They propose that a representative group of 10 to 12 plaintiffs be chosen and that discovery and document production occur with respect to the limitation issues only. It is then proposed that those cases would proceed to trial on that

Page: 4

defence only. Upon final resolution of these limitation issues, it is then proposed by these defendants that another representative group of plaintiffs be selected from one Protestant and one Roman Catholic school with the objective of proceeding through document production and discovery and then to trial on all of the remaining issues. This group would be selected from those claimants whose claims survived the ultimate resolution of the limitation defence. Damage issues would be excluded from this second group and would be dealt with in a third representative trial.

[9] Both the defendant Canada and the plaintiffs object to this proposal.

[10] The difficulty with attempting to isolate and try a limitations defence arises because of the likely answer of discoverability and, to a lesser degree, disability. Some of the causes of action pled are novel, such as cultural and linguistic deprivation as well as wrongful or inadequate education. Many of the cases allege sexual assault and many plead breach of Treaty obligations. The plaintiffs would necessarily be obliged to call all or nearly all of their case in order to provide the proper evidentiary basis for dealing with the limitations defence alone. Insofar as discoverability and disability are concerned, the answers are likely to be fact driven and hence, test cases would provide limited guidance. In addition, to sever this issue and proceed to its ultimate resolution first is likely to create a significant delay. It would effectively restrain the trial of all of the other issues until these limitation issues proceeded through the two appellate levels. I conclude, therefore, that the severance of the limitations issue and proceeding with it first in a group of test cases is inappropriate. This decision does not, of course, preclude any defendant from bringing a motion in a specific case which it considers is statute barred.

Page: 5

[11] It is true that in some fact circumstances a limitations issue is readily severable and pre-  
tried. See *Boorman v. Red Deer Ski and Recreation Area Ltd.* (1989), 69 Alta. L.R. (2d) 396  
and *C.D.I.C. v. Prisco* (1996), 38 Alta. L.R. (3d) 98 (Alta. C.A.). There are other examples as  
well.

[12] However, it is also the case that discoverability is an issue as an answer to a limitations  
defence in the proper case. In *M.(K) v. M.(H)* [1992] 3 S.C.R. 6, the Supreme Court of Canada  
examined the issue of limitation periods and discoverability in the context of an incest case. At  
page 24, La Forest, J. said:

The tort claim, although subject to limitations legislation, does not accrue until the  
plaintiff is reasonably capable of discovering the wrongful nature of the  
defendant's acts and the nexus between those acts and her injuries.

[13] The Court found that discovery did not occur until after the complainant in that case  
commenced therapy and noted that the causal connection between the incestuous activity and the  
present psychological injuries were often unknown to the victim. The critical issue was described  
at page 48:

When did the appellant discover her cause of action in the sense of having a  
substantial awareness of the harm and its likely cause.

[14] I must expect that the plaintiffs in the cases before me will raise the same issues which, in  
turn, will require substantial evidence of their lives both during and after their period of  
residence.

[15] In addition, *M.(K)*, *supra*, raised the possibility that an answer of fraudulent concealment

Page: 6

could be used to postpone the running of the limitation period as a result of the "climate of secrecy" which sometimes surrounds sexual assault circumstances. Again, I must expect that some plaintiffs here may raise that issue given the religious context of the schools.

[16] Lastly, the operation of a limitations period is suspended by virtue of a disability. Under the current **Limitations Act**, S.A. 1999, c. L-15.1, which applies to actions commenced March 1, 1999, a limitation period will be suspended during a period of time, in the case of "an adult who is unable to make reasonable judgments in respect of matters relating to the claim". Again, I must expect that some plaintiffs will raise that issue as an answer to a limitations plea and, accordingly, a significant evidentiary basis will be necessary. The result is that a trial limited to limitations issues is likely to require the plaintiffs to adduce substantially their entire case.

#### **PROPOSAL OF THE DEFENDANT CANADA**

[17] Canada proposes that claims involving allegations of physical and sexual abuse be brought forward as test cases on those issues only. Canada opposes the inclusion of breach of Treaty or breach of aboriginal rights claims in the initial test cases on the basis that Treaty litigation tends to be complex and protracted. Canada proposes that a cross-section of claimants alleging physical and sexual abuse be selected from different time periods and involving different defendants and various schools. The objection taken to this proposal is that it excludes the complex causes of action for which guidance by way of judicial decision is required in order to address the non-test claims. It is properly said that claims involving only physical or sexual abuse are not difficult to deal with and do not really require a test case procedure. The other difficulty is that this proposal focuses too narrowly on only those two issues. Exclusion of Treaty



Page: 7

and aboriginal rights issues excludes all of the allegations of breach of fiduciary duty, wrongful confinement, wrongful or inadequate education and linguistic and cultural deprivation. Those causes of action would effectively be stayed until resolution of the abuse actions. Again, a significant delay would be involved. I concluded that this proposal is inappropriate for the same reasons as the proposal of the religious defendants. We need to find a means to move all of the issues forward for final determination.

#### THE PLAINTIFFS' PROPOSAL

[18] The last proposal I received was from a committee of the plaintiffs' counsel. They concur with the use of some sample or test cases going forward on an expedited basis provided that all issues raised by those claims are tried together. I agree that that is the only fair and reasonable way to deal with these claims. It will permit final resolution on all issues at the same time. Those decisions can then provide guidance to resolve or dispose of the non-test cases.

#### DIRECTIONS

[19] Accordingly, I direct that the plaintiffs will identify up to 30 individual plaintiffs (not actions) and the defendants will identify up to 20 individuals plaintiffs whose claims will be expedited. Each group will represent a cross-section of causes of actions, schools and time periods. Each of the identified defendant religious organizations will be represented in at least one case. Not all 50 sample cases will serve as test trials. At an appropriate time after Examinations for Discovery and with the assistance of counsel, I will select a smaller representative group which will proceed to trial.

Page: 2

[3] Practice Notes No. 7 of this Court deals with the case management of very long trials.

Paragraph 23 provides:

The purpose of a case management conference is to monitor the progress of the matter, to canvass settlement or other disposition of all or as many of the issues as possible, and to provide whatever directions as may be necessary or appropriate with respect to the disposition of the matter. Specifically, at any case management conference the case management judge, after hearing from the parties, may take action with respect to any matter which appears appropriate, including but not limited to:

- (d) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

[4] Further, paragraph 33 provides:

At any case management conference prior to the action being set down for trial any party may apply for an order that certain issues be tried separately and prior to the trial of others, where appropriate. For example, liability may be ordered tried separately from damages in an appropriate case. Where such an order is granted, the case management judge shall establish separate case timetables for each portion of the case to be tried separately. The provisions of this Practice Note will then apply to each separate case timetable.

[5] I conclude that these provisions, along with the Court's inherent jurisdiction to control its own processes, permit me to direct sample or test cases to proceed to trial on a reasonable basis.

[6] All of the parties from whom I have heard are in agreement that there is benefit to proceeding with a series of sample or test cases given the nature of this litigation. Of course, the parties could do it by agreement amongst themselves and simply proceed with several cases and not the others but there is agreement that the entire process should operate within case management. This is not the first time that a test case procedure has been used in this jurisdiction. See *Alberta v. AUPE* (1984) 53 A.R. 277 (Alta. C.A.). Counsel have also cited to

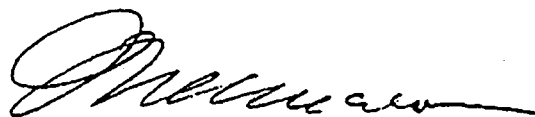
Page: 8

[20] I direct that the list of 30 individual plaintiffs identified by the plaintiffs, with a brief description of the criteria by which each plaintiff was chosen, be provided to me by May 15<sup>th</sup>, 2000. The 20 individuals plaintiffs identified by the defendants will be provided to me before June 1<sup>st</sup>, 2000. I will make the final decision as to the appropriateness of each. If the plaintiffs and the defendants cannot agree on their allotment, then they are to submit a longer list to me along with the rationale for each and I will reduce the list to the requisite number.

[21] We will determine, at a future case management conference, the issues of a schedule for the selection of corporate officers, document production and discoveries. We will also determine how to ensure that all counsel and parties have standing in the test cases as they proceed. Initially, quantum issues will be included for resolution in the test cases.

[22] The other cases will not be stayed at this time. They remain under case management and can proceed as time and resources permit but they will not likely go to trial before the sample cases. The results of the sample cases will have precedential value and I trust will promote settlement or disposition of the other cases.

HEARD in Lethbridge, Alberta on the 7<sup>th</sup> day of April, 2000  
DATED at Calgary, Alberta this 26<sup>th</sup> day of April, 2000



J.C.Q.B.A.

Page: 9

**APPEARANCES:****Counsel Representing Plaintiffs**

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Attention : Mr. F.G. Vaughn Marshall

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Att: Mr. Tom Stepper

Jane-Ann Summers

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Attention : Mr. Graham Neil

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Attention : Mr. Dan P. Carroll

First Street Law Office

Attention: Diana Goldie

Mr. A. R. Collins

May Jensen Gruber Shawa

Attention : Virginia M. May, Q.C.

**Counsel Representing Defendants**

Department of Justice - Canada

Attention: Mr. Larry Huculak

Ms. Linda Fleury

McCuaig Desrochers

Attention : Mr. Frans F. Slater

Chomicki Baril

Attention: Mr. Ray Baril

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Attention: Mr. Garth Dymond

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Attention: Mr. Fran Huck

Parlee McLaws

Attention: Mr. Michael MacDonald

Mr. Rupesh Joshi

Ahlstrom Wright Oliver &amp; Cooper

Attention: Donna Oliver

Davis &amp; Shanks

Attention : Mr. Noble Ernest Shanks

Rath &amp; Company

Attention: Mr. Jeffrey R.W. Rath

Donlevy &amp; Company

Attention: W.R. Donlevy

Emery, Jamieson

Attention: Phyllis A. Smith, Q.C.

