

**FEDERAL COURT**  
**CLASS PROCEEDING**

**BETWEEN:**

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND,

CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND,

VIOLET CATHERINE GOTTFRIEDSON, CHARLOTTE ANNE VICTORINE GILBERT, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, DAPHNE PAUL and RITA POULSEN

**PLAINTIFFS**

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

**DEFENDANT**

**DAY SCHOLARS SURVIVOR AND DESCENDANT CLASS  
SETTLEMENT AGREEMENT**

**WHEREAS:**

A. Canada and certain religious organizations operated Indian Residential Schools for the education of Indigenous children, in which children suffered harms.

B. On May 8, 2006, Canada entered into the Indian Residential Schools Settlement Agreement, which provided for compensation and other benefits, including the Common Experience Payment, in relation to attendance at Indian Residential Schools.

C. On August 15, 2012, the Plaintiffs filed a putative class action in the Federal Court of Canada bearing Court File No. T-1542-12, *Gottfriedson et al. v. Her Majesty*

*the Queen in Right of Canada* (the “Action”). An Amended Statement of Claim was filed on June 11, 2013, and a First Re-Amended Statement of Claim was filed on June 26, 2015.

D. The Action was certified as a class proceeding by order of the Federal Court dated June 18, 2015, on behalf of three subclasses: the Survivor Class, the Descendant Class, and the Band Class.

E. The Parties intend there to be a fair and comprehensive settlement of the claims of the Survivor Class and Descendant Class, and further desire the promotion of truth, healing, education, commemoration, and reconciliation. They have negotiated this Agreement with these objectives in mind.

F. Subject to the Settlement Approval Order, the claims of the Survivor Class Members and Descendant Class Members shall be settled on the terms contained in this Agreement.

G. The Parties intend that the claims of the Band Class shall continue, notwithstanding the settlement of the claims of the Survivor Class and Descendant Class, and intend that this Agreement shall not prejudice the rights of the Parties in the continued litigation of the Band Class Members’ claims in the Action.

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

## **INTERPRETATION & EFFECTIVE DATE**

### **1. Definitions**

1.01 In this Agreement, the following definitions apply:

**“Aboriginal” or “Aboriginal Person”** means a person whose rights are recognized and affirmed by the *Constitution Act, 1982*, s. 35;

“**Action**” means the certified class proceeding bearing Court File No. T-1542-12, *Gottfriedson et al. v. Her Majesty the Queen in Right of Canada*;

“**Agreement**” means this settlement agreement, including the schedules attached hereto;

“**Approval Date**” means the date the **Court** issues its **Approval Order**;

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

“**Band Class**” means the Tk’emlúps te Secwépmeč Indian Band and the Sechelt Indian Band and any other Indian Band(s) which:

- a. has or had some members who are or were members of the **Survivor Class**, or in whose community an **Indian Residential School** is located; and
- b. is specifically added to the **Action** with one or more **Indian Residential Schools**;

“**Business Day**” means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the province or territory in which the person who needs to take action pursuant to this **Agreement** is situated or a holiday under the federal laws of Canada applicable in the said province or territory;

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

“**Certification Order**” means the order of the **Court** dated June 18, 2015, certifying this **Action** under the *Federal Courts Rules*, attached as Schedule B;

“**Claim**” means an application/request for compensation made by a **Claimant** under this **Agreement** by submitting a **Claim Form**, including any related documentation, to the **Claims Administrator**;

“**Claim Form**” means the application for a **Day Scholar Compensation Payment** that must be submitted by a **Claimant** to the **Claims Administrator** by the **Claims Deadline**, the form and content of which will be approved by the **Court** prior to the **Implementation Date**;

“**Claimant**” means a **Day Scholar**, their **Personal Representative**, or, in the case of a Day Scholar who died on or after May 30, 2005, their **Designated Representative**, who makes or continues a **Claim**;

“**Claims Administrator**” means such entity as may be designated by the **Parties** from time to time and appointed by the **Court** to carry out the duties assigned to it in this **Agreement**;

“**Claims Deadline**” means the date which is twenty-one (21) months after the **Implementation Date**;

“**Claims Process**” means the process outlined in this **Agreement**, including Schedule C and related forms, for the submission of **Claims**, assessment of eligibility, and payment of **Day Scholar Compensation Payments** to **Claimants**;

