C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No. : 500-06-000812-160

S U P E R I O R C O U R T
Class Action

Anne Smith

Applicant

v.

Attorney General of Canada

Respondent

AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Art. 571 *et seq.*, *C.C.P.*)

TO ONE OF THE JUDGES OF THE SUPERIOR COURT, SITTING IN THE PRACTICE DIVISION FOR THE DISTRICT OF MONTREAL, THE APPLICANT RESPECTFULLY SUBMITS THE FOLLOWING:

The applicant, Anne Smith (a pseudonym), requests authorization to proceed with a class action on behalf of persons in the group described below, of which she is herself a member, specifically:

Description of the group

> "All persons who attended elementary or secondary schools operated by the Government of Canada in Fort George (now Chisasibi) and in Mistassini (now Mistissini), Quebec, between August 1970 and July 1978 and who were billeted with families in the community of Fort George or Mistassini, and who suffered sexual, physical, or psychological abuse in connection with or arising from being placed in the care of those families."

1. Overview

1.1. Every year from the time she turned 7 in 1965, federal civil servants took Anne from her home in the Cree village of Rupert House (now Waskaganish), Quebec, to put her in Indian Residential School (IRS) in Fort George, Quebec, some 550 kilometers away.

1.2. Anne was a direct victim of the fact that, as the Prime Minister stated in his 2008

apology: “For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities,” produced as Exhibit **P-1.**

1.3. The year Anne turned 14 or 15, federal officials decided there was no room for her at the residence and billeted her with [redacted] instead. In that home, Anne was molested by [redacted] and raped by their [redacted].

1.4. Anne received no compensation for the abuse under the Indian Residential Schools Settlement Agreement (IRSSA): she received a final decision on June 21, 2016, that when federal civil servants placed her in the private home where she was raped, their decision on her accommodation had the effect of removing her from the scope of the Agreement – even though she continued to attend the same school as before, hundreds of kilometers from her home.

1.5. Anne was not alone: more than 100 other students from the Cree villages of Rupert House, Paint Hills (now Wemindji), Eastmain and Fort George were also billeted with families living in Fort George, while continuing to attend the same federally-operated school as when they were in residence. Several individuals from Waskaganish who were billeted with other families have described physical and sexual abuse they suffered in those homes.

1.6. A similar situation existed in Mistissini (then known as Mistassini) in the 1970s, where children from Mistissini and other surrounding communities were billeted in families living in Mistissini, while attending the federal Indian day school in the community.

1.7. Anne is seeking recourse for herself and for all those in a similar situation, whether in Fort George or Mistissini.

2. The context of the class action: Indian Residential Schools and the Independent Assessment Process

A. Indian Residential Schools (IRS)

2.1. A fundamental measure in Canada’s policy of assimilation of Aboriginal peoples was its system of residential schools, which were operated across Canada, in collaboration with church entities, from the early 1830s until 1997, as appears from Summary of the Final Report of the Truth and Reconciliation Commission of Canada (TRC Report), produced as Exhibit **P-2**, at p. 70.

2.2. In total, roughly 150,000 Aboriginal people attended one or more of the 139 residential schools across the country, as appears from the TRC Report, P-2, at p. 3. Most of these individuals were Indians within the meaning of the *Indian Act*, like Anne and the other Quebec Cree, but many were also Inuit.

2.3. These schools system played an important role in a process referred to as "cultural genocide" by the Truth and Reconciliation Commission of Canada and by the Right Honourable Beverly McLachlin, Chief Justice of the Supreme Court of Canada, as appears from the TRC Report, P-2, at p. 1, and from an article in the *Globe and Mail* dated May 28, 2015, produced as Exhibit **P-3**.

B. The Indian Residential School Settlement Agreement (IRSSA)

2.4. The Indian Residential School Settlement Agreement (IRSSA), produced as Exhibit **P-4**, was approved as the settlement of nine class actions by the superior courts of six provinces (from British Columbia to Québec) and all three territories, including the decision of this Honourable Court in *Bosum v. Attorney General of Canada*, No. 500-06-000293-056, 550-06-000021-056 and 500-06-000308-052, produced as Exhibit **P-5**.

2.5. The IRSSA has three main components: the Truth and Reconciliation Commission (TRC); the Common Experience Payment (CEP), a lump sum payable to all former students who resided at a recognized Indian Residential School (IRS); and the Independent Assessment Process (IAP) at issue in this application, meant to compensate claims of sexual or serious physical abuse.

2.6. A list of the residential schools attended to by the IAP is found in Schedule P and F of the IRSSA, filed in support of this as Exhibit **P-6**, and it includes Fort George Anglican also known as St. Philip's Indian Residential School (IRS), which Anne attended.

C. The Independent Assessment Process (IAP)

2.7. The IAP has two categories of claimants: Resident Claimants, who lived at the IRS, and Non-Resident Claimants, who did not reside at an IRS but, while under the age of 21, were permitted by an adult employee to be on the premises of an Indian Residential School to take part in authorized school activities.

2.8. The IAP awards compensation for three kinds of acts: sexual abuse, roughly from touching to repeated intercourse; severe physical abuse (PL); and "other wrongful acts" (OWA), which require a high level of psychological harm.

2.9. The IAP also awards compensation for:

a. psychological harms from a modest detrimental impact, such a loss of self-esteem, to continued harm resulting in serious dysfunction, such as a chronic post-traumatic state;

b. consequential loss of opportunity, roughly from reduced attention span to chronic inability to obtain employment; or

c. proven actual income loss, instead of opportunity loss;

d. a future care plan for counselling or medical treatment, to a maximum of $15,000;

the whole as it appears in IRSSA, Schedule D, produced in support of this as Exhibit **P-7.**

2.10. Liability can vary depending on the identity of the alleged perpetrator:

a. Canada accepts liability for abuse by any adult employee of the government or of the church entity that operated the IRS, but other adults must have been lawfully on the premises;

b. Canada accepts liability for student on student abuse only where it took place on the premises and employees had real or constructive knowledge of the abuse (among other conditions).

2.11. Liability can also vary depending on the identity of the Claimant:

a. Canada accepts liability for any compensable abuse committed against a Resident by an adult when the abuse arose from or its commission was connected to the operation of an IRS;

b. Canada accepts similar liability to Non-Resident Claimants, but only if an adult employee gave the Claimant permission to be on the premises for taking part in school activities.

2.12. The variations in liability based on the nature of the acts and the identity of the Claimants and alleged perpetrators has created a host of jurisdictional issues that can complicate cases even where the abuse clearly took place.

2.13. Applications under the IAP had to be submitted by September 19, 2012.

2.14. Upon receipt, the Indian Residential Schools Adjudication Secretariat (Secretariat) determined whether applications were complete and *prima facie* admissible, as appears from Schedule D, P-7, p. 19.

2.15. The Secretariat generally does not schedule hearings until a claimant has submitted mandatory documents relevant to consequential harms and opportunity loss, such as medical, treatment, employment and tax records.

2.16. The Secretariat then assigns an independent adjudicator to the claim, who is the sole finder of fact and the only party allowed to question the claimant throughout the process.

