

Federal Court



Cour fédérale

ate: 20180802

Docket: T-2212-16

Citation: 2018 FC 901

Ottawa, Ontario, August 2, 2018

**PRESENT:** The Honourable Mr. Justice Phelan

**BETWEEN:**

**JESSICA RIDDLE, WENDY LEE WHITE, and  
CATRIONA CHARLIE**

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ORDER**

**WHEREAS** the Plaintiffs and the Defendant have amended the settlement agreement which was approved by the Honourable Justice Michel M.J. Shore on May 11, 2018;

**UPON HEARING** the motion made by the Plaintiffs, on consent, for an order:  
(a) certifying this action as a class proceeding for settlement purposes; (b) approving the Settlement Agreement; and (c) approving the notice of this settlement, the opt out and claims period and other ancillary orders to facilitate the Settlement;

**AND UPON READING** the joint motion record of the parties and the facts of the parties;

**AND UPON BEING ADVISED** of the Defendant's consent to the form of this Order;

**AND WITHOUT ADMISSION OF LIABILITY** on the part of the Defendant;

**AND UPON HEARING AND READING** the oral submissions of counsel for the Plaintiffs, counsel for the Defendant, all interested parties, including objections, written and oral;

**AND UPON CONSIDERING THAT** it is the intention of the parties and this Court that the appropriate level of legal fees are to be determined by each of this Court and the Superior Court of Ontario acting within their respective jurisdictions over the actions in their courts;

**THIS COURT ORDERS THAT:**

1. For the purposes of this Order, the following definitions shall apply:
  - (i) **“Approval Date”** means the date that this Order is made;
  - (ii) **“Approval Orders”** means this order and the order approving the Settlement Agreement in *Brown v Canada* (Court File No. CV-09-00372025-00CP);
  - (iii) **“Brown Class Members”** means members of the class proceeding in the Ontario Superior Court of Justice, *Brown v Canada* (Court File No. CV-09-00372025-00CP) who did not opt out of that proceeding;
  - (iv) **“Canada”** means the Defendant, the Government of Canada, as represented in this proceeding by the Attorney General of Canada;

(v) **“Class” or “Class Members”** means

All Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents excluding any members of the class action in the Ontario Superior Court of Justice styled as *Brown v. AGC* with court file number CV-09-00372025CP.

(vi) **“Implementation Date”** means the latest of:

- (i) the expiry of thirty (30) days following the expiry of the Opt Out Period;
- (ii) the date following the last day on which a Class Member may appeal or seek leave to appeal either of the Approval Orders;
- (iii) the date of a final determination of any appeal brought in relation to the Approval Orders, with respect to appeals regarding costs only.

(vii) **“Opt Out Period” or “Opt Out Deadline”** means the period commencing on the Approval Date and ending ninety days after the date of this Order, during which a Class Member may opt out of this class proceeding, without leave of this Court;

(viii) **“Proposed Class Actions”** means the proposed class proceedings listed in **Schedule “C”**;

(ix) **“Releasees”** means individually and collectively, Canada, and each of the past, present and future Ministers of the federal government, its Departments and Agencies, employees, agents, officers, officials, subrogees, representatives, volunteers, administrators and assigns;

(x) **“Settlement Agreement”** means the Settlement Agreement executed between the parties on November 30, 2017 attached as **Schedule “A”** to this Order as

amended by the Amendment executed between the parties as of July 26, 2018 attached as **Schedule “B”** to this Order; and

(xi) **“Settlement Fund”** means the settlement fund established pursuant to section 4.01 of the Settlement Agreement.

2. All applicable parties have adhered to and acted in accordance with the Order of this Honourable Court of January 11, 2018 relating to the provision of Notice of this hearing (“Notice Order”) and the procedures provided in the Notice Order constitute good and sufficient notice.

#### **CERTIFICATION**

3. This action is hereby certified as a class proceeding for the purposes of settlement pursuant to section 334.16(1) of the *Federal Court Rules*.

4. The Class is defined as:

All Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents excluding any members of the class action in the Ontario Superior Court of Justice styled as *Brown v. AGC* with court file number CV-09-00372025CP.

5. The representative plaintiffs hereby appointed are Wendy White, Jessica Riddle and Catriona Charlie and constitute adequate representative plaintiffs of the Class.

6. Klein Lawyers LLP, Koskie Minsky LLP and Merchant Law Group LLP are appointed as Class Counsel.

7. The claims asserted on behalf of the Class against the Defendant are: (a) negligence; and (b) breach of fiduciary duty.
8. For the purposes of settlement, this proceeding is certified on the basis of the following common issue:

Did the Defendant have a fiduciary or common law duty of care to take reasonable steps to protect the Indigenous identity of the Class Members?
9. The certification of this action is conditional on the approval of the Settlement Agreement in Ontario in accordance with section 12.01 of the Settlement Agreement. Should the Settlement Agreement be set aside, all materials filed, submissions made or positions taken by any party are without prejudice to any future positions taken by any party on a certification motion.

#### **SETTLEMENT APPROVAL**

10. The Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Class Members.
11. The Settlement Agreement, which is expressly incorporated by reference into this Order, shall be and hereby is approved and shall be implemented in accordance with this Order and further orders of this Court.
12. The claims of the Class Members and the Class as a whole, shall be discontinued against the Defendant and are released against the Releasees in accordance with section 10.01 of the Settlement Agreement, in particular as follows:

- (i) Each Class Member and his/her Estate Executor and heirs (hereinafter “Releasors”) has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which any such Releasor ever had, now has, or may hereafter have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the Sixties Scoop and this release includes any such claim made or that could have been made in any proceeding including the Class Actions whether asserted directly by the Releasor or by any other person, group or legal entity on behalf of or as representative for the Releasor.
- (ii) This Agreement does not preclude claims against any third party that are restricted to whatever such third party may be directly liable for, and that do not include whatever such third party can be jointly liable for together with Canada, such that the third party has no basis to seek contribution, indemnity or relief over by way of equitable subrogation, declaratory relief or otherwise against Canada.
- (iii) For greater certainty, the Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over under the provisions of the *Negligence Act*, R.S.O. 1990, c. N-3, or its counterpart in other jurisdictions, the

common law, Quebec civil law or any other statute of Ontario or any other jurisdiction in relation to the Sixties Scoop, including any claim against provinces or territories or other entities for abuse while in care; then, the Releasors will expressly limit their claims to exclude any portion of Canada's responsibility;

- (iv) Canada's obligations and liabilities under this Agreement constitute the consideration for the releases and other matters referred to in this Agreement and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Releasors are limited to the benefits provided and compensation payable pursuant to this Agreement, in whole or in part, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.
13. This Settlement Agreement does not compromise any claims that Class Members have against any Province, Territory or any other entity, other than as expressly stated herein.
14. This Settlement Agreement does not affect the rights of:
- (i) Class Members who opt out of a class action that is certified pursuant to this Settlement Agreement; or
  - (ii) Individuals who are not Class Members.
15. This Order, including the releases referred to in paragraph 12 above, and the Settlement Agreement are binding upon all Class Members, including those persons who are under a disability.

16. The Claims of the Class Members are dismissed against the Defendant, without costs and with prejudice and such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.
17. This Court, without in any way affecting the finality of this Order, reserves exclusive and continuing jurisdiction over this action, the Plaintiffs, all of the Class Members, and the Defendant for the limited purposes of implementing the Settlement Agreement and enforcing and administering the Settlement Agreement and this Order.
18. Save as set out above, leave is granted to discontinue this action against the Defendant without costs and with prejudice, and that such discontinuance shall be an absolute bar to any subsequent actions against the Defendant in respect of the subject matter hereof.
19. No person may bring any action or take any proceeding against the Administrator, the Foundation Table, the Exceptions Committee or the members of such bodies, the adjudicators, or any employees, agents, partners, associates, representatives, successors or assigns, for any matter in any way relating to the Settlement Agreement, the administration of the Settlement Agreement or the implementation of this judgment, except with leave of this Court on notice to all affected parties.
20. In the event that the number of persons who appear to be eligible for compensation under the Settlement Agreement who opt out of this class proceeding and the Ontario Action exceeds two thousand (2,000), the Settlement Agreement will be void and this judgment will be set aside in its entirety, subject only to the right of Canada, at its sole discretion, to waive compliance with section 5.09 of the Settlement Agreement.



21. Rule 334.21(2) does not apply to the plaintiffs in the proposed Class Actions listed in **Schedule “C”** and those plaintiffs are not excluded from this proceeding despite not having discontinued their parallel Class Actions prior to the Opt Out Deadline.
22. The fees payable to Class Counsel are hereby set at \$37,500,000.00 (\$37.5 million) in respect of legal fees plus applicable taxes, inclusive of disbursements, payable as follows:
  - (i) \$12,500,000.00 to Klein Lawyers LLP;
  - (ii) \$12,500,000.00 to Koskie Minsky LLP; and
  - (iii) \$12,500,000.00 to Merchant Law Group LLP.
23. No fee may be charged to Class Members in relation to claims under this Agreement without prior approval of the Federal Court.
24. Within five (5) business days of the later of the Approval Orders, notice shall be given of this judgment, the approval of the Settlement Agreement, the Opt Out period and the claims period by the commencement of the Notice plan attached here to **Schedule “D”**, at the expense of Canada.
25. The Notice Plan provided for in paragraph 20 above satisfies the requirements of the applicable class proceedings law and this Court, and is the best notice practicable under the circumstances.
26. This Court may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Settlement Agreement and this Order.

27. Class Counsel shall report back to the Court on the administration of the Settlement Agreement at reasonable intervals not less than semi-annually, as requested by the Court and upon the completion of the administration of the Settlement Agreement.
28. The representative Plaintiffs Wendy White, Jessica Riddle, and Catriona Charlie shall each receive the sum of \$10,000 as an honorarium to be paid by the Defendant out of the settlement fund.
29. The proposed representative plaintiffs in the proposed Class Actions listed in **Schedule “C”** shall each receive the sum of \$10,000 as an honorarium to be paid by the Defendant out of the settlement fund.
30. This Order will be rendered null and void in the event that the Settlement Agreement is not approved in substantially the same terms by way of order of the Ontario Superior Court of Justice.
31. The statutory provisions of all applicable class proceedings legislation shall apply in their entirety to the supervision, operation and implementation of the Settlement Agreement and this Order.

“Michael L. Phelan”

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Judge

**SCHEDULE "A"**  
**PRIVILEGED AND CONFIDENTIAL**

November 2017  
Sixties Scoop Settlement Agreement

**WHEREAS:**

A. Between 1951 and 1991, Indian and Inuit children were taken into care and placed with non-Indigenous parents where they were not raised in accordance with their cultural traditions nor taught their traditional languages (the "Sixties Scoop");

B. Various class proceedings were commenced against Canada in provincial superior courts and the Federal Court in connection with the Sixties Scoop;

C. The Parties desire a fair, comprehensive and lasting resolution of the legacy of the Sixties Scoop;

D. The Parties further desire the promotion of healing, education, reconciliation and commemoration;

E. The Parties entered into an Agreement in Principle on August 30, 2017 for the resolution of the legacy of the Sixties Scoop:

- (i) to settle the Class Actions in accordance with and as provided for in this Agreement;
- (ii) to provide for payment by Canada in accordance with the Funding Provisions;
- (iii) to provide Individual Payments to Eligible Class Members; and,

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- (iv) to establish a Foundation to enable change and reconciliation and, in particular, access to education, healing/wellness and commemoration activities for communities and individuals.

F. The Foundation is intended to bridge the generations and give meaning to suffering as well as to provide healing and reconciliation for the whole of Canada, now and for the future.

G. The Parties, subject to the Approval Orders, have agreed to amend or discontinue and consolidate all of the existing Proposed Class Actions to assert two Class Actions for the purposes of settlement;

H. The Parties, subject to the Approval Orders and the expiration of the Opt Out Period without the Opt Out Threshold being met, have agreed to settle the Class Actions upon the terms contained in this Agreement;

I. This Agreement is not to be construed as an admission of liability by Canada;

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

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### SECTION ONE INTERPRETATION

#### 1.01 Definitions

In this Agreement, the following terms will have the following meanings:

**“Adjusted Payment”** means:

- a) if there are fewer than 20,000 Eligible Class Members, the amount calculated by dividing the Designated Amount by the number of Eligible Class Members, up to a maximum of fifty thousand dollars (\$50,000.00); or,
- b) if there are more than 30,000 Eligible Class Members, the amount calculated by dividing seven hundred and fifty million dollars (\$750,000,000.00) by the number of Eligible Class Members.

**“Administrator”** means the entity appointed by the Court to carry out the duties assigned to in Section Eight (8);

**“Adopted”** means a child adopted pursuant to applicable provincial or territorial legislation;

**“Agreement in Principle”** means the Agreement signed in Vancouver, British Columbia, on August 30, 2017 and attached hereto as Schedule “A”;

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

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“Approval Orders” means:

- a) the judgment of the Federal Court certifying the Omnibus Federal Court Class Action and approving this Agreement as fair, reasonable and in the best interests of the Class Members for the purposes of settlement of the Class Actions pursuant to the applicable class proceedings legislation and the common law; and,
- b) the judgement of the Ontario Superior Court of Justice in the Brown Class Action approving this Agreement as fair, reasonable and in the best interests of the Class Members for the purposes of settlement of the Class Actions pursuant to the applicable class proceedings legislation and the common law.