“**Class Counsel**” means Peter R. Grant Law Corporation, Diane Soroka Avocate Inc., and Waddell Phillips Professional Corporation;

“**Class Period**” means the period from and including January 1, 1920, and ending on December 31, 1997;

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

“**Day Scholar**” means a **Survivor Class Member** who attended but did not simultaneously reside at an **Indian Residential School** that is listed in Schedule E, either on List 1 or List 2, during the time periods indicated therein, for any part of a **School Year**;

“**Day Scholar Compensation Payment**” means the ten thousand dollar (\$10,000) payment referred to in section 25.01 herein;

“**Day Scholars Revitalization Fund**” or “**Fund**” means the Fund established in section 21.01 herein, and as described in the **Fund Distribution Plan**;

“**Day Scholars Revitalization Society**” or “**Society**” means the not-for-profit society established pursuant to section 22.01 herein;

“**Descendant Class**” means the first generation of persons descended from **Survivor Class Members** or persons who were legally or traditionally adopted by a **Survivor Class Member** or their spouse;

“**Descendant Class Member**” means an individual who falls within the definition of the **Descendant Class**;

“**Designated Representative**” means the individual designated by the validly completed Designated Representative Form, the form and content of which will be approved by the **Court** prior to the **Implementation Date**;

“**Fee Agreement**” means the **Parties**’ standalone legal agreement regarding legal fees, costs, honoraria and disbursements;

“**Fund Distribution Plan**” is the plan for the distribution of funds allocated to the **Day Scholars Revitalization Fund**, attached as Schedule F;

“**Independent Reviewer**” means the individual(s) appointed by the **Court** to determine review reconsideration requests from **Claimants** whose **Claims** were denied by the **Claims Administrator**, in accordance with the **Claims Process**;

“**Indian Residential Schools**” means the institutions identified in the list of Indian Residential Schools attached as Schedule “A” to the **Certification Order**, as that list may be amended by further Order of the **Court**;

“**Implementation Date**” means the latest of:

- a. the day following the last day on which an appeal or motion for leave to appeal the **Approval Order** may be brought; and

- b. the date of the final determination of any appeal brought in relation to the **Approval Order**;

“**IRSSA**” means the Indian Residential Schools Settlement Agreement dated May 8, 2006;

“**McLean Settlement**” means the McLean Federal Indian Day Schools Settlement Agreement entered into on November 30, 2018, in the matter of *McLean et al. v. Her Majesty the Queen in Right of Canada*, bearing Court File No. T-2169-16;

“**Opt Out**” means any individual who would otherwise fall within the definition of a **Survivor Class Member** or **Descendant Class Member** who previously validly opted out of the **Action**;

“**Parties**” means the signatories to this **Agreement**;

“**Person Under Disability**” means

- a. a minor as defined by the legislation of that person's province or territory of residence; or
- b. a person who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity and for whom a **Personal Representative** has been appointed under the applicable legislation of that person's province or territory of residence;

“**Personal Representative**” means the person appointed under the applicable legislation of that person's province or territory of residence to manage or make reasonable judgments or decisions in respect of the affairs of a **Person Under Disability**;

“**Released Claims**” means those causes of action, liabilities, demands, and claims released pursuant to the **Approval Order**, as set out in section 42.01 herein;

“**School Year**” means from September 1 of one calendar year to August 31 of the subsequent calendar year;

“**Settlement Agreement Notice Plan**” means the Notice Plan advising **Survivor Class Members** and **Descendant Class Members** of the Agreement;

“**Settlement Approval Notice Plan**” means the Notice Plan advising **Survivor Class Members** and **Descendant Class Members** of the **Approval Order**.

“**Survivor Class**” means all **Aboriginal Persons** who attended as a student or for educational purposes for any period at an **Indian Residential School** during the **Class Period**, excluding, for any individual class member, such periods of time for which that class member received compensation by way of the Common Experience Payment under the **IRSSA**;

“**Survivor Class Member**” means an individual who falls within the definition of the **Survivor Class** and is not an **Opt Out**; and

“**Ultimate Claims Deadline**” means the date which is three (3) months after the **Claims Deadline**.

## **2. No Admission of Liability or Fact**

2.01 This Agreement shall not be construed as an admission by Canada, nor a finding by the Court, of any fact within, or liability by Canada for any of the claims asserted in the Plaintiffs’ claims and/or pleadings in the Action as they are currently worded in the First Re-Amended Statement of Claim, were worded in previous versions, or may be worded in the future.