2.17. Once satisfied that abuse and harms are established, the adjudicator decides on a compensation amount in accordance with the framework set out in Schedule D, P-7, at p. 3-6.

2.18. An initial adjudication decision is subject to review, but "on the record (no new evidence permitted) and without oral submissions", as appear from Schedule D, P-7, at p. 14.

2.19. The possibility of re-review arises from either party's right to "ask the Chief Adjudicator or designate to determine whether an adjudicator's, or reviewing adjudicator's, decision properly applied the IAP Model" and presumably also from the Claimant's right to "require that a second adjudicator review a decision to determine whether it contains a palpable and overriding error", as appear from Schedule D, P-7, at p. 14.

3. The facts which give rise to a personal action on behalf of the Applicant against the Respondent are:

A. Anne's attendance at St. Philip's IRS

3.1. Anne, the Applicant, is a Cree woman born on [redacted], and raised in the Cree village of Rupert House, Quebec (now called Waskaganish).

3.2. In 1965, at the age [redacted], Anne was sent to Fort George, Quebec, to attend St. Philip's IRS, also known as Fort George Anglican Residential School. At the same time, other Cree children were sent to the same community to attend Fort George Roman Catholic Roman Catholic IRS (known variously as St. Joseph's Mission, Résidence Couture, or Sainte-Thérèse-de-l'Énfant-Jésus).

3.3. Anne lived in the St. Philip's residence from September to June, during seven or eight of the years she spent in Fort George. The school was attended as a residential school by children from other communities, like Anne, but during some years, local children whose families lived in Fort George also attended the IRS as a day-school. During some years, Inuit as well as Cree children resided at the IRS.

3.4. Around 1969, the federal government assumed sole responsibility for the operation of St. Philip's IRS from the Anglican Church of Canada. Around the same time, the federal government proposed a policy for administering the residences and the schools at an IRS separately: this so-called "administrative split" may have been the reason why around 1972, some or all classrooms at St. Philip's began to be referred to as "Sand Park Federal School." However, neither change had any significant effect on Anne.

B. The abuse suffered when billeted with a family

3.5. In late August or early September of 1972 or 1973, after Anne had arrived in Fort George for the new school year, the Respondent billeted her with a Cree family living in Fort George. Anne would live with this family for two more years, while attending the same school as before.

3.6. During those years, [redacted] and [redacted] of the family sexually assulted Anne on several occasions.

3.7. Although [redacted] did not live with [redacted], he frequently visited the home.

3.8. [redacted] often drank to excess and engaged in violent behaviour; he made sexual advances towards Anne and would ask her, "Why don't we have sex?" On other occasions, he would get into a rage and force everyone to leave the house, including [redacted].

3.9. The first incident of abuse occurred during the fall of Anne's first year with the [redacted] family, although it is difficult for her to remember the exact dates of the abuse.

3.10. On this occasion, [redacted] told Anne to get Carnation condensed milk from a room in which [redacted] was lying on a bed. [redacted] approached her, put his hands in her pants and touched her vagina. Anne pushed him and ran away.

3.11. On another occasion, which Anne has difficulty remembering, [redacted] came in to her basement bedroom in the middle of the night; she could smell alcohol on his breath. [redacted] forced himself on top of Anne and penetrated her; at the time, Anne was a virgin.

3.12. In another incident, [redacted] came down to Anne's room and ordered her to go upstairs to sleep with [redacted].

3.13. Anne obeyed and was woken up later that night by [redacted] who was rubbing her vagina under her panties. The incident did not last long: when Anne moved, the touching stopped, and she believes she ultimately fell back asleep later that night.

3.14. Three other girls who were also billeted with the [redacted] family during Anne's stay. She does not know whether those girls knew that she was being abused by [redacted] and [redacted], nor does she know whether they abused the other girls because the matter was never discussed with Anne.

3.15. In fact, Anne never disclosed her own abuse to anyone before describing it to her legal counsel in 2012, while filling out her IAP Application.

C. The harms suffered by the Applicant

3.16. The abuse perpetrated by members of the family in which Anne was billeted have had many profound impacts in her life.

3.17. Anne struggled for a number of years with drinking and drug abuse problems.

3.18. She started drinking when she was living with the [redacted] family, albeit on an irregular basis. Upon her return to Waskaganish, however, she drank heavily, almost every weekend, over a 25-year span.

3.19. She also abused drugs such as mescaline, crack, and cocaine.

3.20. Anne abused these substances in attempts to suppress and hide the guilt she felt as a result of the abuse.

3.21. Anne's substance abuse reached its peak in 2007, at which point she was using cocaine on a daily basis and suffered from feeling "very slow."

3.22. Her addictions led her to forgo paying bills in favour of spending large amounts of money on drugs. She was unable to take care of her children and grandchildren.

3.23. Fortunately, Anne has now been sober for several years.

3.24. During times of heavy drug use, Anne sometimes thought of committing suicide.

3.25. On one such occasion, feeling like she "wanted to go away and end everything" Anne retrieved a firearm from her basement, whereupon it accidently fired while in her hands. This near-fatal incident scared her and discouraged her from "going further."

3.26. The abuse she suffered also led Anne to be overly protective of [redacted] and her grand children, to the point where she sometimes had irrational fears that her [redacted] might have abused them. In fact, she often checked on him and the children to ensure that abuse was not occurring. She could not trust any adult, including [redacted], and always had to know where her [redacted] were.

3.27. Anne has had and still has feelings of shame and humiliation. She feels dirty and often wonders whether people know what happened to her.

3.28. Anne also suffered from sexual dysfunction early in her relationship with her husband; she would rebuff his approaches and "push him away" at first because she felt dirty, feeling like the abuse was occurring again.

3.29. The abuse also had an impact on her work history. In [redacted], she was fired from her job because of her drug abuse and drinking problems.

3.30. Anne has never been able to maintain stable employment because she never had confidence in herself during her adult life. She has long felt as though she cannot "handle or cope," and that she cannot do things properly.

D. The Applicant's IAP claim

3.31. In August 2012, Anne filed an IAP claim to be compensated for the above-mentioned abuse, as appears from her Application Form, produced as Exhibit **P-8**.

3.32. On February 28, 2014, an IAP hearing took place, during which Anne testified about the abuse, the consequential harms and the loss of opportunity she suffered as a result.

3.33. During the course of the hearing and in his final submissions, Canada's representative made an objection to Anne's claim based on jurisdictional grounds: he argued that during the years in question, she was attending a federally-operated day school known as Sand Park, not an IRS within the scope of the IAP.

3.34. Adjudicator Robert Néron found Anne credible and held that she had suffered the abuse alleged. However, he upheld Canada's preliminary objection and concluded she was not attending an IRS at the time of the abuse. He also concluded that abuse suffered by students in the homes of families with whom they were billeted is not covered by the IRSSA, as appears from his decision dated July 22, 2014, produced as Exhibit **P-9**.

3.35. On October 3, 2014, Anne's legal counsel requested a review of Adjudicator Néron's decision on the basis that, *inter alia*, Sand Park was part of St. Philip's IRS and that the abuse suffered in billeting families falls within the scope of the IAP, as appears from the Request for Review, produced as Exhibit **P-10**.

