

CANADA

**SUPERIOR COURT
(Class Action)**

PROVINCE OF QUÉBEC
DISTRICT OF LABELLE

N° :565-06- 000001- 189

CLAUDETTE DORIS COMMANDA domiciled for service purposes at: University of Ottawa Faculty of Law, Fauteux Hall, 57 Louis Pasteur Street, Ottawa, Ontario K1N 6N5

-and-

MARIETTE LUCILLE BUCKSHOT domiciled for service purposes at: Kitigan Zibi Anishinabeg Cultural Centre, 54 Makwa Mikan, Maniwaki, Quebec J9E 3B1

Plaintiffs

v.

THE ATTORNEY GENERAL OF CANADA,
having an office at **Québec Regional Office**,
Department of Justice Canada, Guy Favreau
Complex, East Tower, 9th Floor, 200 René-
Lévesque Boulevard West, district of Montréal,
Province of Québec, H2Z 1X4

Defendant

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO
OBTAIN THE STATUS OF REPRESENTATIVE
(ART. 574 C.C.P. AND FOLLOWING)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT SITTING IN AND FOR
THE DISTRICT OF LABELLE, THE PLAINTIFFS ALLEGE RESPECTFULLY THE
FOLLOWING:**

I. THE CLASS ACTION – OVERVIEW

1. Canada created, designed, established, funded, operated, supervised, controlled, maintained and regulated Indian Day Schools in Québec. The purpose of these Indian Day Schools was to strip students of their Aboriginal culture and identity and remove from

them the ability to pass on to succeeding generations their spiritual, cultural and linguistic heritage;

2. By implementing an education policy aimed at the assimilation of Aboriginal children into the culture of Canada, Canada breached its duties to Plaintiffs and to Class Members; namely, Canada directly, and by way of vicarious liability, breached duties of care owed to Plaintiffs and Class Members in negligence, fiduciary obligations and Aboriginal rights. Canada set out to cause damages, for which relief is claimed, by intentionally breaking the link between Plaintiffs and Class Members to their culture and identity;
3. Indian Day Schools were designed and operated to create an atmosphere of brutality and intimidation. The Crown knew, or ought to have known, that this would result in the systemic infliction of severe physical, mental and sexual abuses to the students attending Indian Day Schools in Québec;
4. Plaintiffs wish to institute a class action on behalf of natural persons forming part of the two Classes hereinafter described, and of which Plaintiffs are members: namely

A. SURVIVOR CLASS

All persons who attended a Québec Indian Day School or Schools as established and/or designated and/or operated under the *Indian Act*, R.C.S. 1985, c. I-5 from and including January 1, 1920 and ending on the date of closure of any particular Indian Day School, or the date on which management and control of any particular Indian Day School was effectively transferred from Canada.

B. FAMILY CLASS

All persons who are a spouse or former spouse, child, grandchild or sibling of a member of the Survivor Class and the spouse of a child, grandchild or sibling of a Surviving Class Member.

II. DEFINED TERMS

5. In this Application, in addition to terms defined elsewhere herein, the following terms have the following meanings:
 - a) **“Aboriginal Persons”** means those persons so defined in the *Constitution Act, 1982*, s. 35;
 - b) **“Agents”** means the servants, contractors, agents, officers and employees of Canada and the operators, managers, administrators and teachers and staff of each of the **Indian Day Schools**;
 - c) **“Canada”** means the Defendant, Her Majesty the Queen in Right of Canada, as represented by the Attorney General of Canada;
 - d) **“Class”** and **“Class Members”** means members of the **Survivor Class** and/or members of the **Family Class**;

- e) **“Class Period”** means the period from and including January 1, 1920 and ending after the effective transfer of management and control of **Indian Day Schools** to First Nations or other Aboriginal governing bodies;
- f) **“Crown”** means **Canada** interchangeably, as defined above;
- g) **“Indian Day School”** and **“Indian Day Schools”** means such schools as were established and/or designated and/or operated under the *Indian Act*, R.S.C. 1985, c.1-5, as amended (*“Indian Act”* or *the “Act”*) during the Class Period but does not include **Indian Residential Schools**; and
- h) **“Indian Residential Schools”** means such schools as were established and/or designated and/or operated under *the Act* and whose students received both an apology from the Prime Minister of Canada in 2008 and compensation through the Indian Residential Schools Class Action Settlement approved in 2006.

III. FACTS GIVING RISE TO THE ACTION

- 6. The facts giving rise to personal claims by each of the Members of the Classes against the Defendant are:

A. THE INDIAN DAY SCHOOL SYSTEM GENERALLY

- 7. In 1920, Parliament amended the *Indian Act* to give the federal department of Indian Affairs the authority to enforce compulsory school attendance of status Indian children as it appears from a copy of the Annual Report of the Department of Indian Affairs for the year ending March 31, 1920, page 13, attached as **Exhibit P-1**;
- 8. Following these amendments, Aboriginal children from Aboriginal communities across Canada, including Aboriginal communities in Québec, were forced by Canada to attend federally funded and administered Indian schools;
- 9. These schools were either Indian Residential Schools, at which the children resided all year or for significant periods of the year, or Indian Day Schools, which the children attended by day only;
- 10. In both cases, the children who attended these schools endured cultural assimilation as well as psychological, physical, and sexual abuse at the hands of teachers, administrators, and other employees of these schools;
- 11. Failure to ensure attendance at these schools, which was made mandatory by the 1920 amendment to section 10 of the *Indian Act*, could result in a fine or imprisonment of parents and arrest of the child. These provisions were strictly enforced by Canada through the use of truancy officers as it appears from a copy of the *Indian Act*, RSC 1927, c 98, attached as **Exhibit P-2**;
- 12. Aboriginal children who attended Indian Day Schools were regularly and frequently subjected to abuse while in the care of those who were responsible for their safety and care;