2.02 For greater certainty, and without limiting the foregoing, the Parties agree that, in the further litigation of the Band Class claims, the Parties will not argue that the existence of this Agreement or any terms herein are admissions by the Parties, or findings by the Court, of any fact or law, or an admission of liability by Canada, relevant to the claims asserted by the Band Class in the Action, or

a settlement or resolution of the Band Class claims in the Action. Nothing in the above, however, or anything found elsewhere in this Agreement prevents the Parties from referring to or otherwise relying on the existence of the Agreement and the compensation paid or payable under it in any proceeding, if relevant.

### **3. Headings**

- 3.01 The division of this Agreement into paragraphs, the use of headings, and the appending of Schedules are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

### **4. Extended Meanings**

- 4.01 In this Agreement, words importing the singular number include the plural and *vice versa*, words importing any gender include all genders, and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations, and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

### **5. No *Contra Proferentem***

- 5.01 The Parties acknowledge that they have reviewed and participated in settling the terms of this Agreement and they agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Parties is not applicable in interpreting this Agreement.

### **6. Statutory References**

- 6.01 In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date thereof or as the same may from



time to time have been amended, re-enacted, or replaced, and includes any regulations made thereunder.

## **7. Day for Any Action**

- 7.01 Where the time on or by which any action required to be taken hereunder expires or falls on a day that is not a Business Day, such action may be done on the next succeeding day that is a Business Day.

## **8. Final Order**

- 8.01 For the purpose of this Agreement, a judgment or order becomes final when the time for appealing or seeking leave to appeal the judgment or order has expired without an appeal being taken or leave being sought or, in the event that an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals as may be taken have been disposed of and the time for further appeal, if any, has expired.

## **9. Currency**

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

## **10. Compensation Inclusive**

- 10.01 The amounts payable under this Agreement are inclusive of any pre-judgment or post-judgment interest or other amounts that may be claimed by Survivor Class Members or Descendant Class Members against Canada arising out of the Released Claims.

## **11. Schedules**

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

Schedule A: First Re-Amended Statement of Claim, filed June 26, 2015

Schedule B: Certification Order, dated June 18, 2015

Schedule C: Claims Process

Schedule D: Estate Claims Process

Schedule E: Lists of Indian Residential Schools for Claims Process

Schedule F: Day Scholars Revitalization Fund Distribution Plan

Schedule G: Draft Amended Certification Order (re: Band Class claims)

Schedule H: Draft Second Re-Amended Statement of Claim, draft without delineations of prior or currently proposed amendments (re: Band Class claims)

## **12. No Other Obligations**

12.01 All actions, causes of action, liabilities, claims, and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses, and interest which any Survivor Class Member or Descendant Class Member ever had, now has, or may hereafter have arising in relation to the Action against Canada, whether such claims were made or could have been made in any proceeding, will be finally settled based on the terms and conditions set out in this Agreement upon the date of the Approval Order, and Canada will have no further liability except as set out in this Agreement.

### **13. Entire Agreement**

13.01 This Agreement constitutes the entire agreement among the Parties with respect to the Survivor Class and Descendant Class claims asserted in the Action and cancels and supersedes any prior or other understandings and agreements between or among the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied, or statutory between or among the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Agreement.

### **14. Benefit of the Agreement**

14.01 This Agreement will enure to the benefit of and be binding upon the Parties, the Survivor Class Members, the Descendant Class Members, and their respective heirs, estates, Designated Representatives and Personal Representatives.

### **15. Band Class Claim**

15.01 Nothing in this Agreement is intended to, or does prejudice the rights of the Parties in the continued litigation of the Band Class claims in the Action.

15.02 The Band Class claims that will continue are set out in the Draft Amended Certification Order (re: Band Class claims), attached as Schedule G and the Draft Second Re-Amended Statement of Claim (re: Band Class claims), attached as Schedule H.

### **16. Applicable Law**

16.01 This Agreement will be governed by and construed in accordance with the laws of the province or territory where the Survivor Class Member or Descendant Class Member resides and the laws of Canada applicable therein.

## **17. Counterparts**

17.01 This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

## **18. Official Languages**

18.01 Canada will prepare a French translation of this Agreement for use at the settlement approval hearing before the Court. As soon as practicable after the execution of this Agreement, Canada will arrange for the preparation of an authoritative French version. The French version shall be of equal weight and force at law.