“Base Payment” means twenty-five thousand dollars (\$25,000.00);

“Brown Class Action” means the litigation in the Ontario Superior Court of Justice styled as *Brown v. AGC* with court file number CV-09-00372025CP;

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

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

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**“Class Actions”** means the Omnibus Federal Court Class Action referred to in Section 5.01 and 5.02 and the Brown Class Action;

**“Class Members”** means all individuals including Persons Under Disability

(a) who are included in the Omnibus Federal Court Class Action and who have not opted out and who are not deemed to have opted out of the Omnibus Federal Court Class Action on or before the expiry of the Opt Out Period; or,

(b) who are included in the Brown Class Action;

**“Court”** means either:

a) the Ontario Superior Court of Justice; or,

b) the Federal Court;

**“Designated Amount”** means five hundred million dollars (\$500,000,000.00);

**“Determination Date”** means the day the Administrator determines the number of Eligible Class Members in accordance with Section 6.04(3);

**“Eligible Class Member”** means a Class Member who was alive on February 20, 2009 and whose application for an Individual Payment is approved in accordance with the provisions of this Agreement;

**“Enhanced Amount”** means the amount required to make a Base Payment to each Eligible Class Member in the event that the Designated Amount is

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insufficient to do so; however, in no circumstances will the Enhanced Amount exceed seven hundred and fifty million dollars (\$750,000,000.00);

**“Estate Executor”** means the estate executor, administrator, trustee or liquidator of the deceased Class Member’s or Eligible Class Member’s estate or the personal representative of the Class Member or Eligible Class Member who is under a disability in accordance with applicable provincial and territorial legislation;

**“Exceptions Committee”** means the committee established in Section Nine (9) to carry out the duties assigned to it in this Agreement;

**“Foundation”** means the Foundation established by Canada in accordance with this Agreement and initially funded by Canada to the extent of fifty million dollars (\$50,000,000.00);

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

- a) thirty (30) days after the expiry of the Opt-Out Period; and
- b) the day following the last day on which a Class Member in any jurisdiction may appeal or seek leave to appeal any of the Approval Orders; and
- c) the date of a final determination of any appeal brought in relation to the Approval Orders;

**“Indian”** has the meaning ascribed to it in the *Indian Act*;



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**“Indian Affairs and Northern Development” or “INAC”** means the department of the federal government tasked to perform the duties in relation to processing the Individual Payment Application described in Schedule “B”.

**“Individual Payment”** means a lump sum payment made to an Eligible Class Member in the manner set out in Section Six (6); and, for greater certainty, means either the Base Payment or the Adjusted Payment and, in no circumstances, will any Eligible Class Member receive a payment from this settlement which exceeds fifty thousand dollars (\$50,000.00);

**“Individual Payment Application”** means an application for an Individual Payment completed substantially in the form attached hereto as Schedule “B” and signed by an Eligible Class Member or his or her Estate Executor along with any supporting documentation;

**“Individual Payment Application Deadline”** means the nine (9) month anniversary of the Implementation Date;

**“Inuit”** means individuals who are currently enrolled in the:

1. Nunavut Inuit Enrolment List as specified in article 3.1 of the Nunavut Land Claims Agreement;
2. Nunavik Land Claims Agreement;
3. Labrador Inuit Land Claims Agreement; and,
4. Inuvialuit Land Claims Agreement;

or individuals whom the Exceptions Committee deems to be Inuit.

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**“Omnibus Federal Court Class Action”** means the class action referred to in Sections 5.01 and 5.02;

**“Opt Out Period”** means the ninety (90) day period commencing on the date the Federal Court approves this settlement;

**“Opt Out Threshold”** means the Opt Out Threshold set out in Section 5.09;

**“Parties”** means collectively and individually the signatories to this Agreement;

**“Permanent Ward”** means a child who was committed permanently to the custody or guardianship of a province or territory or provincial or territorial child welfare authority pursuant the applicable provincial or territorial legislation;

**“Person Under Disability”** means

- a) a minor as defined by that person’s province or territory of residence;
- or
- b) a person who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity and for whom a Estate Executor has been appointed;

**“Proposed Class Actions”** means the proceedings listed in Schedule “D”;

**“Reconsideration Officer”** means the individual appointed by the Court to

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carry out the duties assigned to him or her in Section 6.07 and Section 9.03;

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### **1.02 Headings**

The division of this Agreement into Sections and Schedules and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “herein”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections and Schedules are to Sections and Schedules of this Agreement.

### **1.03 Extended Meanings**

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

### **1.04 No *Contra Proferentem***

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

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### **1.05 Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date thereof or as the same may from time to time have been amended, re-enacted or replaced and includes any regulations made thereunder.

### **1.06 Day For Any Action**

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

### **1.07 When Order Final**

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

### **1.08 Currency**

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

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### **1.09 Schedules**

The following Schedules to this Agreement are incorporated into and form part of it by this reference as fully as if contained in the body of this Agreement:

- Schedule A – Agreement in Principle
- Schedule B – Individual Payment Application Form
- Schedule C – Proposed Class Actions
- Schedule D – Foundation Table
- Schedule E – Omnibus Federal Court Statement of Claim
- Schedule F – Federal Court Consolidation Order
- Schedule G – Language Restricting Claims to Several Liability
- Schedule H – Amendments to Each Proposed Class Action
- Schedule I – Federal Court Approval Order
- Schedule J – Brown Approval Order
- Schedule K – Contact Information for Counsel
- Schedule L – Opt Out Form
- Schedule M – Individual Payment Application Process
- Schedule N – Claimant Address Search Plan

### **1.10 No Other Obligations**

All actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any Class Member ever had, now has or may hereafter have arising in relation to the Sixties Scoop against Canada, whether such

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claims were made or could have been made in any proceeding including the Class Actions, will be finally settled based on the terms and conditions set out in this Agreement upon the Implementation Date, and Canada will have no further liability except as set out in this Agreement.

### **SECTION TWO EFFECTIVE DATE OF AGREEMENT**

#### **2.01 Date when Binding and Effective**

This Agreement will become effective and be binding on and after the Implementation Date on all the Parties and the Class Members. The Approval Orders will constitute approval of this Agreement in respect of all Class Members.

#### **2.02 Effective in Entirety**

None of the provisions of this Agreement will become effective unless and until the Courts approve all the provisions of this Agreement.

### **SECTION THREE THE FOUNDATION**

#### **3.01 The Foundation**

(1) Canada will establish the Foundation in accordance with the the *Canada Not For Profit Corporations Act*.

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- (2) The Parties specifically agree that their intention is for the Foundation to continue after the other elements of this Agreement are complete in order to continue to enable change and reconciliation and that the Foundation may receive funding from other sources in order to do so.
- (3) The Parties agree that they will convene a separate negotiation table to particularize the objects of the Foundation (the "Foundation Table"); however, the Parties agree that:
- a. the main purpose of the Foundation is to enable change and reconciliation and, in particular, access to healing/wellness, commemoration and education activities for communities and individuals;
  - b. the Foundation shall be governed by a board of not fewer than six and not more than ten members, one of which shall be appointed by Canada;
  - c. the Foundation is a living entity and it is intended to be responsive to the challenges of current and future needs; and,
  - d. the Foundation is intended to benefit the Class Members and to complement and not duplicate government programs.
- (4) The Foundation Table shall consist of the representatives set out in Schedule "D". The Parties agree that there may be circumstances under which the representatives identified in Schedule "D" will not be able to participate; however, no substitutions will be permitted except by consensus of the Foundation Table.



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- (5) Canada will initially fund the Foundation with fifty million dollars (\$50,000,000.00);
- (6) Any surplus in the Designated Amount after an Adjusted Payment has been made to all of the Eligible Class Members will be paid to the Foundation.

### **SECTION FOUR FUNDING**

#### **4.01 Individual Payment Funding**

- (1) On or before the thirtieth (30<sup>th</sup>) day after the Determination Date, Canada will pay to the Administrator for the benefit of the Class Members either the Designated Amount or the Enhanced Amount as follows:
- I. If the Administrator determines that there are twenty thousand (20,000) or fewer Eligible Class Members, Canada will pay the Designated Amount; or
  - II. If the Administrator determines that there are more than twenty thousand Eligible Class Members, Canada will pay the Enhanced Amount.
- (2) In no circumstances, will Canada be required to pay more than the Enhanced Amount or will the Enhanced Amount exceed seven hundred and fifty million dollars (\$750,000,000.00).
- (3) The Administrator shall hold the moneys in an interest-bearing

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account; however, any interest earned thereon will be held in trust for the Foundation and, upon payment of all the Eligible Class Members, the interest shall be paid out to the Foundation.

### **4.02 Foundation Funding**

On the later of

- a. the date the Foundation comes into existence; or,
- b. the Implementation Date,

Canada will transfer fifty million dollars (\$50,000,000.00) to the Foundation in accordance with Section 3.01(5).

### **4.03 Legal Fees, Notice and Administration Fees**

Canada will pay amounts for legal fees, notice and administration fees and all applicable taxes in accordance with this Agreement.

### **4.04 Social Benefits**

- (1) Canada will make its best efforts to obtain the agreement of the provinces and territories that the receipt of any payments pursuant to this Agreement will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member pursuant to any legislation of any province or territory of Canada.
- (2) Canada will make its best efforts to obtain the agreement of the necessary Federal Government Departments that the receipt of any

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

### **SECTION FIVE IMPLEMENTATION OF THIS AGREEMENT**

#### **5.01 Class Actions**

The Parties agree that *Riddle v. HMQ* (T-2212-16), *White v. AGC* (T-294-17), and *Charlie v. HMQ* (T-421-17) (the “Federal Court Class Actions”) will be consolidated into the uniform Omnibus Federal Court Class Action.

#### **5.02 Content of the Omnibus Federal Court Class Action**

The Omnibus Federal Court Class Action will assert common causes of action encompassing and incorporating all claims and causes of action asserted in the Federal Court Class Actions. The Statement of Claim in the Omnibus Federal Court Class Action will be in the form attached as Schedule “E”.

#### **5.03 Consent Order**

- (1) The Parties will consent to an order in the Federal Court in the form attached as Schedule “F” consolidating the Federal Court Class Actions into the Omnibus Federal Court Class Action as set out in

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Section 5.01 and 5.02.

- (2) For greater certainty, the order consented to in the Federal Court will not amend nor merge nor have any other impact on the Brown Class Action.

### 5.04 Class Definitions

- (1) The Parties agree that it is their intent to resolve the claims of all Indian (as defined by the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents.
- (2) The class in the Brown Class Action is defined pursuant to the Order of Justice Belohaba dated September 27, 2013 as follows:

Indian children who were taken from their homes on reserves in Ontario between December 1, 1965 and December 31, 1984 and were placed in the care of non-aboriginal foster or adoptive parents who did not raise the children in accordance with the aboriginal person's customs, traditions and practices.

- (3) The class in the Omnibus Federal Court Class Action will be defined as the following:

All Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents excluding any members of the class action in the Ontario Superior Court of Justice styled as *Brown v. AGC* with court file number CV-

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09-00372025CP.

- (4) The Parties agree to either amend the class definitions in the Proposed Class Actions listed in Schedule “C” or any other action commenced or continued by any of the counsel listed in Schedule “K” to specifically exclude the Class Members and to preclude claims by other parties against Canada in relation to the Class Members’ claims, or to discontinue the Proposed Class Actions. For greater certainty, the nature of the amendments for each of the Proposed Class Actions is described in Schedule “H”. Furthermore, should any Proposed Class Action listed in Schedule “C” that names Canada as the only defendant be amended to include any other defendant, then that claim shall also be amended to include language substantially in the form set out in Schedule “G”.
  
- (5) The Parties agree that it is their intent that only the claims of the Class Members be compromised by this Agreement and that nothing in this Agreement will be construed to preclude or otherwise diminish any causes of action that members of the Proposed Class Actions listed in Schedule “C” who are not Class Members as defined herein may have against Canada or other entities.

### **5.05 Consent Certification**

The Parties agree that concurrent with the application for the Order referred to in Section 5.03, an application will be made to the Federal Court for the consent certification of the Omnibus Federal Court Class Action for the

## **PRIVILEGED AND CONFIDENTIAL**

purposes of settlement in accordance with the terms of the Agreement.

### **5.06 Omnibus Federal Court Approval Order**

An Approval Order will be sought in the form attached as Schedule "I".

### **5.07 Brown Class Action Approval Order**

There will be a separate Approval Order in relation to the Brown Class Action which will be, in all respects save as to class membership, in the same terms and conditions as the approval order issued in the Federal Court. For greater certainty, the Brown Class Action Approval Order will be sought in the form attached as Schedule "J".

### **5.08 Notice**

- (1) The parties will agree to notice plans to provide notice of the approval hearing and of the settlement's approval and the process to apply for an Individual Payment.
- (2) Canada agrees to fund the notice plans.
- (3) The Parties agree that contact information as set out in Schedule "K" for counsel to the Brown Class Action and the Omnibus Federal Court Class Action will be referenced in the written materials and website information of the notice program.