Bishop &amp; McKenzie

Attention : Mr. J. Philip Warner

Mr. William Paul

McDougall, Ready

Attention: Mr. Aaron Fox

Re Residential Schools, 2003 ABQB 449

Date: 20030520  
Action No. 9901 15362

This is Exhibit "E" referred to in the Affidavit of Donald Bekourt IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL DISTRICT OF CALGARY

Sworn before me this 14 day of July A.D., 2006 IN THE MATTER OF CERTAIN CLAIMS ARISING FROM INDIAN RESIDENTIAL SCHOOLS;

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA AND IN THE MATTER OF CASE MANAGEMENT OF THE RESIDENTIAL SCHOOL CLAIMS  
**DEREK A. CRANNA**  
Barrister & Solicitor

---

REASONS FOR DECISION  
of the  
HONOURABLE MR. JUSTICE T.F. MCMAHON

---

**INTRODUCTION**

[1] This decision relates to all of the remaining Indian Residential School actions in Alberta which are under case management. At this time there are more than one thousand such actions involving more than three thousand claimants. For the purpose of assisting in the orderly resolution of the actions, 50 sample plaintiffs were selected whose claims represented a reasonable cross-section of all of the claims. The vast bulk of the thousands of documents would pertain to all plaintiffs. The causes of actions alleged are similar in all of the cases and include:

- wrongful confinement;
- breach of fiduciary duty;
- breach of non-delegable statutory duty;
- breach of treaty rights;
- deprivation of the necessities of life;
- intentional infliction of mental harm;
- negligence.

[2] Many but not all of the claims also raise allegations of physical and sexual assault. The 50 test cases were subject to specific deadlines throughout the litigation process and have now advanced to the point where a few must be selected to proceed to trial at an early date.

[3] The plaintiffs group and the defendants group each complied with my request to provide me with a short list of reasonably representative cases which would be the first to go to trial before a single trial judge. Those proposals have been received and I have reviewed each.

Page: 2

**DECISION**

[4] There are three plaintiffs that were selected by each of the plaintiffs group and defendants group and, accordingly, they will proceed to trial as soon as they are ready. They are:

Roland Rollinmud - Action No. 9901 19561  
Alexander William Houle - Action No. 9903 16672  
Theresa Larocque - Action No. 9903 03807


[5] I conclude that six claims in total are necessary for a reasonable cross-section to be obtained. The factors involved in making a selection include the school attended, the time frame, the defendants involved, the nature of the claims made. The following will be the three additional claims:

1. Martha Fox: who was selected by the Crown as representing a low end of physical assault. This claimant also attended a school different from the other claimants.
2. Betty Kusiak: this claimant was selected by the plaintiffs group and attended a school different from the other claimants. Her claims do not allege any sexual assault and only mild forms of physical assault, a category which was not otherwise well represented.
3. Donald Belcourt: also selected by the plaintiffs group. This claimant attended yet another school in a time frame earlier than the other selected claimants.

[6] These representative six claims will now be prepared for trial before a single trial judge. In my view it is not feasible to send more than six claims to trial together. The case is complex enough without adding to the numbers. Also, apart from the allegations of physical and sexual assault, which of course vary between all claimants, the balance of the issues listed above are repeated by all claimants. It is reasonable to expect, therefore, that judgment on those issues in six claims, representing different schools and different time periods, will be at least influential in expediting settlement of the other claims. This format permits all parties to focus resources and energy on a manageable number of claims.

HEARD on the 9<sup>th</sup> day of May, 2003.

DATED at Calgary, Alberta this 20<sup>th</sup> day of May, 2003.

  
J.C.Q.B.A.

Page: 3

**APPEARANCES****Counsel representing Plaintiffs****Ruston Marshall**

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Attention: Dan P. Carroll/P.J. Faulds

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A. R. Collins

**Dubuc Osland**

Attention: Sylvic M. Molgat/Shirley Mackey

**Biamonte Cairo & Shortreed**

Attention: R.M. Saccomani/Terry W. Antonello

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Attention: F.G. Vaughn Marshall

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**McCuaig Desrochers**

Attention: John J. Gill

**Chomicki Baril**

Attention: Ray Baril

**Clark Dymond McCaffery**

Attention: Garth Dymond

**Bennett Jones**

Attention: John Cordeau/George Vlavianos

**Lavery, de Billy**

Attention: Pierre L. Baribeau

**Other Counsel****Fraser Milner Casgrain LLP**

Attention: P. Daryl Wilson

**Les Meiklejohn****Merchant Law Group**

Attention: Michael Mantyka

**Rogers & Co.**

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**Ahlstrom Wright Oliver & Cooper**

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**Nickerson Roberts Holinski & Mercer**

Attention: Elaine Hancheruk

**Donlevy & Company**

Attention: W. Rod Donlevy/Michel Thibault

**Emery, Jamieson**

Attention: Phyllis A. Smith, Q.C.

**Bishop & McKenzie**

Attention: W. Benjamin Russell

**Mathieu Hryniuk**

Attention: William Paul

**Macleod Dixon**

Attention: Glen Poelman

**Alberta School Boards Association**

Attention: Yvon V. Préfontaine

01947

Action No: 9901 15362

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IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY

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IN THE MATTER OF CERTAIN CLAIMS  
ARISING FROM INDIAN RESIDENTIAL SCHOOLS;  
AND IN THE MATTER OF CASE MANAGEMENT  
OF THE RESIDENTIAL SCHOOL CLAIMS

---

REASONS OF DECISION  
of the  
HONOURABLE MR. JUSTICE T.F. MCMAHON

---





**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CHARLES BAXTER SR., ELIJAH BAXTER,  
LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor  
of the estate of Agnes Mary Fontaine, deceased, JAMES FONTAINE in his personal  
capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine,  
deceased, FRED KELLY, VINCENT BRADLEY FONTAINE, NATIONAL INDIAN  
BROTHERHOOD also known as ASSEMBLY OF FIRST NATIONS, NORMAN  
PAUCHEY, ALVIN BARNEY SAULTEAUX, EARL KENNETH COTE, KEITH  
DIETER, ALVIN GERALD STRAIGHTNOSE, KENNETH SPARVIER, DENNIS  
SMOKEYDAY, RHONDA BUFFALO, CLIFFORD HOUSE, JIM CHEWANISH, SIMON  
SCPIO, MARIE GAGNON, CORNELIUS McCOMBER, EDWARD TAPIATIC,  
ELIZABETH SCPIO-KOOKASH, HELEN WINDERMAN, ANN DENE, ERNESTINE  
CAIBAIOSAI-GIDMARK, JOHN BOSUM, FLORA NORTHWEST, ADRIAN  
YELLOWKNEE, MICHAEL CARPAN, MICHAEL PETER ABRAHAM, JOBIE  
ABRAHAM, CHARLOTTE ABRAHAM, MINNIE ABRAHAM, JOSCELYN  
ABRAHAM, CHRISTINE SEMPLE, JAME McCALLUM, STANLEY THOMAS  
NEPETAYPO, PEGGY GOOD, CAMBLE QUATELL, MICHELLINE AMMAQ,  
BLANDINA TULUGARJUK, ROSEMARIE KUPTANA, DONALD BELCOURT,  
THERESA LAROCQUE and ELIZABETH KUSIAK**

Plaintiffs

- and -

**THE ATTORNEY GENERAL OF CANADA, THE GENERAL SYNOD OF THE  
ANGLICAN CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE  
ANGLICAN CHURCH OF CANADA, THE SYNOD OF THE DIOCESE OF ALGOMA,  
THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF  
BRANDON, THE SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD  
OF THE DIOCESE OF CALGARY, THE DIOCESE OF THE SYNOD OF CARIBOO,  
THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE SYNOD OF  
THE DIOCESE OF KEEWATIN, THE DIOCESE OF MOOSONEE, THE SYNOD OF  
THE DIOCESE OF WESTMINSTER, THE SYNOD OF THE DIOCESE OF  
QU'APPELLE, THE DIOCESE OF SASKATCHEWAN, THE SYNOD OF THE  
DIOCESE OF YUKON, THE COMPANY FOR THE PROPAGATION OF THE GOSPEL  
IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE  
PRESBYTERIAN CHURCH IN CANADA, THE TRUSTEE BOARD OF THE  
PRESBYTERIAN CHURCH IN CANADA, THE FOREIGN MISSION OF THE  
PRESBYTERIAN CHURCH IN CANADA, BOARD OF HOME MISSIONS AND  
SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN CANADA, THE  
WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN  
CANADA, THE UNITED CHURCH IN CANADA, THE BOARD OF THE HOME**

**MARIE and THE DAUGHTERS OF THE IMMACULATE HEART OF MARY),  
MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (also known as  
MISSIONARY OBLATES OF THE SACRED HEARTS AND MARY IMMACULATE or  
LES MISSIONAIRES OBLATS DE SAINT-BONIFACE), LES SOEURS DE LA  
CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (also known as SISTERS OF  
CHARITY OF OTTAWA – GREY NUNS OF THE CROSS), SISTERS OF THE HOLY  
NAMES OF JESUS AND MARY (also known as THE RELIGIOUS ORDERS OF JESUS  
AND MARY and LES SOEURS DE JESUS-MARIE), THE SISTERS OF THE CHARITY  
OF ST. VINCENT DE PAUL OF HALIFAX (also known as THE SISTERS OF CHARITY  
OF HALIFAX), LES SOEURS DE NOTRE DAME AUXILIATRICE, LES SOEURS DE  
ST. FRANCOIS D'ASSISE, SISTERS OF THE PRESENTATION OF MARY (SOEURS  
DE LA PRESENTATION DE MARIE), THE BENEDICTINE SISTERS, INSTITUT DES  
SOEURS DU BON CONSEIL, IMPACT NORTH MINISTRIES and THE BAPTIST  
CHURCH IN CANADA**

Defendants

AND IN THE MATTER OF:

1997

S.H. No. 138442

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

**NORA M. BERNARD, LOTTIE MARSHALL, ALBERT BERNARD,  
MARLENE THOMAS, RODERICK W. GOULD and KATHERINE  
SORBEY, Coordinators of the ASSOCIATION FOR THE SURVIVORS OF  
THE SHUBENACADIE INDIAN RESIDENTIAL SCHOOL and MARY  
AGNES PAUL (on behalf of themselves and other former residents of the  
Shubenacadie Indian Residential School)**

**PLAINTIFFS**

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA, represented by the  
Minister of Indian Affairs and Northern Development and THE ROMAN  
CATHOLIC DIOCESE OF HALIFAX**

**DEFENDANTS**

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF NORA MADELINE BERNARD.**

**(Settlement Approval)**

I, **NORA MADELINE BERNARD**, of the Millbrook First Nation Reserve, in the Province of Nova Scotia, **MAKE OATH AND SAY:**

1. I am one of the representative plaintiffs in this proceeding. I bring this action on my own behalf and on behalf of all Survivor Class Members (the "Survivor Class" or "Survivor Class Members"), as described and defined in the Master Statement of Claim (the "Master Claim").
2. I am Mi'kmaq and a Status Indian.
3. I was born on September 22, 1935 at Truro, in the Province of Nova Scotia.
4. I lived with my mother and brothers and sisters on the Millbrook Reserve and attended school on the Reserve until I was approximately 9 years old when I was taken to the Shubenacadie Indian Residential School.
5. I am the Coordinator of The Association for the Survivors of the Shubenacadie Indian Residential School (ASSIRS). ASSIRS was formed in order to provide support and to seek compensation for former students of the Shubenacadie Indian Residential School and their families.
6. In 1995, I retained John McKiggan of the law firm Arnold Pizzo McKiggan to commence a Representative claim against Her Majesty the Queen in Right of Canada ("Canada") and the Roman Catholic Diocese of Halifax in order to obtain compensation for the members ASSIRS and their families. I had talked to many lawyers at many law firms and none of

them believed in the merits of our claim or were prepared to accept our claim unless they were paid by the hour.