## **19. Date When Binding and Effective**

19.01 This Agreement will become binding and effective on and after the Implementation Date on the Parties and all Survivor Class Members and Descendant Class Members. The Approval Order of the Court constitutes deemed approval of this Agreement by all Survivor Class Members and Descendant Class Members.

## **20. Effective in Entirety**

20.01 None of the provisions of this Agreement will become effective unless and until the Court approves this Agreement.

## **THE DAY SCHOLARS REVITALIZATION FUND**

### **21. The Day Scholars Revitalization Fund**

21.01 Canada agrees to provide the amount of fifty million dollars (\$50,000,000.00) to the Day Scholars Revitalization Fund, to support healing, wellness, education,

language, culture, heritage and commemoration activities for the Survivor Class Members and Descendant Class Members.

21.02 The monies described in section 21.01 herein will be paid by Canada to the Day Scholars Revitalization Society within thirty (30) days after the Implementation Date.

## **THE DAY SCHOLARS REVITALIZATION SOCIETY**

### **22. Establishing the Day Scholars Revitalization Society**

22.01 The Parties agree that the Day Scholars Revitalization Society will use the Fund to support healing, wellness, education, language, culture, and commemoration activities for the Survivor Class Members and the Descendant Class Members. The monies for the Fund shall be held by the Day Scholars Revitalization Society, which will be established as a “not for profit” entity under the British Columbia *Societies Act*, S.B.C. 2015, c. 18 or analogous federal legislation or legislation in any of the provinces or territories prior to the Implementation Date, and will be independent of the Government of Canada, although Canada shall have the right to appoint one representative to the Society Board of Directors.

22.02 A draft Day Scholars Revitalization Fund Plan is attached as Schedule F.

22.03 The Fund is intended to benefit the Survivor Class Members and Descendant Class Members and to complement and not duplicate any federal government programs.

### **23. Directors**

23.01 The Society will have five first directors, to be appointed by the Parties.

23.02 The Board of the Society will have national representation and will include one director appointed by Canada. The representative appointed by Canada will not be an employee or public servant of Canada.

## **24. Responsibilities of Directors**

24.01 The Society's Directors shall manage and/or supervise the management of the activities and affairs of the Day Scholars Revitalization Society, which will receive, hold, invest, manage, and disburse the monies described in the Fund provisions of this Agreement and any other monies transferred to the Fund under this Agreement for the purposes of funding healing, wellness, education, language, culture, heritage and commemoration activities for the Survivor Class Members and Descendant Class Members.

## **COMPENSATION FOR INDIVIDUAL CLAIMANTS**

### **25. Day Scholar Compensation Payments**

25.01 Canada will pay the sum of ten thousand dollars (\$10,000) as non-pecuniary general damages, with no reductions whatsoever, to each Claimant whose Claim is approved pursuant to the Claims Process.

25.02 A Claimant is entitled to a Day Scholar Compensation Payment, and their Claim shall be approved, if the Claimant satisfies the following Eligibility Criteria:

- a. the Claim is made with respect to a Day Scholar who was alive on May 30, 2005;
- b. the Claim is delivered to the Claims Administrator prior to the Ultimate Claims Deadline;
- c. the Claim is made with respect to that Day Scholar's attendance at an Indian Residential School that is listed in Schedule E on either List 1 or List 2 during the time periods indicated therein, for any part of a specific School Year that meets all three of the following conditions, namely that it is a School Year for which the Day Scholar or their executor, representative, or heir who applied in place of the Day Scholar:

- i. has not received a Common Experience Payment under the IRSSA;
- ii. has not received and will not receive compensation under the McLean Settlement; and
- iii. has not received compensation under any other settlement with respect to a school listed on Schedule K to the McLean Settlement.

25.03 For greater clarity, for any School Year during which a Survivor Class Member was eligible for, but did not make a claim for the Common Experience Payment under the IRSSA, no Claim for a Day Scholar Compensation Payment under this Agreement may be made in regard to that Survivor Class Member for that School Year.

## **26. No Cap on Claims**

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

## **27. Transfer of Monies by Canada**

27.01 Canada will transfer monies directly to the Claims Administrator to provide for payment of approved Claims, in accordance with the Claims Process.