13. In particular, they were subjected to systematic child abuse, neglect, maltreatment, and generally deprived of the essential components of a healthy childhood;
14. These physical, emotional, psychological, cultural and spiritual abuses were systematically perpetrated upon them by teachers, adults in positions of authority and/or other students;
15. Aboriginal students were beaten, at times into unconsciousness, and were in constant fear of being assaulted, physically and sexually;
16. They were generally unable to tell their parents of the abuse they were suffering, out of intimidation, fear and threat of reprisal and further abuse. Many parents passed away never knowing about the abuse their children were experiencing;
17. The Aboriginal children at the Indian Day Schools returned to their homes at the end of the school day having been taught in the school that the cultural beliefs, values and teachings of their parents, grandparents and elders were of no value;
18. The children were indoctrinated into Christianity, and taught to be ashamed of their Aboriginal culture, spirituality, identity, language and practices;
19. Indian Day Schools fostered an institutionalized culture that was hostile to Aboriginal culture and spiritual practice;
20. Aboriginal language and culture were strictly suppressed and consistently denigrated by the school administrators, teachers and other staff, and were treated as inherently inferior;
21. Aboriginal children were prohibited from speaking their own languages, even to their parents, and were punished for doing so – often severely, including by such practices as beatings and putting a nail or pin through the tongue of the child;
22. They were referred to by demeaning terms such as “heathens” and “dirty savages” and taught to discard their Aboriginal identities. The Aboriginal way of life, traditions, culture, language and spiritual practices were replaced with the identity and culture imposed upon them by Canada;
23. Through the establishment and operation of Indian Day Schools, Canada allowed and/or failed to curtail the systematic abuses from occurring and supported and encouraged the undermining of Aboriginal values, cultures and practices that were critical to the very existence of Aboriginal peoples as a group;
24. Aboriginal children were deprived of their heritage, their support networks and their way of life, forced to adopt a foreign language and a culture foreign to them, and were severely punished for non-compliance;
25. The purpose of establishing Indian Day Schools was to facilitate assimilation of Aboriginal children into the culture which Canada wished to impose upon them, and, in turn, the elimination of their traditional language, culture, religion and way of life;
26. Canada set out and intended to cause the damage which has harmed Plaintiffs and the Class Members;

27. The intent of Indian Day Schools was not primarily to educate them, but rather to break their link to their culture and identity;
28. Through the pursuit of an Indian education policy, a policy of assimilation, Canada, in whole or in part, sought to eradicate what Canada referred to as the "Indian problem" as it appears from a copy of the Annual Report of the Department of Indian Affairs for the year ending March 31, 1931, page 7, attached as **Exhibit P-3**;
29. Canada sought to relieve itself of its moral, legal and financial responsibilities for Aboriginal people, the expense and inconvenience of dealing with cultures, languages, habits and values different from Canada's predominant Euro-Canadian heritage, and the challenges arising from land claims, treaties and other obligations toward Aboriginal peoples;
30. Through the implementation of the Indian education policy, Canada severely damaged the identities of those children who attended and subsequent generations of Aboriginal people and caused irreversible harm to individuals, families and communities;
31. Children who attended and resided at Indian Residential Schools received an apology from the Prime Minister in 2008 and compensation through the Indian Residential Schools Class Action Settlement ("IRSCAS"), approved in 2006, a copy of the IRSCAS is attached as **Exhibit P-4**;
32. Aboriginal children who were forced to attend Indian Day Schools and suffered the same abuses were specifically excluded from the IRSCAS and received nothing. This Claim is on behalf of those Aboriginal children and their families for the damages inflicted upon them while they attended the Indian Day Schools in Québec, as set out below;

B. THE INDIAN DAY SCHOOL SYSTEM IN QUÉBEC

33. In 1920, there were at least 27 Indian Day Schools operating in Québec as shown in the Annual Report, Exhibit P-1;
34. These schools existed across the province, with their geographic reach increasing throughout the Class Period. By 1931, there were 32 Indian Day Schools in the province, and by 1952, two schools, Port Harrison and Fort Chimo, were in operation for Inuit students in Northern Québec as it appears from the Annual Report Exhibit P-3 and from a document entitled Classification of Pupils in Schools of the Mackenzie District of the Northwest Territories as of March 31, 1952, attached as **Exhibit P-5**;
35. Although the majority of these schools were administered on a day-to-day basis by religious organizations, almost all of them were supervised by federal Indian Agents who conducted monthly inspections and filed associated reports. In Québec, schools also received semi-annual inspections through arrangements made between the federal government and the provincial department of education as it appears from the Annual Report Exhibit P-1, page 14;
36. Teachers were generally hired and remunerated by the Department of Indian Affairs as it appears from a copy of a document entitled Indian Agent's References and Regulations, 1947, Indian Affairs Branch, Department of Mines and Resources, at pages 41-42, attached as **Exhibit P-6**;

37. The Department issued regular circulars and instructions to teachers, who generally followed the provincial curriculum as it appears from the Annual Report, Exhibit P-1, page 14, and a copy of the Annual Report of the Department of Indian Affairs for the year ending March 31, 1923, page 8, attached as **Exhibit P-7**; and
38. In Québec, these circulars emphasized that every effort was to be made to induce students to speak French. Teachers were to insist on French even during supervised periods of play as it appears from a copy of the Daily Register for Birtle Indian School, June 30, 1949, attached as **Exhibit P-8**.