## **PRIVILEGED AND CONFIDENTIAL**

- (4) The legal notice will include an opt out form generally in the form attached as Schedule "L".
- (5) There will be a "1-800" number funded by Canada which will provide scripted information concerning the settlement.

### **5.09 Opt Out Threshold**

- (1) If the number of Class Members who would have been Eligible Class Members opting out or deemed to have opted out under the Approval Orders exceeds two thousand (2,000), this Agreement will be rendered void and the Approval Orders set aside in their entirety subject only to the right of Canada, in its sole discretion, to waive compliance with this Section. Canada has the right to waive compliance with this provision within thirty (30) days after the end of the Opt Out Period.
- (2) In any event, for each Class Member who opts out and the Parties agree is likely to have received an Individual Payment if he or she had applied, Canada shall deduct twenty-five thousand dollars (\$25,000) from the Enhanced Amount. A copy of any opt out form received will be provided to counsel for the Parties.

## **PRIVILEGED AND CONFIDENTIAL**

### **SECTION SIX INDIVIDUAL PAYMENTS**

#### **6.01 Individual Payments**

Subject to Section 6.03(4), the Administrator will make an Individual Payment to every Eligible Class Member provided that:

- a) the Individual Payment Application is submitted to the Administrator in accordance with the provisions of this Agreement;
- b) the Individual Payment Application is received prior to the Individual Payment Application Deadline;
- c) the Individual Payment Application is validated in accordance with the provisions of this Agreement; and
- d) the Eligible Class Member was alive on February 20, 2009.

#### **6.02 Amount of the Individual Payment**

(1) Depending on number of Eligible Class Members, the Administrator will make Individual Payment in the amount of either:

- a. a Base Payment; or,
- b. an Adjusted Payment.

(2) In no circumstances will an Individual Payment exceed fifty thousand dollars (\$50,000.00).



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### 6.03 Individual Application Process

- (1) The claims process is intended to be expeditious, cost effective, user-friendly and to minimize the burden on the applicant. The Administrator and the Reconsideration Officer shall, in the absence of reasonable grounds to the contrary, assume the applicant to be acting honestly and in good faith. The Administrator and the Reconsideration Officer are instructed to draw all reasonable and favourable inferences that can be drawn with respect to the application, as well as resolving any doubt as to whether a claim has been established in favour of the applicant.
- (2) No Eligible Class Member will receive an Individual Payment without submitting an Individual Payment Application to the Administrator.
- (3) The Administrator will not accept an Individual Payment Application prior to the Implementation Date or after the Individual Payment Application Deadline.
- (4) Notwithstanding Sections 6.03(2) and 6.03(3), where the Reconsideration Officer is satisfied that an Eligible Class Member is a Person Under Disability on the Individual Payment Application Deadline or was delayed from delivering an Individual Payment Application on or before the Individual Payment Application Deadline as a result of undue hardship or exceptional circumstances, the Reconsideration Officer will direct the Administrator to consider the

## **PRIVILEGED AND CONFIDENTIAL**

Individual Payment Application received after the Individual Payment Application Deadline, but in no case will the Administrator consider an Individual Payment Application submitted more than ninety (90) days after the Individual Payment Application Deadline.

- (5) No person may submit more than one (1) Individual Payment Application on his or her own behalf.
- (6) Where a Class Member does not submit an Individual Payment Application as prescribed by this Agreement that Class Member will not be entitled to receive an Individual Payment and any such entitlement will be forever extinguished.
- (7) The Administrator will process all Individual Payment Applications substantially in accordance with Schedule "M" attached hereto.
- (8) Where a claim form contains minor omissions or errors, the Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available or obvious to the Administrator.
- (9) The Administrator will give notice to an applicant of its decision in respect of his or her Individual Payment Application within thirty (30) days of the decision being made.
- (10) A decision of the Administrator is final and binding upon the

## **PRIVILEGED AND CONFIDENTIAL**

claimant and the Administrator, subject only to the Individual Payment Reconsideration Procedure set out in Section 6.07.

- (11) The Administrator agrees to make all Individual Payments as soon as practicable after the number of Eligible Class Members has been determined.

### **6.04 Determination of the Amount Payable by Canada**

- (1) On the ninety-first (91st) day after the Individual Payment Application Deadline, the Administrator will forward any Individual Payment Applications for which no final determination has been made to the Exceptions Committee;
- (2) If there are Individual Payment Applications which have not been finally determined on the Determination Date, the Exceptions Committee may direct the Administrator to calculate the amount owing by Canada as if the applicants or some of them had been finally determined to be Eligible Class Members. If, in fact, the applicants or some of them are finally determined not to be Eligible Class Members, an amount equal to the total of what their Individual Payments would have been if they had been determined to be Eligible Class Members will be provided to the Foundation.
- (3) Within one hundred and twenty (120) days of the Individual Payment Application Deadline (the "Determination Date"), the Administrator will determine the number of Eligible Class Members and advise

## **PRIVILEGED AND CONFIDENTIAL**

Canada whether it will pay the Designated Amount or the Enhanced Amount as set out in Section 4.01;

(4) If Canada is required to pay the Enhanced Amount, the Administrator will forthwith advise as to the precise amount Canada will be required to pay; however, in no circumstance will Canada be required to pay more than seven hundred and fifty million dollars (\$750,000,000.00);

(5) For greater certainty, if Canada is required to pay the Enhanced Amount, the precise amount which Canada will be required to pay is equal to twenty-five thousand dollars (\$25,000.00) multiplied by the number of Eligible Class Members; however, in no circumstance will Canada be required to pay more than seven hundred and fifty million dollars (\$750,000,000.00);

(6) Within thirty (30) days of the Administrator's advice to Canada of the required amount, Canada will pay that amount to the Administrator.

### **6.05 Excess Designated Amount**

If the total amount of the Individual Payments is less than the Designated Amount, the Administrator will pay the balance to the Foundation along with any accrued interest.

### **6.06 Individual Payment Administrative Costs**

## **PRIVILEGED AND CONFIDENTIAL**

The Parties agree that Canada will pay the costs of the Administrator relating to the Individual Payments and their distribution as recommended in writing by the Exceptions Committee.

### **6.07 Individual Payment Reconsideration Procedure**

- (1) The Parties agree the decision of the Administrator as to whether an Individual Payment will be made is intended to be final.
- (2) The claims process is intended to prevent fraud and abuse. If the Administrator believes that the claim is fraudulent or contains intentional misstatements, the claim may be rejected.
- (3) Where the Administrator intends to reject a claim in whole or in part, the applicant shall be contacted by phone or in writing to advise of the intent and reason for rejection and to invite the applicant to provide additional information to support the claim. The process is meant to be informative, informal and to promote, where reasonably possible, payment for the claims of removal from Indigenous families.
- (4) If no information or documents pursuant to section 6.07(3) can remedy the intent to reject and the Claims Administrator rejects a claim, or if the claim is deficient and the Administrator is unable to contact the applicant in accordance with section 6.07(3), the Administrator shall send to the applicant's last known postal address a notice advising the applicant of the Administrator's decision, which shall be accompanied by a form permitting the Applicant to request

## **PRIVILEGED AND CONFIDENTIAL**

reconsideration of the claim by the Reconsideration Officer.

- (5) Within thirty (30) days after the rejection notice has been sent to the applicant by the Administrator, the applicant may request reconsideration by the Reconsideration Officer by mailing to the Administrator a copy of the reconsideration form.
- (6) The Reconsideration Officer may request documents or other evidence where appropriate to better clarify or validate a claim made, but such requests shall not be extensive or put the applicant to unreasonable efforts in view of the nature of the claim made, the credibility and reliability of the applicant and the spirit and intent of the settlement, including the need for a system that is respectful, reconciliatory and simple. The reconsideration decision shall be provided within thirty (30) days of receipt of the applicant's request.
- (7) The decision of the Reconsideration Officer is final without any recourse or appeal to the court or any other tribunal.
- (8) In the exceptional circumstance that the Reconsideration Officer cannot make a decision on a Reconsideration application, the Reconsideration Officer may refer the matter to the Exceptions Committee, as constituted herein in section 9.02, for final and binding determination.

### **6.08 Eligible Class Members Address Search Plan**

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Where after six months have elapsed from the distribution of Individual Payments the Administrator will identify all Eligible Class Members to whom settlement cheques have been mailed but who have not deposited their settlement cheques and conduct searches substantially in accordance with the Eligible Class Member Address Search Plan attached as Schedule "N". If, after conducting the searches in Schedule "N", the Eligible Class Member still cannot be located, the amount of his or her Individual Payment shall be paid to the Foundation.

### **SECTION SEVEN**

#### **INDIVIDUAL PAYMENTS TO APPROVED ESTATE EXECUTORS**

##### **7.01 Compensation if Deceased**

If a Class Member or Eligible Class Member dies or died on or after February 20, 2009 and the Individual Payment Application required under Section Six (6) has been submitted to the Administrator by him or her prior to his or her death or by his or her Estate Executor after his or her death, the Estate Executor shall be paid the amount payable under Section Six (6) to which the deceased Eligible Class Member would have been entitled if he or she had not died.

##### **7.02 Person Under Disability**

If an Eligible Class Member is or becomes a Person Under Disability prior to receipt of an Individual Payment and the Individual Payment Application required under Section Six (6) has been submitted to the Administrator by

## **PRIVILEGED AND CONFIDENTIAL**

him or her prior to becoming a Person Under Disability or by his or her Estate Executor after he or she becomes a Person Under Disability within the period set out in Section Six (6), the Estate Executor will be paid the amount payable under Section Six (6) to which the Eligible Class Member who has become a Person Under Disability would have been entitled if he or she had not become a Person Under Disability.

### **SECTION EIGHT**

#### **Duties of the Administrator**

##### **8.01 Administrator**

The Administrator's duties and responsibilities will be the following:

- a) developing, installing and implementing systems and procedures for processing, evaluating and making decisions respecting Individual Payment Applications which reflect the need for simplicity in form, including processing the Individual Payment Applications substantially in accordance with Schedule "M";
- b) developing, installing and implementing systems and procedures for making Individual Payments;
- c) reporting to the Exceptions Committee on a monthly basis respecting Individual Payment Applications received and being administered and determined;



## **PRIVILEGED AND CONFIDENTIAL**

- d) providing personnel in such reasonable numbers as are required for the performance of its duties, and training and instructing them;
- e) keeping or causing to be kept accurate accounts of its activities and its administration of the Individual Payments, including payment, preparing such financial statements, reports and records as are required by the Courts, in form and content as directed by the Courts and submitting them to the Courts so often as the Courts direct;
- f) receiving and responding to all enquiries and correspondence respecting the validation of Individual Payment Applications, reviewing and evaluating all Individual Payment Applications, making decisions in respect of Individual Payment Applications, giving notice of its decisions in accordance with the provisions this Agreement and communicating with Class Members and Eligible Class Members, in either English or French, as the Class Member or Eligible Class Member elects;
- g) receiving and responding to all enquiries and correspondence respecting payment of compensation for valid Individual Payment Applications, and forwarding the compensation in accordance with the provisions of this Agreement and communicating with Class Members and Eligible Class Members in either English or French, as the Class Member or Eligible Class Member elects;

## **PRIVILEGED AND CONFIDENTIAL**

- h) If a Class Member or Eligible Class Member contacts the Administrator and expresses the desire to communicate in a language other than English or French, the Administrator will make best efforts to accommodate him or her;
- i) maintaining a database with all information necessary to permit a determination and making a determination whether Canada must pay the Designated Amount or the Enhanced Amount and, if Canada is required to pay the Enhanced Amount, what the precise amount of that payment should be on the Determination Date; and,
- j) such other duties and responsibilities as either of the Courts may from time to time by order direct.

## **SECTION NINE**

### **EXCEPTIONAL CIRCUMSTANCES**

#### **9.01 General Principle**

The Parties agree that they are not currently able to precisely contemplate or describe exhaustively all of the criteria for qualification as an Eligible Class Member. The Parties desire to establish a procedure to avoid injustice and ensure that Individual Payments are paid to Eligible Class Members in accordance with the underlying principle of this Agreement; specifically, compensation for long term placement with non-Indigenous families resulting in cultural loss.

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### 9.02 The Exceptions Committee

- (1) The Parties agree that there will be an Exceptions Committee consisting of four members; specifically,
- a. A representative of class counsel present for the discussions leading up to this Agreement;
  - b. A representative of Canada present for the discussions leading up to this Agreement;
  - c. An Indigenous representative, agreed upon by the Parties; and,
  - d. Justice Michel M.J. Shore or such other Federal Court Judge as the Chief Justice of the Federal Court may designate if Justice Shore is unable to continue.
- (2) The purposes of the Exceptions Committee will be to:
- a. consider and decide whether certain Class Members will be determined to be Eligible Class Members;
  - b. receive and consider reports from the Administrator;
  - c. give such directions to the Administrator as may, from time to time, be necessary;
  - d. consider any disputes between the Parties in relation to the implementation of this Agreement; and,
  - e. any other matters assigned to it pursuant to this Agreement.