## **28. Social Benefits**

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

28.02 Further, Canada will make its best efforts to obtain the agreement of the necessary Departments of the Government of Canada that the receipt of any

payments pursuant to this Agreement will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Claimant pursuant to any federal social benefit programs, including Old Age Security and Canada Pension Plan.

## **IMPLEMENTATION OF THIS AGREEMENT**

### **29. The Action**

29.01 The First Re-Amended Statement of Claim in the Action is attached as Schedule A.

29.02 The Parties agree that the Plaintiffs will seek leave of the Court, on consent and as part of the application for Court approval of this Agreement, to file the Draft Second Re-Amended Statement of Claim in the Action, which is attached as Schedule H.

### **30. Certification Order**

30.01 The Certification Order is attached as Schedule B.

30.02 The Parties agree that the Plaintiffs will seek an Order from the Court, on consent and as part of the application for Court approval of this Agreement, issuing the Amended Certification Order, which is attached as Schedule G.

### **31. Notice Plans**

31.01 The Parties agree that the Plaintiffs will seek an Order from the Court, on consent, approving a Settlement Agreement Notice Plan, whereby Survivor Class Members and Descendant Class Members will be provided with notice of the Agreement, its terms, how to obtain more information, and how to share their feedback in advance of, and during, the settlement approval hearing.



31.02 The Parties further agree that the Plaintiffs will seek an Order from the Court, on consent and as part of the application for Court approval of this Agreement, approving a Settlement Approval Notice Plan, which will provide Survivor Class Members and Descendant Class Members with notice of the Approval Order and how a Claim for compensation can be made.

31.03 Canada agrees to pay for the implementation of the Settlement Agreement Notice Plan and the Settlement Approval Notice Plan.

## **CLAIMS MADE BY PERSONAL REPRESENTATIVES AND DESIGNATED REPRESENTATIVES**

### **32. Compensation If Deceased**

32.01 Where a Day Scholar has died on or after May 30, 2005, a Claim may be brought on behalf of the deceased Day Scholar's estate or heirs in accordance with the Estate Claims Process set out in Schedule D.

### **33. Person Under Disability**

33.01 If a Day Scholar submits a Claim to the Claims Administrator prior to the Ultimate Claims Deadline and the Claim is approved but the Day Scholar is or becomes a Person Under Disability prior to their receipt of a Day Scholar Compensation Payment, that payment will be made to the Personal Representative of the Day Scholar.

### **34. Hold Harmless Agreement for Claims**

34.01 Canada, the Claims Administrator, Class Counsel, and the Independent Reviewer, shall not be liable for, and will in fact be held harmless by Claimants, from any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including without limitation legal fees, disbursements, and expenses)

or other liabilities of every character whatsoever by reason of or resulting from a payment or non-payment to a Personal Representative or Designated Representative pursuant to this Agreement and any order of the Court approving it.

## **CLAIMS PROCESS**

### **35. Principles Governing Claims Administration**

35.01 The Claims Process is intended to be expeditious, cost-effective, user-friendly, culturally sensitive, and trauma-informed. The intent is to minimize the burden on the Claimants in pursuing their Claims and to mitigate any likelihood of re-traumatization through the Claims Process. The Claims Administrator and Independent Reviewer shall, in the absence of reasonable grounds to the contrary, assume that a Claimant is acting honestly and in good faith. In considering an Application, the Claims Administrator and Independent Reviewer shall draw all reasonable and favourable inferences that can be drawn in favour of the Claimant.

### **36. Claims Process**

36.01 The Claims Process is set out in Schedule C.

## **CLAIMS ADMINISTRATOR**

### **37. Duties of the Claims Administrator**

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

- a. developing, installing, and implementing systems, forms, information, guidelines and procedures for processing Claims in hard or electronic copy, in accordance with this Agreement;

- b. developing, installing, and implementing systems and procedures for making payments of Day Scholar Compensation Payments in accordance with this Agreement;
- c. providing personnel in such reasonable numbers as are required for the performance of its duties, and training and instructing them;
- d. keeping or causing to be kept accurate accounts of its activities and its administration, including preparing such financial statements, reports, and records as are required by the Court;
- e. reporting to the Parties on a monthly basis respecting Claims received and determined, and to which Indian Residential Schools the Claims relate;
- f. responding to enquiries respecting Claims, reviewing Claims, making decisions in respect of Claims, giving notice of its decisions in accordance with this Agreement, and providing information to Claimants regarding the reconsideration process as set out in the Claims Process;
- g. communicating with Claimants in either English or French, as the Claimant elects, and, if a Claimant expresses the desire to communicate in a language other than English or French, making best efforts to accommodate them; and
- h. such other duties and responsibilities as the Court may from time to time direct.