C. CANADA'S STATEMENT OF RECONCILIATION AND APOLOGY

39. In January 1998, Canada issued a Statement of Reconciliation acknowledging the role it played in the development and administration of residential schools and apologizing with profound regret for physical and sexual abuse and the erosion of culture and the economic and social systems of Aboriginal people suffered by victims of the Residential Schools system. The Statement of Reconciliation attached as **Exhibit P-9**, stated, in part, as follows:

One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School System. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continued to reverberate in Aboriginal communities to this date. Tragically, some children were the victims of physical and sexual abuse.

40. The Plaintiffs plead that the Statement of Reconciliation should be taken as a statement against interest with respect to the facts and Canada's obligations set out herein;
41. Although the Statement of Reconciliation by Canada refers to Indian Residential Schools, there is no meaningful distinction between the experiences of and harms suffered by those who attended Indian Residential Schools and those of Plaintiffs and the Class Members who attended Indian Day Schools;
42. On June 11, 2008, Prime Minister Stephen Harper on behalf of Canada, delivered an Apology that acknowledged the harm done by Canada's Residential Schools Policy. In this Apology, attached as **Exhibit P-10**, the Prime Minister made certain important acknowledgments regarding the damage to Aboriginal children:

First Nations, Inuit and Metis languages and cultural practices were prohibited in these schools. Tragically, some of these children died while attending residential schools and others never returned home.

...

We now recognize that, far too often, these institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you. Not only did you suffer these abuses as children, but as you

became parents, you were powerless to protect your own children from suffering the same experience, and for this we are sorry.

43. Similarly, the Plaintiff pleads that the Prime Minister's apology should also be taken as a statement against interest with respect to the Crown's obligations set out herein;
44. The same profound and reverberating damages to Aboriginal languages, culture, and individuals, resulted from the experiences forced upon the students of Indian Day Schools;

D. THE TRUTH AND RECONCILIATION COMMISSION

45. The Indian Residential Schools Settlement Agreement provided for the creation of the Truth and Reconciliation Commission of Canada ("**Commission**");
46. The Commission travelled across Canada to hear from the Aboriginal people who had been removed from their families as children and placed in Indian Residential Schools;
47. On December 15, 2015, the Commission released "*Honouring the Truth, Reconciling for the Future*," a summary of its Final Report. *Honouring the Truth* is attached as **Exhibit P-11**, and lists 94 recommendations to redress the legacy of Indian Residential Schools and advance the reconciliation process;
48. The Commission, and then Prime Minister Harper, on behalf of Canada, acknowledged the extreme miscarriage of justice through the settlement of the claims of those who resided at Canada's Indian Residential Schools. Notwithstanding this, many members of Canada's Aboriginal communities were excluded from the IRSCAS simply because they attended Indian Day Schools;
49. The physical and sexual abuse, pain and distress, and the damages to language, learning, culture and heritage acknowledged by Canada, were also suffered by students who were forced to attend Indian Day Schools, their descendants, and their communities;
50. Aboriginal children who were forced to attend Indian Day Schools suffered these same abuses as children and as they became parents, they were, in the same way, unable to protect their own children from suffering the same experience. Yet they were denied an apology, compensation or any kind of reconciliation;
51. The Commission specifically acknowledged the exclusion of Indian Day School students from the IRSCAS (and the lawsuits against Canada based upon these exclusions.) The Commission, at page 170 of *Honouring the Truth*, Exhibit P-11, states that it "*urges all parties to seek expedited means of resolving this litigation.*" The Commission further issued Call to Action Number 29 (Exhibit P-11) which reads as follows:

Call to Action

29) We call upon the parties and, in particular, the federal government, to work collaboratively with the plaintiffs not included in the Indian Residential Schools Settlement Agreement to have disputed legal issues determined expeditiously on an agreed set of facts.

52. As explained below, the proposed class action's objective is to allow for the resolution of the outstanding claims of Indian Day School students in an expeditious manner;

E. CANADA'S BREACH OF OBLIGATIONS

53. Canada created, designed, established, funded, operated, supervised, controlled, maintained and regulated all Indian Day Schools in Canada, including those in Québec;
54. All Aboriginal Persons who attended Indian Day Schools in Québec did so as wards of the Crown and were persons to whom the Crown owed the highest fiduciary, constitutional, statutory, and common law duties;
55. Canada had the obligation to uphold the Honour of the Crown in all of its dealings with Aboriginal peoples;
56. The Crown was responsible, during the Class Period, for:
- a) the promotion of the health, safety, and well-being of Aboriginal Persons in Canada, including those in Québec;
 - b) the management, operation, and administration of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments;
 - c) decisions, procedures, regulations promulgated, operations and actions taken by the Department of Indian Affairs and Northern Development and its predecessors and related Ministries and Departments, as well as the decisions taken by those Ministries and Departments, and their respective employees, servants, officers, and agents in Québec during the Class Period;
 - d) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection, and auditing of Indian Day Schools in Québec and for the creation, design, and implementation of the program of education for Aboriginal Persons confined therein during the Class Period;
 - e) the selection, control, training, supervision, and regulation of the designated operators and their employees, servants, officers, and agents, and for the care and education, control and well-being of Aboriginal Persons confined in an Indian Day School in Québec during the Class Period;
 - f) the provision of all educational services and opportunities to the Survivor Class Members, pursuant to the provisions of the Act and its predecessor statutes as well as all regulations promulgated under that Act and its predecessors during the Class Period;
 - g) the care and supervision of all members of the Survivor Class while they were in attendance at an Indian Day School in Québec and for the supply of all the necessities of life to Survivor Class Members, *in loco parentis*, during the Class Period;
 - h) the provision of educational and recreational services to the Survivor Class while in attendance at an Indian Day School in Québec;

