

IN THE NUNAVUT 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, JANET BREWSTER, RHONDA BUFFALO, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, BRENDA CYR, DEANNA CYR, MALCOLM DAWSON, ANN DENE, BENNY DOCTOR, LUCY DOCTOR, 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 McCULLUM, 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 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 OF 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 COLUMBIA, 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 WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA, SISTERS OF CHARITY, A BODY CORPORATE ALSO KNOWN AS SISTERS OF CHARITY OF ST. VINCENT DE PAUL, HALIFAX, ALSO KNOWN AS SISTERS OF CHARITY HALIFAX, ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, LES SOEURS DE NOTRE DAME-AUXILIATRICE, LES SOEURS DE ST. FRANCOIS D'ASSISE, INSITUT DES SOEURS DU BON CONSEIL, LES SOEURS DE SAINT-JOSEPH DE SAINT-HYANCITHE, LES SOEURS DE JESUS-MARIE, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE, LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE L'ALBERTA, LES SOEURS DE LA CHARITE DE ST.-HYACINTHE, LES OEUVRES OBLATES DE L'ONTARIO, LES RESIDENCES OBLATES DU QUEBEC, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE JAMES (THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY), THE CATHOLIC DIOCESE OF MOOSONEE, SOEURS GRISES DE MONTRÉAL/GREY NUNS OF MONTREAL, SISTERS OF CHARITY (GREY NUNS) OF ALBERTA, LES SOEURS DE LA CHARITÉ DES T.N.O., HOTEL-DIEU DE NICOLET, THE GREY NUNS OF MANITOBA INC.-LES SOEURS GRISES DU MANITOBA INC., LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE D'HUDSON - THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, MISSIONARY OBLATES - GRANDIN PROVINCE, LES OBLATS DE MARIE IMMACULEE DU MANITOBA, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE SISTERS OF THE PRESENTATION, THE SISTERS OF ST. JOSEPH OF SAULT ST. MARIE, SISTERS OF CHARITY OF OTTAWA, OBLATES OF MARY IMMACULATE -ST. PETER'S PROVINCE, THE SISTERS OF SAINT ANN, SISTERS OF INSTRUCTION OF THE CHILD JESUS, THE BENEDICTINE SISTERS OF MT. ANGEL OREGON, LES PERES MONTFORTAINS, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS CORPORATION SOLE, THE BISHOP OF VICTORIA, CORPORATION SOLE, THE ROMAN CATHOLIC BISHOP OF NELSON, CORPORATION SOLE, ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD, ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE ST. BONIFACE, LES MISSIONNAIRES OBLATES SISTERS DE ST. BONIFACE-THE MISSIONARY OBLATES SISTERS OF ST. BONIFACE, ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, IMMACULATE HEART COMMUNITY OF LOS ANGELES CA, ARCHDIOCESE OF VANCOUVER - THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, ROMAN CATHOLIC DIOCESE OF WHITEHORSE, THE CATHOLIC EPISCOPALE CORPORATION OF

**MACKENZIE-FORT SMITH, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, EPISCOPAL CORPORATION OF SASKATOON, OMI LACOMBE CANADA INC. and MT. ANGEL ABBEY INC.**

Defendants

**PROCEEDING UNDER the following legislation, as appropriate:**

- (a) In the Province of Alberta: the *Class Proceedings Act*, S.A. 2003, c. C-16.5;
- (b) In the Province of British Columbia: the *Class Proceedings Act*, R.S.B.C. 1996, c.50;
- (c) In the Province of Manitoba: *The Class Proceedings Act*, C.C.S.M. c. C130;
- (d) In the Provinces of Newfoundland and Labrador, Prince Edward Island, New Brunswick and Nova Scotia: the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- (e) In The Northwest Territories: Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg. 010-96;
- (f) 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.
- (g) In the Province of Ontario: the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- (h) In the Province of Québec: Articles 999–1051 of the *Code of Civil Procedure* (Québec);
- (i) In the Province of Saskatchewan: *The Class Actions Act*, S.S. 2001, c.C-12.01; and
- (j) 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 of Section 38 of the *Judicature Act*, R.S.Y. 2002, c. 128.