7. Throughout this litigation I have been actively involved as a representative plaintiff and as the coordinator of ASSIRS. John McKiggan has made efforts to keep me apprised of the progress of the litigation, and I have instructed John McKiggan throughout. I have also reviewed the pleadings and other materials on file herein.
8. I had input with respect to the settlement objectives contained in the agreements between the plaintiffs and the defendants (the "Settlement"). If approved by the court, the Settlement will resolve all outstanding litigation between the parties.
9. I have attended various meetings sponsored by Canada seeking input from survivors on issues concerning Residential Schools.
10. I have met regularly with John McKiggan to discuss this matter and to review and discuss the provisions of the Settlement. I have met with the Board of Directors of ASSIRS to discuss and take instructions from them regarding the settlement. I have also spoken with a number of ASSIRS members regarding the Settlement.
11. By virtue of my attendance at residential school, my experiences while there and my involvement with the Survivor Class as set out above, I have knowledge of the matters deposed to below.

**My experiences at the Shubenacadie Indian Residential School**

12. I was punished if I was caught speaking Mi'kmaq, the only language I understood. I was essentially unable to communicate with anyone, except in secret.

13. I was separated from my brothers Albert and Lemmie because the children at the school were housed in separate dormitories and we were not allowed to talk to or play with children of the opposite sex.
14. I was physically punished for what seemed like arbitrary and inconsequential reasons. I have been slapped and strapped, pushed to the floor and punched in the face with a closed fist. I had to watch as my younger sisters were punished and I was humiliated and shamed at not being able to protect them.
15. I was sexually abused by one of the other students at the school.
16. We were humiliated in other ways. We were required to line up and show the sisters our underwear to ensure we had not soiled them. If we wet the bed, we were required to wrap the wet sheets around our head and stand in front to of the other children.
17. When children ran away they would be caught and brought back to the school. All the children would be forced to line up and watch the runaway's get beaten and have their heads shaved.
18. I was humiliated and made to feel ashamed of my identity as an Aboriginal person. I was called a savage and other racial slurs. The priests and nuns at the residential school made me feel worthless and alone. I had no one to talk to about these feelings. I lost an important connection to my parents. I also became disconnected to the ways of life of my family and the spiritual aspects of family life important to them.

**Loss of Language, Culture Customs and Traditions**

19. Aboriginal language, culture, customs and traditions are generally passed from generation to generation by listening and speaking and through active participation in events and ceremonies within families and communities.
20. Aboriginal languages, culture, customs and traditions define our Aboriginal identity and I believe they are vital to the well-being of all Aboriginal People, myself included.
21. In my case, I learned what I know of our language, culture, customs and traditions from my family and from mostly elders in my community.
22. During the time I was at residential school I was prevented from practicing and learning our language, culture, customs and traditions and I was taught to be ashamed of my language, culture, customs and traditions. I was also punished for even speaking my Aboriginal language. As a result, I suffered a significant loss of tradition, customs and culture. I was forced to celebrate Christian holidays and was steered away from the traditional ceremonies and events important to my own family.
23. I have spoken with hundreds of residential school survivors and hundreds of family members of residential school survivors and I believe that the residential school system prevented us from sustaining, practicing and transmitting our families' and communities' languages, culture, customs and traditions.

**Recognizing the impact of the residential school experience**

24. It was not until 1995 that I really reflected on the abuse I suffered at residential schools. I had tried to carry on with my day to day life after I left the Shubenacadie Indian Residential School.

MISSIONS OF THE UNITED CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA, THE METHODIST CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS, THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, THE ROMAN CATHOLIC BISHOP OF VICTORIA, THE ROMAN CATHOLIC BISHOP OF NELSON, THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD-McLENNAN, THE CATHOLIC ARCHDIOCESE OF EDMONTON, LA DIOCESE DE SAINT-PAUL, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF MacKENZIE, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, THE ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT-BONIFACE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF SAULT STE. MARIE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, THE MISSIONARY OBLATES OF MARY IMMACULATE-GRANDIN PROVINCE, LES PERES MONTFORTAINS (also known as THE COMPANY OF MARY), JESUIT FATHERS OF UPPER CANADA, THE MISSIONARY OBLATES OF MARY IMMACULATE-PROVINCE OF ST. JOSEPH, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (also known as LES REVERENDS PERES OBLATS DE L'IMMACULEE CONCEPTION DE MARIE), THE OBLATS OF MARY IMMACULATE, ST. PETER'S PROVINCE, LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES TERRITOIRES DU NORD OUEST, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (PROVINCE DU CANADA-EST), THE SISTERS OF SAINT ANNE, THE SISTERS OF INSTRUCTION OF THE CHILD JESUS (also known as THE SISTERS OF THE CHILD JESUS), THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERT (also known as THE SISTERS OF CHARITY (GREY NUNS) OF ST, ALBERTA), THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES, THE SISTERS OF CHARITY (GREY NUNS) ON MONTREAL (also known as LES SOEURS DE LA CHARITÉ (SOEURS GRISES) DE L'HÔPITAL GÉNÉRAL DE MONTREAL), THE GREY SISTERS NICOLET, THE GREY NUNS OF MANITOBA INC. (also known as LES SOEURS GRISES DU MANITOBA INC.), THE SISTERS OF ST. JOSEPH OF SAULT STE. MARIE, LES SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE, LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE NICOLET AND THE SISTERS OF ASSUMPTION, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE DE L'ALBERTA, THE DAUGHTERS OF THE HEART OF MARY (also known as LA SOCIETE DES FILLES DE COEUR DE

25. In September of 1995 I organized a meeting of former Residential School Survivors at my home to help support one another. Out of that meeting eventually grew the group that became ASSIRS. For the next ten years I dedicated all my time and efforts to helping other Survivors of the Residential School system to heal and to teach others about what went on in the Schools.
26. I know that many of the children who attended at residential schools with me and others who attended other residential schools at other times are simply unable to speak on their own behalf. Many survivors are vulnerable, embarrassed and afraid to explain what happened to them. Many are suspicious of people in authority (such as lawyers and the justice system) and have lost faith that they can be helped.
27. Most survivors are poor. Their poverty is often directly caused by their experiences at the schools. They cannot afford to hire a lawyer and without our representative Action and the National Class Action they simply not be able to sue.
28. Most survivors I speak with strongly believe that if they have to start their own claims they will suffer even more emotional harm. I believe that the fact that I am prepared to act as representative plaintiff and help advance this claim on their behalf will be a great help to many, and the only realistic hope for justice in their lifetime.
29. I was physically and sexually abused at residential school. I was deprived of my dignity and subjected to humiliation. I was removed from my family and confined against my will and against the will of my parents. <sup>NS</sup> My childhood was stolen from me. I was never properly educated or cared for. I was prevented from honouring my customs and tradition and from even speaking my own language.



30. I was told that I was inferior and that I needed to abandon my tradition and customs. As a result I suffered injury, harm and damage. I knew that hundreds of others did as well.

**I am prepared to act as representative plaintiff of the Survivor Class**

31. I am prepared to act as representative plaintiff of the Survivor Class.

32. I will fairly and adequately represent the interests of the Survivor Class if the court appoints me as representative plaintiff. I appreciate that my role is to protect the interests of the Survivor Class.

33. I believe that Canada has breached its duty to me and to the Survivor Class through its administration of the residential schools system and that, as a result, I, and the Survivor Class, are entitled to compensation.

34. I understand that the major steps in the class action can be summarized as follows:

- (a) the action was started by filing the statement of claim. That claim has been amended in a fresh as amended statement of claim. Further amendments have been made in the Master Claim;
- (b) I am now asking the court to certify the action as a class proceeding by this motion for certification;
- (c) if the court certifies the action as a class proceeding, the certification notice will be sent to Survivor Class Members who will be given the opportunity to opt out of the class action if they wish within a fixed period;
- (d) at the same time, the court will be asked to approve the proposed settlement;
- (e) Survivor Class Members will have the right to object to the settlement;
- (f) if the settlement is approved by the court, Survivor Class Members who do not opt out will receive the benefits set out in the settlement agreement;

- (g) in the event the Survivor Class Members wish to make an additional claim, the settlement gives Survivor Class Members the opportunity to participate in further hearings if their involvement is necessary to prove or assess damages;
- (h) appeals of decisions may be taken at various stages of the settlement; and
- (i) the court will supervise the execution and administration of the settlement.

35. I also understand that, in agreeing to seek and accept an appointment as a representative plaintiff, it is my responsibility, among other things, to be familiar with this action, and to:

- a) to review the Master Claim and any further amendments;
- b) to assist in the preparation and execution of an affidavit such as this one in support of the motion for certification and settlement approval;
- c) to attend, if necessary, with Class Counsel for cross examination on my affidavit;
- d) to attend with Class Counsel at the settlement approval hearing and give evidence regarding the case, if necessary;
- e) to receive briefings from and to instruct Class Counsel;
- f) to seek the court's approval of agreements respecting Class Counsel's fees and disbursements; and
- g) to communicate with Survivor Class Members throughout and through our counsel, as required.

36. To date, the following are some of the steps I have taken to fairly and adequately represent the Survivor Class Members:

- a) I retained and instructed John McKiggan to commence a Representative Action;
- b) I negotiated and executed an agreement respecting fees and disbursements for the Representative Action;
- c) discussed with John McKiggan the nature of this class action, including the risks and costs of same;
- d) assisted, as necessary, in drafting the statement of claim;

- e) obtained documents and other information at the request of John McKiggan;
- f) met with John McKiggan on various occasions;
- g) held meetings with Survivors (both individually and as groups) to obtain their input and instructions;
- h) coordinated meetings for John McKiggan to meet with Survivors to discuss the progress of the claim;
- i) approved the participation of John McKiggan as co counsel in this class proceeding; and
- j) instructed John McKiggan, as necessary.

36. I have reviewed a copy of the original Litigation Plan (the "Plan") that was presented to court in this proceeding. I do not have any legal expertise to permit me to evaluate the legal aspects of the Plan, but I accept this Plan has been formulated by experienced Class Counsel. I understand that the court will be asked to adopt it to the extent necessary.