3.36. Adjudicator Néron's decision was ultimately upheld, as appears from the review decision by Deputy Chief Adjudicator Rodger Linka, dated February 23, 2015, produced as Exhibit **P-11**.

3.37. The decision to reject Anne's claim was upheld a second time, in the Re-Review decision of Adjudicator Anne Wallace, dated May 23, 2016, produced as Exhibit **P-12**.

3.38. Adjudicator Wallace found that the abuse suffered by Anne was not connected to nor did not arise from the operation of an IRS and, therefore, "the elements required by the IAP Model... [had] not been established," as appears from the re-review decision, P-12.

3.39. Since she held that abuse suffered in a home where a student was billeted is not compensable under the IAP, Adjudicator Wallace held that she need not decide

whether the school that Anne was attending was a federal day-school or an IRS, as appears from her decision, P-12.

3.40. Adjudicator Wallace's decision was communicated to Anne's legal counsel on June 21, 2016, as appears from an email from the Secretariat's electronic document interchange (EDI) to Marie-Eve Dumont, produced as Exhibit **P-13**.

3.41. Adjudicator Wallace's re-review was the final decision on Anne's claim under the IAP: three different adjudicators had found that Anne's abuse by members of the family with whom she was billeted was not within the scope of the IAP.

E. Other billeted students in Fort George

3.42. Anne was not the only student billeted with a family in Fort George.

3.43. With the addition of secondary education to the curriculum in the fall of 1972, the Minister's agents and servants began moving children out of school residences and billeting them in private homes […] in Fort George, to make room for classrooms and staff accomodations, as appears from a letter dated February 11, 1972 from A.E. Aimé, Supervisor of Education, to M.C. Paradis, at the Quebec regional office of the Department of Indian Affairs and Northern Development (DIAND), produced as Exhibit **P-23**.

3.44. In these circumstances, the IRS residence rapidly reached full capacity, as appears from a letter dated September 26, 1972, from J.G. Simard, Education Advisor with DIAND's Abitibi District, to the Education Supervisor of DIAND, filed in support of this as Exhibit **P-14**.

3.45. Students were moved into families' homes, so that their rooms in the residences could be given to unmarried teachers, as appears from the exchange of correspondence between A.E. Aimé, Supervisor of Education, and C. Paradis, Regional Supervisor of Education, both at DIAND, dated February 18 and September 21, 1972 (in a bundle), produced as Exhibit **P-15**.

3.46. In accordance with this initiative, roughly fifty (50) students from Rupert House, Paint Hills (now known as Wemindji) and Eastmain were lodged in private homes at the end of September 1972, as appears from the letter from J.G. Simard, dated September 26, 1972, P-14.

3.47. An unspecified number of children from Fort George were also lodged in private homes during the school year, because during those months, their parents practiced a traditional "nomadic" lifestyle of hunting, fishing and trapping, as appears from J.G. Simard's letter, P-14.

3.48. The practice of billeting students continued in 1973-1974 and 1974-1975, as appears from a 1976 tripartite agreement between a group of parents, the Fort George Band Council, and DIAND […] concerning the establishment of a "hostel

program" in Fort George, produced as Exhibit **P-16**, p. 2 of 6.

3.49. In November 1974, at least 37 students were billeted with families, as appears from a letter dated November 12, 1974, from V.J. Caissie, Acting Regional Director, to R.L. Boulanger, Regional Director at DIAND […], produced as Exhibit **P-17.**

3.50. According to a letter dated January 21, 1975 from V.J. Caissie, Acting Regional Director, to P.B. Lesaux, Assistant Deputy Minister of […] Indian and Eskimo Affairs Branch of DIAND:

> *les cours du Secondaire I à IV inclusivement sont fournis à 140 élèves en provenance des communautés de Rupert House, Paint Hills et Eastmain. Un peu plus d'une centaine de ces étudiants sont hébergés dans des maisons privées à Fort George, la balance demeurant en résidence dans le pensionnat*

as appears from the letter, produced as Exhibit **P-18**.

3.51. On April 10, 1975, the Acting Regional Director reported that:

> Last year, approximately 140 students from smaller communities along the coast attended school at Fort George. All but 35 of those were boarded in private homes.

as appears from a letter from V.J. Caissie to H.T. Parker, Director of the Financial & Management Branch, […] DIAND, produced as Exhibit **P-19**.

3.52. The Respondent's civil servants were aware that "la situation de certains élèves dans les maisons privées n'est pas acceptable, surtout à cause de l'espace vital restreint", as appears from V.J. Caissie's letter dated January 21, 1975, P-18.

3.53. A handwritten note on a letter dated November 1974 concerning the St.Philip's residence stated:

> *Les 4 hostels en construction accommodent les 31 étudiants présentement en résidence. De plus, chaque hostel peut recevoir 12 étudiants, cela signifie que 17 étudiants placés dans des foyers non-adéquats, pourront être relocalisés dans ces memes hostels.*
>
> *Ceci a pour effet que les 49 étudiants demeurant dans les foyers évalués comme non-adéquats, sont réduits à 32 et que l'addition de 3 hostels seraient nécessaires [sic]….*

as appears from a letter from G. Lefebvre, Education Supervisor […] at DIAND, produced as Exhibit **P-20**.

3.54. The high operating costs were another reason why the Defendant decided to billet students with families living in Fort George, as appears from the 1976 tripartite agreement, Exhibit P-16, at p. 2 of 6.

3.55. In fact, Canada estimated the annual per capita cost of lodging children in the school residence was $15,000, as appears from a letter dated April 10, 1975, from V.J. Caissie, Acting Regional Director, to H.T. Parker, Director of the Indian and Eskimo Affairs Branch, produced as Exhibit **P-24**, in contrast to $1,500 for children lodged in private dwellings, as appears from Caissie's correspondence dated January 21, 1975, P-18.

3.56. Nevertheless, billeting so many students was known to have "caused many problems in the community," as appears in the tripartite agreement, P-16, at p. 2 of 6.

3.57. In January 1976, many of the billeted students were sent to live in one (1) of eight (8) hostels, which had been built as "the third alternative for boarding students" in Fort George, after the residence and private homes, as appears from the tripartite agreement, P-16, at p. 2 of 6.

3.58. However, because the hostels could house a total of only ninety-six (96) students, more than forty (40) students continued to live in billet families after the transfer, as appears from V.J. Caissie's letter dated April 10, 1795, P-24.

3.59. Canada's direct role in Cree education ended at the with the 1977-1978 school year, after which management and control were transferred to the Cree School Board, in accordance with the James Bay and Northern Quebec Agreement ("JBNQA"), as appears from section 16 of the JBNQA, produced as Exhibit **P-25**.

F. Other billeted students in Mistissini

3.60. In Mistissini (then known as Mistassini), a similar situation existed where, after a federally-run school was built, "all [Mistassini] Indians pupils from Kindergarten to Grade 6 attend[ed] [that] school", and those "whose parents [had] to go away for trapping" were placed "in cottage-style hostels or in Indian families", as appears from a letter dated January 20, 1970, from A.R. Jolicoeur to the Regional Superintendent of Education at DIANDs, produced as Exhibit **P-26**.