## **PRIVILEGED AND CONFIDENTIAL**

- (3) The Exceptions Committee will specifically take into consideration the discussions leading up to this Agreement having regard to the general principle set out in Section 9.01 in making its decisions.
- (4) The Exceptions Committee will endeavour to arrive at a consensus; however, in the event that consensus cannot be achieved, Justice Shore, or another Judge designated by the Chief Justice of the Federal Court if Justice Shore is unable to continue, will decide the matter.
- (5) The decision of the Exceptions Committee will be final.

### **9.03 Duty on Reconsideration**

If, in the course of reconsidering the Individual Payment Application of a Class Member, the Reconsideration Officer determines that he or she is unable to conclude that the Class Member is an Eligible Class Member but, having regard to the objects, intentions and spirit of the settlement, that the Class Member's circumstances are such that he or she should be considered to receive an Individual Payment, the Reconsideration Officer shall refer the Individual Payment Application and any related documents to the Exceptions Committee for consideration along with a report from the Reconsideration Officer indicating:

- a) why the Class Member was not determined to be an Eligible Class Member; and,
- b) why the Exceptions Committee should consider circumstances of the

## **PRIVILEGED AND CONFIDENTIAL**

Class Member to be sufficiently similar to those of an Eligible Class Member to warrant an Individual Payment.

### **SECTION TEN RELEASES**

#### **10.01 Class Member Releases**

The Approval Orders will declare that:

- a) Each Class Member and his/her Estate Executor and heirs (hereinafter "Releasers") has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which any such Releaser ever had, now has, or may hereafter have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the Sixties Scoop and this release includes any such claim made or that could have been made in any proceeding including the Class Actions whether asserted directly by the Releaser or by any other person, group or legal entity on behalf of or as representative for the Releaser.
- b) This Agreement does not preclude claims against any third party that are restricted to whatever such third party may be directly

## PRIVILEGED AND CONFIDENTIAL

liable for, and that do not include whatever such third party can be jointly liable for together with Canada, such that the third party has no basis to seek contribution, indemnity or relief over by way of equitable subrogation, declaratory relief or otherwise against Canada.

- c) For greater certainty, the Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over under the provisions of the *Negligence Act*, R.S.O. 1990, c. N-3, or its counterpart in other jurisdictions, the common law, Quebec civil law or any other statute of Ontario or any other jurisdiction in relation to the Sixties Scoop, including any claim against provinces or territories or other entities for abuse while in care; then, the Releasors will expressly limit their claims to exclude any portion of Canada's responsibility;
  
- d) Canada's obligations and liabilities under this Agreement constitute the consideration for the releases and other matters referred to in this Agreement and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Releasors are limited to the benefits provided and compensation payable pursuant to this Agreement, in whole or in part, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.

## **PRIVILEGED AND CONFIDENTIAL**

- e) For greater certainty, the Parties agree this Settlement Agreement does compromise any claims that Class Members have against any Province, Territory or any other entity, other than as expressly stated herein;
  
- f) For greater certainty, the Parties agree that this Agreement does not affect the rights of:
  - a. Class Members who opt out of any class action that is certified pursuant to this Settlement Agreement; or,
  - b. Individuals who are not Class Members.

### **10.02 Cessation of litigation**

- (1) Upon execution of this Agreement, the representative plaintiffs named in the Class Actions and their counsel will cooperate with Canada and make best efforts to obtain approval of this Agreement and general participation by Class Members in all aspects of the Agreement.
  
- (2) Each counsel listed in Schedule "K" undertakes not to commence or assist or advise on the commencement or continuation of any actions or proceedings against Canada calculated to or having the effect of undermining this Agreement;

## **PRIVILEGED AND CONFIDENTIAL**

- (3) Each counsel listed in Schedule "K" who commences or continues litigation against any person or persons who may claim contribution or indemnity from Canada in any way relating to or arising from any claim which is released by this Agreement, agrees that they will limit such claims to exclude any portion of Canada's responsibility.

### **SECTION ELEVEN LEGAL FEES**

#### **11.01 Legal Fees**

Canada agrees to compensate the counsel representing parties to this Agreement in respect of their legal fees and disbursements through a payment equal to fifteen percent (15%) of the Designated Amount plus applicable taxes. Canada will pay this amount as directed in writing by all of the counsel listed on Schedule "K" on the Implementation Date for distribution in agreed-upon shares.

#### **11.02 No Other Fees to be Charged**

The Parties agree that it is their intention that the Individual Payments be made to the Eligible Class Members without any reduction on account of fees; and, accordingly:

- a) No counsel or law firm listed in Schedule "K" or who accepts a



## **PRIVILEGED AND CONFIDENTIAL**

payment for legal fees from Canada will charge any Class Member any fees or disbursements in respect of an Individual Payment; and,

- b) Each counsel listed in Schedule "K" undertakes to make no further charge for legal work for any Class Member with respect to claims under this Agreement.

### **11.03 Pre-Approval of Fees Required**

No fee may be charged to Class Members in relation to claims under this Agreement by counsel not listed on Schedule "K" without prior approval of the Federal Court.

## **PRIVILEGED AND CONFIDENTIAL**

### **SECTION TWELVE CONDITIONS AND TERMINATION**

#### **12.01 Agreement is Conditional**

This Agreement will not be effective unless and until it is approved by the Courts or confirmed on appeal, and if such approvals are not granted by each of the Courts on substantially the same terms and conditions save and except for the variations in class membership contemplated in Section 5.04, this Agreement will thereupon be terminated and none of the Parties will be liable to any of the other Parties hereunder.

#### **12.02 Termination of Agreement**

This Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled.

#### **12.03 Amendments**

Except as expressly provided in this Agreement, no amendment or supplement may be made to the provisions of this Agreement and no restatement of this Agreement may be made unless agreed to by the Parties in writing and any such amendment, supplement or restatement is approved by the Courts without any material differences.

## **PRIVILEGED AND CONFIDENTIAL**

### **SECTION THIRTEEN**

#### **GENERAL**

##### **13.01 No Assignment**

- (1) No amount payable under this Agreement can be assigned and such assignment is null and void except as expressly provided for in this Agreement.
  
- (2) An Individual Payment will be made to each Eligible Class Member by direct deposit or by cheque mailed to his or her home. Where the Eligible Class Member is deceased or under a disability, the Individual Payment will be made to his or her Estate Executor by direct deposit or by cheque.

##### **13.02 Compensation Inclusive**

For greater certainty, the amounts payable to Eligible Class Members under this Agreement are inclusive of any prejudgment or postjudgment interest or other amounts that may be claimed by Eligible Class Members against Canada for claims arising from the Sixties Scoop.

##### **13.03 Applicable Law**

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

## **PRIVILEGED AND CONFIDENTIAL**

### **13.04 Entire Agreement**

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

### **13.05 Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the Parties and their respective heirs and Estate Executors.

### **13.06 Counterparts**

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

### **13.07 Official Languages**

Canada will prepare a French translation of this Agreement for use at the Approval Hearings. As soon as practicable after the execution of this Agreement, Canada will arrange for the preparation of an authoritative

## **PRIVILEGED AND CONFIDENTIAL**

French version. The French version shall be of equal weight and force at law.

### **13.08 Dispute Resolution**

The Parties agree that any dispute in relation to the implementation of this Agreement will be finally determined by the Exceptions Committee.

## **SECTION FOURTEEN CONFIDENTIALITY**

### **14.01 Confidentiality**

Any information provided, created or obtained in the course of this settlement, whether written or oral, will be kept confidential by the Parties and their counsel, all Class Members and the Administrator and will not be used for any purpose other than this settlement unless otherwise agreed by the Parties.

### **14.02 Destruction of Class Member Information and Records**

Within two years of completing the Individual Payments, the Administrator will destroy all Class Member information and documentation in its possession.

### **14.03 Confidentiality of Negotiations**

Save as may otherwise be agreed between the Parties, the undertaking of

## PRIVILEGED AND CONFIDENTIAL

confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to the Agreement in Principle and this Agreement continues in force.

### SECTION FIFTEEN COMMUNICATIONS

#### 15.01 Public Communications

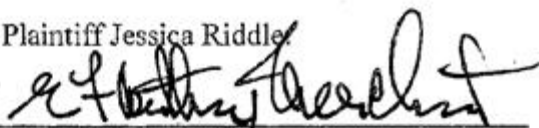
Save as may otherwise be agreed upon, the Parties will not engage in any media or public communications or disclosure of or about this Agreement until a date and manner agreed to by the Parties.

#### 15.02 Public Announcements

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

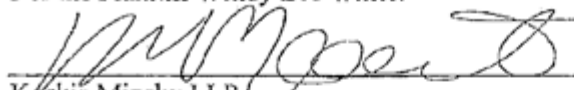
IN WITNESS WHEREOF the Parties have executed this Agreement at Vancouver as of this 30<sup>th</sup> day of November, 2017.

For the Plaintiff Jessica Riddle


  
\_\_\_\_\_  
Merchant Law Group LLP

**PRIVILEGED AND CONFIDENTIAL**

For the Plaintiff Wendy Lee White:

  
Kaskie Minsky LLP

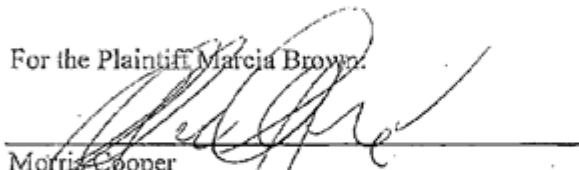
For the Plaintiff Catriona Charlie:

  
Kleia Lawyers

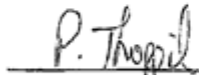
For the Plaintiff Marcia Brown:

\_\_\_\_\_  
Wilson Christen LLP

For the Plaintiff Marcia Brown:

  
Morris Cooper

For the Defendant Her Majesty the Queen:

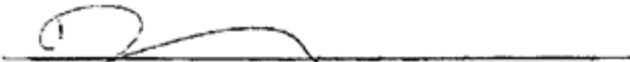
  
Indian Affairs and Northern Development Canada  
Paul Thoppil  
Chief Finances, Results and Delivery Officer

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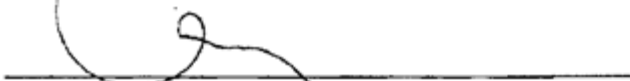
For the Plaintiff Wendy Lee White:

  
Koskie Minsky LLP

For the Plaintiff Catriona Charlie:

  
Klein Lawyers

For the Plaintiff Marcia Brown:

  
Wilson Christen LLP

For the Plaintiff Marcia Brown:

\_\_\_\_\_  
Morris Cooper

For the Defendant Her Majesty the Queen:

\_\_\_\_\_  
Indian Affairs and Northern Development Canada  
Paul Thoppil  
Chief Finances, Results and Delivery Officer



Docket: T-2212-16

BETWEEN FEDERAL COURT  
JESSICA RIDDLE  
Plaintiff

And

HER MAJESTY THE QUEEN  
Defendant

Docket: T-294-17

BETWEEN WENDY LEE WHITE  
Plaintiff

and

THE ATTORNEY GENERAL OF CANADA  
Defendant

Docket: T-421-17

BETWEEN CATRIONA CHARLIE  
Plaintiff

And

HER MAJESTY THE QUEEN  
Defendant

Court file # CV-09-00372025

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN

**MARCIA BROWN and ROBERT COMMANDA**

Plaintiff

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**AGREEMENT IN PRINCIPLE**

**THE FOUNDATION**

1. Canada shall establish a Foundation in accordance with the guidelines in the *Canada Not For Profit Corporations Act*. Canada shall fund the Foundation to the extent of \$50M (the "Initial Funding"); however, the Initial Funding may be augmented from other sources. The Parties agree that they will convene a separate negotiation table to particularize the objects of the Foundation (the "Foundation Table"); however, the Parties agree that the main purpose of the Foundation is to enable change and reconciliation and, in particular, access to education, healing/wellness and commemoration activities for communities and individuals. The Parties also acknowledge that the Foundation is a living entity and may be amended from time to time to respond to the challenges of current and future needs. The Foundation is intended to complement and not duplicate government programs.
2. The Foundation Table shall consist of three (3) representative plaintiffs; two (2) plaintiffs' counsel, the Assistant Deputy Minister, Resolution and Individual Affairs for INAC or his agreed-upon designate Krista Robertson, one (1) counsel from Canada, and Justice Shore.

**CLASS DEFINITION**

3. All "Indians" (as per the *Indian Act* – registered or entitled to be registered) and "Inuit" who were removed from their homes in Canada from 1951 to 1991 and placed in the care of non-Indigenous foster or adoptive parents.

## APPROVED CLAIMANTS

4. All "Indians" (as per the *Indian Act* – registered or entitled to be registered) and "Inuit" who were removed from their homes in Canada from 1951 to 1991 and who were adopted or made Crown wards or permanent wards and placed in the care of non-Indigenous foster or adoptive parents.
5. Individual Payments shall be made to Approved Claimants as follows:
  - Canada shall pay \$500M to the Administrator (the "Designated Amount");
  - The Administrator shall pay \$25,000 to each Approved Claimant (the "Base Payment");
  - Any residue after the Base Payments are made shall be distributed equally among the Approved Claimants to a maximum total payment of \$50,000 to each Approved Claimant (the "Augmented Payment");
  - After payment of the Augmented Payments, any further residue shall be applied to the Foundation described in paragraphs 1 and 2.