- i) inspection and supervision of all Indian Day Schools in Québec and all activities that took place therein during the Class Period and for full and frank reporting to Departmental officials and to the families with respect to conditions in all Indian Day Schools in Québec and all activities that took place therein;
 - j) the administration of the Act and its predecessor statutes as well as all other statutes relating to Aboriginal Persons and all regulations promulgated under these Acts and their predecessors;
 - k) preserving, promoting, maintaining, and not interfering with Aboriginal rights, including the right to retain and practice their culture, spirituality, language, and traditions and the right to fully learn their culture, spirituality, language and traditions from their families, extended families, and communities; and the care and supervision of all members of the Survivor Class while they were in attendance at Indian Day Schools in Québec during the Class Period; and
 - l) administration of the Act.
57. Canada was negligent and in breach of its fiduciary, statutory, and constitutional duties to the Plaintiffs and members of the Classes and breaches include the following:
- a) it undertook a systemic program of forced integration of Aboriginal children through the institution of Indian Day Schools in Québec when it knew or ought to have known that doing so would cause profound and permanent cultural, psychological, emotional, and physical injury to the members of the Survivor Class and Family Class;
 - b) it failed to properly screen and select the organizations and individuals to which it delegated the implementation of the Indian Day School system in Québec;
 - c) it failed to properly monitor and properly oversee the provision of funding it made to provinces with respect to Indian Day Schools, knowing that the operation of those Indian Day Schools was in conflict with its fiduciary duty to protect the safety and cultural identity of the Survivor Class Members;
 - d) it failed to take proper steps to ameliorate the harmful effects of the Indian Day Schools in Québec;
 - e) it failed to adequately supervise and control Indian Day Schools and agents operating under its jurisdiction in Québec;
 - f) it deliberately and chronically deprived the Survivor Class Members of the education they were entitled to, or were led to, expect from Indian Day Schools in Québec or of any adequate education;
 - g) it designed, constructed, maintained, and operated Indian Day School buildings in Québec that were sub-standard, inadequate for the purpose for which they were intended, and detrimental to the emotional, psychological and physical health of the Survivor Class;
 - h) it failed to provide funding for the operation of Indian Day Schools in Québec that was sufficient or adequate to supply the necessities of life to Aboriginal children confined to them;

- i) it failed to respond appropriately, or at all, to disclosure of abuses in Indian Day Schools in Québec during the Class Period;
- j) it permitted Survivor Class Members to be assaulted and battered in Indian Day Schools in Québec during the Class Period;
- k) it permitted an environment which allowed student-on-student abuse in Indian Day Schools in Québec;
- l) it failed to inspect or audit Indian Day Schools in Québec adequately, or at all;
- m) it failed to implement an adequate system of evaluation, monitoring and control of teachers, administrators, and non-teaching staff of Indian Day Schools in Québec during the Class Period;
- n) it failed to periodically reassess its regulations, procedures and guidelines for the Indian Day Schools in Québec when it knew, or ought to have known, of serious systemic failures in Indian Day Schools during the Class Period;
- o) it failed to close Indian Day Schools in Québec and/or otherwise protect and care for those persons confined therein, when it knew, or ought to have known, that it was appropriate and essential to do so in order to preserve the health, welfare and well-being of the Class Members; and
- p) it failed to protect Survivor Class Members from physical and/or sexual abuse while attending Indian Day Schools in Québec.

F. BREACH OF ABORIGINAL RIGHTS

- 58. The Survivor Class Members are Aboriginal Persons within the meaning of the *Constitution Act*, 1982, s. 35. The Class Members' Aboriginal rights existed and were exercised at all relevant times pursuant to the *Constitution Act*, 1982, s. 35;
- 59. The Survivor Class Members and their communities have exercised laws, customs, and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from time immemorial prior to contact with Europeans, these communities have sustained their distinctive cultures by speaking their languages and practicing their customs and traditions;
- 60. During the time when Survivor Class Members attended Indian Day Schools in Québec, they were punished for using their traditional languages and were made ashamed of their traditional language and way of life;
- 61. Consequently, by reason of the attendance at Indian Day Schools, the Survivor Class Members' ability to speak their traditional languages and practice their spiritual, religious, and cultural activities was seriously impaired and, in some cases, lost entirely;
- 62. These Class Members were denied the ability to exercise and enjoy their Aboriginal rights, both individually and in the context of their collective expression within their communities;

63. The interference in the Aboriginal rights of the Survivor Class has resulted in that same loss being suffered by their descendants and communities, which was the result sought by Canada; and
64. Canada had at all material times, and continues to have, a duty not to impair the Class Members' Aboriginal rights, including the exercise of their spiritual practices, languages, traditions, and culture. Canada has failed in these duties, without justification.