3.61. The goal of building hostels and offering accommodation in families in Mistissini was that elementary students shoud "not be required to go to La Tuque Student Residence below Grade 6," as they had up till 1970, as appears from Exhibit P-26.

3.62. Three Mistassini Hostels, with twelve (12) beds each, began operating in the fall of 1971, as appears from a letter dated February 19, 1973, from Maurice Legendre, District Supervisor, to C. Paradis, at DIAND, produced as Exhibit **P-27**.

3.63. By October 1976, another 69 children were placed in what DIAND called "nomad homes" because their parents had left the community to hunt, fish and trap on their traditional territory, as appears from a letter dated October 12, 1976, from W. Halligan, District Supervisor, to Donald Daoust, at DIAND, produced as Exhibit **P-28**.

3.64. In 1976-1977, it was anticipated that 120 childrent would be placed in those "nomad homes", as appears from W. Halligan's letter, P-27.

3.65. According to a letter dated November 3, 1976, from G. Lemay, Acting Deputy Director, to the District Supervisor, the "nomad homes" housed Mistissini children, while children from surrounding communities lived in Mistissini hostels, as appears from G. Lemay's letter, produced as Exhibit **P-29**.

3.66. The "cottage-style" or "Mistissini Hostels" were recognized as an Indian Residential School for purposes of the IAP during the period from September 1, 1971, to June 30, 1978, as appears from the IAP School Narrative prepared for Mistassini Hostels, produced as Exhibit **P-30**.

3.67. Counsel for the Applicant has interviewed two individuals who, as children living in surrounding Cree communities, were sent to Mistissini and also placed in "nomad homes."

3.68. However, those two individuals did not make any claim in regard of the abuse they suffered in the "nomad homes" because they were advised by their lawyer that it was not compensable under the IAP.

G. The Respondent

3.69. The *Crown Liability and Proceedings Act*, RSC 1985, c C-50, s. 23(1), requires proceedings against the Crown in right of Canada to be "taken in the name of the Attorney General of Canada."

3.70. The Respondent in this case is acting for and on behalf of the Minister of Indian Affairs and Northern Development (the Minister).

3.71. The "powers, duties, and functions" of the Minister "extend to and include all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to... Indian Affairs," pursuant to s. 4(a) of the *Department of Indian Affairs and Northern Development Act*, RSC 1985, c I-6, and at all material times did so under the *Department of Indian Affairs and Northern Development Act*, RSC 1970, c.1-7.

3.72. As of May 18, 2011, the Department of Indian Affairs and Northern Development […] has been known as Aboriginal Affairs and Northern Development Canada (AANDC) and since November 4, 2015, it also bears the name Indigenous and

Northern Affairs Canada (INAC).

4. Grounds for the Respondent's liability

A. General Crown liability

4.1. Since the Crown can only act through its servants or agents, at all relevant times, the Crown in right of Canada was directly liable for the damages caused by its servants or agents, pursuant s. 3(1)(a) of the *Crown Liability Act*, RSC 1970, c C-38.

4.2. Each of the Crown's servants was liable pursuant to art. 1053 of the *Civil Code of Lower Canada* "for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill."

4.3. Moreover, the Crown's servants were liable *in solidum* pursuant to art. 1106 of the *Civil Code of Lower Canada* for the consequences of their own independent acts and omissions, together with the acts and omissions of a third party, if both directly contributed the injury suffered by the victims of their fault.

B. The Minister's powers and duties

4.4. The Government of Canada's power and jurisdiction over the Applicant and the Class Members were at all relevant times rooted in s. 91(24) of the *Constitution Act, 1867*, and in the *Indian Act*, RSC 1970, c. I-6, which came into force on August 1, 1972.

4.5. By virtue of this jurisdiction, the Respondent enjoyed power and discretion over significant aspects of the lives of Aboriginal people and assumed a corresponding fiduciary duty towards them.

4.6. At all relevant times, the Minister's powers under the *Indian Act*:

a. allowed him to designate the school Indian children had to attend, without the parents' consent: s. 118;

b. allowed him to appoint truant officers with the powers of a peace officer: s. 119(1);

c. provided that parents served by truant officers with a notice for their children to attend school were guilty of an offence and subject to fines and imprisonment, if their children did not "attend school and continue to attend school regularly": s. 119(3) and (4);

d. allowed truant officers to take into custody a child who was absent from

school and to "convey the child to school, using as much force as the circumstances require": s. 119(6).

4.7. The Respondent used its powers and jurisdiction to implement a systematic policy of assimilating Aboriginal people, designed to eliminate their distinct languages, customs, and ways of life.

4.8. For the Applicant and the Class Members, this involved removing them from their families and from life on the land, at a time when most Cree in Quebec still lived largely from hunting, fishing and trapping. The children were forced to relocate without their parents to Fort George or Mistissini, where they could be "educated" to think like white people in federally-run schools.

4.9. Once the Minister removed the Applicant and Class Members from their parents, they became his wards and he stood in *loco parentis* towards them; he became responsible for ensuring that they receive all the necessities of life.

4.10. From the moment the Minister took charge of them, his duties to the Applicant and the Class Members had to meet the "careful parent test," the standard of a prudent parent solicitous for the welfare of his or her child.

4.11. When the Minister's agents and servants decided to remove the Applicant and Class Members from the IRS residence or from their own families and place them with local families in Fort George and Mistissini, the standard imposed by the "careful parent test" required measures such as the proper selection, screening, training and monitoring of families that billeted children to protect them from possible abuse.

4.12. By 1972, no one in authority in DIAND should have been unaware that Indian residential school students were at risk from sexually predatory employees. More particularly, the Minister's Quebec regional office had investigated three cases of sexual abuse of students at the Anglican IRS in La Tuque beween 1969 and 1971, as reported in the TRC Report, vol. 1, part 2, produced as Exhibit **P-21**, at pp. 443-444.

4.13. In fact, the principal at St. Philip's from July 1962 to May 1968 was William Peniston Starr, who is probably the most notorious abuser in the IRS system. By 1998, even before the IAP existed, Canada had already settled almost 200 claims alleging abuse by Starr while he was principal of the Gordon IRS in Saskatchewan, the school he went to after he left Fort George. Starr also pleaded guilty to 10 counts of indecent assault at Gordon's IRS during years 1976-1983 and was convicted on February 8, 1993, as reported in the TRC Report, vol. 1, part 2, P-21, at pp. 447-448.

4.14. The Minister acting through his agents and servants was responsible for the creation and implementation of these measures and failed in both regards.

