

**FEDERAL COURT
PROPOSED CLASS PROCEEDING**

BETWEEN:

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

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

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

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

STATEMENT OF CLAIM

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defense in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defense is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defense is sixty days.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: _____

Issued by: _____
(Registry Officer)

Address of local office: Pacific Centre
P.O. Box 10065
701 West Georgia Street,
Vancouver, British Columbia
V7Y 1B6

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

Relief Sought

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

Nature of this Action

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

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

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

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

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

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

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

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

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

Parties and Class

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

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

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

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

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

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

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

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

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

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

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

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

The Boarding Home Program for Indian Students

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

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

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

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

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

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

Student Experiences

Loss of Culture

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

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

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

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

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

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

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

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

Physical, Sexual and Psychological Abuse

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

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

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

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

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

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

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

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

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

Representative Plaintiffs

Reginald Percival

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

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

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

47. Mr. Percival felt scared and alone.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Iona Teena McKay

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

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

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

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

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

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

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

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

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

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

80. Ms. McKay reported the abuse to her Indian Affairs and Northern Development counsellor. To Ms. McKay's knowledge, her boarding home father was never punished.

81. After being kicked out of her first boarding home, Ms. McKay's counsellor sent Ms. McKay to live with another boarding home family in Terrace.

82. Ms. McKay endured psychological and sexual abuse in her new boarding home.

83. Ms. McKay had two boarding home brothers at this second home. The older brother would often come into Ms. McKay's bedroom at night while he was naked and drunk. Every night, Ms. McKay felt terrified – worried that he would come into her room naked again.

84. Once, Ms. McKay awoke from her sleep to find herself being raped by the younger of her two boarding home brothers. He was lying naked on top of her, his penis inside her, with his hand over her mouth to prevent her from screaming. She was 14.

85. Eventually, Ms. McKay was put into a third boarding home where she remained until she finished grade 12.

86. Ms. McKay's school teachers and fellow students were racist and mean. She was often bullied.

87. Ms. McKay felt ashamed, isolated and hopeless. At the age of 13 she started turning to alcohol and drugs to numb her pain.

88. Ms. McKay suffered from extreme depression and suicidal ideation. She began taking anti-depressants.

89. At age 16, Ms. McKay tried to kill herself.

90. Ms. McKay didn't ever feel at home in Terrace. None of her boarding home families spoke her Nisga'a language and they didn't know or understand her culture.

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

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

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

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

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

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

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

Allan McKay

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Lorna Watts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Duties of the Defendant

Generally

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

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

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

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

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

Fiduciary Duty

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

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

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

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

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

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

Common Law Duty

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

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

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

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

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

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

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

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

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

Breach of the Defendant’s Duties

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

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

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

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

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

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

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

International Law

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

180. Article 1 of UNDRIP states:

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

181. Article 8 of UNDRIP states:

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

discrimination directed against them.

Ongoing Loss and Damage

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

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

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

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

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

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

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

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

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

Punitive Damages

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

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

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

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

Disgorgement

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

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

Québec Class Members

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

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

Legislation

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

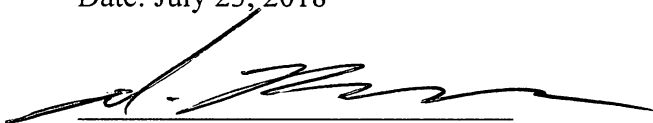
- a. *Charter of Human Rights and Freedoms*, CQLR c C-12;
- b. *Civil Code of Quebec*, CQLR, c CCQ-1991;
- c. *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK);
- d. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11;
- e. *Crown Liability Act*, SC 1952-53, c 30;
-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

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

Place of Trial

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

Date: July 23, 2018



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