IV. THE DAMAGES SUFFERED BY CLASS MEMBERS

A. Survivor Class Members

65. As a consequence of the negligence and/or breach of fiduciary, constitutional and statutory duties and the breaches of Aboriginal rights by Canada and its Agents, for whom Canada is vicariously liable, the Survivor Class Members, including the Survivor Class Representative Plaintiff, suffered significant injury and damages. The Survivor Class Members therefore seek the following:
 - a) Compensatory damages for any and all immediate and resulting long term physical harms, including but not limited to damages for:
 - i. assault and battery;
 - ii. sexual abuse; and
 - iii. any chronic, residual, or long term physical harms such as broken bones, disfigurement, or other impairments.
 - b) Compensatory damages for any and all immediate and resulting long-term psychological harms, including but not limited to damages for:
 - i. severe emotional and/or psychological pain and suffering;
 - ii. an impairment of mental and emotional health, in some cases amounting to a permanent disability;
 - iii. a propensity to addiction;
 - iv. an impaired ability to trust other people, to form or sustain intimate relationships, to participate in normal family life, or to control anger;
 - v. alienation from community, family, spouses and children;
 - vi. an impaired ability to enjoy and participate in recreational, social, cultural, athletic, and employment activities;
 - vii. an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
 - viii. nightmares, flashbacks, and sleeping problems;
 - ix. sexual dysfunction, confusion and disorientation;

- x. depression, anxiety and emotional dysfunction;
 - xi. suicidal tendencies and ideation;
 - xii. impaired ability to express emotions in a normal and healthy manner; and
 - xiii. deprivation of an education, including basic literacy and skills necessary to obtain gainful employment.
- c) Moral damages, including but not limited to damages for:
- i. loss of self-esteem and feelings of degradation, shame, fear, and loneliness;
 - ii. fear, humiliation, and embarrassment as a child and adult;
 - iii. loss of ability to participate in, or fulfill, cultural practices and duties;
 - iv. loss of ability to live in their community and Nation; and
 - v. loss of language, culture, spirituality and Aboriginal identity;
 - vi. isolation from their family, community, and Nation; and
 - vii. cultural, economic, and social devastation.

B. Family Class Members

66. As a consequence of the negligence and/or breach of fiduciary, constitutional, and statutory duties, and breach of Aboriginal rights by Canada and its agents, for whom Canada is vicariously liable, the Family Class Members, including the Family Class Representative Plaintiff, suffered injury and damages including:
- a) their relationships with Survivor Class Members were impaired, damaged, and distorted as a result of the experiences of Survivor Class Members in Indian Day Schools;
 - b) their culture and languages were undermined and in some cases eradicated by the forced assimilation of Survivor Class Members into the dominant culture as a result of the forced attendance at Indian Day Schools;
 - c) they suffered abuse from Survivor Class Members as a result of the experiences of Survivor Class Members in Indian Day Schools;
 - d) they were unable to resume normal family life and experiences with Survivor Class Members as a result of the experiences of Survivor Class Members in Indian Day Schools;
 - e) they were deprived of pecuniary support from Survivor Class Members as the direct, and indirect, consequence of impairments caused by the Indian Day School experience;

- f) they incurred special and out of pocket expenses in their care of Survivor Class Members and were required to provide support and medical care to Survivor Class Members as a direct or indirect consequence of the Indian Day School experience; and
- g) cultural, economic and social devastation.

C. PUNITIVE DAMAGES

- 67. The Class Members plead Canada deliberately planned the systemic eradication of the language, religion and culture of Survivor Class Members and Family Class Members. The actions were deliberate, malicious, and intended to cause harm, and in the circumstances punitive damages are appropriate and necessary;
- 68. The Class Members plead that Canada, and its Agents, had specific and complete knowledge of the systemic and widespread physical, psychological, emotional, cultural, and sexual abuses of Survivor Class Members that were occurring at Indian Day Schools in Québec;
- 69. In the alternative, the Class Members plead that Canada was grossly negligent or negligent and/or willfully blind to these abuses;
- 70. Despite this knowledge, actual or imputed, Canada continued to operate Indian Day Schools in Québec and took no reasonable steps to protect the Survivor Class Members from these severe abuses and resulting damage that arose as a result. In the circumstances, the failure to act on that knowledge and to protect vulnerable children in Canada's care amounts to a wanton and reckless disregard for their safety and renders punitive damages appropriate and necessary;
- 71. Plaintiffs plead that the Statement of Reconciliation and the Apology by Canada (Exhibits P-9 and P-10) are statements against interest by Canada with respect to the facts and duties set out herein and that they are supportive of punitive damages;
- 72. Notwithstanding said clear acknowledgments and the Commission's Call to Action Number 29, as it appears at page 170 of Exhibit P-11, Canada has failed and neglected to act expeditiously to correct the wrongs made to Plaintiffs and Class Members; and
- 73. At all material times, Canada owed Plaintiffs and Class Members a special duty of care, good faith, honesty and loyalty, pursuant to Canada's constitutional obligations and Canada's duty to act in the best interests of Aboriginal people in Québec, and especially Aboriginal children, who were particularly vulnerable. Canada breached those duties, causing severe harm.