## UNLESS

- The Designated Amount is insufficient to make a Base Payment to each Approved Claimant THEN, Canada shall pay an amount sufficient to make a Base Payment to each Approved Claimant (the "Enhanced Amount")

## HOWEVER

- In no circumstances shall Canada be required to pay any amount in excess of a total of \$750M for individual payments to Approved Claimants; and,
- If the Enhanced Amount is not sufficient to make a Base Payment to each Approved Claimant, then the Enhanced Amount shall be divided equally among the Approved Claimants.

For greater certainty, if the number of Approved Claimants is:

- 10,000, each individual will receive \$50,000;
- 15,000, each individual will receive \$30,000  $\{(15,000 \times \$25,000) + (\$125 \text{ M} / 15,000) = \$5,000\}$
- 20,000, each individual will receive \$25,000;
- 25,000, each individual will receive \$25,000 and Canada will pay an additional \$125M  $\{25,000 \times \$25,000 = \$625\text{M} - \$500\text{M}(\text{Designated Amount}) = \$125\text{M}\}$
- 35,000, each individual will receive \$21,400  $(\$750\text{M} / 35,000)$

## NOTICE AND ADMINISTRATION

6. The Parties shall jointly agree on a notice program and administration process to be paid for by Canada to an agreed-upon maximum amount.

#### RELEASES

7. The class members agree to release Canada from any and all claims that have been pleaded or could have been pleaded with respect to their placement in foster care, Crown wardship or permanent wardship, and/or adoption. Such release shall include, but not be limited to, claims for: loss of language, culture, and identity, claims for sexual and physical abuse, Charter or constitutional claims, etc..

#### SETTLEMENT APPROVAL

8. The Parties agree that the settlement agreement shall be approved:
  - a) In *Brown v Canada* in the Ontario Superior Court of Justice; and,
  - b) In an action constituted in the Federal Court consistent with the terms of the settlement agreement.
9. Furthermore, the Parties agree that class counsel shall amend all other actions to eliminate claims which will be settled in this action and seek bar orders with respect to any actions that have or may be brought against any other party where Canada may be added as a third party.

#### EXCEPTIONAL CIRCUMSTANCES

10. The Parties agree to establish a mechanism to consider class members who are not Approved Claimants but whose circumstances are such that they should be considered for individual payment or other relief.

#### OPT-OUTS

11. For each opt out who is eligible to receive an individual payment, Canada shall deduct \$25,000 from the Enhanced Amount.
12. Should 2,000 class members opt out, Canada, in its sole discretion, may decide not to proceed with the settlement agreement and shall have no further obligations in this regard.
13. The Parties agree to work together to minimize the number of opt outs.

#### SOCIAL BENEFITS AND TAXATION

14. Canada shall make best efforts ensure that any Approved Claimant's entitlement to federal social benefits or social assistance benefits will not be negatively affected by receipt of an individual payment and that individual payments will not be considered taxable income within the meaning of the *Income Tax Act*.

15. Canada will use its best efforts to obtain agreement with provincial and territorial governments to the effect that the receipt of any individual payments will not affect the amount, nature, or duration of any social benefits or social assistance benefits available or payable to any class member.

LEGAL FEES

16. Canada shall pay to class counsel 15% of the Designated Amount plus applicable GST/PST/HST as legal fees. Class counsel agree that no amount shall be taken from any payments made to Approved Claimants on account of fees. Class counsel further agree to perform any additional work required on behalf of class members at no additional charge.

Signed at Vancouver this 30th day of August 2017.

CANADA, as represented by the Attorney General of Canada

BY: *Trevor Henderson*  
ATTORNEY GENERAL OF CANADA  
For the Defendant

BY: *Catharine Moors*  
ATTORNEY GENERAL OF CANADA  
For the Defendant


BY: *[Signature]*  
ATTORNEY GENERAL OF CANADA  
For the Defendant


THE PLAINTIFFS, as represented by Class Counsel

BY: *[Signature]*  
KLEIN LAWYERS  
For the Plaintiff Catriona Charlie

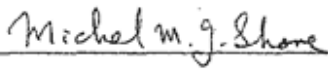
BY: *[Signature]*  
MERCHANT LAW GROUP LLP  
For the Plaintiff Jessica Riddle

BY: *[Signature]*  
KOSKIE MINSKY LLP  
For the Plaintiff Wendy Lee White

BY:   
\_\_\_\_\_  
WILSON CHRISTEN LLP  
For the Plaintiff Marcia Brown

BY:   
\_\_\_\_\_  
MORRIS COOPER  
For the Plaintiff Marcia Brown

Mediated, authorized and approved by Justice Michel M.J. Shore of the Federal Court –  
Mediator of the matter, known as the Sixties Scoop, 1951-1991.

  
\_\_\_\_\_

## Schedule B

### Individual Payment Application Form

This is an application form to obtain an individual payment from the Sixties Scoop Settlement Agreement.

The settlement provides a payment to any registered Indian or Inuit person who was adopted or made a permanent ward and was placed in the care of non-Indigenous foster or adoptive parents in Canada between January 1, 1951 and December 31, 1991.

If this describes you, please read and complete the following form and send it to:

1. What is your full name? \_\_\_\_\_

Have you ever used any other names? (for example, birth names, adopted names, married names, etc.) Please list them here: \_\_\_\_\_

2. What is your date of birth? \_\_\_\_\_

3. Are you a registered Indian? Please provide your registration number here: \_\_\_\_\_

4. Are you entitled to be registered? Please complete the **Request for Registration** form.

5. Are you Inuit? Please indicate which Lands Claims Agreement you are enrolled in here:  
\_\_\_\_\_

6. If you were adopted, when? \_\_\_\_\_ where? \_\_\_\_\_

7. If you were made a permanent ward, when? \_\_\_\_\_ where? \_\_\_\_\_

8. Were you placed with non-Indigenous parents? \_\_\_\_\_

9. Do you have any documents with relate to your adoptions or wardship? Please provide a copy with your application form. Please do not send us original documents.

10. If you do not have any documents, you must consent to the Administrator arranging for the provincial records to be checked in order to substantiate your claim. Please indicate your consent by signing the **Consent to Search for Records** form.

11. [Optional] If you would like to share your story, please use this page. The information you provide may be used to evaluate your claim if records cannot be located or you may request that your story be shared with the Foundation. The Foundation will archive your story along with those of other Sixties Scoop survivors but only if you agree.

Declaration and signature: \_\_\_\_\_

**Schedule "C"**  
**Proposed Class Actions**

<b>Province</b>	<b>Court</b>	<b>Style of Cause</b>	<b>CFN</b>
Alberta	Court of Queen's Bench	Peter Christopher van Name v. Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian and Northern Affairs of Canada; Her Majesty the Queen in Right of Alberta as represented by the Attorney General and Minister of Justice of Alberta	1101-11452
British Columbia	Supreme Court	Skogamhallait also known as Sharon Russell v. The Attorney General of Canada	VLC-S-S-113566
Manitoba	Queen's Bench	Priscilla Meeches and Stewart Garnett v. The Attorney General of Canada	CI 16-01-01540
Saskatchewan	Court of Queen's Bench	Maggie Blue Waters also known as Maggie Nelson v. Her Majesty the Queen in Right of Canada (as represented by the Minister of Indian Affairs and Northern Development of Canada and the Attorney General of Canada) and the Queen in Right of the Province of Saskatchewan (as represented by the Minister of Social Services of Saskatchewan and the Attorney General of Saskatchewan)	QBG 2635-2014
Alberta	Court of Queen's Bench	Sarah Glenn v. Attorney General of Canada	1601-13286
Manitoba	Queen's Bench	Lynn Thompson, David Chartrand and Laurie-Anne O'Cheek v. Her Majesty the Queen in Right of Manitoba, as represented by the Minister of Justice of Manitoba and Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian and Northern Affairs of Canada	CI 15-01-94427
Saskatchewan	Court of Queen's Bench	Simon Ash v. Attorney General of Canada	QBG 2487/16



Quebec	Superior Court	Marry-Ann Ward v. The Attorney General of Canada and the Attorney General of Quebec	500-06-000829-164
Ontario	Superior Court	Catherine Morrisseau v. Her Majesty the Queen in Right of Ontario and Attorney General of Canada	CV-16-56559800CP
British Columbia	Supreme Court	Sarah Tanchak v. Her Majesty the Queen in Right of the Province of British Columbia and Attorney General of Canada	186178
Nova Scotia	Supreme Court	Linda Lou Flewin v. Attorney General of Canada and the Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia	458720

**Schedule D**  
**Foundation Table**

Maggie Blue Waters	Representative Plaintiff
Chief Marcia Brown	Representative Plaintiff
Sharon Russell	Representative Plaintiff
Jeffery Wilson	Plaintiffs' Counsel
Tony Merchant	Plaintiffs' Counsel
Martin Reiher	Assistant Deputy Minister, Resolution and Individual Affairs Indian Affairs and Northern Development Canada
Krista Robertson	Senior Policy Analyst and designate for the Assistant Deputy Minister Indian Affairs and Northern Development Canada
Catharine Moore	General Counsel Department of Justice Canada
The Honourable Michel M.J. Shore	Judge of the Federal Court of Canada

**Schedule "E"**

**Court File No. T-2212-16**

**JESSICA RIDDLE, WENDY LEE WHITE and  
CATRIONA CHARLIE**

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**Relief Sought**

1. The Plaintiffs, Catriona Charlie, Wendy Lee White and Jessica Riddle claim on their own behalf and on behalf of a class of similarly situated persons:
  - a. an order certifying this action as a class proceeding and appointing Catriona Charlie, Wendy Lee White and Jessica Riddle as Representative Plaintiffs;
  - b. a declaration that the Defendant breached fiduciary and common law duties of care;
  - c. general damages plus damages equal to the costs of administering the plan of distribution;
  - d. special damages in an amount to be determined;
  - e. exemplary, aggravated and punitive damages;
  - f. symbolic damages on an aggregate basis;
  - g. disgorgement by the Defendant of its profits;
  - h. pre-judgment and post-judgment interest;
  - i. costs; and
  - j. such further and other relief as this Honourable Court may deem just.

**Nature of this Action**

2. Ms. Charlie, Ms. White, Ms. Riddle and class members are Indians as defined by the *Indian Act*, RSC 1985, c I-5 and aboriginals within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11.
3. This action concerns the practice of removing large numbers of Indian children from their families and communities and placing them in the care of non-indigenous foster or adoptive families (the “Sixties Scoop”).
4. Indian children who were victims of the Sixties Scoop lost their cultural identity and suffered psychologically, emotionally, spiritually and physically. They were also deprived of their status, their aboriginal and treaty rights and monetary benefits to which they were entitled pursuant to the *Indian Act*, RSC 1985, c I-5 and related legislation and policies.

**The Parties**

5. Catriona Charlie is a descendant of the Namgis people and a member of the Namgis First Nation. Immediately after her birth, Ms. Charlie was taken from her birth mother by the province of British Columbia (“BC Child Welfare”) and placed with a non-indigenous foster family. Ms. Charlie was adopted as a toddler by a non-indigenous family. Ms. Charlie currently resides in Port Alberni, British Columbia.
6. Wendy Lee White is a descendant of the Sheshatshiu Innu First Nation. Ms. White was taken from her birth mother by the province of Newfoundland and Labrador (“Nfld Child Welfare”) and placed in foster care. Ms. White was adopted as a toddler by a non-indigenous family. Ms. White currently resides in St. John’s, Newfoundland.
7. Jessica Riddle was taken from her birth parents by the Government of the Northwest Territories (“NWT Child Welfare”) and adopted to a non-indigenous family. Ms. Riddle currently resides in Lutselk’e, Northwest Territories.
8. The Defendant Her Majesty the Queen was, at all relevant times, responsible for the promotion of the health, safety and wellbeing of Indians in Canada, and for the administration of the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes. The Defendant has exclusive jurisdiction in respect of indigenous persons pursuant to section 91(24) of the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK) and the common law. The Defendant is liable for the conduct,

negligence and malfeasance of individuals who were at all material times Crown employees, agents and servants, pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50.

### **The Class**

#### ***The Proposed Class***

9. All Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-indigenous foster or adoptive parents excluding any members of the class action in the Ontario Superior Court of Justice styled as *Brown v. Canada* with court file number CV-09-00372025CP (“Class Members”).

#### ***Aboriginal and Treaty Rights***

10. The indigenous peoples from whom Ms. Charlie, Ms. White and Ms. Riddle have descended have exercised laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. The Plaintiffs and Class Members’ aboriginal and treaty rights were exercised at all relevant times pursuant to the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11.

#### **Delegation of Indian Child Welfare Services**

11. The Defendant delegated Indian child welfare services to the provinces and territories largely through bilateral agreements entered into between the Defendant and each province and territory (each a “Delegation Agreement”, collectively the “Delegation Agreements”).

12. It was an express or implied term of each Delegation Agreement that provincial or territorial Children’s Aid Societies or related agencies (the “Agencies”) would provide child welfare services to Indian children and communities and that the Defendant would reimburse the Agencies on the basis of a daily charge for family services and the maintenance and supervision of each Indian child in care. While the dates during which the Sixties Scoop occurred in each province and territory varied, the phenomenon commenced in the early 1950s and continued until the mid-1990s.