4.15. Specifically, the Minister breached his duty of care by:

a. failing to properly screen individuals prior to allowing them to billet Class Members and hiring individuals to act as billeting families who were not qualified to provide the necessaries of life for the children under their care and supervision;

b. failing to provide proper, adequate and effective training initially or on an on-going basis to ensure that billeting families were suitable and fit to act as the Minister's employees, servants, or agents;

c. failing to set or implement standards of conduct for billeting families with respect to the safety, health or well-being of Class Members;

d. failing to adequately, properly and effectively supervise the conduct of billeting families and their households;

e. failing to set or implement policies for recognizing and reporting potential abuse of or harm to Class Members;

f. failing to educate Class Members in the use of a system through which abuse would be recognized and reported;

g. failing to investigate or report injuries sustained by Class Members;

h. failing to respond adequately, or at all, to complaints regarding the treatment of Class Members, including complaints of physical, psychological, and sexual abuse; and

i. failing to provide adequate medical and psychological care for Class Members.

4.16. The negligent supervision of the billeting families by the Crown's servants made them liable *in solidum* for the consequences of their acts and omissions, together with the acts of those families because both directly contributed the injury suffered by the Applicant and Class Members.

4.17. Moreover, those standing *in loco parentis* are also bound by a special duty of loyalty to the children, which forbids them from advancing their own interests at the expense of the children.

4.18. In this case, the Minister saved at least $10,000 per year for every child that was billeted instead of being housed in school residences, as appears from V.J. Caissie's letters dated January 21, 1975, P-18, and April 10, 1975, P-24.

4.19. The conditions in the houses where students were billeted were considered "inadequate" by the Minister's civils servants, as appears from V.J. Caissie's

letter, P-18.

4.20. By knowingly billeting children in inadequate conditions, and at substantial financial savings, the Respondent advanced its own interests at the expense of the children, and thereby breached its duty of loyalty towards them.

4.21. The Applicant states that the Respondent's actions, inactions and omissions as aforesaid, constitute: 1) negligence in the selection, employment and supervision of billeting families; 2) breaches of the duty of loyalty that parents owe to their children; and 3) failures to protect the Applicant's and other Class Members' best interests.

4.22. These failures and breaches resulted in the Applicant and Class Members being subjected to sexual, physical and psychological abuse at the hands of persons with whom they were billeted.

4.23. Finally, the Minister made a delegation of his duty to the Applicant and Class Members that was not provided for by statute when he began confiding these children to local families in Fort George and Mistissini to be billeted.

4.24. While s. 115(c) of the *Indian Act*, RSC 1970, provided that the Minister could "enter into agreements with religious organizations for the support and maintenance of children who are being educated in schools operated by those organizations," the Minister had no clear right to enter into agreements with local families for the same purpose; neither did the Minister have the right under s. 114 to delegate his duties to anyone other than a provincial or territorial government, a school board, or "a religious or charitable organization."

4.25. While the Applicant and Class Members were billeted, the Minister therefore remained under a non-delegable statutory duty to ensure their safety and welfare.

C. Vicarious liability

4.26. At all relevant times, the Government of Canada was vicariously liable for the damage caused by the fault of its agents and servants, pursuant to s. 4(2) of the *Crown Liability Act* of 1970 and art. 1054 of the *Civil Code of Lower Canada*.

4.27. These provisions reflect one of the most fundamental principles underlying civil liability: that the person or entity who creates a risk assumes the obligation to compensate the victims if they are injured when that risk does in fact materialize.

4.28. Confiding a child to an adult to live with him or her places that adult a position of great power, authority, trust and intimacy with respect to that child. The Minister thereby created a relationship between the Applicant and Class members and the billeting families that placed the children at risk.

4.29. In this case, the Minister was in a contractual relationship with the billeting

families and exercised power and control over them. He was responsible for the administration of the billets at all material times because his agents and employees decided to billet the children instead of having them live in the IRS residence.

4.30. Since the Minister's agents and servants chose the families with whom the children were billeted, they could or should have been able to inspect and monitor those families and did retain or should have retained the power to remove the children at any time, if necessary for their protection.

4.31. The Minister therefore assumed liability for the faults committed by the billeting families as his agents or servants and the Applicant invokes the rule in art. 1464 of the *Civil Code of Québec*.

D. The claim is not prescribed

4.32. The Applicant and all or most Class Members were victims of childhood sexual, physical, and psychological abuse.

4.33. Due the age at which the wrongs were done to them and due to the conduct of the Minister's servants and agents, including the billeting families, the Applicant and all or most Class Members were unable to understand the necessary connection between the abuse they suffered and their injuries and thus discover their cause of action.

4.34. At all material times the Applicant and all or most Class Members therefore suffered from an impossibility to act within the meaning of art. 2904 of the *Civil Code of Québec*. As a result, the prescription of their cause of action was already suspended for the Applicant and all or most of the Class Members at the time proceedings were filed in *Bosum v. Attorney General of Canada et al.*, P-5, on or about May 20, 2005.

4.35. On the date the *Bosum* application was filed, on or about May 20, 2005, prescription was further interrupted by virtue of art. 2892 and 2897 of the *Civil Code of Québec*:

a. for "[a]ll Aboriginal Persons who attended Residential Schools in Quebec who were transported to, attended at, and/or were confined in Residential Schools in Quebec," referred to as "the Survivor Class"; and

b. with respect to the Crown's "common law duties to the Plaintiff and the other Survivor Class Members in relation to the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and/or support of the Aboriginal Residential School system and the individual schools therein (the 'Residential Schools') throughout Canada."

4.36. Until the Re-review Adjudicator rejected Anne's claim in the IAP re-review decision, P-12, received by Anne's counsel on June 21, 2016, the Applicant and Class Members were entitled to believe they could advance their claims through the IAP created under the IRSSA, especially given the broad scope of the group and the cause of action described in the *Bosum* application.

4.37. More particularly, when the Chief Justice of the British Columbia Supreme Court approved the IRSSA in that province, he expressly ruled that individuals who "attended these schools, but only as day pupils," and who "as well, were forced to live far from their homes and families" and "were subject to abuse both at the residential schools during the day and in the homes where they lived outside school hours," would "be eligible to advance an IAP claim should they so choose," as appears from the judgment in *Quatell v. Attorney General of Canada*, 2006 BCSC 1840, at para. 22.

4.38. This interpretation was confirmed by the B.C. Supreme Court when it ruled that under the IRSSA, "[a]lthough the Billeted Students were not included in the CEP, they were permitted to advance claims through the IAP," as appears from the judgment in *Fontaine v. Canada (Attorney General)*, 2014 BCSC 941, at para. 57.

4.39. Therefore prescription remained suspended through September 21, 2016, pursuant to art. 2895, *C.C.Q.*, during the three months following the Applicant's receipt of the re-review decision in her case, P-12, which dismissed her claim without a decision having been made on the merits, but established that abuse suffered in a home where a student was billeted is not compensable under the IAP, even if she was attending an IRS.

4.40. In addition, the Applicant and any other Class Members who suffered from an impossibility to act, or who had filed an IAP application after May 23, 2010, were in an "existing juridical situation" with respect to their claims against the Respondent at the time art. 2926.1, *C.C.Q.*, came into force on May 23, 2013.

4.41. As a result, the Applicant and Class Members benefit from the extension of the prescription period applicable to bodily injury resulting from sexual and physical abuse suffered during childhood, to 30 years from the date they become aware that the injury they suffered was attributable to that act.