BEFORE THE HONOURABLE ) Iqaluit, in the Nunavut Territory  
 )  
MR. JUSTICE KILPATRICK ) Thursday, this 8<sup>th</sup> day of March, 2007.  
 )  
IN CHAMBERS )

**ORDER**

UPON THE APPLICATION for approval of the Indian Residential Schools Settlement Agreement, dated May 10, 2006 (the "Agreement") having been heard and this Court having approved the Agreement as set out in the judgment dated December 19, 2006,

AND UPON similar judgments having been issued in the eight (8) other Courts whose approval is required under the Agreement,

AND UPON it appearing that the implementation and administration of the Agreement requires the oversight and supervision of this Court and the other eight (8) courts,

AND UPON hearing further and supplementary submissions from counsel for the parties, reading the supplementary materials filed by the parties, and having regard for the steps required to oversee the implementation the Agreement pursuant to this court's supervisory jurisdiction pursuant to the applicable class proceedings law and its inherent jurisdiction to control its own process, in order to ensure the Agreement is administered in a fair and impartial manner and to assist the Courts in their supervision over implementation and administration of the Agreement;

IT IS ORDERED AS FOLLOWS:

**Monitor**

1. That Crawford Class Action Services, Inc. (the "Monitor") be and hereby is appointed as the Courts' monitor.
2. That the Monitor shall be provided full and unfettered access to all information relating to the implementation or administration of the CEP

and the IAP on behalf of the Courts. Such access shall extend to documents and records, systems and persons, including those of Canada, the other parties hereto or the persons or bodies appointed or established under the Agreement involved in or relating to the implementation or administration of the CEP and IAP, save and except for matters which are subject to solicitor-client privilege or are cabinet confidences.

3. That the Monitor may move before the Courts for an order providing it with access to information from any entity or individual on notice to the NAC and notice to the party from whom production is sought.

4. That the Monitor shall communicate with, take directions from and report to the Courts upon the implementation and administration of the Agreement in such manner and at such times as the Court directs. Reports by the Monitor will be circulated as the Courts direct.

5. That the Monitor Funding Agreement shall be subject to future approval of this Court.

6. That the Monitor's fees and costs shall be paid monthly by Canada, pursuant to the Monitor Funding Agreement, upon approval by order of Mr. Justice McMahon of the Court of Queen's Bench of Alberta or his designate.

### **Chief Adjudicator**

7. That in addition to any other reporting requirements, the Chief Adjudicator shall report directly to the Courts through the Monitor not less than quarterly on all aspects of the implementation and operation of the IAP. The Courts may provide the Chief Adjudicator with directions regarding the form and content of such reports.

8. That the Courts shall be notified in a timely way when the recruitment of a Chief Adjudicator is to be undertaken. The Courts will be provided

with copies of all applications of qualified candidates for the position of Chief Adjudicator at least twenty-one (21) days prior to the IAP Oversight Committee's selection of the candidate for Chief Adjudicator. The Court may make recommendations to the IAP Oversight Committee concerning the candidates and the selection of the Chief Adjudicator by the IAP Oversight Committee shall be subject to approval by the Court.

### **CEP Administrator**

9. That Canada shall, within five (5) days of the Opt Out Deadline (August 20, 2007) name and notify the Courts of the senior official or officials responsible for the administration of the CEP (the "CEP Administrator") and any duly appointed successors who shall report to the Courts not less than quarterly on all aspects of the implementation and operation of the CEP in sufficient detail to permit the Courts to properly assess and supervise its operation. The Courts may provide the CEP Administrator with directions regarding the form and content of such reports. Reports by the CEP Administrator will be circulated as the Courts direct.

### **CEP Assistance**

10. That legal counsel to whom Article 13 of the Agreement relates shall assist those individuals as requested and necessary in completing and submitting their CEP applications and pursuing any appeals to the NAC of a decision by Canada, except those which, in counsel's opinion, have no reasonable prospect of success, concerning their CEP applications without charge to such clients, subject to counsel's entitlement to recover and retain costs awarded in connection with any such appeal.

11. That Service Canada shall provide assistance as necessary to unrepresented Eligible CEP Recipients as requested and necessary in completing and submitting their CEP applications but Service Canada shall not be responsible for providing legal representation to Eligible CEP Recipients.

### **Court Counsel**

12. That Randy Bennett, of Rueter Scargall Bennett LLP (“Court Counsel”) is hereby appointed legal counsel to and for the Courts to assist the Courts in their supervision over the implementation and administration of the Agreement.