13. As a consequence of the Defendant’s actions, both in entering into the Delegation Agreements and thereafter, Indian children were apprehended by the Agencies and removed from their indigenous families and communities and placed in the care of non-indigenous foster or

adoptive homes.

14. The Defendant's actions authorized a child welfare program that systemically eradicated the culture, society, language, customs, traditions, practices and spirituality of Indian children in each province and territory.

15. The Defendant's conduct was an improper and unlawful delegation of the Defendant's constitutional obligations arising under the *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, s. 91(24) and the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11 and were in contravention of the treaties between the Defendant and indigenous peoples. The Defendant's actions were also in contravention of the United Nations Genocide Convention to which Canada is a signatory.

### **The Representative Plaintiffs**

#### ***Catriona Charlie***

16. When Ms. Charlie was born on July 26, 1968 in Campbell River, British Columbia, she was immediately taken from her birth mother by BC Child Welfare.

17. Ms. Charlie spent the first 16 months of her life in a non-indigenous foster home. In November of 1969, Ms. Charlie was provisionally adopted. The adoption was finalized in February of 1972. Ms. Charlie's adoptive parents and four sisters were non-indigenous.

18. When Ms. Charlie was approximately 10 years old, she moved with her adoptive father and sisters to Edinburgh, Scotland. While in Scotland, Ms. Charlie was completely isolated from her indigenous-Canadian community. She was thousands of kilometers from her Namgis home and had no reasonable opportunity to maintain contact with her Namgis family and community.

19. While living in foster care and with her adoptive family throughout her childhood and teenage years, Ms. Charlie had no reasonable opportunity to maintain any connection with the traditions, language, customs, religion, heritage and culture of her Namgis community, and had no reasonable opportunity to exercise her aboriginal rights as a Namgis.

20. Ms. Charlie entered adulthood with a significantly impaired knowledge and experience of what it meant to be Namgis.

21. On June 24, 1994, Ms. Charlie moved from Scotland to the reserve land of her Namgis people in Alert Bay. She had hoped to connect with her birth family and learn the Namgis language, religion and culture.

22. Unfortunately, Ms. Charlie's birthmother had died in 1978, and Ms. Charlie generally felt awkward, alienated and alone in Alert Bay. She left Alert Bay after 2 years.

23. Ms. Charlie suffers from low self-esteem and, to this day, feels as though there is nowhere that she belongs.

#### *Wendy Lee White*

24. Ms. White was born Pauline Nuna on July 3, 1972 to an Innu mother in North West River, Labrador. Ms. White's biological father was not in her life.

25. Ms. White lived with her mother and various relatives until approximately 16 months of age when she was taken by Nfld Child Welfare and placed in foster care with non-indigenous parents. On or about May 3, 1975, Ms. White was adopted by a non-indigenous family. She was given a new name and a birth certificate from Corner Brook, Newfoundland.

26. Growing up, Ms. White never felt like she fit in. She experienced racism and was often ridiculed. Ms. White was not taught about her indigenous heritage, culture, traditions, customs and language. She had no reasonable opportunity to maintain contact with her Sheshatshiu Innu family and community.

27. Just prior to her nineteenth birthday, Ms. White learned that she was a member of the Sheshatshiu Innu First Nation. In the fall of 1997, Ms. White met with her biological mother and siblings.

28. In 2002, after completing her Master of Social Work, she moved to Goose Bay, Newfoundland. While Ms. White was excited to be working in close proximity to her people in Sheshatshiu and Natuashish, her excitement was short-lived. Ms. White tried to fit into – and identify with – the Innu culture she was born into, but she did not speak the language and did not understand the culture. Ms. White became emotionally, psychologically and spiritually overwhelmed. She felt alienated, anxious, hopeless, sad and resentful. She felt as if she did not belong anywhere.

29. Ms. White's experiences have significantly impacted her interpersonal relationships. She has difficulty opening up to others and suffers from low self-esteem, low self-worth and self-loathing.

***Jessica Riddle***

30. Jessica Riddle was born on September 26, 1983 in Yellowknife, Northwest Territories. Immediately after her birth, Ms. Riddle was taken from her birth parents by NWT Child Welfare.

31. Ms. Riddle was adopted out to a non-indigenous family in Hay River, Northwest Territories. Shortly after the adoption, the family moved to Bridgewater, Nova Scotia, thousands of kilometres away from Ms. Riddle's indigenous family and community. While in Bridgewater, Ms. Riddle felt like an "outsider", and she had no reasonable opportunity to maintain contact with her indigenous family and community. She never developed a trusting relationship with her adoptive parents and had difficulties forming social bonds.

32. While living with her adoptive family throughout her childhood and teenage years, Ms. Riddle had no reasonable opportunity to maintain any connection with the traditions, language, customs, religion, heritage and culture of her indigenous community, and had no reasonable opportunity to exercise her aboriginal rights.

33. At the age of 23, Ms. Riddle's biological mother located her, and Ms. Riddle was united with her birth family. Ms. Riddle moved back to the Northwest Territories to reconnect with her family and indigenous community.

34. Unfortunately, integrating herself back into her community has proven challenging. Ms. Riddle does not speak the native language and does not have the cultural knowledge that she would have gained had she grown up within her indigenous community.

35. As a consequence of these experiences, Ms. Riddle has suffered and continues to suffer from depression and self-confidence issues. She requires counselling and psychological support.

**Commencing this Action**

***Discoverability***

36. Ms. Charlie was unable to bring an action in respect of her injury, damage or loss as a consequence of her profound concern for the harmful impact that litigation would have on the



wellbeing of her Namgis family and community and on her adoptive father and sisters. Ms. Charlie's interests and circumstances were so pressing that she could not reasonably consider commencing litigation until 2016.

37. As a consequence of her emotional and psychological state, Ms. White could not consider commencing litigation in relation to the Sixties Scoop. In 2017, Ms. White's emotional state stabilized, and she was able to reasonably consider bringing an action against the Defendant.

38. Ms. Riddle's depression prevented her from bringing an action against the Defendant in relation to the Sixties Scoop. It was not until 2016 that Ms. Riddle's depression was under control, and she was reasonably able to consider commencing litigation.

#### **Duties of the Defendant**

##### ***Generally***

39. The Defendant had a duty to protect and preserve Indian children's culture and identity both when entering into the Delegation Agreements and after the children were placed in non-indigenous homes. Indian children and their families were and are entitled to a special duty of care, good faith, honesty and loyalty from the Defendant.

40. At all relevant times the Defendant was responsible for:

- a. the administration of the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes as well as any other statutes relating to Indians and all Regulations promulgated under these Acts and their predecessors;
- b. the promotion of the physical and mental health, safety and wellbeing of Indians in Canada;
- c. the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments;
- d. decisions, procedures, regulations promulgated, operations and actions taken by the Department of Indian Affairs and Northern Development, its employees, servants, officers and agents and their predecessors;
- e. the financing of Indian child welfare services in the provinces and territories, including the incentivised payments to the provinces and territories for family services and the maintenance and supervision of each Indian child in care;

- f. preserving and not interfering with the aboriginal rights of Indian children in care, including the right to:
  - i. retain their status as Indians;
  - ii. benefit from indigenous laws, customs and traditions in relation to citizenship, adoption, family care, marriage, property and use of resources;
  - iii. retain and practice their culture, religion, language and traditions;
  - iv. fully learn their culture, religion, language and traditions from their families and communities; and
  - v. obtain monetary benefits under the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes and related legislation and policies;
- g. preserving and not interfering with the treaty rights of Indian children in care; and
- h. preserving the estates of reserve resident Indians, including carrying out the terms of wills of deceased reserve resident Indians and administering the property of reserve resident Indians who die intestate.

***Fiduciary Duty***

- 41. The Defendant stands in a fiduciary relationship with Canada's indigenous peoples.
- 42. The Defendant has an ongoing obligation to consult with indigenous peoples on matters relevant to indigenous peoples' interests.
- 43. At all material times, the Plaintiffs and Class Members were particularly vulnerable and -- being children taken away from their families, homes and communities -- were in need of protection.
- 44. At all material times, the Defendant had undertaken to act in the best interests of Indian children.
- 45. Indigenous identity and culture were legal or substantial practical interests of Indian children. The Defendant was required to take steps to safeguard, monitor, preserve, secure and protect these interests.
- 46. At all material times, the Defendant assumed such a degree of discretionary control over the protection and preservation of the identity and culture of Indian children that it amounted to a direct administration of those interests.

47. The Defendant's fiduciary duty owed to Indian children was, at all material times, a non-delegable duty. This duty continued despite the fact that the Defendant entered into the Delegation Agreements with the provinces and territories.

***Common Law Duty***

48. At all material times, the Defendant owed a common law duty of care to take steps to prevent indigenous children who were placed in the care of non-indigenous foster or adoptive parents from losing their indigenous identity.

49. In one or more of the Delegation Agreements, the Defendant undertook the obligation to consult with Indian Bands regarding the provision by the Agencies of child welfare services to Indian children. The Indian Bands were third-party beneficiaries under the Delegation Agreements. A special relationship – to which the law attached a duty of care – existed as between the Defendant and the Indian Bands. This special relationship, by extension, existed as between the Defendant and the Indian children who were apprehended during the Sixties Scoop, namely the Plaintiffs and Class Members.

50. In the alternative, a common law duty of care arose by virtue of the relationship of proximity that existed between the Defendant and Indian children who were apprehended during the Sixties Scoop. Proximity between the Defendant and Class Members is supplemented by the acknowledged fiduciary duty in existence between them in respect of specific interests.

51. The Delegation Agreements evidence that the Defendant assumed an obligation to provide child welfare programs to Indian children. The Defendant established, supervised, financed, regulated and controlled the provision of child welfare services to Indian children. Given the long-standing historical and constitutional relationship between the Defendant and indigenous peoples, the Defendant knew or ought to have known that failure on its part to take reasonable care to ensure that the child welfare services provided to Indian children were executed in a manner that took into account the protection and preservation of their indigenous identity and culture, would cause harm to the Indian children.

***Breach of the Defendant's Duties***

52. The Defendant breached its fiduciary and common law duties by, *inter alia*:

- a. failing to ensure that the Agencies delivered an appropriate child welfare program for indigenous children;
- b. failing to take reasonable steps to prevent the Plaintiffs and Class Members from being placed in the care of non-indigenous foster and adoptive parents;
- c. supporting or acquiescing in the apprehension and removal of the Plaintiffs and Class Members from their indigenous family and community and their placement in the care of non-indigenous foster and adoptive parents;
- d. failing to properly monitor and oversee the provision of funding it made to the provinces and territories with respect to child welfare programs for indigenous children;
- e. failing to take reasonable steps to prevent the Plaintiffs and Class Members from losing their indigenous identity and culture;
- f. failing to ensure that adequate services were provided to the Plaintiffs and Class Members to enable them to exercise their indigenous culture, language, religion, customs, rights, benefits and traditions during the period of placement in non-indigenous homes;
- g. failing to advise the Plaintiffs and Class Members of their status as Indians, including failing to provide essential information about the indigenous identity of the Plaintiffs and Class Members to their non-indigenous foster and adoptive parents;
- h. supporting or acquiescing in denying the Plaintiffs and Class Members a reasonable opportunity to exercise their rights as Indians, including aboriginal rights and treaty rights;
- i. failing to ameliorate the harmful effects of the Delegation Agreements and the delegation of Indian child welfare services to the provinces and territories;
- j. failing to provide information, to their non-indigenous foster and adoptive parents, about the financial benefits to which the Plaintiffs and Class Members were entitled;
- k. failing to provide the financial benefits to which the Plaintiffs and Class Members were entitled under the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes and related legislation and policies;

- l. failing to assure that indigenous children were made aware of their treaty and aboriginal rights;
  - m. failing to consult with Indian Bands and other indigenous stakeholders about the delegation of child welfare services to the provinces and territories, the provision of funding to the provinces and territories for that purpose, and the policies and practices that would be adopted by the Agencies with respect to the removal of indigenous children from their homes and their subsequent placement in non-indigenous foster and adoptive homes and the related or anticipated consequences of those practices;
  - n. permitting unqualified individuals to hire servants, agents and employees to administer and operate foster homes;
  - o. permitting unqualified and otherwise unsuitable individuals to act as adoptive parents without proper screening and investigation as to the risks of abuse;
  - p. failure to protect the Plaintiffs and Class Members from harm;
  - q. failure in general to take proper and reasonable steps to prevent injury to the Plaintiffs' and Class Members' physical health and mental well-being and moral safety while the Plaintiffs and Class Members were resident at foster homes, and when they were adopted by non-aboriginal families;
  - r. having occupied a position analogous to that of a parent, failing to establish and maintain systems to protect the Plaintiffs and Class Members as a good parent should;
  - s. the cause of the physical and sexual assaults surrounding circumstances that were or ought to have been within the knowledge of the Defendant and would not have occurred but for the negligence of the Defendant; and
  - t. actively promoting a policy of cultural assimilation.
53. The actions and omissions of the Defendant were acts of fundamental disloyalty, betrayal and dishonesty to the Plaintiffs and Class Members.
54. The provision of funding through the various Delegation Agreements did not absolve the Defendant from its duty to take reasonable steps to prevent vulnerable indigenous children from losing their cultural identity, their status and their treaty and other benefits as a by-product of the child welfare policies implemented in Canada.

55. Pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, the Defendant is vicariously liable for the negligent acts and omissions of its employees, servants and agents, including but not limited to the acts and omissions of BC Child Welfare, Nfld Child Welfare, NWT Child Welfare and other Agencies.

**Ongoing Loss and Damage**

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

- a. loss of their indigenous culture and identity;
- b. loss of their indigenous customs, language, religion, spirituality and traditions;
- c. loss of opportunity to exercise their aboriginal rights;
- d. loss of opportunity to exercise their treaty rights;
- e. loss of their status as Indians;
- f. isolation from their families, communities and reserve land;
- g. loss of self-esteem and self-worth;
- h. social dysfunctionality and alienation from family, spouses and children;
- i. forced cultural assimilation;
- j. loss of ability to parent;
- k. deprivation of one's ability to pass one's culture and identity on to one's children;
- l. alienation and the inability to cope in social situations;
- m. physical, sexual, emotional, spiritual and psychological abuse and suffering;
- n. psychological injury, including depression, anxiety, emotional dysfunction, suicidal ideation and loss of self-worth;
- o. addiction, including addiction to alcohol, prescription and non-prescription drugs;
- p. pain and suffering;
- q. deprivation of reserve or related land;
- r. loss of opportunity to benefit from the financial and other benefits to which they were entitled under the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes and related legislation and policies;

- s. loss of opportunity to benefit from unclaimed estates to which they were entitled;
- t. loss of ability to obtain proper education or employment;
- u. loss of income, loss of competitive advantage in the employment field, loss of income earning potential and loss of income earning capacity; and
- v. the cost of required psychological, psychiatric and medical treatment, including but not limited to the cost of counselling, rehabilitation, therapy, mediation and hospitalization.

#### **Punitive Damages**

57. As set out in detail in this claim, the actions of the Defendant were reprehensible and showed a callous disregard for the Plaintiffs' and Class Members' rights.

58. The conduct of the Defendant was deliberate, lasted for decades and represented a marked departure from ordinary standards of decent behaviour.

59. Compensatory damages are insufficient in this case. The conduct of the Defendant merits punishment and warrants a claim for punitive damages. A punitive damage award is necessary to express society's condemnation of the conduct of the Defendant, and to achieve the goals of both general and specific deterrence.

#### **Disgorgement**

60. Throughout the Sixties Scoop, the Plaintiffs and Class Members were deprived of their status and the financial benefits to which they were entitled under the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes and related legislation and policies. The Defendant wrongfully retained these monies and the value of these benefits.

61. The Plaintiffs and Class Members received differential treatment as compared to other indigenous persons in Canada who were not apprehended during the Sixties Scoop.

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

#### **Quebec Class Members**

63. Where the acts and omissions of the Defendant and its agents and servants took place in Quebec, they constitute fault giving rise to extra-contractual liability pursuant to the *Civil Code of*

Quebec, CQLR c C-1991, c 64. The Defendant's acts and omissions also constitute fault giving rise to extra-contractual civil liability pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and the *Interpretation Act*, RSC 1985, c 1-21.

64. The Defendant is liable to pay damages - including punitive damages - to the Plaintiffs and Class Members pursuant to the *Civil Code of Quebec*, CQLR c C-1991, c 64.

**Legislation**

65. The Plaintiffs and Class Members plead and rely upon, *inter alia*:
- a. *Civil Code of Quebec*, CQLR c C-1991, c 64
  - b. the common law
  - c. *Constitution Act*, 1867, 30 & 31 Victoria, c 3 (UK)
  - d. *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982 c 11
  - e. *Crown Liability and Proceedings Act*, RSC 1985, c C-50
  - f. *Federal Courts Act*, RSC, 1985, c F-7
  - g. *Federal Courts Rules*, SOR/98-106
  - h. *Indian Act*, RSC 1952, c 149
  - i. *Indian Act*, RSC 1985, c I-5
  - j. *Indian Estates Regulations*, SOR/55-285
  - k. *Interpretation Act*, RSC 1985, c 1-21
  - l. all other comparable and relevant acts and regulations in Canada

**Place of Trial**

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

Date:

---

Lawyers for the Plaintiffs, Catriona Charlie,  
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Schedule "F"

Federal Court



Cour fédérale

Date: \_\_\_\_\_

Docket: T-2212-16

Saskatoon, Saskatchewan, \_\_\_\_\_

PRESENT: The Honourable Justice Michael M. J. Shore

BETWEEN:

JESSICA RIDDLE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

**ORDER**

**THIS MOTION** made by the plaintiffs for an order consolidating the actions commenced in Toronto, Court file number T-294-17 (the "White Action") , in Vancouver , Court file number T-421-17 (the "Charlie Action") with the present action, Court file number T-2212-16 (the "Consolidated Action") and to file a consolidated Statement of Claim was heard in writing.

**WHEREAS** the White Action and the Charlie Action relate to substantially the same subject matter as the Consolidated Action;

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**ON CONSENT** of the parties in the Consolidated Action, the White Action and the Charlie Action;

**IT IS ORDERED THAT:**

1. Pursuant to Rule 105(a), the White Action and the Charlie Action be consolidated into this Consolidated Action;
2. Jessica Riddle, Wendy White and Catriona Charlie be appointed as plaintiffs in the Consolidated Action;
3. The style of cause of the Consolidated Action shall be amended to read as follows:

**JESSICA RIDDLE , WENDY LEE WHITE and  
CATRIONA CHARLIE**

**Plaintiffs**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

4. The plaintiffs may deliver a Consolidated Statement of Claim, without interlineations, in the form attached hereto as Schedule "A";
5. This Order shall be filed in this Consolidated Action, in the White Action and in the Charlie Action.

\_\_\_\_\_  
Michael M.J. Shore  
Judge

### Schedule "G"

The class/subclass consisting of all Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents ("Indian and Inuit class/subclass") makes no claim against Canada in this action.

The Indian and Inuit class/subclass expressly waive any and all rights they may possess to recover from any defendant, or any other party, any portion of their loss that may be attributable to the fault or liability of Canada, her servants, agents, officers, and/or employees, for which any defendant or other party might reasonably be entitled to claim from Canada, her servants, agents, officers, and/or employees for contribution, indemnity, or apportionment at common law, in equity, or pursuant to any Federal, Provincial, or Territorial legislation or regulation.

The Indian and Inuit class/subclass will not seek to recover from any party any portion of their losses, which have been claimed or could have been claimed, against Canada, her servants, agents, officers, and/or employees.

## Schedule “H”

The applicable Statement of Claim, Notice of Civil Claim, Notice of Action, or Application for Authorization to Institute a Class Action and to Appoint a Representative Applicant for each proposed class proceeding listed in Schedule “C” shall be amended as follows:

1. *Peter Christopher van Name v. Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian and Northern Affairs of Canada; Her Majesty the Queen in Right of Alberta as represented by the Attorney General and Minister of Justice of Alberta*

Amendments:

11a. The class includes a subclass consisting of all Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents (“Indian and Inuit subclass”).

11b. The Indian and Inuit subclass claims only as against Alberta and makes no claim against Canada in this action.

11c. The Indian and Inuit subclass expressly waive any and all rights they may possess to recover from any defendant, or any other party, any portion of their loss that may be attributable to the fault or liability of Canada, her servants, agents, officers, and/or employees, for which any defendant or other party might reasonably be entitled to claim from Canada, her servants, agents, officers, and/or employees for contribution, indemnity, or apportionment at common law, in equity, or pursuant to any Federal, Provincial, or Territorial legislation or regulation.

11d. The Indian and Inuit subclass will not seek to recover from any party any portion of their losses, which have been claimed or could have been claimed, against Canada, her servants, agents, officers, and/or employees.

2. *Skogamhallait also known as Sharon Russell v. The Attorney General of Canada*

Amendments:

7a. The proposed class definition specifically excludes all Indian (as defined in the Indian Act) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents.

3. *Priscilla Meeches and Stewart Garnett v. The Attorney General of Canada*

Amendments:

9a. The proposed class definition specifically excludes all Indian (as defined in the Indian Act) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents.

4. *Maggie Blue Waters also known as Maggie Nelson v. Her Majesty the Queen in Right of Canada (as represented by the Minister of Indian Affairs and Northern Development of Canada and the Attorney General of Canada) and Her Majesty the Queen in Right of the Province of Saskatchewan (as represented by the Minister of Social Services of Saskatchewan and the Attorney General of Saskatchewan)*

Amendments:

10a. The class includes a subclass consisting of all Indian (as defined in the Indian Act) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents ("Indian and Inuit subclass").

10b. The Indian and Inuit subclass claims only as against Her Majesty the Queen in Right of the Province of Saskatchewan as represented by the Minister of Social Services of Saskatchewan and the Attorney General of Saskatchewan and makes no claim against Her Majesty the Queen in Right of Canada as represented by the Minister of Indian

Affairs and Northern Development of Canada and the Attorney General of Canada (“Canada”) in this action.

10c. The Indian and Inuit subclass expressly waive any and all rights they may possess to recover from any defendant, or any other party, any portion of their loss that may be attributable to the fault or liability of Canada, her servants, agents, officers, and/or employees, for which any defendant or other party might reasonably be entitled to claim from Canada, her servants, agents, officers, and/or employees for contribution, indemnity, or apportionment at common law, in equity, or pursuant to any Federal, Provincial, or Territorial legislation or regulation.

10d. The Indian and Inuit subclass will not seek to recover from any party any portion of their losses, which have been claimed or could have been claimed, against Canada, her servants, agents, officers, and/or employees.

5. *Sarah Glenn v. Attorney General of Canada*

Amendments:

9a. The proposed class definition specifically excludes all Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents.

6. *Lynn Thompson, David Chartrand and Laurie-Anne O’Cheek v. Her Majesty the Queen in Right of Manitoba, as represented by the Minister of Justice of Manitoba and Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian and Northern Affairs of Canada*

Amendments:

10a. The class includes a subclass consisting of all Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents (“Indian and Inuit subclass”).

10b. The Indian and Inuit subclass claims only as against the Province of Manitoba and makes no claim against Canada in this action.

10c. The Indian and Inuit subclass expressly waive any and all rights they may possess to recover from any defendant, or any other party, any portion of their loss that may be attributable to the fault or liability of Canada, her servants, agents, officers, and/or employees, for which any defendant or other party might reasonably be entitled to claim from Canada, her servants, agents, officers, and/or employees for contribution, indemnity, or apportionment at common law, in equity, or pursuant to any Federal, Provincial, or Territorial legislation or regulation.

10d. The Indian and Inuit subclass will not seek to recover from any party any portion of their losses, which have been claimed or could have been claimed, against Canada, her servants, agents, officers, and/or employees.

7. *Simon Ash v. Attorney General of Canada*

Amendments:

9a. The proposed class definition specifically excludes all Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents.

8. *Marry-Ann Ward v. The Attorney General of Canada and the Attorney General of Quebec*

Amendments:

1a. The group includes a subgroup consisting of all Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents (“Indian and Inuit subclass”).

1b. The Indian and Inuit subclass claims only as against the Attorney General of Québec and makes no claim against the Attorney General of Canada in this action.



25a. The Indian and Inuit subclass expressly waive any and all rights they may possess to recover from any defendant, or any other party, any portion of their loss that may be attributable to the fault or liability of Canada, her servants, agents, officers, and/or employees, for which any defendant or other party might reasonably be entitled to claim from Canada, her servants, agents, officers, and/or employees for contribution, indemnity, or apportionment at common law, in equity, or pursuant to any Federal, Provincial, or Territorial legislation or regulation.

25b. The Indian and Inuit subclass will not seek to recover from any party any portion of their losses, which have been claimed or could have been claimed, against Canada, her servants, agents, officers, and/or employees.

9. *Catherine Morrisseau v. Her Majesty the Queen in Right of Ontario and Attorney General of Canada*

Amendments:

6.1. The class includes a subclass consisting of all Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents ("Indian and Inuit subclass").

6.2. The Indian and Inuit subclass claims only as against Her Majesty the Queen in Right of Ontario and makes no claim against Canada in this action.

6.3. The Indian and Inuit subclass expressly waive any and all rights they may possess to recover from any defendant, or any other party, any portion of their loss that may be attributable to the fault or liability of Canada, her servants, agents, officers, and/or employees, for which any defendant or other party might reasonably be entitled to claim from Canada, her servants, agents, officers, and/or employees for contribution, indemnity, or apportionment at common law, in equity, or pursuant to any Federal, Provincial, or Territorial legislation or regulation.

6.4. The Indian and Inuit subclass will not seek to recover from any party any portion of their losses, which have been claimed or could have been claimed, against Canada, her servants, agents, officers, and/or employees.

10. *Sarah Tanchak v. Her Majesty the Queen in Right of the Province of British Columbia and Attorney General of Canada*

Amendments:

5.1. The class includes a subclass consisting of all Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents ("Indian and Inuit subclass").

5.2. The Indian and Inuit subclass claims only as against British Columbia and makes no claim against Canada in this action.