V. THE CASE OF THE PLAINTIFFS

- 74. The facts upon which Plaintiffs' personal claims against the Defendant are based are as follows:

A. CLAUDETTE DORIS COMMANDA

75. The Plaintiff, Claudette Doris Commanda ("Ms. Commanda"), was born on June 6, 1956, on the Kitigan Zibi Anishinabeg Reserve Number 73 ("Kitigan Zibi") near Maniwaki, Québec;
76. She is a member of the Kitigan Zibi Anishinabeg First Nation ("KZAFN") and currently resides at Kitigan Zibi;
77. When she was six years old, Ms. Commanda was forced to attend Congo Bridge Day School ("Congo Bridge"), an Indian Day School located on Kitigan Zibi, from September of 1962 to June of 1963. She then attended a public school in Maniwaki;
78. At the time of Ms. Commanda's attendance, Congo Bridge was administered by a federal Indian Agent, a Roman Catholic Priest, and a lay teacher;
79. While attending Congo Bridge, Ms. Commanda was a victim of daily physical and psychological abuse at the hands of the school's administration;
80. The Plaintiff also witnessed those same abuses being visited upon her classmates;
81. The physical abuse Ms. Commanda suffered and/or witnessed while at Congo Bridge included, but was not limited to: daily beatings from the teacher with a yardstick across the head, back, and hands; being slapped with open palms; shaking of the head by one's ears; boxing of the ears; and having teeth removed by a visiting dentist without any anaesthetic or other form of pain relief;
82. The psychological abuse Ms. Commanda suffered and/or witnessed while at Congo Bridge included, but was not limited to: verbal abuse, such as being told that she was a "dumb Indian who would never amount to anything," threats and intimidation, such as the sudden slamming of a yardstick upon a desk to frighten students; and students not being permitted to use the washroom;
83. On one occasion, a classmate, being unable to wait any longer for the bathroom, urinated in the classroom. Ms. Commanda witnessed the teacher forcing the classmate to remove his pants and clean the mess in front of his peers;
84. In addition to the ongoing psychological and physical abuse, Ms. Commanda and the other students, who were also members of KZAFN, were also subjected to the systematic and persistent denigration of their people, culture, and way of life;
85. Members of KZAFN were described by the administration as "dirty Indians" who were "drunks, lazy, savages, and cold-blooded killers";
86. Ms. Commanda was beaten by the teacher when she raised her hand and observed that none of her family met those descriptions; and
87. Similarly, Ms. Commanda was told that she and her classmates had to pray to God in order to get to heaven because Indians were "evil" and "without religion."

B. MARIETTE LUCILLE BUCKSHOT

88. The Plaintiff, Mariette Lucille Buckshot ("Ms. Buckshot") was born on April 12, 1970, in the town of Maniwaki, Québec;
89. She is a member of KZAFN and was raised in Kitigan Zibi, where she continues to reside;
90. She is the Language and Culture Co-ordinator at the Kitigan Zibi Anishinabeg Cultural Centre. In this capacity, she administers programs designed to revitalize, retain, and protect the Algonquin language;
91. Ms. Buckshot's father, John Buckshot ("Mr. Buckshot"), was born on August 19, 1932, at Kitigan Zibi. He is also a member of KZAFN;
92. From approximately September of 1937 (the beginning of first grade) to spring of 1940 (the end of third grade), Mr. Buckshot attended Maniwaki Day School, which was located at Kitigan Zibi;
93. Throughout his attendance at the Maniwaki Day School, Mr. Buckshot was verbally, physically, and sexually abused by the single nun who administered the school;
94. Following a decrease in attendance at the Maniwaki Day School, Mr. Buckshot was transferred to Congo Bridge for the remainder of third grade and the beginning of fourth grade. He dropped out of school in the winter of 1941 and did not attend another school;
95. Her father's experiences at Maniwaki Day School had a devastating impact on both Ms. Buckshot and her family;
96. Upon learning about and repeatedly hearing of her father's experiences at Day School, Ms. Buckshot rejected her identity as a native person. Being convinced that people tried to hurt native people, and that she did not want to be hurt, she decided she did not want to be a native girl, but rather "a mainstream Canadian." She became biased against her own people; and
97. Ms. Buckshot has had a very difficult relationship with her father, who failed to treat her with respect and often demeaned and degraded her. This, in turn had a negative influence on her relationship with her mother, which continues to be unstable today.

VI. COMPOSITION OF THE CLASSES

98. The composition of the Classes makes the application of Article 59 or 67 C.C.P. impractical or impossible;
99. The composition of the Classes makes it impracticable or impossible to apply the rules for mandates to take part in judicial proceedings on behalf of others or for *consolidation of proceedings*;
100. The size of the Classes is conservatively estimated to include thousands of people in Québec;

101. It is difficult and almost impossible for Plaintiffs to identify all Class Members;
102. It is thus impossible for Plaintiffs to contact and obtain mandates from every Class Member;
103. Considering the number of Class Members, a class action is the only appropriate procedure to allow reasonable access to justice and avoid multiple recourses;

VII. IDENTICAL, SIMILAR OR RELATED QUESTIONS IN FACT AND LAW

104. The identical, similar or related questions in fact and law between each member of the respective Classes and Defendant which Plaintiffs wish to have decided by the class action are:
 - a) Did Canada, through its design, establishment, funding, operation, supervision, control, maintenance and support of Indian Day Schools in Québec, breach its fiduciary, constitutional, or statutory duties to Claudette ~~Dolores~~^{Dolores} Commanda, Mariette Lucille Buckshot, and the other members of the Survivor and Family Classes?
 - b) Was Canada vicariously liable for the acts and/or omissions of its Agents?
 - c) Did Canada infringe the Survivor Class Members' Aboriginal rights in relation to:
 - i) the design, establishment, funding, operation, supervision, control, maintenance and support of the Indian Day School system in Québec; and
 - ii) the intentional infliction of physical and mental distress, in relation to the purpose, design, establishment, funding, operation, supervision, control, maintenance and support of the Indian Day School system through the forced attendance of Survivor Class Members at Indian Day Schools in Québec?
 - d) Was Canada grossly negligent or negligent in the design, establishment, funding, operation, supervision control, maintenance and support of Indian Day Schools in Québec?
 - e) Should Defendant compensate Plaintiffs and the Class Members for all the damages caused stemming from the above breach of obligations?
 - f) Are Plaintiffs and Class Members entitled to moral damages?
 - g) Are Plaintiffs and Class Members entitled to punitive damages?
105. The said common questions must all be answered to determine all individual claims;
106. One question in fact and in law which is particular to each of the Members in either Class is :
 - a) In what quantum should the Defendants compensate each particular Class Member?