4.42. Finally, if claims by any of the Class Members are prescribed (which is not hereby admitted, but expressly denied), that issue would be relevant only during the individual recovery of claims and does not affect the Applicant's right to authorization.

5. Application to use a pseudonym

5.1. The Applicant hereby asks for the Court's permission to use a pseudonym for all legal proceedings and court documents in this case.

5.2. The Applicant lives in a small community of less than 2,500 people and does not want her community to become aware of the abuse she suffered as a child.

5.3. The desire to keep this most intimate part of her life private is more than understandable and is a common sentiment among survivors of child abuse.

5.4. Allowing the Applicant to remain anonymous will also encourage other Class Members to participate, knowing that their privacy will be respected and their identities will be kept confidential. An order allowing use of a pseudonym will therefore facilitate greater access to justice.

5.5. The Applicant is prepared to provide the Court and counsel for the Respondents with her name and that of any known Class Member, under seal, provided that such information is protected and kept confidential.

6. The composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings

6.1. Statistics from the IAP indicate that the number of claims for compensation for abuse was equivalent to approximately 48% of the number of former students who were eligible to make such claims and alive in May 2005, as reported in the TRC Report, vol. 1, part 2, P-21, at p. 400.

6.2. The TRC therefore concluded:

- abuse was widespread throughout the residential school system;
- a signicant percentage of the acts of abuse were of a serious nature with potentially lifelong impacts;
- male and female students were abused at equal rates;
- male students were compensated at the most serious and damaging category of abuse at a greater rate than female students;
- students were at risk in all institutions, regardless of the denomination of the religious order in charge of the institution; and
- student abuse of fellow students was a serious and widespread problem

as appears from Exhibit P-21, at p. 411.

6.3. No reason exists to believe that students were at significantly lower risk when billeted with families whom the Minister did not supervise or monitor adequately.

6.4. Three individuals from Waskaganish who were billeted with other families have described to the Applicant's counsel incidents of physical and sexual abuse they suffered in those homes.

6.5. The Applicant estimates that there are more than 220 potential members of the class described in this Application for Authorization, based on correspondence […] from 1975 from V.J. Caissie, Acting Regional Director of […] DIAND, P-18, and from 1976, from District Supervisor W. Halligan, P-28.

6.6. Based on the information contained in P-18, P-26 and P-29, it seems that most of the potential Class Members came from the […] Cree communities of Waskaganish (Rupert House), Eastmain, Wemindji (Paint Hills), Chisasibi and Mistissini. Nevertheless, it is possible that potential Class Members also came from Oujé-Bougoumou and Waswanipi.

6.7. The Applicant has no access to a list of the students who were billeted in families during the relevant period because it is personal information about individuals held by a government institution and protected from disclosure under the *Privacy Act*, RSC 1985, c. P-21, except with a court order.

6.8. The Applicant therefore submits that the identity of potential Class Members is ascertainable only to the Respondent.

6.9. Even if some Class Members could be reached or contacted by notices, radio announcements, or through word of mouth in the relevant communities, many would be reluctant to come forward and reveal facts about their childhood abuse.

6.10. It is unrealistic to expect most or all Class Members to identify themselves readily and outside of a process that ensures them confidentiality and the ability to apply in private.

6.11. Despite decades of publicity about the issue of residential school abuse, in the IAP, out of the total of 38,093 applications received by the Secretariat, more than 35 per cent (13,385) were between January 1, 2012, and the September 19, 2012, deadline, as appears from the Secretariat's historical statistics, produced as Exhibit **P-22**.

6.12. In addition to the difficulties that exist in identifying and contacting other potential Class Members, considerations of access to justice weight in favour of authorizing this application.

6.13. The amount of compensation available to individuals who succeed in independent proceedings is likely disproportionately small compared to the amount of money that they would spend on legal fees and disbursements.

6.14. It would be economically inefficient for individuals to proceed with a multitude of individual actions, needlessly duplicating large portions of work across many mandates and exhausting taxpayer and judicial resources.

6.15. Class Members are also part of a disadvantaged population, with lower education

compared to other Canadians of the same age and a commensurate difficulty in using the judicial system. Should this application be denied, it seems unlikely that other means of seeking justice will be pursued by any significant number of Class Members and the grave injustice they suffered will remain unaddressed.

6.16. Finally, it would be inequitable to deny authorization where virtually identical faults and injuries have benefited from compensation under the IRSSA across the country and the only difference between Class Members and the beneficiaries of that settlement is where the Minister assigned them to live.

6.17. In light of the above considerations, it would not only be impractical, if not impossible to proceed by other means, it would also be contrary to access to justice and equitable considerations.

7. The claims of the members of the class raise identical, similar or related issues of law or fact

7.1. The nature and quantum of damages suffered are particular to each Class Member, but the principal questions of law and fact are common to all.

A. Concerning the Respondent's civil liability, the following issues must be decided in common:

7.2. Could or should the Minister as represented herein by the Respondent, including the Ministers, agents or servants, have foreseen that billeting families were in a position that could result in them abusing their positions of power, authority, and trust over children entrusted to them?

7.3. Did the Minister owe the Class Members a duty arising from circumstance, usage or law?

7.4. Did the Minister take steps to screen billeting families, prior to placing Class Members in their care? If so, were these steps proper and adequate to prevent unqualified individuals from billeting children?

7.5. Did the Minister provide proper, adequate and effective training or monitoring initially or on an on-going basis to ensure that billeting families were suitable and fit to act as its employees, servants, or agents?

7.6. Did the Minister set or implement standards of conduct for billeting families with respect to the safety, health or well-being of Class Members? If so, did the Minister fail to uphold these standards?

7.7. Did the Minister fulfill its duty to supervise and monitor the performance and behaviour of billeting families to ensure that they performed and behaved as

qualified, reasonable and prudent employees, servants, or agents?

7.8. Did the Minister set or implement policies for recognizing and reporting potential abuse of or harm to Class Members? If so, did the Minister fail to educate Class Members in the use of a system through which abuse would be recognized and reported?

7.9. Was the Minister aware of any injuries sustained by the Applicant or Class Members, which occurred while in the care of billeting families? If so, did the Minister adequately investigate those injuries?

7.10. Was the Minister aware of any complaints put forth by the Applicant or Class Members, in relation to physical, psychological, or sexual abuse? If so, did the Minister respond adequately to those complaints?

7.11. Did the Minister provide adequate medical and psychological care for the Applicant and Class Members while in the care of billeting families?

7.12. Was the Minister aware of inappropriate punishments delivered by billeting families? If so, did the Minister allow these punishments to continue?

7.13. Did the Minister fail to provide leadership and fulfilment of its legal and moral obligations by not enforcing or creating guidelines on sexual abuse, thereby causing the Applicant and the Class Members damages?

B. Concerning the Respondent's vicarious liability

7.14. Were billeting families employees, servant or agents of the Respondent? If so, is the Respondent liable for the negligent and intentional acts committed by its employee, servant, or agent which harmed the Applicant or Class Members?

