

Federal Court



Cour fédérale

Date: 20150618

Docket: T-1542-12

Citation: 2015 FC 766

Ottawa, Ontario, June 18, 2015

PRESENT: The Honourable Mr. Justice Harrington

PROPOSED CLASS ACTION

BETWEEN:

**CHIEF SHANE GOTTFRIEDSON,
ON HIS OWN BEHALF AND ON BEHALF OF
ALL THE MEMBERS OF THE TK'EMLÚPS
TE SECWÉPEMC INDIAN BAND AND THE
TK'EMLÚPS TE SECWÉPEMC INDIAN
BAND, CHIEF GARRY FESCHUK, ON HIS
OWN BEHALF AND ON BEHALF OF ALL
MEMBERS OF THE SEHEL'T INDIAN
BAND AND THE SEHEL'T INDIAN BAND,
VIOLET CATHERINE GOTTFRIEDSON,
DOREEN LOUISE SEYMOUR, CHARLOTTE
ANNE VICTORINE GILBERT, VICTOR
FRASER, DIENA MARIE JULES, AMANDA
DEANNE BIG SORREL HORSE, DARLENE
MATILDA BULPIT, FREDERICK JOHNSON,
ABIGAIL MARGARET AUGUST, SHELLY
NADINE HOEHNE, DAPHNE PAUL, AARON
JOE AND RITA POULSEN**

Plaintiffs

and

**HER MAJESTY THE QUEEN
IN RIGHT OF CANADA**

Defendant

ORDER

FOR REASONS GIVEN on 3 June 2015, reported at 2015 FC 706;

THIS COURT ORDERS that:

1. The above captioned proceeding shall be certified as a class proceeding with the following conditions:

a. The Classes shall be defined as follows:

Survivor Class: all Aboriginal persons who attended as a student or for educational purposes for any period at a 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 Indian Residential Schools Settlement Agreement.

Descendant Class: 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.

Band Class: the Tk'emlúps te Secwépemc Indian Band and the Sechelt Indian Band and any other Indian Band(s) which:

- (i) has or had some members who are or were members of the Survivor Class, or in whose community a Residential School is located; and
- (ii) is specifically added to this claim with one or more specifically Identified Residential Schools.

b. The Representative Plaintiffs shall be:

For the Survivor Class:

Violet Catherine Gottfriedson

Charlotte Anne Victorine Gilbert

Diena Marie Jules

Darlene Matilda Bulpit

Frederick Johnson

Daphne Paul

For the Descendant Class:

Amanda Deanne Big Sorrel Horse

Rita Poulsen

For the Band Class:

Tk'emlúps te Secwépemc Indian Band

Sechelt Indian Band

c. The Nature of the Claims are:

Breaches of fiduciary and constitutionally mandated duties, breach of Aboriginal Rights, intentional infliction of mental distress, breaches of International Conventions and/or Covenants, breaches of international law, and negligence committed by or on behalf Canada for which Canada is liable.

d. The Relief claimed is as follows:

By the Survivor Class:

- i. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties to the Survivor Class Representative Plaintiffs and the other Survivor Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools;
- ii. a Declaration that members of the Survivor Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;
- iii. a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) of the Survivor Class;
- iv. a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Survivor Class;
- v. a Declaration that Canada is liable to the Survivor Class Representative Plaintiffs and other Survivor Class members for the damages caused by its breach of fiduciary, constitutionally-mandated, statutory and common law duties, and Aboriginal Rights and for the intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose,

establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Residential Schools;

- vi. general damages for negligence, breach of fiduciary, constitutionally-mandated, statutory and common law duties, Aboriginal Rights and intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law, for which Canada is liable;
 - vii. pecuniary damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, loss of educational opportunities, breach of fiduciary, constitutionally-mandated, statutory and common law duties, Aboriginal Rights and for intentional infliction of mental distress, as well as breaches of International Conventions and Covenants, and breaches of international law including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Survivor Class for which Canada is liable;
 - viii. exemplary and punitive damages for which Canada is liable; and
 - ix. pre-judgment and post-judgment interest and costs.
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By the Descendant Class:

- i. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties owed to the Descendant Class Representative Plaintiffs and the other Descendant Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance, obligatory attendance of Survivor Class members at, and support of, the Residential Schools;
- ii. a Declaration that the Descendant Class have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner
- iii. a Declaration that Canada breached the linguistic and cultural rights (Aboriginal Rights or otherwise) of the Descendant Class;
- iv. a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Descendant Class;
- v. a Declaration that Canada is liable to the Descendant Class Representative Plaintiffs and other Descendant Class members for the damages caused by its breach of fiduciary and constitutionally-mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at, and support of, the Residential Schools;

- vi. general damages for breach of fiduciary and constitutionally-mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, for which Canada is liable;
- vii. pecuniary damages and special damages for breach of fiduciary and constitutionally-mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the cost of care, and to restore, protect and preserve the linguistic and cultural heritage of the members of the Descendant Class for which Canada is liable;
- viii. exemplary and punitive damages for which Canada is liable; and
- ix. pre-judgment and post-judgment interest and costs.