13. That Court Counsel’s duties shall be as determined by the Courts. Communications between Court Counsel and the Court shall be privileged.

14. That the Court Counsel Funding Agreement shall be subject to future of this Court.

15. That Court Counsel’s fees and costs shall be paid monthly by Canada, pursuant to the Court Counsel Funding Agreement, upon approval by order of Regional Senior Justice Winkler of the Ontario Superior Court of Justice or his designate.

16. That no person may bring any action or take any proceeding against Court Counsel or the Monitor, their employees, agents, partners, associates, representatives, successors or assigns, for any matters in any way relating to the Agreement, the administration of the Agreement or the implementation of the Agreement and this order, except with leave of this Court and on notice to all affected parties.

### **Review of IAP Legal Fees**

17. That all legal fees charged by legal counsel to claimants pursuing claims through the IAP shall not exceed 30% of compensation awarded to the client. This 30% cap shall be inclusive of and not in addition to Canada’s 15% contribution to legal fees, but exclusive of GST and any other applicable taxes. The 30% cap shall also be exclusive of Canada’s contribution to disbursements. Upon the

conclusion of an IAP hearing legal counsel shall provide the presiding Adjudicator (the "Adjudicator") with a copy of their retainer agreement and the Adjudicator shall make such order or direction as may be required to ensure compliance with the said limit on legal fees.

18. That upon a claimant's request which request shall be made at the conclusion of the hearing, or within fourteen (14) days thereof, or on the Adjudicator's own motion, legal counsel's legal fees for conducting the IAP may be reviewed by the Adjudicator for fairness and reasonableness. In the event of such review legal counsel shall in addition to submitting their retainer agreement provide any other information pertinent to their legal fees. The Adjudicator shall assess the fairness and reasonableness of the legal fees in accordance with the generally accepted principles and authority for the assessment of accounts, including the following:

- a. time expended by legal counsel;
- b. the legal complexity of the matters;
- c. the degree of responsibility assumed by legal counsel;
- d. the monetary value of the matters at issue;
- e. the importance of the matter to the claimant;
- f. the degree of skill and competence demonstrated by the legal counsel;
- g. the results achieved and the contribution of legal counsel to the result;
- h. the ability of the claimant to pay; and
- i. the claimant's expectations as to the amount of the legal fees,

and shall take into account the fact that Canada will contribute an amount equal to 15% of the compensation award towards the legal fees. In all cases, the Adjudicator shall inform the claimant of their right to have the account of their counsel reviewed. The Adjudicator's decision on the fees will be issued at the same time, or following, the decision on the claim and a copy shall be sent to the claimant personally together with an explanation of the right to a review.

19. That claimants or their legal counsel may request the Chief Adjudicator or his designate to review a ruling by an adjudicator on the fairness and



reasonableness of legal fees. Any such request shall be made within seven (7) days of the adjudicator's ruling. The Chief Adjudicator or his designate shall review the materials before the adjudicator and shall issue reasons in writing within fourteen (14) days.

20. That applications to the Courts shall be carried out in accordance with the Protocol attached as Schedule "A" to this order.

21. That verification pursuant to Article 5.04(6) of the Agreement shall be carried out in accordance with the Principles attached as Schedule "B" to this order.

22. That appeals arising in connection with the CEP shall be carried out in accordance with the Agreement and with any Protocols approved by any further order of this Court.

23. That the Courts shall supervise the implementation of the Agreement and this order and, without limiting the generality of the foregoing, may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Agreement, the judgment dated December 15, 2006 and this order.



JUSTICE KILPATRICK

ENTERED this 30<sup>th</sup> day

of March, 2007

## COURT ADMINISTRATION PROTOCOL

In order to ensure the efficient and expeditious administration of the Agreement, the courts have determined that a streamlined process for addressing all matters that require court orders, directions or consideration during the course of the administration is desirable. Accordingly, the procedure set out below will be followed in respect of all such matters.