### **Preferable Procedure**

37. I believe that a class action is the preferable procedure to resolve the Common Issues.

38. The class action will provide access to justice for myself and other Survivor Class Members. I am aware that many Aboriginal Persons live in remote communities, are not in a position to retain counsel due to geographic, logistic and financial reasons, suffer from psychological and emotional problems often as a result of their residential school experiences, which included various forms of institutional child abuse, and suffer from poverty and often from substance abuse. I believe that thousands of residential school survivors and their families would not be able to advance their legal rights without this class action.

**No Conflict of Interest**

39. I do not believe that I have any interest that is in conflict with the interest of any other Survivor Class Members.

40. I believe that I can fairly and adequately represent the interest of the Survivor Class and I am committed to fulfilling my responsibilities as a representative plaintiff.

**The proposed settlement**

41. I have reviewed the proposed settlement with John McKiggan and I believe that the settlement is fair, reasonable and in the best interests of the Survivor Class Members.

42. If this action had not been settled, there would have been a contested certification motion. Even if the plaintiffs had been successful, I believe that the defendants would have sought leave to appeal. If leave had been granted, further appeals were possible.

43. If there was a trial of the Common Issues on a contested basis, the litigation process to determine liability would have been protracted, and no Survivor Class Member would have been paid, if at all, until the litigation process ended.

44. Given the complexity of this case, and its importance, appeals from the decision at the Common Issues trial would have been inevitable. If the settlement is not approved, it will be at least five years before those issues are finally determined and the Survivor Class Members provided with an opportunity to obtain compensation, if successful.

45. If the settlement is approved, compensation will be immediately available for all Survivor Class Members.

46. I have reviewed the claims process in the claims administration process and find it to be reasonable and fair, particularly in light of the fact that there are provisions for the court to exercise continuing jurisdiction over the claims administration process to ensure that the administration and payment of claims is effective and fair.

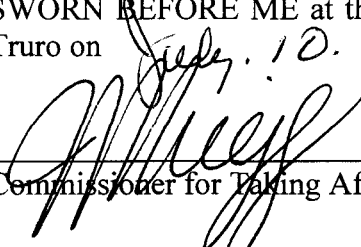
47. My objectives in this litigation have been satisfied by this proposed settlement which combines effective court supervision of the claims administration process, and the provision of a full and complete measure of damages to Survivor Class Members.

48. I am satisfied that the settlement is fair, reasonable and in the best interests of the Survivor Class.

49. I respectfully request the court to approve the settlement. The proposed settlement allows Survivor Class Members to obtain compensation fairly and efficiently.

50. I swear this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME at the Town of Truro on July 10, 2006.

  
Commissioner for Taking Affidavits

**JOHN A. MCKIGGAN**  
A Barrister of the Supreme  
Court of Nova Scotia

  
NORA MADELINE BERNARD

Affidavit of Brian O'Reilly  
Sworn July 27, 2006

NO. L051875  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

CAMBLE QUATELL, PEGGY GOOD, ADRIAN YELLOWKNEE, KENNETH SPARVIER, DENNIS SMOKEYDAY, RHONDA BUFFALO, MARIE GAGNON, SIMON SCIPIO, as representatives and claimants on behalf of themselves and all other individuals who attended Residential Schools in Canada, including but not limited to all Residential Schools' clients of the proposed Class Counsel, Merchant Law Group, as listed in part in Schedule 1 to this Claim, and the John and Jane Does named herein, and such further John and Jane Does and other individuals belonging to the proposed class, including JOHN DOE I, JANE DOE I, JOHN DOE II, JANE DOE II, JOHN DOE III, JANE DOE III, JOHN DOE IV, JANE DOE IV, JOHN DOE V, JANE DOE V, JOHN DOE VI, JANE DOE VI, JOHN DOE VII, JANE DOE VII, JOHN DOE VIII, JANE DOE VIII, JOHN DOE IX, JANE DOE IX, JOHN DOE X, JANE DOE X, JOHN DOE XI, JANE DOE XI, JOHN DOE XII, JANE DOE XII, JOHN DOE XIII, JANE DOE XIII, being a Jane and John Doe for each Canadian province and territory, and other John and Jane Does, Individuals, Estates, Next-of-Kin and Entities to be added

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

Proceeding under the *Class Proceedings Act*, R.S.B.C 1996, c. 50

**AFFIDAVIT OF BRIAN O'REILLY**

I, Brian O'Reilly, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am an associate in the firm of Peter Grant & Associates (formerly known as Hutchins Grant & Associates) and as such have personal knowledge of the matters hereafter set forth, except

where stated to be on information and belief and where so stated I verily believe them to be true.

2. I have been an associate in the firm of Peter Grant & Associates ["PGA"] since 1999 and have worked extensively with respect to a number of Indian residential school cases, which were the seminal cases, not only in British Columbia but also in Canada.
3. Since August of 2005, I attended all of the negotiations leading up to the Agreement-in-Principle on November 20, 2005. I also participated in meetings in which several Independent Counsel participated to review the draft final Settlement Agreement in Vancouver in January, 2006. I also attended a meeting to which all counsel were invited in February 2006 to review the Settlement Agreement. Due to my involvement in all elements of the negotiation of the final settlement agreement, I signed both the Agreement-in-Principle and the final Settlement Agreement on behalf of our law firm.

**I. The History of Litigation in British Columbia in Residential School Claims**

4. This affidavit shall set out the history and background of cases that have been before the Courts and our experience with cases of Indian residential school litigation prior to the present proposed Indian Residential School Settlement Agreement.
5. The history set out in this affidavit demonstrates that notwithstanding cooperation by the British Columbia Supreme Court in addressing matters through settlement conferences, litigation for individual survivors is very time consuming and takes several years. Even in cases in which there are judicial settlement conferences, survivors have to go through grueling cross-examinations by the defendants, in which all parts of their lives are scrutinized and dissected.

**II. First Filed Court Action: *Aleck v. Clarke, Canada and the Anglican Church of Canada***

6. In 1988, Terry Aleck and six other male plaintiffs commenced Court actions in the British Columbia Supreme Court and the Federal Court of Canada against Canada and the General Synod of the Anglican Church of Canada and other defendants for sexual abuse which they suffered while they were student residents at St. George's Indian Residential School ["St. George's"] in Lytton. They sought damages for injuries which they suffered as a result of being sexually assaulted on numerous occasions and physically abused by a dormitory supervisor and a principal of St. George's while in the care of the defendant Canada and the Anglican Church. This was the first civil lawsuit brought by Indian residential school survivors in British Columbia and, to my knowledge, in Canada.
7. Terry Aleck and the other plaintiffs were the first of the many thousands of survivors of approximately 130 Indian residential schools to come forward and make allegations of serious sexual and physical abuse. Our law firm, then known as Hutchins, Soroka & Grant ["HSG"], took over conduct of Mr. Aleck's case in 1997.
8. When our law firm took over conduct of the *Aleck* proceedings, another survivor of sexual and physical abuse at St. George's approached us and we commenced a new action for this survivor.
9. Previous counsel had dropped their claim against the Anglican defendants by way of a consent order. Our firm addressed the procedural issues of an action in the Federal Court of Canada and in the British Columbia Supreme Court ["BCSC"] at the same time by discontinuing the Federal Court action. Canada brought in the General Synod of the Anglican Church and the Anglican Diocese of the Cariboo as third parties. In the new action we commenced we joined these Anglican entities as defendants.
10. The case came on for trial in March 2000, liability having been settled by a written



Agreement based on the decision of Justice Dillon in *F.S.M. v. Clarke et al.* The hearing on the remaining issues of damages suffered by the eight plaintiffs proceeded before Mr. Justice Williamson in 2000 and 2001. The trial on damages took 60 days over the spring and fall of 2000 through to February 2001. In October 2000, four of the eight plaintiffs settled out of Court. Justice Williamson then rendered judgment with respect to the four remaining plaintiffs. In his judgment, Justice Williamson awarded general, aggravated and punitive damages. No award was made for loss of income or loss of opportunity.

11. Justice Williamson awarded non-pecuniary damages commensurate with the highest level of awards rendered by the trial judge in the *Blackwater* case. Unlike Justice Brenner in *Blackwater*, Justice Williamson did not discount the award with respect to damages as a result of other tortious and non-tortious conduct suffered by the plaintiffs while in the care Canada and the Anglican Church. He found that it was not possible to sever off the damages suffered as a result of the sexual abuse from the simultaneous physical and other abuse suffered by these plaintiffs.
12. Justice Williamson found that the sexual assaults were the ultimate cause of the plaintiffs' alcoholism and serious psychological disorders, but he did not make a determination that they had suffered any loss of income or loss of opportunity.
13. Both Canada and the Anglican defendants appealed the judgment. The plaintiffs cross-appealed to the British Columbia Court of Appeal ["BCCA"] with respect to the finding of no loss of income or loss of opportunity.
14. The defendants appealed his finding that there should not be a deduction for damages as a result of non-sexual abuse suffered by the plaintiffs at the School.
15. This case was heard by the BCCA on January 27 and 28, 2003. The BCCA rendered its judgment in the *Aleck* case on December 5, 2003. The Court remitted the matter back for a

new hearing with respect to a determination of loss of opportunity.

16. The Court also remitted the matter back to the trial judge to reconsider the general and aggravated damages by deducting damages as a result of non-sexual abuse.
17. Subsequent to the BCCA decision, the plaintiffs and defendants settled compensation for loss of opportunity with the assistance of a settlement conference judge provided by the BCSC. I attended as counsel for all of the plaintiffs, not only at trial but also at the settlement conference. Mr. Terry Aleck and three of the other plaintiffs finally received closure through the Court process in October 2004, 16 years after Mr. Aleck commenced his action.

### **III. The Mowatt Action**

18. In 1993 our law firm filed the second claim which was brought for a survivor of an Indian residential school in British Columbia. This was the claim of Mr. Floyd Mowatt, who had attended St. George's in the 1960's. He had been repeatedly sexually assaulted by the dormitory supervisor who was the same perpetrator as in *Aleck*.
19. In September 1997 we faced a Rule 18A summary trial in the British Columbia Supreme Court, which was brought by the Anglican defendants. The Anglican defendants challenged their liability for any wrong doing that happened at St. George's.
20. At this time, the Anglican Church, the United Church of Canada and the Catholic Church, who all were being sued with respect to the operation of residential schools, were vigorously defending any liability on the basis that they had no decision-making roles in the schools and, in effect, had no responsibility for what went on in the residential schools. In this context, the Rule 18A summary trial held before Madame Justice Dillon of the British Columbia Supreme Court was a critical case.