7.15. Was the Respondent aware of the wrongful actions of its employees, servants, or agents, and if so, when did it become aware? If not aware, should the Respondents have been aware of the wrongful actions committed by its employees, servants, or agents?

7.16. The Applicant submits that these questions raise factual and legal issues of systemic fault common to all Class Members that requires an assessment of the Respondent's knowledge, actual or constructive, with respect to the selection, training, monitoring, and supervision of its employees, servants or agents.

7.17. The resolution of these issues will move litigation further significantly; these constitute substantial elements that must be resolved in the case of each individual Class Member, and their resolution will avoid duplication of fact-finding and of legal analysis.

8. The questions of fact and law specific to each Class Member are as follows

8.1. After the resolution of common issues, only matters specific to each Class Member will have to be addressed, including:

a. What acts of abuse did individual Class Members suffer?

b. What harms did Class Members suffer because of the acts of abuse?

c. Does a causal link exist between any acts of abuse and harms suffered?

d. What individual defences exist that could be advanced, such as prescription?

9. It is expedient that the institution of a Class Action for the benefit of the Class Members be authorized for the following reasons

9.1. The class action is the best procedural vehicle available to the Class Members in order to protect and enforce their rights herein.

9.2. While the amount of damages sustained by each Class Member may differ, the Respondent's wrongful behaviour and its liability are identical for each Member.

9.3. In the absence of a class action there would be no viable recourse against the Respondent for most Members, due to the cost and difficulty that an individual civil action would entail, relative to the benefits one could hope to obtain.

9.4. To the best of the Applicant's knowledge, all of the Class Members come from and are likely still domiciled in the Cree communities of northern Québec and would therefore incur greater than average expenses if they brought individual proceedings, due to their remote location.

9.5. A single hearing by means of a class action on the issues of fact and law that all members have in common would significantly reduce the cost of litigation for all parties.

10. The nature of the action the Applicant intends to bring on behalf of the Class Members is an action in damages for extra-contractual liability.

11. The Applicant seeks the following conclusions or relief:

11.1. Compensation, in an amount to be perfected at trial, for the damages incurred

because of the Respondent's failure to screen, negligence in selecting, and inadequate supervision of its employees, servants or agents; and more generally for its breach of its obligation of loyalty and duty to protect the best interests of the Applicant and Class Members as would a parent solicitous for his or her child's well-being.

11.2. Compensation, in an amount to be perfected at trial, for the damages incurred as a result of the intentional and negligent actions of billeting families, including the perpetration of sexual, physical and psychological abuse on the Applicant and other Class Members for which the Respondent is directly or vicariously liable.

11.3. Punitive damages in an amount to be perfected at trial;

11.4. Interest and the additional indemnity provided by the *Civil Code of Quebec*;

11.5. Judicial fees and legal costs;

11.6. Such further and other relief as this Honourable Court may deem just and reasonable in the circumstances.

12. The relief sought by the Applicant is to:

ALLOW *the institution of the Applicant's class action;*

GRANT *the Applicant's application for an order allowing her to use a pseudonym for herself and for Class Members;*

DECLARE *the Respondent liable to the Applicant and Class Members for the damages suffered Respondent's breach of obligation to act as a parent solicitous of his or her child's wellfair and its breach of its obligation of loyalty towards the Applicant and Class Members;*

DECLARE *the Respondent vicariously liable to the Applicant and Class Members for the damages suffered by the negligent and intentionally wrongful actions of its employees, servants, or agents;*

CONDEMN *the Respondent to pay to each of the Class Members compensatory, moral and punitive damages, and* ***ORDER*** *collective recovery of these sums;*

CONDEMN *the Respondent to indemnify each and every Class Member for all damages that they have suffered as a result of Respondent's wrongful behaviour, and the wrongful behaviour of its employees, servants, and agents;*

AND TO THIS END:

DECLARE *the Respondent liable for the cost of judicial and extra-judicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of the Applicant and Class Members and* ***ORDER*** *collective recovery of these sums;*

CONDEMN *the Respondent to pay the Applicant and Class Members the above mentioned sums with interest at the legal rate, plus the additional indemnity provided by law, to accrue from the date of service of the present motion;*

ORDER *the Respondents to deposit with the Clerk of the Superior Court for the District of Montreal an amount equal to the total compensatory and punitive and exemplary damages caused by Respondents' wrongful behaviour during the class period; and* ***ORDER*** *the collective recovery of this amount, the whole according to proof to be made at trial, the whole with interest and the additional indemnity provided by law calculated from the date of service of the present Motion;*

ORDER *the individual liquidation in favour of the Applicant and Class Members of a sum equivalent to their share of the damages claimed or, if this process turns out to be inefficient or impracticable,* ***ORDER*** *the Respondent to perform any remedial measures that the Court may determine to be in the interest of the members of the Applicant or Class Members;*

CONDEMN *the Respondent to pay the costs incurred for all investigation necessary in order to establish the liability of Respondent in this matter, including the extra-judicial fees of counsel for Applicant and the Class Members and extra-judicial disbursements, including the costs of expertise;*

RENDER *any other order that this Honourable court shall determine may be just and proper;*

THE WHOLE WITH COSTS*, including the cost of notices.*

13. The Applicant requests that she be granted representative status.

14. The Applicant is suitable to act as representative plaintiff and is in a position to properly represent the Class Members

14.1. The Applicant suffered abuse and harms while under the Minister's care and supervision, and while billeted by the Minister with a family in Fort George.

14.2. The Applicant has been deeply affected by the abuse and considers it her moral obligation to seek justice through the judicial system in order to bring closure and justice to herself and to all Class Members.

14.3. The Applicant understands and has been thoroughly advised as to the process required for this class action.

14.4. The Applicant is committed to seeking a resolution to the problems caused by the abuse alleged herein, not just for herself but also for others.

14.5. The Applicant is disposed to invest the necessary resources and time towards the accomplishment of all formalities and tasks necessary for the bringing of the present class action and she is committed to collaborating fully with her attorneys.

14.6. The Applicant is capable of providing her attorneys with the information useful to the bringing of the present class action.

14.7. The Applicant is acting in good faith with the only goal of obtaining justice for herself and for each Class Member.

14.8. The Applicant intends to ask for financial aid from the Fonds d'aide aux recours collectifs.

15. The Applicants request that the Class Action be brought before the Superior Court for the District of Montreal for the following reasons:

15.1. To the Applicant's knowledge, most of the Class Members are likely domiciled in the Cree communities of Waskaganish, Eastmain, Wemindji, Mistissini, and Chisasibi, which fall within the judicial district of Abitibi.

15.2. However, Waskaganish, Eastmain, Wemindji, Mistissini, and Chisasibi are located roughly 590 km, 700 km, 850 km, 583 km, and 930 km, respectively, from Val d'Or, the seat of the judicial district of Abitibi.

15.3. Given these great distances, Val d'Or is no more convenient for the Applicant or Class Members to travel to than is Montreal.

15.4. For her part, the current Minister's principal place of business is in the District of Hull.

15.5. At the same time, the Applicant's undersigned attorneys practise in the District of Montreal and the Respondent also has a place of business in the District of Montreal, as well as in the District of Québec and the City of Ottawa.