1. The courts will designate two Administrative Judges from among the 9 (nine) judges who heard the motions for approval of the Agreement, or their successors as supervising judges. There will be one Eastern Administrative Judge and one Western Administrative Judge.
2. All matters that require court orders, directions or consideration, will be brought to the attention of the Administrative Judges at first instance by the filing of a Request For Direction. The Request will identify the party, counsel or other entity with standing in respect of the Agreement who is bringing the matter forward, the matter(s) in issue, the relief requested, whether it is on consent, or if opposed, the various positions of those in favour and those opposed. It is expected that all parties, counsel and entities with standing will cooperate to the extent that a single Request that fairly and accurately sets out the issue(s) and their positions in **brief** form is filed. The Judges do not expect to receive initial Requests that exceed 3 pages in length.
3. Upon receipt of a Request, the Administrative Judges will determine whether a case management conference is required or whether the matter should be directed to a hearing.
4. In the event that a case management conference is required, the conference will be conducted by one or both of the Administrative Judges.
5. Should a hearing be required, the Administrative Judges will make such direction and determine the jurisdiction in which the hearing should be held. In making this determination the Administrative Judges will be guided by the following principles:
  - (a) Where the issue(s) involve relief for a particular class member or particular class, the hearing will be directed to the supervising court with jurisdiction over the class member or class pursuant to the terms of the Agreement and the Approval Orders.

- (b) Where the issue(s) affect more than one jurisdiction, but not all, the hearing will be directed to a supervising court in one of the affected jurisdictions.
  - (c) Where the issue(s) will affect all jurisdictions, the hearing may be directed to any court supervising the Agreement.
  - (d) If the issue(s) raised are such that the relief requested may result in an order that would constitute an amendment of the Agreement or the Approval Orders, the Administrative Judges will direct that a full record be delivered to each of the supervising courts and direct that the matter be heard by at least one of the supervising courts. Upon communication with all the supervising courts, the Administrative Judges will advise the parties further how many additional hearings will be held, if any. A supervising court that has received a copy of the full record may choose to adopt the reasons of any other supervising court hearing the matter without holding a formal hearing of its own, but no order amending the Agreement or the Approval Orders shall be effective unless it is approved by all 9 (nine) supervising courts.
  - (e) On purely procedural matters, the Administrative Judges may direct that any hearing shall be in writing only. On substantive matters, the court to which the hearing is directed, shall in its discretion, determine the manner in which the matter will be heard, whether in writing or by appearance, or both.
  - (f) In applying these principles, the Administrative Judges may also be guided by any other consideration that he or she deems to be appropriate in the circumstances.
6. Any task designated to be carried out by the Administrative Judges, may be carried out by either one of them acting alone or both acting together.
  7. Nothing in this protocol shall be construed as derogating from the authority of the Administrative Judge in his or her capacity as a supervising judge under this Agreement, and for greater clarity, neither Administrative Judge shall be precluded from referring any matter to be determined to him or herself or to the other Administrative Judge.
  8. During the course of the administration of the Agreement, the judges of the supervising courts will continue to communicate with one another in the same manner and on the same basis that was the case with respect to the motions for approval of the Agreement.

### CEP Validation Principles

1. Validation is intended to confirm eligibility, not refute it;
2. Validation must accommodate the reality that in some cases records may be incomplete;
3. Validation must be based on the totality of the information available concerning the application;
4. Inferences to the benefit of the applicant may be made based on the totality of the information available concerning the application;
5. If information is ambiguous, interpretation should favour the applicant;
6. This principle (6) shall apply to applicants who identify themselves as having been status Indians at the time of residency in a residential school. The absence of such an applicant's name from the lists comprising all status Indian residential students in a given year at the school in question shall be interpreted as confirmation of non residence that year. An applicant whose application is rejected on this basis may seek reconsideration based on the provision of further information;
7. Where an application is not accepted in whole or in part, the applicant will be advised of the reasons and may seek reconsideration based on the provision of additional information that relates to the rejection, including evidence that may be provided by the applicant personally which may include:
  - photographs;
  - other documentary evidence of a connection with the school;
  - affidavit evidence, including but not limited to, the affidavits of other students, school or residence employees, Aboriginal leaders or others with personal knowledge relating to the applicant's residence at the school;
  - an affidavit from the applicant confirming residence by reference to corroborating documents and/or objective events;
8. An application will not be validated based on the applicant's bare declaration of residence alone.

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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, JANET BREWSTER, RHONDA BUFFALO, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, BRENDA CYR, DEANNA CYR, MALCOLM DAWSON, ANN DENE, BENNY DOCTOR, LUCY DOCTOR, 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 McCULLUM, 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 et al

Defendants

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**ORDER**

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