21. In the *Mowatt* Rule 18A summary trial, the Anglican Church sought a summary dismissal on the basis they had no role in the operation of the school beyond providing pastoral care. After a three day hearing during which thousands of documents were put in evidence, Justice Dillon dismissed the Anglican application saying she was unable to resolve the issue of Anglican liability under the summary trial process. However, Justice Dillon made it clear in her judgment that the Anglican involvement in St. George's went far beyond the provision of "pastoral care". She held that the principal/administrator "wore two hats"; he was an Anglican clergyman appointed by the Cariboo Diocese but he was simultaneously a federal government employee, nominated by the Anglican Church, and appointed by Canada to administer the School and that his duties included hiring all the domestic staff. In her judgment, she ruled that his two functions "were so intermeshed that the principal's activities could not be divided moment for moment."
22. After the dismissal of the Rule 18A application, in which Justice Dillon left it open that she would consider their liability after a full trial, Canada, the Anglican defendants and the plaintiff came to an agreement on damages. It was agreed that the case would proceed to trial solely on the issue of liability.
23. Canada strenuously argued that the Anglican defendants were partially responsible for the operation of the school. The trial of the case on liability proceeded over 21 days.
24. Justice Dillon found the Anglican Church and Canada vicariously liable for the assaults. She found both institutional defendants liable in negligence and the Church was also found liable for breach of fiduciary duty. Canada was found to have had a fiduciary duty to Mr. Mowatt but was not found in breach of that duty. Justice Dillon's finding that Canada was not in breach of its fiduciary duty was based on the finding of fact that the Church authorities were aware through the principal and other persons who reported to the Bishop of the allegations of sexual abuse by Clarke and deliberately or otherwise did not inform Canada.

25. However, the Court also held that the principal of St. George's had two employers - the Anglican Church and Canada, and that whatever knowledge he had would have to be presumed to be his employers' knowledge - what the principal of St. George's knew Canada and the Church knew. This apparent contradiction has never been resolved as the appeal hearing was adjourned shortly before it was to take place.
26. Both Canada and the Anglican defendants appealed this judgment. The appeal was abandoned in December 2002, shortly before it was scheduled to occur in January 2003.

#### IV. *The Blackwater Case*

27. In 1995, Peter Grant of our law firm was approached by William Blackwater, a Gitksan person who had suffered sexual and physical abuse while attending Alberni Indian Residential School ["AIRS"]. He was one of several victims of Arthur Henry Plint, a pedophile who sexually abused many boys at AIRS.
28. In 1996, our law firm commenced a Court action on behalf of Mr. Blackwater and 27 other plaintiffs. By the time of trial, Mr. David Paterson, who had been a partner in the firm, had withdrawn and seven of the plaintiffs were represented by Mr. Paterson.
29. Our firm represented 22 of the plaintiffs.
30. By agreeing to have the trial proceed in two phases, we were able to commence the first phase of the trial in April of 1998. The first phase was to determine whether Canada and the United Church were vicariously liable for the sexual assaults committed by employees at AIRS against the plaintiffs. Almost all of the plaintiffs testified in the first phase of the trial, describing the horrific sexual and physical abuse that they suffered while at the school, including punishments such as the "gauntlet" in which students were forced to strip down and run between the legs of other students who were required to hit them with a book or

ruler, in addition to serious sexual assaults.

31. The hearing on the first phase of the trial took 18 days and was held in Nanaimo and Prince Rupert, British Columbia.
32. Canada's argument in the first phase was that the United Church operated and controlled the School together with Canada and should be found vicariously liable for the sexual assaults that occurred at the School. The United Church argued that it was Canada who controlled all of the School operations including the hiring of staff. According to the United Church, their only role was to provide religious instruction to the students and to act as a conduit for federal funds used to finance the School.
33. In his June 4, 1998 judgment, Justice Brenner (as he then was) found both Canada and the United Church vicariously liable for the sexual assaults of the plaintiffs.
34. This was a landmark decision. Thousands of historical documents and hundreds of hours of vive voce evidence made up the body of evidence that had to be considered by Justice Brenner. The United Church was represented by senior counsel from a large, well-established Vancouver firm and their considerable resources and talents were fully employed ensuring that no legal stone was left unturned to defeat the plaintiffs' claims against the Church.
35. In *Blackwater* and *Mowatt*, the arguments made by Canada and the Churches were that these were exceptional incidents of abuse in an otherwise well-run organization. By the time of the judgment of Justice Brenner in June 1998, hundreds of other Indian residential school claimants had come forward with similar claims to those made in *Blackwater*.
36. It was apparent that thousands more Indian residential school claims would likely be filed across the country over the next several years. The decisions in *Blackwater* and *Mowatt* put

Canada and the Church defendants on notice that they could be found vicariously liable for the tortious wrongs suffered by thousands of Indian residential school survivors.

37. The plaintiffs in *Blackwater* hoped that there would now be a change towards the settlement of the claims for wrongful sexual and physical abuse while they were attending Indian residential schools. It was apparent that if all of the cases proceeded to Court it would take decades for the Court system to address each and every individual claim.
38. In September 1998, the parties agreed to a five day settlement conference in the *Blackwater* case, with a goal of settling the claims. At this point there had not been a Court award for damages for childhood sexual abuse arising out of the residential school cases.
39. At the end of the five days, only two of the 28 plaintiffs settled their cases. However, in the course of the succeeding months, all except seven cases were settled between the plaintiffs and the defendants.
40. By the time the *Blackwater* trial resumed in October 1998 to consider the claims of direct liability, breach of fiduciary and statutory duties and damages, the strategies of both the Church and Canada had changed. During the earlier hearings, both institutional defendants had not only denied any responsibility for what happened in the School, they also tried to create a picture of AIRS as at worst a benign institution where isolated incidents of abuse may have occurred and if they did happen they were criminal acts performed far outside the boundaries of the perpetrators' employment duties. They also tried to establish that really these schools were, particularly in their later years, refuges for children from broken homes that gave them security and an education they would not have otherwise received.
41. In *Blackwater*, after the plaintiffs' evidence regarding the extensive sexual, physical and psychological abuse they suffered, along with the inadequate food and resulting hunger was heard by the Court in the first phase of the trial, Canada and the Church defendants in the

- following phases of the trial appeared to acknowledge that there were horrific conditions.
42. The defendants' position appeared paradoxical. They emphasized the physical abuse, the lack of care, the hunger and isolation and the forced removal from family in the second and third phases of the trial. As became apparent, the greater emphasis they placed on this was to ultimately argue that the plaintiffs would have suffered severe and long-lasting psychological damage, even if they were not sexually abused. Because limitation periods applied with respect to all of the other abuse except the sexual abuse, the defendants argued that the Court had to reduce the damages for each and every plaintiff based on the fact that they would have been severely traumatized as a result of the non-sexual abuse at AIRS and isolation from home and family.
  43. In cross-examination, Canada and the Church lawyers emphasized the name calling, the racist epithets, hunger, isolation from family and psychological abuse, as well as the physical beatings suffered by many of the plaintiffs. The plaintiffs readily acknowledged the non-sexual abuse to which they were subjected.
  44. The plaintiffs argued that Canada and the Church knew or ought to have known that the assaults had occurred and that they were therefore liable in negligence for the injuries caused by those assaults. The plaintiffs also argued that defendants were in a fiduciary relationship with the plaintiffs and that they had breached that duty.
  45. In the third and final phase of the trial, evidence was led as to the damages suffered by each of the plaintiffs. The plaintiffs argued that the physical abuse, the psychological abuse and the forced loss of language and culture led to serious psychological dysfunctions, alcohol and substance abuse and lack of ability to work and that these damages should be the responsibility of the two institutional defendants.
  46. In the *Blackwater* case, the plaintiffs led evidence and argued that the damages suffered as a

result of non-sexual abuse at the schools could not be severed from the damages suffered as a result of the sexual abuse which was occurring at the same approximate time.

47. The trial on the second and third phases in the *Blackwater* case took 92 days over a period between August 1998 and December 2000. There were several adjournments, many of which were at the request of the defendants.
48. Justice Brenner did not rule separately on direct liability, but waited until all the evidence was in and arguments were made with respect to both direct liability and damages.
49. In his July 10, 2001 judgment, Chief Justice Brenner found there was insufficient evidence to find direct or indirect knowledge and that Canada and the United Church were not negligent.
50. The Chief Justice accepted that several plaintiffs or the witnesses had gone to the principal or other employees complaining of abuse. However, Chief Justice Brenner held that the evidence was not clear as to what exactly the plaintiffs, as children, reported to the principal. Because the principal had died before cross-examination on this evidence, Chief Justice Brenner could not find that there was actual and direct knowledge of the assaults on the part of either Canada or the Church.
51. Chief Justice Brenner relied on evidence of defence witnesses who were in the education system in Alberni but not at AIRS that sexual abuse was not discussed at the time.
52. Many of the plaintiffs only disclosed the sexual abuse as adults when they either made a criminal complaint against the convicted perpetrator in the early 1990s (30 years after the assaults) or when they entered the civil litigation process. Many had used alcohol or other drugs to self-medicate various trauma symptoms they had suffered since the assaults. Their lives had commonly been characterized by abusive relationships, serious lack of parenting skills, alienation from their language and culture, and extreme poverty (little work and little



income). To have found the courage to come forward and openly discuss what had happened to them at the school and to be vigorously cross examined on every fact of their lives was for some a process of retraumatization.

53. With respect to the damages, the Chief Justice made a determination that he was required by law to reduce general and aggravated damages by finding that the other tortious and non-tortious behaviour suffered by the plaintiffs while in the care of the defendants was time barred and, therefore, non-compensable. He found that, overall, six of the seven plaintiffs whose cases were still before him would have had life-long negative consequences, even if they had not been sexually assaulted. In the seventh case, the claim of M.L.J., the Chief Justice dismissed her case.
54. In this regard, the Chief Justice in the *Blackwater* case took a different position from that of Justice Williamson of the British Columbia Supreme Court in the *Aleck* case. In that case, Justice Williamson, faced with the same issue, concluded that it was not possible to sever off the non-sexual abuse from the sexual abuse which happened at St. George's Indian Residential School.
55. In the *Blackwater* judgment, the Chief Justice did not award any damages for loss of opportunity or loss of income. Once again, one of the key factors for the Court was that he was unable to compensate for the non-sexual abuse suffered by the plaintiffs and that he held that even without the sexual abuse their employment histories after leaving the school would have been marginal.