By the Band Class:

- i. a Declaration that the Sechelt Indian Band and Tk'emlúps te Secwépemc Indian Band, and all members of the Band Class, have Aboriginal Rights to speak their traditional languages, to engage in their traditional customs and religious practices and to govern themselves in their traditional manner;
- ii. a Declaration that Canada owed and was in breach of the fiduciary, constitutionally-mandated, statutory and common law duties, as well as breaches of International Conventions and Covenants, and breaches of international law, to the Band Class members in relation to the purpose, establishment, funding, operation, supervision, control, maintenance,

- obligatory attendance of Survivor Class members at, and support of, the SIRS and the KIRS and other Identified Residential Schools;
- iii. a Declaration that the Residential Schools Policy and the KIRS, the SIRS and Identified Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Band Class;
 - iv. a Declaration that Canada was or is in breach of the Band Class members' linguistic and cultural rights, (Aboriginal Rights or otherwise), as well as breaches of International Conventions and Covenants, and breaches of international law, as a consequence of its establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Residential Schools Policy, and the Identified Residential Schools;
 - v. a Declaration that Canada is liable to the Band Class members for the damages caused by its breach of fiduciary and constitutionally mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, in relation to the purpose, establishment, funding, operation, supervision, control and maintenance, and obligatory attendance of Survivor Class members at and support of the Identified Residential Schools;
 - vi. non-pecuniary and pecuniary damages and special damages for breach of fiduciary and constitutionally mandated duties and Aboriginal Rights, as well as breaches of International Conventions and Covenants, and breaches of international law, including amounts to cover the ongoing cost

of care and development of wellness plans for members of the bands in the Band Class, as well as the costs of restoring, protecting and preserving the linguistic and cultural heritage of the Band Class for which Canada is liable;

- vii. The construction and maintenance of healing and education centres in the Band Class communities and such further and other centres or operations as may mitigate the losses suffered and that this Honourable Court may find to be appropriate and just;
- viii. exemplary and punitive damages for which Canada is liable; and
- ix. pre-judgment and post-judgment interest and costs.

e. The Common Questions of Law or Fact are:

- a. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a fiduciary duty owed to the Survivor, Descendant and Band Class, or any of them, not to destroy their language and culture?
 - b. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach the cultural and/or linguistic rights, be they Aboriginal Rights or otherwise of the Survivor, Descendant and Band Class, or any of them?
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- c. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a fiduciary duty owed to the Survivor Class to protect them from actionable mental harm?
 - d. Through the purpose, operation or management of any of the Residential Schools during the Class Period, did the Defendant breach a duty of care owed to the Survivor Class to protect them from actionable mental harm?
 - e. If the answer to any of (a)-(d) above is yes, can the Court make an aggregate assessment of the damages suffered by the Class as part of the common issues trial?
 - f. If the answer to any of (a)-(d) above is yes, was the Defendant guilty of conduct that justifies an award of punitive damages; and
 - g. If the answer to (f) above is yes, what amount of punitive damages ought to be awarded?
- f. The following definitions apply to this Order:
- a. “Aboriginal(s)”, “Aboriginal Person(s)” or “Aboriginal Child(ren)” means a person or persons whose rights are recognized and affirmed by the *Constitution Act*, 1982, s. 35;
 - b. “Aboriginal Right(s)” means any or all of the Aboriginal and treaty rights recognized and affirmed by the *Constitution Act*, 1982, section. 35;

- c. "Act" means the *Indian Act*, R.S.C. 1985, c. I-5 and its predecessors as have been amended from time to time;
- d. "Agreement" means the Indian Residential Schools Settlement Agreement dated May 10, 2006 entered into by Canada to settle claims relating to Residential Schools as approved in the orders granted in various jurisdictions across Canada;
- e. "Canada" means the Defendant, Her Majesty the Queen;
- f. "Class Period" means 1920 to 1997;
- g. "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the educational, governmental, economic, cultural, linguistic, spiritual and social customs, practices and way of life, traditional governance structures, as well as to the community and individual security and wellbeing, of Aboriginal Persons;
- h. "Identified Residential School(s)" means the KIRS or the SIRS or any other Residential School specifically identified as a member of the Band Class;
- i. "KIRS" means the Kamloops Indian Residential School;
- j. "Residential Schools" means all Indian Residential Schools recognized under the Agreement and listed in Schedule "A" appended to this Order

which Schedule may be amended from time to time by Order of this Court.;

k. "Residential Schools Policy" means the policy of Canada with respect to the implementation of Indian Residential Schools; and

l. "SIRS" means the Sechelt Indian Residential School.

g. The manner and content of notices to class members shall be approved by this Court. Class members in the Survivor and Descendent class shall have until October 30, 2015 in which to opt-out, or such other time as this Court may determine. Members of the Band Class will have 6 months within which to opt-in from the date of publication of the notice as directed by the Court, or other such time as this Court may determine.

h. Either party may apply to this Court to amend the list of Residential Schools set out in Schedule "A" for the purpose of these proceedings.

"Sean Harrington"

Judge