107. Notwithstanding this particular question, there are significant identical common questions of fact and law as stated above;
108. The cost of bringing each individual action would disproportionately exceed the amount sought by each Class Member against Defendant; and
109. If Class Members actually exercised their rights, the sheer number of victims would lead to a multitude of individual actions which could lead to contradictory rulings on questions in fact and in law that are for all intents and purposes identical to all the Class Members.

VIII. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

110. The nature of the recourse which Plaintiffs wish to exercise on behalf of the Class Members, is a an action in compensatory, moral and punitive damages for the breach of the obligations stated above;
111. Plaintiffs, on their own behalf, and on behalf of the Class Members, based on the allegations made seek the following conclusions:

- | | |
|-----------|---|
| GRANT | Plaintiffs' action on behalf of all Class Members; |
| CONDEMN | Defendant to pay to each Survivor Class Member all damages in an amount to be determined, plus interest and the legal indemnity as of the date of service of the Application for Authorization to Institute a Class Action; |
| CONDEMN | Defendant to pay to each Family Class Member all damages, in an amount to be determined, plus interest and the legal indemnity as of the date of service of the Application for Authorization to Institute a Class Action; |
| CONDEMN | Defendant to pay punitive damages to Class Members in an amount to be determined; |
| ORDER | the collective recovery of the claims; |
| ORDER | the liquidation of the Class Members' individual claims in accordance with Articles 595 to 598 C.C.P; and |
| THE WHOLE | with costs, including costs of all experts, notices and expenses of the administrator, if any. |

IX. PLAINTIFFS ADEQUACY TO REPRESENT THE CLASSES

112. Claudette Doris Commanda requests that she be ascribed the status of representative of the Survivor Class Members;
113. Ms. Commanda is in a position to represent the Survivor Class Members adequately, for the following reasons:
 - a) She is a member of the Class;

- b) She has an honest and strong desire to represent the interests of the Survivor Class Members;
 - c) She is willing to cooperate fully with her lawyers in order to diligently carry out the action. She has reviewed this procedure before it was filed at Court;
 - d) She is represented by lawyers who have extensive experience in class action litigation;
 - e) She has, through various roles, actively promoted First Nations history, language, and culture for the past 30 years, including as: Professor and Elder-in-Residence at the University of Ottawa; three-time member of the KZAFN Band Council; and as the Executive Director of the First Nations Confederacy of Cultural Education Centres; and
 - f) She does not have interests that conflict with those of other members of the Class.
114. Ms. Buckshot requests that she be ascribed the status of representative of the Family Class Members;
115. Ms. Buckshot is in a position to represent the Family Class Members adequately, for the following reasons:
- a) She has an honest and strong desire to represent the interests of the Family Class Members;
 - b) She is willing to cooperate fully with her lawyers in order to diligently carry out the action;
 - c) She has also reviewed this procedure before it was filed at Court;
 - d) She is represented by lawyers who have extensive experience in class action litigation;
 - e) She has, through various roles, actively promoted the revitalization and protection of Aboriginal language and culture; and
 - f) She does not have interests that conflict with those of other members of the Class.
116. Plaintiffs suggest that the class action be brought and the application for authorization be heard before the Superior Court of the District of Labelle for the following reasons:
- a) The Plaintiffs reside in Maniwaki, within the District of Labelle;
 - b) The Defendant has an office in Ottawa, in close proximity to the District of Labelle;
 - c) The faults alleged by the named Plaintiffs were committed in Maniwaki, within the District of Labelle;
 - d) The District of Labelle best represents the interests of the parties and of the Class Members.

WHEREFORE, PLAINTIFFS PRAY THE COURT TO:

GRANT the present Application;

AUTHORIZE the class action described as an action in compensatory, moral and punitive damages;

GRANT Plaintiff Claudette Doris Commanda the status of Representative for the purpose of bringing said class action for the benefit of the following group of natural persons, namely:

A. SURVIVOR CLASS

All persons who attended a Québec Indian Day School or Schools as established and/or designated and/or operated under the *Indian Act*, R.C.S. 1985, c. I-5 from and including January 1, 1920 and ending on the date of closure of any particular Indian Day School, or the date on which management and control of any particular Indian Day School was effectively transferred from Canada.

GRANT Plaintiff Mariette Lucille Buckshot the status of Representative for the purpose of bringing said class action for the benefit of the following group of natural persons, namely:

B. FAMILY CLASS

All persons who are a spouse or former spouse, child, grandchild or sibling of a member of the Survivor Class and the spouse of a child, grandchild or sibling of a Surviving Class Member.