#### **V. Appeals of Residential School Claims to the British Columbia Court of Appeal**

56. At approximately the same time as the *Blackwater* and *Aleck* decisions, another British Columbia Supreme Court decision had been heard with respect to Christie Indian Residential School, run by the Oblates. This case was argued on the basis of a stated case with the only

- issue being whether the Oblates, a religious order of the Catholic Church and a party to the Settlement Agreement, were vicariously liable for the sexual assaults committed by the School baker. Cohen, J. of the British Columbia Supreme Court found that the Oblates were vicariously liable and awarded general and aggravated damages, as well as \$80,000.00 for loss of income.
57. *Mowatt, Blackwater, Aleck and E.B.* were all appealed to the British Columbia Court of Appeal on several issues, by both plaintiffs and defendants. These appeals were scheduled to be heard in January 2003. In December 2003, the Anglicans dropped their appeal on the finding of liability. The BCCA rendered its judgments in these cases in December 2003.
  58. The United Church appealed the judgment that they were found vicariously liable to the British Columbia Court of Appeal, which upheld that appeal and determined that the United Church was not vicariously liable for the proven sexual assaults. Canada and the plaintiffs appealed that decision to the Supreme Court of Canada which, in December 2005, ruled that the United Church was vicariously liable, thereby reinstating the trial judgment.
  59. The plaintiffs appealed to the BCCA, with respect to finding that neither Canada nor the United Church were negligent or in breach of a fiduciary duty. The BCCA upheld that decision.
  60. The plaintiffs also appealed the damages and the dismissal of the action of one of the plaintiffs, M.L.J., whose claim had been dismissed in its entirety by the trial judge. The BCCA reversed the trial and remitted M.L.J.'s case back for a new trial.
  61. With respect to general and aggravated damages, the Court of Appeal increased the awards for two plaintiffs for whom the trial judge made very nominal damage awards. The Court also awarded damages for loss of opportunity for F.L.B., one of the plaintiffs.

62. In the period between the trial judgments and the *Barney* decision in the Supreme Court of Canada in 2005, the trial decisions were being used by plaintiffs' counsel in British Columbia and across the country to guide the preparation of their claims and to use as a tool to get the institutional defendants to negotiating tables.
63. Some of the important rulings from the BCCA arising out of these hearings may be summarized as follows:
- a. In *Blackwater*, the trial judge was reversed on his finding that the United Church was vicariously liable for the sexual assaults.
  - b. The BCCA found that Chief Justice Brenner had erred in not awarding F.L.B. some future loss of income and made an award to him of \$20,000.00.
  - c. The BCCA increased the general damages award for two of the plaintiffs whose sexual abuse was less severe.
  - d. The BCCA remitted the case of M.L.J. back for a new trial and overturned the dismissal of her case.
  - e. The BCCA ordered the matter remitted to the trial judge on pecuniary damages in *Aleck*. It also upheld Chief Justice Brenner's application of *Athey* and found that Justice Williamson erred in his view of what the claimants' original positions were in terms of assessment of damages and remitted the assessment of general and aggravated damages.
  - f. The BCCA dismissed Canada and the Churches' appeal that punitive damages were not appropriate in the *Aleck* case, setting a precedent that in appropriate cases punitive damages may be awarded.
  - g. The BCCA reversed the trial judge in *E. B.* on vicarious liability saying that, unlike dormitory supervisors, the baker had no authority over the children and the required nexus between his duties and the assaults was not present and therefore the employer was not responsible. The Court ordered that all other issues of liability be remitted back to the trial courts for determination.

64. The abandonment of their appeal by the Anglican defendants in *Mowatt* led to an application by the plaintiff for costs. The BCCA denied the cost application on the basis that Mr. Mowatt had no "legal interest" in the case, as he had already been paid the agreed upon damages.
65. This was an example of the difficulty in addressing the residential school claims in Court. In deciding to take his case to Court, Mr. Mowatt was very concerned that the Church should acknowledge and take responsibility for the suffering he had endured all of his life as a result of being abused while in their care.
66. Mr. Mowatt, like many residential school survivors, was seeking not only compensation for the wrongs he suffered, but also the recognition in a public forum by the Courts that those who were responsible were identified and named by the Court.

#### **VI. Initiation of Settlement Conferences**

67. After the trial judgments in *Mowatt*, *Blackwater* and *Aleck*, as well as decisions in Saskatchewan Courts, hundreds of residential school claims being brought forward by survivors were proceeding in other provinces and territories as well as British Columbia through settlements.
68. In British Columbia, the BCSC provided settlement conference judges to assist in arriving at settlements, which became increasingly common as a means to resolve the claim without the necessity of trials. These settlement conferences most often occurred after there were discoveries of the plaintiffs by Canada and/or the Church who was being sued. Notwithstanding many settlements being addressed in this way, the claims being brought forward to the Courts continued to increase.
69. In Ontario, counsel was seeking to have the Cloud action certified with respect to survivors

of the Mohawk Institute. In Alberta, the case management judge proposed to deal with test cases and all other residential school cases were put on hold.

70. In subsequent cases our firm was involved with, settlements were negotiated largely on the basis of the trial decisions in *Blackwater* and *Aleck* with respect to the amount of damages to be awarded. Notwithstanding that these were less adversarial than full trials, the Court settlement conferences were still adversarial. There were rigorous examinations for discovery of the plaintiffs before settlements could be discussed. Extensive examinations for discovery continue up to today in ongoing litigation.

## **VII. The Initiation of the Indian Residential Schools Alternative Dispute Resolution Process**

71. As an alternative to litigation, and prior to the BC Court of Appeal decisions in the aforementioned cases, negotiations began between litigants and interested parties (including the Assembly of First Nations and other aboriginal groups) to come up with an alternative method or stream to settle IRS claims. Out of that process, the current IRS Alternate Dispute Resolution Process ["ADR"] was developed and implemented in 2003. To be useful such a process had to be able to fulfill some obvious requirements:

- a. It had to be considerably faster than litigation;
- b. It had to require significantly less document discovery;
- c. It had to reconcile the different limitations laws in various provinces, for example, in some jurisdictions there was no limitation on physical assault when there was a breach of fiduciary duty, whereas in other jurisdictions like BC, limitations law barred claims for historical physical abuse;
- d. It had to be less adversarial; and
- e. Compensation awards would be governed by the existing case law.

72. In respect to the current ADR process, vicarious liability can be found against the

institutional defendants for abuse committed against a child by any adult on the premises of a residential school. This removes the challenge of limitation of liability to those whose duties provided the necessary nexus to the assaults. In effect, this resolves the issue raised by the BCCA decision in *E.B.*

73. From my experience, the current ADR process appears to have met the basic objectives set out above, at least with respect to the experience in British Columbia. Unlike the long Court processes, claimants can have their claim heard in a comparatively short period of time in British Columbia. Claims are now being routinely processed and awards made in less than nine months after the claim being filed.
74. We also have some clients in Saskatchewan and, unfortunately, there are much greater delays in Saskatchewan with respect to claims under the ADR process.
75. Following the BCCA decision in *Blackwater* in which the United Church was found not to be vicariously liable, the Catholic Church and Dioceses refused to participate in the ADR process or settlement negotiations. Even under the ADR process, British Columbia claimants who attended Catholic run schools (except Lejac Indian Residential School) are only paid 70% of any settlement negotiated or otherwise awarded. Notwithstanding that the SCC overturned the BCCA decision and found the United Church liable, the Catholic entities who operated the schools have, for the most part, continued to refuse to pay their share of any claims involving their schools that have proceeded through the ADR process.
76. One benefit of the Settlement Agreement is that all Catholic entities have signed onto the Settlement Agreement and the issue of being paid only 70% of any settlement will be resolved under the new Independent Assessment Process ["IAP"].
77. Another benefit of the ADR process is that the claims with respect to physical abuse are accepted for adjudication across the country. Under the existing ADR process, physical

abuse is compensable. Under the new IAP process, which is a part of the Settlement Agreement, it will be serious physical abuse that is compensable. The limitations applied by the BCCA and upheld by the SCC with respect to severing off sexual abuse from physical abuse (at least with respect to claims arising in British Columbia because of *Limitations Act* in British Columbia) are not relied upon for the purposes of ADR or under the Settlement.

78. In the ADR process, only the adjudicator asks the claimant questions about his or her claim. This is most often done quite sensitively and the claimant does not feel that they are being challenged. This gives the claimant much more freedom to describe the story of their particular residential school experiences. The claimants are allowed to bring in persons as support. Unlike Court where other witnesses are normally excluded, the ADR process is a more informal process, as the IAP is intended to be.
79. Many of our clients and other survivors with whom I have spoke have avoided any discussion of what happened to them at the residential schools 30 – 60 years ago. When they do start to talk about the abuse they suffered, they often relive that abuse. The ADR process provided a means by which they can describe the story without being challenged as they would during examinations for discovery or cross-examination at trial.
80. From my observation, there is certainly a much preferable psychological benefit to the survivors to be able to tell their story to an adjudicator in a non-confrontational environment.
81. Another benefit of the ADR process over Court is that the adjudicator only has to find a plausible link between the assaults and the asserted injuries that have been sustained. This removes the issue of the legal test as assessed in *Athey*. Not only is this significant with respect to the legal test for the assessment of damages, but also it is significant for claimants. Most of our clients recognize that the whole of the residential school experience damaged them in a multitude of ways. Because they do not have to separate the impact of sexual abuse from serious physical abuse, but can describe the whole experience, they are able to

was victim of more severe abuse but for some reason suffered less as a result. Related to this problem is the fact that more points can be awarded for the found level of abuse than for the harm resulting from that abuse. This approach does not reflect a basic principle of several experts on childhood sexual abuse: even relatively minor sexual abuse of a child can produce serious and life-long psychological and behavioural problems including *chronic post-traumatic stress disorder*.

- d. For BC claimants who attended Catholic run schools (except Lejac IRS), at the end of the day they only receive 70% of their award and have to sue the Catholic defendants for the remaining 30%. Other than the obvious unfairness of this, more importantly it detracts from potential closure the ADR process can and should offer.

#### **IX. The Effect of the New Indian Residential School Settlement Agreement**

83. According to Canada, as of May of 2006, there are an estimated 80,000 residential school survivors still living; more than 16,000 of whom have filed claims for compensation. Of these, some 3,700 claims have been settled through litigation, negotiation or the ADR process leaving more than 12,000 claims yet to be settled.
84. On May 8, 2006, Canada gave its final approval to the Indian Residential Schools Settlement Agreement ["Agreement"] negotiated by former Supreme Court Justice Frank Iacobucci (representing Canada), legal counsel for former students, counsel for the Churches and the Assembly of First Nations and other aboriginal organizations. Peter Grant & Associates (formerly known as Hutchins Grant & Associates) participated in those negotiations and is a signatory to the Agreement.
85. The Agreement will not come into force until it is approved by nine Courts across Canada and there has been the completion of an opt-out period (presently estimated at 5 months from the final Approval Date).