### **38. Appointment of the Claims Administrator**

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

### **39. Duties of the Independent Reviewer**

39.01 The role of the Independent Reviewer is to determine any request for reconsideration brought by a Claimant pursuant to the Claims Process set out in Schedule C. The Independent Reviewer(s) will be appointed by the Court on the recommendation of the Parties.

### **40. Costs of Claims Process**

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

### **41. Approval Order**

41.01 The Parties agree that an Approval Order of this Agreement will be sought from the Court in a form to be agreed upon by the Parties and shall include the following provisions:

- a. incorporating by reference this Agreement in its entirety including all Schedules;
- b. ordering and declaring that the Order is binding on all Survivor Class Members and Descendant Class Members, including Persons Under Disability; and
- c. ordering and declaring that the Survivor Class and Descendant Class Claims set out in the First Re-Amended Statement of Claim, filed June 26, 2015, are dismissed, and giving effect to the releases and related clauses set out in sections 42.01 and 43.01 herein to ensure the conclusion of all Survivor Class and Descendant Class claims.

### **42. Conclusion of Survivor Class and Descendant Class Claims**

42.01 The Approval Order sought from the Court will declare that:

- a. Each Survivor Class Member or, if deceased, their estate (hereinafter “Survivor Releasor”), has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims, and demands of every nature or kind available, asserted for the Survivor Class in the First Re-Amended Statement of Claim filed June 26, 2015, in the Action or that could have been asserted by any of the Survivor Releasors as individuals in any civil action, whether known or unknown, including for damages, contribution, indemnity, costs, expenses, and interest which any such Survivor Releasor ever had, now has, or may hereafter have due to their attendance as a Day Scholar at any Indian Residential School at any time.
- b. Each Descendant Class Member or, if deceased, their estate (hereinafter “Descendant Releasor”), has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims, and demands of every nature or kind available, asserted for the Descendant Class in the First Re-Amended Statement of Claim filed June 26, 2015, in the Action or that could have been asserted by any of the Descendant Releasors as individuals in any civil action, whether known or unknown, including for damages, contribution, indemnity, costs, expenses, and interest which any such Descendant Releasor ever had, now has, or may hereafter have due to their respective parents’ attendance as a Day Scholar at any Indian Residential School at any time.
- c. All causes of actions/claims asserted by, and requests for pecuniary, declaratory or other relief with respect to the Survivor Class Members and Descendant Class Members in the First Re-Amended Statement of Claim filed June 26, 2015 are dismissed on consent of the Parties without determination on their merits, and will not be adjudicated as part of the determination of the Band Class claims.

- d. Canada may rely on the above-noted releases as a defence to any lawsuit that purports to seek compensation from Canada for the claims of the Survivor Class and Descendant Class as set out in the First Re-Amended Statement of Claim. For additional certainty, however, the above-noted releases and the Approval Order will not be interpreted as if they release, bar or remove any causes of action or claims that Band Class Members may have in law as distinct legal entities or as entities with standing and authority to advance legal claims for the violation of collective rights of their respective Aboriginal peoples, including to the extent such causes of action, claims and/or breaches of rights or duties owed to the Band Class are alleged in the First Re-Amended Statement of Claim filed June 26, 2015, even if those causes of action, claims and/or breaches of rights or duties are based on alleged conduct towards Survivor Class Members or Descendant Class Members set out elsewhere in either of those documents.
- e. Each Survivor Releaser and Descendant Releaser is deemed to agree that, if they make any claim or demand or take any action or proceeding against another person, persons, or entity in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute, common law, or Quebec civil law, in relation to allegations and matters set out in the Action, including any claim against provinces or territories or other legal entities or groups, including but not limited to religious or other institutions that were in any way involved with Indian Residential Schools, the Survivor Releaser or Descendant Releaser will expressly limit their claim so as to exclude any portion of Canada's responsibility.
- f. Upon a final determination of a Claim made under and in accordance with the Claims Process, each Survivor Releaser and Descendant Releaser is also deemed to agree to release the Parties, Class Counsel, counsel for Canada, the Claims Administrator, the Independent Reviewer, and any other party involved in the Claims Process, with respect to any claims that arise or

could arise out of the application of the Claims Process, including but not limited to the sufficiency of the compensation received.