15.6. It would greatly increase the time and costs of proceedings if the undersigned attorneys or those for the Respondent had to travel to Val d'Or for hearings.

15.7. Montreal is therefore the most appropriate location for this class action to be heard.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the action;

AUTHORIZE the institution of the class action herein:

To sanction the Respondent's breach of obligation, duty of care and omission.

To sanction its wrongful behaviour in permitting wrongful acts against the children in its care

ASCRIBE to the applicant the status of representative for the purpose of instituting the said class action on behalf of the group of natural persons hereinafter described:

Description of the group:

All persons who attended elementary or secondary schools operated by the Government of Canada in Fort George (now Chisasibi) and Mistassini (now Mistissini), Quebec, between August 1970 and July 1978 and who were billeted with families in the community of Fort George or Mistassini, and who suffered sexual, physical, or psychological abuse in connection with or arising from being placed in the care of those families.

DETERMINE as follows the principal questions of fact and of law that will be dealt with collectively:

a. Could or should the Minister as represented herein by the Respondent, including the Minister's agents or servants, have foreseen that billeting families were in a position that could result in them abusing their positions of power, authority, and trust over children entrusted to them?

b. Did the Minister owe the Class Members a duty arising from circumstance, usage or law?

c. Did the Minister take steps to screen billeting families, prior to placing Class Members in their care? If so, were these steps proper and adequate to prevent unqualified individuals from billeting children?

d. Did the Minister provide proper, adequate and effective training or monitoring initially or on an on-going basis to ensure that billeting families were suitable and fit to act as its employees, servants, or agents?

e. Did the Minister set or implement standards of conduct for billeting families with respect to the safety, health or well-being of Class Members? If so, did the Minister fail to uphold these standards?

f. Did the Minister fulfill its duty to supervise and monitor the performance and

behaviour of billeting families to ensure that they performed and behaved as qualified, reasonable and prudent employees, servants, or agents?

g. Did the Minister set or implement policies for recognizing and reporting potential abuse of or harm to Class Members? If so, did the Minister fail to educate Class Members in the use of a system through which abuse would be recognized and reported?

h. Was the Minister aware of any injuries sustained by the Applicant or Class Members, which occurred while in the care of billeting families? If so, did the Minister adequately investigate those injuries?

i. Was the Minister aware of any complaints put forth by the Applicant or Class Members, in relation to physical, psychological, or sexual abuse? If so, did the Minister respond adequately to those complaints?

j. Did the Minister provide adequate medical and psychological care for the Applicant and Class Members while in the care of billeting families?

k. Was the Minister aware of inappropriate punishments delivered by billeting families? If so, did the Minister allow these punishments to continue?

l. Did the Minister fail to provide leadership and fulfilment of its legal and moral obligations by not enforcing or creating guidelines on sexual abuse, thereby causing the Applicant and the Class Members damages?

m. Were billeting families employees, servant or agents of the Minister? If so, is the Minister liable for the negligent and intentional acts committed by its employee, servant, or agent which harmed the Applicant or Class Members?

n. Was the Minister aware of the wrongful actions of its employees, servants, or agents, and if so, when did it become aware? If not aware, should the Minister have been aware of the wrongful actions committed by its employees, servants, or agents?

DETERMINE as follows the related conclusions sought:

ALLOW *the institution of the Applicant's class action;*

GRANT *the Applicant's application for an order allowing her to use a pseudonym for herself and for Class Members;*

DECLARE *the Respondent liable to the Applicant and Class Members for the damages suffered Respondent's breach of obligation to act as a parent solicitous of his or her child's wellfair and its breach of its obligation of loyalty towards the Applicant and Class Members;*

DECLARE *the Respondent vicariously liable to the Applicant and Class Members for the damages suffered by the negligent and intentionally wrongful actions of its employees, servants, or agents;*

CONDEMN *the Respondent to pay to each of the Class Members compensatory, moral and punitive damages, and* ***ORDER*** *collective recovery of these sums;*

CONDEMN *the Respondent to indemnify each and every Class Member for all damages that they have suffered as a result of Respondent's wrongful behaviour, and the wrongful behaviour of its employees, servants, and agents;*

AND TO THIS END:

DECLARE *the Respondent liable for the cost of judicial and extra-judicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of the Applicant and Class Members and* ***ORDER*** *collective recovery of these sums;*

CONDEMN *the Respondent to pay the Applicant and Class Members the above mentioned sums with interest at the legal rate, plus the additional indemnity provided by law, to accrue from the date of service of the present motion;*

ORDER *the Respondents to deposit with the Clerk of the Superior Court for the District of Montreal an amount equal to the total compensatory and punitive and exemplary damages caused by Respondents' wrongful behaviour during the class period; and* ***ORDER*** *the collective recovery of this amount, the whole according to proof to be made at trial, the whole with interest and the additional indemnity provided by law calculated from the date of service of the present Motion;*

ORDER *the individual liquidation in favour of the Applicant and Class Members of a sum equivalent to their share of the damages claimed or, if this process turns out to be inefficient or impracticable,* ***ORDER*** *the Respondent to perform any remedial measures that the Court may determine to be in the interest of the members of the Applicant or Class Members;*

CONDEMN *the Respondent to pay the costs incurred for all investigation necessary in order to establish the liability of Respondent in this matter, including the extra-judicial fees of counsel for Applicant and the Class Members and extra-judicial disbursements, including the costs of expertise;*

RENDER *any other order that this Honourable court shall determine may be just and proper;*

THE WHOLE WITH COSTS*, including the cost of notices.*

DECLARE that, unless excluded, the members of the group are bound by any judgment to be

handed down in the manner provided for by law;

SET the exclusion time period at 60 days after the date of the notice to members; upon expiry of the exclusion time period the members of the group who have not availed themselves of the means of exclusion will be bound by any judgment to be handed down;

ORDER the publication of a notice to members worded as indicated in Schedule A to this judgment, in the Cree community magazine *The Nation*, the whole within 60 days following the date of this judgment;

ORDER the broadcasting of the notice to members on radio by the James Bay Cree Communications Society in the communities of Waskaganish, Eastmain, Wemindji, Chisasibi, Mistissini, Waswanipi, Oujé-Bougoumou, and Nemaska, worded as indicated in Schedule A to this judgment, the whole within 60 days following the date of this judgment;

REFER the case to the Chief Judge for determination of the district where the class action will be instituted and designation of the judge who will hear it;

ORDER the clerk of this Court, should the action have to be instituted in another district, to transfer the record, upon the Chief Judge's decision, to the clerk of that other district;

The whole with costs, including the costs of notice.

Montréal, this 29th of May, 2017

(S) Marie-Eve Dumont

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Marie-Eve Dumont
ATTORNEYS

NO : 500-06-000812-160

SUPERIOR COURT
CLASS ACTION

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

ANNE SMITH (PSEUDONYM)

APPLICANT

-v.-

ATTORNEY GENERAL OF CANADA

RESPONDENT

AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE

(s. 571 & ss. *C.C.P.*)

COPY

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Our file #5100-005