86. The Agreement appears to provide many benefits for residential school survivors, such as:
- a. every former IRS student alive as of May 30, 2005 will be eligible for a Common Experience Payment (CEP) of \$10,000 for the first year (or portion thereof) of attendance at a listed IRS plus \$3,000 for each additional year they spent at an IRS provided they do not opt out of the Agreement (\$1,900,000,000 has been designated to fund the CEPs);
  - b. Eligible CEP Recipients 65 years or older may apply for an \$8,000 advance on their CEP from May to December, 2006;
  - c. Eligible CEP recipients, if they have a claim for sexual or serious physical abuse will have their claims processed through the Independent Assessment Process (IAP) funded by Canada to the extent necessary to satisfy all awards made under the process;
  - d. the Aboriginal Healing Foundation will be endowed with five year funding in the amount of \$125 million with the potential for future funding if needed beyond the five years; and
  - e. a Truth and Reconciliation Commission will be established and funded with \$60 million by Canada to carry out various programs and activities designed to make the general public aware of the legacy of the Indian residential schools and mechanisms to reconcile First Nations and the rest of Canadian society on this legacy.
87. The Common Experience Payment recognizes that every student who attended an Indian residential school has suffered to some extent. The trial judge in *Blackwater* and the British Columbia Court of Appeal in *Blackwater* made it clear that this type of compensation is not within the capacity of the Courts to award without amendments to legislation. The ability to obtain damages from a Court for the general residential school experience is extremely limited across Canada and would be affected by the specific limitation acts in each province. Under existing limitation legislation, there would be a complete disparity of awards across the Canada.

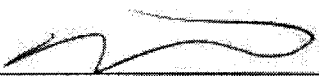
88. It is also significant that all survivors of Indian residential schools, whether they have had their claims heard by the Courts, under the ADR, or have not yet brought forward a claim, are eligible for the CEP.
89. With respect to the improvements over the present ADR process, persons who have been given an award under the old scale will have their awards adjusted automatically by Canada under the new compensation scale under the IAP. Furthermore, the types of sexual abuse are broadened under the IAP.
90. The IAP process also allows for additional aggravating factors. ADR awards may be adjusted to take into account these additional aggravating factors after the Implementation Date. The new factors include:
- a. Use of religious doctrine, paraphernalia or authority during, or in order to facilitate, the abuse;
  - b. Being abused by an adult who had built a particular relationship of trust and caring with the victim (betrayal); and
  - c. Witnessing another student being subjected to an act set out on page 3 (i.e. the schedule of compensable abuse).
91. Claimants that went through ADR who reported seeing other children being abused will have their evidence reviewed to see what, if any, claims could be submitted under this last factor.

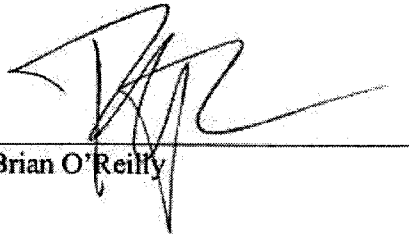
## **X Conclusion**

92. As set out in this affidavit, I have acted as one of the lawyers in Peter Grant & Associates on behalf of more than 155 survivors in the Courts, in Court mandated settlement conferences and in ADR hearings. I have reviewed the new IAP process under the Settlement Agreement

- and, in my opinion, the IAP will provide significant benefits to a larger number of survivors, who bring claims under the IAP process, than is possible under litigation.
93. As can be seen by the chronology with respect to the Court cases that our law firm took to the Courts, resolution through the Courts has taken up to 16 years (*Aleck*). The commitment in the Settlement Agreement that all claims will be resolved within five years shall provide closure to many survivors and at least the opportunity to know that their cases will be heard and resolved in the foreseeable future.
94. In my opinion, based on my review of the IAP process and on the experience I have had working with survivors, the Settlement Agreement shall provide significant benefits to a large number of survivors who are presently involved in a process where they have to wait a long period of time for their claims to be resolved.
95. Additionally, under the Settlement Agreement those survivors involved in the ADR process or in the IAP will no longer have to settle for 70% of their award when their cases involve Catholic entities.
96. Finally, the Settlement Agreement eliminates significant limitations on compensable claims as compared with established case law.

SWORN before me in the City of )  
 Vancouver, in the Province of British )  
 Columbia this 27th day of July, 2006 )

  
 \_\_\_\_\_ )  
 A Commissioner for taking Affidavits  
 within British Columbia

  
 \_\_\_\_\_  
 Brian O'Reilly

NO. L051875  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

CAMBLE QUATELL, PEGGY GOOD, ADRIAN YELLOWKNEE, KENNETH SPARVIER, DENNIS SMOKEYDAY, RHONDA BUFFALO, MARIE GAGNON, SIMON SCIPIO, as representatives and claimants on behalf of themselves and all other individuals who attended Residential Schools in Canada, including but not limited to all Residential Schools' clients of the proposed Class Counsel, Merchant Law Group, as listed in part in Schedule 1 to this Claim, and the John and Jane Does named herein, and such further John and Jane Does and other individuals belonging to the proposed class, including JOHN DOE I, JANE DOE I, JOHN DOE II, JANE DOE II, JOHN DOE III, JANE DOE III, JOHN DOE IV, JANE DOE IV, JOHN DOE V, JANE DOE V, JOHN DOE VI, JANE DOE VI, JOHN DOE VII, JANE DOE VII, JOHN DOE VIII, JANE DOE VIII, JOHN DOE IX, JANE DOE IX, JOHN DOE X, JANE DOE X, JOHN DOE XI, JANE DOE XI, JOHN DOE XII, JANE DOE XII, JOHN DOE XIII, JANE DOE XIII, being a Jane and John Doe for each Canadian province and territory, and other John and Jane Does, Individuals, Estates, Next-of-Kin and Entities to be added

PLAINTIFFS

**AND:**

ATTORNEY GENERAL OF CANADA

DEFENDANT

Proceeding under the *Class Proceedings Act*, R.S.B.C 1996, c. 50

**AFFIDAVIT OF BONNIE REID**

I, Bonnie Reid, of the City of Regina, in the Province of Saskatchewan, MAKE OATH AND SAY AS FOLLOWS:

1. I am an associate in the firm of MacPherson Leslie & Tyerman and as such have personal knowledge of the matters hereafter set forth, except where stated to be on information and belief and where so stated I verily believe them to be true.
2. I have been called to the bar for 22 years. I have specialized in personal injury litigation.

describe the impacts on their lives in a way that makes sense to them.

### **VIII. Benefits of the Independent Assessment Process under the Settlement Agreement**

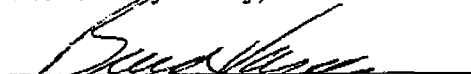
82. Although our law firm and several other law firms represented by Independent Counsel who have signed the Settlement Agreement have participated fully in the ADR process, it has become apparent that there are still inherent problems with that process. The development of the IAP process which forms part of the final Settlement Agreement, addresses some of the problems of the present ADR process in a way that is more respectful of survivors. Under the present ADR process, the following elements remain problematic for survivors:

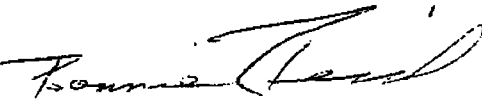
- a. Maximum compensation levels for "general damages" are still too low and don't reflect the BCCA decision in *Aleck* in respect of pecuniary damages. Because these levels were determined by damage awards made at trial in *Blackwater* and *Aleck*, which in turn were based on specific findings of fact for those plaintiffs, the potential awards are limited in effect by those fact patterns. What we have found since those cases is that there are individual cases where not only were the sexual assaults and immediate circumstances more severe than heretofore in evidence, the catastrophic effects of those assaults exceeded any injuries previously heard by a trial judge.
- b. Potential compensation for loss of opportunity is extremely limited and does not allow any full assessment of pecuniary loss as mandated by the BCCA in *Aleck*. An adjudicator can make a finding that the claimant was chronically unemployed for 30 years and that there is a plausible connection between the proven assaults and the unemployment and then be restricted to topping up the claimants award under this heading for a relatively insignificant amount of money when compared to the value of the actual loss over that 30 years.
- c. There is a disparate emphasis on the nature and frequency of the abuse in the point system governing awards. That is to say a claimant who suffered so-called minor abuse but with catastrophic results will receive a smaller award than a claimant who

Over the last three to four years, I have been exclusively involved in residential school litigation, except for a small amount of work on health issues to stay in touch with my first career in health care administration and education.

3. Our law firm has acted for residential school clients since February 1993. We issued the first claim, to my knowledge, in Saskatchewan, in early 1994. We settled 6 claims before February 1996 through pre-trial conferences.
4. Our law firm also ran the following three test cases in Saskatchewan:
  - a. D.W. v. Attorney General of Canada and William Starr Q.B.G. No. 2708 of 1997
  - b. D.B. v. Attorney General of Canada and William Starr Q.B.G. No. 2266 of 1997
  - c. I.B. v. Attorney General of Canada et al. Q.B.G. No. 3579 of 1996
5. These cases were run at significant costs to our law firm. The first case was commenced in May 1997 and was completed in February 2000. The second case was commenced in August 1997 and was completed in December 2000. The third case was commenced in December 1996 and was completed for I.B. in November 2000; thereafter the Defendants proceeded to trial in May 2001 on their claim against the Third Parties for contribution and indemnity.
6. Our law firm supports the final Settlement Agreement. Maurice Laprairie, Q.C., signed the final Settlement Agreement on behalf of our law firm.
7. From my experience in working on residential school litigation, a process which is non-adversarial and is assured to be done in a more expedited manner than the Court process will be of significant benefit to survivors of Indian residential schools.