#### **43. Deemed Consideration by Canada**

43.01 Canada's obligations and liabilities under this Agreement constitute the consideration for the releases and other matters referred to in this Agreement and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Survivor Releasors and Descendant Releasors are limited to the benefits provided and compensation payable pursuant to this Agreement, in whole or in part, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims, and demands.

### **LEGAL FEES AND DISBURSEMENTS**

#### **44. Class Counsel Fees and Disbursements**

44.01 All legal fees and disbursements of Class Counsel, and the representative plaintiffs' proposed honoraria are the subject of the Fee Agreement, which is subject to review and approval by the Court.

44.02 Court approval of the Fee Agreement is separate and distinct from Court approval of this Agreement. In the event that the Court does not approve the Fee Agreement, in whole or in part, it will have no effect on the approval or implementation of this Agreement.

#### **45. No Other Fees or Disbursements to Be Charged**

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

## **TERMINATION AND OTHER CONDITIONS**

### **46. Termination of Agreement**

46.01 This Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled and the Court orders that the Agreement is completed.

### **47. Amendments**

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

### **48. No Assignment**

48.01 No amount payable under this Agreement can be assigned and any such assignment is null and void except as expressly provided for in this Agreement. Where a Day Scholar is deceased or is a Person Under Disability, payment for an approved Claim will be made to their Designated Representative or Personal Representative, respectively.

## **CONFIDENTIALITY**

### **49. Confidentiality**

49.01 Any information provided, created or obtained in the course of this settlement, whether written or oral, will be kept confidential by the Parties and Class Counsel, all Claimants, the Claims Administrator, and the Independent Reviewer and will not be used for any purpose other than this settlement unless otherwise agreed by the Parties, authorized by this Agreement or applicable federal, provincial or territorial privacy legislation, or ordered by the Court.



## **50. Destruction of Claimant Information and Records**

50.01 Within two (2) years of completing the payments of compensation, the Claims Administrator will destroy all Claimant information and documentation in its possession, unless a Claimant, Designated Representative, or Personal Representative specifically requests the return of such information within the two (2) year period. Upon receipt of such request, the Claims Administrator will forward the Claimant information as directed.

50.02 Within two (2) years of rendering a reconsideration decision, the Independent Reviewer will destroy all Claimant information and documentation in their possession, unless a Claimant, Designated Representative, or Personal Representative specifically requests the return of such information within the two (2) year period. Upon receipt of such request, the Independent Reviewer will forward the Claimant information as directed.

50.03 Prior to destruction of the records, the Claims Administrator and Independent Reviewer shall create and provide to Canada a list showing the (i) Day Scholar, (ii) School Year(s) of attendance, and (iii) Indian Residential School(s), with respect to which each Day Scholar Compensation Payment was made. Notwithstanding anything else in this Agreement, this list must be retained by Canada in strict confidence and can only be used in a legal proceeding or settlement where it is relevant as demonstrating, which the Parties agree they will do without further proof, which individuals received the Day Scholar Compensation Payment for which School Year(s) and with regard to which Indian Residential School(s).

## **51. Confidentiality of Negotiations**

51.01 Save as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to the exchanges of letters of offer and acceptance, and this Agreement continues in force.

## CO-OPERATION

### 52. Co-operation With Canada

52.01 Upon execution of this Agreement, the representative plaintiffs and Class Counsel will co-operate with Canada and make best efforts to obtain Court approval of this Agreement and make reasonable efforts to obtain the support and participation of Survivor Class Members and Descendant Class Members in all aspects of this Agreement.

### 53. Public Announcements

53.01 At the time agreed upon, the Parties will make public announcements in support of this Agreement and continue to speak publicly in favour of the Agreement.

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of this \_\_\_\_ day of May, 2021.

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For the Plaintiffs

Waddell Phillips Professional Corporation, per  
John K. Phillips  
Class Counsel

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For the Plaintiffs

Peter R. Grant Law Corporation, per  
Peter R. Grant  
Class Counsel

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For the Plaintiffs

Diane Soroka Avocate Inc., per  
Diane H. Soroka  
Class Counsel

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For the Defendants

Annie Boudreau  
Chief Finances, Results and Delivery Officer  
Crown-Indigenous Relations and Northern  
Affairs Canada