IDENTIFY as follows the principal questions of fact and law to be determined collectively:

- a) Did Canada, through its design, establishment, funding, operation, supervision, control, maintenance and support of Indian Day Schools in Québec, breach its fiduciary, constitutional, or statutory duties to Claudette Dolores Commanda, Mariette Lucille Buckshot, and the other members of the Survivor and Family Classes?
- b) Was Canada vicariously liable for the acts and/or omissions of its Agents?
- c) Did Canada infringe the Survivor Class Members' Aboriginal rights in relation to:
 - i) the design, establishment, funding, operation, supervision, control, maintenance and support of the Indian Day School system in Québec; and
 - ii) the intentional infliction of physical and mental distress, in relation to the purpose, design, establishment, funding, operation, supervision, control, maintenance and support of the Indian Day School system through the forced attendance of Survivor Class Members at Indian Day Schools in Québec?

- d) Was Canada grossly negligent or negligent in the design, establishment, funding, operation, supervision control, maintenance and support of Indian Day Schools in Québec?
- e) Should Defendant compensate Plaintiffs and the Class Members for the damages caused stemming from the above breach of obligations?
- f) Are Plaintiffs and Class Members entitled to moral damages?
- g) Are Plaintiffs and Class Members entitled to punitive damages?


IDENTIFY as follows the conclusions sought in relation thereof:

- GRANT** Plaintiffs' action on behalf of all Class Members;
- CONDEMN** Defendant to pay to each Survivor Class Member for all damages, in an amount to be determined, plus interest and the legal indemnity as of the date of service of the Application for Authorization to Institute a Class Action;
- CONDEMN** Defendant to pay to each Family Class Member for all damages, in an amount to be determined, plus interest and the legal indemnity as of the date of service of the Application for Authorization to Institute a Class Action;
- CONDEMN** Defendant to pay punitive damages to Class Members in an amount to be determined;
- ORDER** the collective recovery of the claims;
- ORDER** the liquidation of the Class Members' individual claims in accordance with Articles 595 to 598 C.C.P.;
- THE WHOLE** with costs, including costs of all experts, notices and expenses of the administrator, if any;
- DECLARE** that any Class Member who has not requested his exclusion from the Class be bound by any judgment to be rendered on the class action, in accordance with the law;
- FIX** the delay for exclusion at 60 days from the date of publication of the notice to members;
- ORDER** the publication of a notice to the Class Members according to the terms to be determined by the Court;
- REFER** the present file to the Chief Justice for determination of the district in which the class action should be brought and application for authorization and to designate the Judge who shall preside over the hearing;

THE WHOLE with costs, including costs of all experts, notices and expenses of the administrator, if any.

Ottawa, May 21, 2018

Gowling WLG (CANADA) LLP PER
Gowling WLG (Canada) LLP
Lawyers for the Plaintiffs



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SUMMONS

(ARTICLES 145 AND FOLLOWING C.C.P)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of Labelle.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the Superior Court courthouse of Maniwaki at 266, rue Notre-Dame, 1er étage, Maniwaki (Québec) J9E 2J8, , within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

P-1: Annual Report of the Department of Indian Affairs for the year ending March 31, 1920.

P-2: *Indian Act*, RSC 1927, c 98.

P-3: Annual Report of the Department of Indian Affairs for the year ending March 31, 1931.

P-4: 2006 Indian Residential Schools Class Action Settlement

P-5: Classification of Pupils in Schools of the Mackenzie District of the Northwest Territories as of March 31, 1952.

P-6: Indian Agent's References and Regulations, 1947, Indian Affairs Branch, Department of Mines and Resources.

P-7: Annual Report of the Department of Indian Affairs for the year ending March 31, 1923.

P-8: Daily Register for Birtle Indian School, June 30, 1949.

P-9: 1998 Statement of Reconciliation.

P-10: Apology by Prime Minister Stephen Harper of June 11, 2008.

P-11: Summary of the Final Report from the Truth and Reconciliation Commission of Canada "Honouring the truth".

These exhibits are available on request.

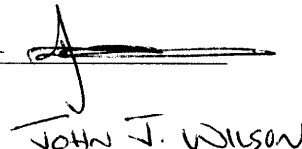
Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the

establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Ottawa, May 21, 2018

Gowling WLG (Canada) LLP PBR
Gowling WLG (Canada) LLP
Lawyers for the Plaintiffs



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NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 C.P.C.)

TO: THE ATTORNEY GENERAL OF CANADA, with an office at **Québec Regional Office**,
Department of Justice Canada
Guy Favreau Complex
East Tower, 9th Floor
200 René-Lévesque Boulevard West
Montréal, Québec, H2Z 1X4

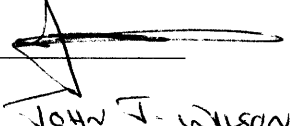
Defendant

TAKE NOTICE that Plaintiffs *Application for Authorization to Institute a Class Action and to obtain the Status of Representative* will be presented before the Superior Court at 266, rue Notre-Dame, 1er étage, Maniwaki (Québec) J9E 2J8, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Ottawa, May 21, 2018

~~Gowling WLG (Canada) LLP~~ PER
Gowling WLG (Canada) LLP
Lawyers for the Plaintiffs


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N° :565-06-

**SUPERIOR COURT (CLASS ACTION)
PROVINCE OF QUÉBEC
DISTRICT OF LABELLE**

**CLAUDETTE DORIS COMMANDA and
MARIETTE LUCILLE BUCKSHOT**

Plaintiffs

v.

**THE ATTORNEY GENERAL OF
CANADA**

Defendant

BL0052

**APPLICATION FOR AUTHORIZATION TO
INSTITUTE A CLASS ACTION AND TO
OBTAIN THE STATUS OF
REPRESENTATIVE
(ART. 574 C.C.P. AND FOLLOWING)**

ORIGINAL

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INIT. : PH a/s 3580

18 MAY 22 10 34

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