SWORN before me in the city of Regina, )  
 in the Province of Saskatchewan, )  
 this 27th day of July, 2006. )

  
 A Commissioner for taking Affidavits  
 within Saskatchewan

  
 Bonnie Reid

Affidavit of Anastasia Hoodikoff  
Sworn July 27, 2006

NO. L051875  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

CAMBLE QUATELL, PEGGY GOOD, ADRIAN YELLOWKNEE, KENNETH SPARVIER, DENNIS SMOKEYDAY, RHONDA BUFFALO, MARIE GAGNON, SIMON SCIPIO, as representatives and claimants on behalf of themselves and all other individuals who attended Residential Schools in Canada, including but not limited to all Residential Schools' clients of the proposed Class Counsel, Merchant Law Group, as listed in part in Schedule 1 to this Claim, and the John and Jane Does named herein, and such further John and Jane Does and other individuals belonging to the proposed class, including JOHN DOE I, JANE DOE I, JOHN DOE II, JANE DOE II, JOHN DOE III, JANE DOE III, JOHN DOE IV, JANE DOE IV, JOHN DOE V, JANE DOE V, JOHN DOE VI, JANE DOE VI, JOHN DOE VII, JANE DOE VII, JOHN DOE VIII, JANE DOE VIII, JOHN DOE IX, JANE DOE IX, JOHN DOE X, JANE DOE X, JOHN DOE XI, JANE DOE XI, JOHN DOE XII, JANE DOE XII, JOHN DOE XIII, JANE DOE XIII, being a Jane and John Doe for each Canadian province and territory, and other John and Jane Does, Individuals, Estates, Next-of-Kin and Entities to be added

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

Proceeding under the *Class Proceedings Act*, R.S.B.C 1996, c. 50

**AFFIDAVIT OF ANASTASIA HOODIKOFF**

I, Anastasia Elizabeth Hoodikoff, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a legal secretary in the office of Peter Grant & Associates.

- 2. I prepared and sent to Keshen Major the affidavit of Doug Keshen, a copy of which is attached hereto and marked Exhibit "A" to this my affidavit.
  
- 3. I prepared Mr. Keshen's affidavit based on the assumption that it would be filed in the Ontario Superior Court of Justice. However, the affidavit was intended to be filed as part of the class action proceedings in British Columbia Supreme Court action no. L051875.

SWORN before me in the City of )  
Vancouver, in the Province of British )  
Columbia this 27<sup>th</sup> day of July, 2006 )



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)  
)  
)  
)  
A Commissioner for taking Affidavits  
within British Columbia




\_\_\_\_\_  
Anastasia Elizabeth Hoodikoff

*PRATER* **BRIAN O'REILLY**  
**HUTCHINS GRANT & ASSOCIATES**  
*Barristers and Solicitors*  
900 - 777 Hornby Street  
Vancouver, B.C. V6Z 1S4



THIS IS EXHIBIT " A " REFERRED TO IN THE  
AFFIDAVIT OF A. HOODKOFF  
SWORN BEFORE ME AT VANCOUVER BC  
THIS 27<sup>th</sup> DAY OF JULY, 2006

01988

  
A Commissioner for taking Affidavits within  
British Columbia

Court File No. 00-CV-192059CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the  
Executor of the estate of Agnes Mary Fontaine, deceased, MICHELLINE  
AMMAQ, PERCY ARCHIE, CHARLES BAXTER SR., ELIJAH BAXTER,  
EVELYN BAXTER, DONALD BELCOURT, NORA BERNARD, JOHN  
BOSUM, RHONDA BUFFALO, ERNESTINE CAIBAIOSAI-GIDMARK,  
MICHAEL CARPAN, BRENDA CYR, DEANNA CYR, MALCOLM  
DAWSON, ANN DENE, JAMES FONTAINE in his personal capacity and in his  
capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased,  
VINCENT BRADLEY FONTAINE, PEGGY GOOD, FRED KELLY,  
ROSEMARIE KUPTANA, ELIZABETH KUSIAK, THERESA LAROCQUE,  
JANE McCALLUM, CORNELIUS McCOMBER, VERONICA MARTEN,  
STANLEY THOMAS NEPETAYPO, FLORA NORTHWEST, NORMAN  
PAUCHEY, CAMBLE QUATELL, ALVIN BARNEY SAULTEAUX,  
CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER,  
EDWARD TAPIATIC, HELEN WINDERMAN and ADRIAN YELLOWKNEE

PLAINTIFFS

AND:

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN  
CHURCH OF CANADA, THE GENERAL SYNOD OF THE ANGLICAN  
CHURCH OF CANADA, THE UNITED CHURCH OF CANADA, THE  
BOARD OF THE HOME MISSIONS OF THE UNITED CHURCH OF  
CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE  
PRESBYTERIAN CHURCH THE BAPTIST CHURCH IN CANADA, THE  
ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY, THE  
ROMAN CATHOLIC BISHOP OF KAMLOOPS, THE ROMAN CATHOLIC  
BISHOP OF THUNDER BAY, THE ROMAN CATHOLIC ARCHBISHOP OF  
VANCOUVER, THE ROMAN CATHOLIC BISHOP OF VICTORIA, THE  
ROMAN CATHOLIC BISHOP OF NELSON, THE CATHOLIC EPISCOPAL  
CORPORATION OF WHITEHORSE, LA CORPORATION EPISCOPALE  
CATHOLIQUE ROMAINE DE GROUARD-McLENNAN, THE CATHOLIC  
ARCHDIOCESE OF EDMONTON, LA DIOCESE DE SAINT-PAUL, THE  
ROMAN CATHOLIC EPISCOPAL CORPORATION OF MacKENZIE, THE  
ARCHIEPISCOPAL CORPORATION OF REGINA, THE ROMAN  
CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, THE ROMAN  
CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA

CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT-BONIFACE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF SAULT STE. MARIE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN BAY, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, THE CANADA, IMPACT NORTH MINISTRIES, INSTITUT DES SOEURS DU BON CONSEIL, JESUIT FATHERS OF UPPER CANADA, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (also known as LES REVERENDS PERES OBLATS DE L'IMMACULEE CONCEPTION DE MARIE), LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (PROVINCE DU CANADA-EST), LES PERES MONTFORTAINS (also known as THE COMPANY OF MARY), LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES TERRITOIRES DU NORD OUEST, LES SOEURS DE LA CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (also known as SISTERS OF CHARITY OF OTTAWA - GREY NUNS OF THE CROSS), LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE NICOLET AND THE SISTERS OF ASSUMPTION, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE DE L'ALBERTA, LES SOEURS DE NOTRE DAME AUXILIATRICE, LES SOBURS DE SAINT-JOSEPH DE SAINT-HYACINTHE, LES SOEURS DE ST. FRANCOIS D'ASSISE, MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (also known as MISSIONARY OBLATES OF THE SACRED HEARTS AND MARY IMMACULATE or LES MISSIONAIRES OBLATS DE SAINT-BONIFACE), SISTERS OF THE HOLY NAMES OF JESUS AND MARY (also known as THE RELIGIOUS ORDERS OF JESUS AND MARY and LES SOEURS DE JESUS-MARIE), SISTERS OF THE PRESENTATION OF MARY (SOEURS DE LA PRESENTATION DE MARIE), ST. PETER'S PROVINCE, THE BENEDICTINE SISTERS, THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS, THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE DAUGHTERS OF THE HEART OF MARY (also known as LA SOCIETE DES FILLES DE COEUR DE MARIE and THE DAUGHTERS OF THE IMMACULATE HEART OF MARY), THE DIOCESE OF MOOSONEE,, THE DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE GREY NUNS OF MANITOBA INC. (also known as LES SOEURS GRISES DU MANITOBA INC.), THE GREY SISTERS NICOLET, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE MISSIONARY OBLATES OF MARY IMMACULATE-GRANDIN PROVINCE, THE MISSIONARY OBLATES OF MARY IMMACULATE-PROVINCE OF ST. JOSEPH, THE

MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA ,  
 THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF  
 CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF  
 CANADA), THE OBLATS OF MARY IMMACULATE, THE ORDER OF  
 THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF  
 BRITISH COLUMBIA, THE SISTERS OF CHARITY (GREY NUNS) OF  
 MONTREAL (also known as LES SOEURS DE LA CHARITÉ (SOEURS  
 GRISES) DE L'HÔPITAL GÉNÉRAL DE MONTREAL), THE SISTERS OF  
 CHARITY (GREY NUNS) OF ST. ALBERT (also known as THE SISTERS OF  
 CHARITY (GREY NUNS) OF ST. ALBERTA), THE SISTERS OF CHARITY  
 (GREY NUNS) OF THE NORTHWEST TERRITORIES, THE SISTERS OF  
 CHARITY OF PROVIDENCE OF WESTERN CANADA, THE SISTERS OF  
 INSTRUCTION OF THE CHILD JESUS (also known as THE SISTERS OF  
 THE CHILD JESUS), THE SISTERS OF SAINT ANNE, THE SISTERS OF  
 ST. JOSEPH OF SAULT STE. MARIE, THE SISTERS OF THE CHARITY OF  
 ST. VINCENT DE PAUL OF HALIFAX (also known as THE SISTERS OF  
 CHARITY OF HALIFAX), THE SYNOD OF THE DIOCESE OF ALGOMA,  
 THE SYNOD OF THE ANGLICAN CHURCH OF THE DIOCESE OF  
 QUEBEC, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD  
 OF THE DIOCESE OF BRANDON, THE SYNOD OF THE DIOCESE OF  
 BRITISH COLOMBIA, THE SYNOD OF THE DIOCESE OF CALGARY,  
 THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE  
 DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF  
 WESTMINSTER, THE SYNOD OF THE DIOCESE OF YUKON, THE  
 TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, IN  
 CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED  
 CHURCH OF CANADA

DEFENDANTS

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF DOUG KESHEN**

I, Doug Keshen, of the city of Kenora, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a partner in the firm of Keshen Major, which practices law in Kenora, Ontario. We have been involved in residential school claims for 8 years.
2. Our firm has signed, as one of the Independent Counsel, the final Settlement Agreement and we support the final Settlement Agreement as it provided greater benefit to survivors of Indian residential schools.

3. In this affidavit I wish to speak to the difficulties with respect to the present Alternative Dispute Resolution ["ADR"] process in northwest Ontario, which is a remote part of Ontario. The practice has been that ADR hearings are set for possibly three in one week and then there is a postponement for any future bookings for one or two months.
  
4. There have also been extensive delays in the present ADR process as a result of the long period of time between the time the application is submitted and there has been approval for hearings to be scheduled. With respect to a number of our clients who are aged or chronically ill with potentially serious diseases, this has been a serious issue.
  
5. One of the reasons why our firm has supported the final Settlement Agreement and the new Independent Assessment Process is that there is the ability if there are such delays for the matter to be review by the Court to ensure that hearings are held in a timely manner and people that would otherwise be prejudiced have an opportunity to have their hearing heard more quickly.

SWORN before me in the town of )  
 Kenora, in the Province of Ontario )  
 this 26th day of July, 2006 )  
Loisene Dwyer LL.B. )  
 A Commissioner for taking Affidavits )  
 within Ontario

Doug Keshen C.C.B.  
 Doug Keshen

BAXTER, et al. v.

THE ATTORNEY GENERAL v. THE SYNOD OF ANGLICAN  
CHURCH, et al.

Court File No: 00-CV-192059CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**JOINT MOTION RECORD  
(Motion for Settlement Approval  
returnable August 29, 30 and 31, 2006**

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