5.3. The Indian and Inuit subclass expressly waive any and all rights they may possess to recover from any defendant, or any other party, any portion of their loss that may be attributable to the fault or liability of Canada, her servants, agents, officers, and/or employees, for which any defendant or other party might reasonably be entitled to claim from Canada, her servants, agents, officers, and/or employees for contribution, indemnity, or apportionment at common law, in equity, or pursuant to any Federal, Provincial, or Territorial legislation or regulation.

5.4. The Indian and Inuit subclass will not seek to recover from any party any portion of their losses, which have been claimed or could have been claimed, against Canada, her servants, agents, officers, and/or employees.

11. *Linda Lou Flewin v. Attorney General of Canada and the Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia*

Amendments:

6a. The class includes a subclass consisting of all Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents ("Indian and Inuit subclass").

6b. The Indian and Inuit subclass claims only as against Nova Scotia and makes no claim against Canada in this action.

6c. The Indian and Inuit subclass expressly waive any and all rights they may possess to recover from any defendant, or any other party, any portion of their loss that may be attributable to the fault or liability of Canada, her servants, agents, officers, and/or employees, for which any defendant or other party might reasonably be entitled to claim from Canada, her servants, agents, officers, and/or employees for contribution, indemnity, or apportionment at common law, in equity, or pursuant to any Federal, Provincial, or Territorial legislation or regulation.

6d. The Indian and Inuit subclass will not seek to recover from any party any portion of their losses, which have been claimed or could have been claimed, against Canada, her servants, agents, officers, and/or employees.

12. *Marcia Brown v. Attorney General of Canada*

Amendments:

2 (d) “Class” or “Class Members” refer to all Aboriginal or Native, and off-reserve Indian persons who, as children in Ontario, were exposed to the consequences of the Defendant’s breach of fiduciary obligation, duty of care and protection of Aboriginal rights and identity genocide during the Class Period but does not include the Excluded Class;

2 (g) ~~“Excluded Class” refers to a member of the Class as Certified in Action No. CV-09-00372025-00CP in The Ontario Superior Court of Justice between Marcia Brown, as Plaintiff, and the Attorney General of Canada, as Defendant~~ all Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents;

7. The proposed Class herein constitutes all off-reserve Indian and Aboriginal or Native persons who are knownd and who self-identify as survivors of the “Sixties Scoop”, meaning they experienced the results of the Defendant’s breach of fiduciary obligation, duty of care and actionable wrong of identity genocide during the Class Period but does not include the Excluded Class. Each is a person who, as a child, lost her or his cultural identity.

Federal Court



Cour fédérale

**Date:** May 10, 2018

**Docket:** ●

Saskatoon, Saskatchewan, ●

**PRESENT:** The Honourable Mr. Justice Shore

**BETWEEN:**

**Court File No. ●**

**JESSICA RIDDLE, WENDY LEE WHITE, and  
CATRIONA CHARLIE**

**Plaintiffs**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**ORDER**

**WHEREAS** the parties before the Court have consented that the mediator, the Honourable Justice Michel M.J. Shore, has been given the authority to preside over the motion for settlement approval in this action in accordance with section 391 of the *Federal Court Rules*;

**AND WHEREAS** the Plaintiffs and the Defendant have entered into the Settlement Agreement in respect of the Plaintiffs' claims against the Defendant;

**AND WHEREAS** this Honourable Court approved the form of notice and plan for distribution of the notice of this motion by Order dated ● (the "**Notice Order**");

**UPON HEARING** the motion made by the Plaintiffs, on consent, for an order: (a) certifying this action as a class proceeding for settlement purposes; (b) approving the settlement agreement dated ● between the parties (the "**Settlement Agreement**" or "**Settlement**"); and (c) approving the notice of this settlement, the opt out and claims period and other ancillary orders to facilitate the Settlement;

**AND UPON READING** the joint motion record of the parties and the facts of the parties;

**AND UPON BEING ADVISED** of the Defendant's consent to the form of this Order,

**AND WITHOUT ADMISSION OF LIABILITY** on the part of the Defendant,

**AND UPON HEARING** the oral submissions of counsel for the Plaintiffs, counsel for the Defendant, all interested parties, including objections, written and oral,

**IT IS ADJUDGED THAT:**

1. For the purposes of this Order, the following definitions shall apply:
  - (i) "**Approval Date**" means the date that this Order is approved;
  - (ii) "**Approval Orders**" means this order and the order approving the Settlement Agreement in *Brown v. Canada* (Court File No. CV09-00372025-00CP);
  - (iii) "**Brown Class Members**" means members of the class proceeding in the Ontario Superior Court of Justice, *Brown v. Canada* (Court File No. CV-09-00372025-00CP) who did not opt out of that proceeding;
  - (iv) "**Canada**" means the Defendant, the Government of Canada, as represented in this proceeding by the Attorney General of Canada;
  - (v) "**Class Actions**" mean:
    - (i) *Wendy Lee White v. The Attorney General of Canada* (Court File No. T-294-17);
    - (ii) *Jessica Riddle v. Her Majesty the Queen* (Court File No. T-2212-16);

- (iii) *Catriona Charlie v. Her Majesty the Queen* (Court File No. T-2212-16);
  - (iv) *Meeches et al. v. The Attorney General of Canada* (Court File No. CI 16-01-01540);
  - (v) *Maggie Blue Waters v. Her Majesty the Queen in Right of Canada et al.* (Court File No. QBG 2635/14);
  - (vi) *Thompson et al. v. Her Majesty the Queen et al.* (Court File No. CI 15-01-94427);
  - (vii) *Pelletier v. Attorney General of Canada* (Court File No. QGB 631/17);
  - (viii) *Simon Ash v. Attorney General of Canada* (Court File No. QBC 2487/16);
  - (ix) *Lynn Thompson et al. v. Her Majesty the Queen in Right of Canada et al.* (Court File No. QBG 1642/11);
  - (x) *Peter Christopher Van Name v. Her Majesty the Queen in Right of Canada et al.* (Court File No. 110111452);
  - (xi) *Sarah Glenn v. Attorney General of Canada* (Court File No. 1601-13286);  
and
  - (xii) *Skogamhallait also known as Sharon Russell v. The Attorney General of Canada* (Court File No. VLC-S-S113566);
- (vi) “**Class**” or “**Class Members**” means all Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents excluding any members of the class action in the Ontario Superior Court of Justice styled as *Brown v. The Attorney General of Canada* (Court File Number CV-09-00372025CP);
  - (vii) “**Implementation Date**” means the latest of:
    - (i) the expiry of thirty (30) days following the expiry of the Opt Out Period;
    - (ii) the date following the last day on which a Class Member may appeal or seek leave to appeal either of the Approval Orders;
    - (iii) the date of a final determination of any appeal brought in relation to the Approval Orders;
  - (viii) “**Opt Out Period**” or “**Opt Out Deadline**” means the period commencing on the Approval Date and ninety days after the date of this Order, during which a Class Member may opt out of this class proceeding, without leave of this Court;

- (ix) **"Releasees"** means individually and collectively, Canada, and each of the past, present and future Ministers of the federal government, its Departments and Agencies, employees, agents, officers, officials, subrogees, representatives, volunteers, administrators and assigns;
- (x) **"Settlement Agreement"** means the Settlement Agreement executed between the parties on ●, attached as **Schedule "A"** to this Order; and
- (xi) **"Settlement Fund"** means the settlement fund established pursuant to section ● of the Settlement Agreement.

2. All applicable parties have adhered to and acted in accordance with the Order of this honourable Court of \_\_\_ relating to the provision of Notice of this hearing (the **"Notice Order"**) and the procedures provided in the Notice Order have constituted good and sufficient notice of the hearing of this motion.

#### **CERTIFICATION**

3. This action is hereby certified as a class proceeding for the purposes of settlement pursuant to section 334.16(1) of the *Federal Court Rules*.

4. The Class is defined as:

All Indian (as defined in the Indian Act) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents excluding any members of the class action in the Ontario Superior Court of Justice styled as *Brown v. The Attorney General of Canada* (Court File Number CV-09-00372025CP).

5. The representative plaintiffs hereby appointed are Wendy White, Jessica Riddle, and Catriona Charlie and constitute adequate representative plaintiffs of the Class.

6. The claims asserted on behalf of the Class against the Defendant are: (a) negligence; and (b) breach of fiduciary duty.

7. For the purposes of settlement, this proceeding is certified on the basis of the following common issue:

Did the Defendant have a fiduciary or common law duty of care to take reasonable steps to protect the Indigenous identity of the Class Members?

8. The certification of this action is conditional on the approval of the Settlement Agreement in Ontario and in accordance with section ● of the Settlement Agreement. Should the Settlement Agreement be set aside, all materials filed, submissions made or positions taken by any party are without prejudice to any future positions taken by any party on a certification motion.

#### **SETTLEMENT APPROVAL**

9. The Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Class Members.

10. The Settlement Agreement, which is expressly incorporated by reference into this Order, shall be and hereby is approved and shall be implemented in accordance with this Order and further orders of this Court.

11. The claims of the Class Members and the Class as a whole, shall be discontinued against the Defendant and are released against the Releasees in accordance with section ● of the Settlement Agreement, in particular as follows:

- (i) Each Class Member and his/her Estate Executor and heirs (hereinafter “**Releasors**”) has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which any such Releasor ever had, now has, or may hereafter have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the Sixties Scoop and this release includes any such claim made or that could have been made in any proceeding including the Class Actions whether asserted directly by the Releasor or by any other person, group or legal entity on behalf of or as representative for the Releasor.



- (ii) This Agreement does not preclude claims against any third party that are restricted to whatever such third party may be directly liable for, and that do not include whatever such third party can be jointly liable for together with Canada, such that the third party has no basis to seek contribution, indemnity or relief over by way of equitable subrogation, declaratory relief or otherwise against Canada.
  - (iii) For greater certainty, the Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over under the provisions of the *Negligence Act*, R.S.O. 1990, c. N-3, or its counterpart in other jurisdictions, the common law, Quebec civil law or any other statute of Ontario or any other jurisdiction in relation to the Sixties Scoop, including any claim against provinces or territories or other entities for abuse while in care; then, the Releasors will expressly limit their claims to exclude any portion of Canada's responsibility;
  - (iv) Canada's obligations and liabilities under this Agreement constitute the consideration for the releases and other matters referred to in this Agreement and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Releasors are limited to the benefits provided and compensation payable pursuant to this Agreement, in whole or in part, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.
12. For greater certainty, the Parties agree this Settlement Agreement does compromise any claims that Class Members have against any Province, Territory or any other entity, other than as expressly stated herein;
13. For greater certainty, the Parties agree that this Agreement does not affect the rights of:
- (i) Class Members who opt out of any class action that is certified pursuant to this Settlement Agreement; or,
  - (ii) Individuals who are not Class Members.

14. This Order, including the releases referred to in paragraph ● above, and the Settlement Agreement are binding upon all Class Members, including those persons who are under a disability.

15. The claims of the Class Members are dismissed against the Defendant, without costs and with prejudice and such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

16. This Court, without in any way affecting the finality of this Order, reserves exclusive and continuing jurisdiction over this action, the Plaintiffs, all of the Class Members, and the Defendant for the limited purposes of implementing the Settlement Agreement and enforcing and administering the Settlement Agreement and this Order.

17. Save as set out above, leave is granted to discontinue this action against the Defendant without costs and with prejudice, and that such discontinuance shall be an absolute bar to any subsequent actions against the Defendant in respect of the subject matter hereof.

18. ● shall be and hereby is appointed as Claims Administrator pursuant to the Settlement Agreement. The fees, disbursements and applicable taxes of the Claims Administrator shall be paid by the Defendant in accordance with section ● of the Settlement Agreement.

19. No person may bring any action or take any proceeding against the Administrator, the Foundation Table, ● or the members of such bodies, the adjudicators, or any employees, agents, partners, associates, representatives, successors or assigns, for any matter in any way relating to the Settlement Agreement, the administration of the Settlement Agreement or the implementation of this judgment, except with leave of this Court on notice to all affected parties.

20. In the event that the number of persons who appear to be eligible for compensation under the Settlement Agreement who opt out of this class proceeding and the Ontario Action exceeds two thousand (2,000), the Settlement Agreement will be void and this judgment will be set aside in its entirety, subject only to the right of Canada, at its sole discretion, to waive compliance with section ● of the Settlement Agreement.

21. The legal fees, disbursements and applicable taxes owing to Class Counsel shall be determined by further order of this Court.
22. No counsel or law firm listed in Schedule "K" to the Settlement Agreement or who accepts a payment for legal fees from Canada will charge any Class Member any fees or disbursements in respect of an Individual Payment; and, each counsel listed in Schedule "K" to the Settlement Agreement undertakes to make no further charge for legal work for any Class Member with respect to claims under this Agreement.
23. Within five (5) business days of this Order, notice shall be given of this judgment, the approval of the Settlement Agreement, the opt out period and the claims period by the commencement of the Notice Plan attached here to Schedule "B", at the expense of Canada.
24. The Notice Plan provided for in paragraph ● above satisfies the requirements of the applicable class proceedings law and this Court, and is the best notice practicable under the circumstances.
25. This Court may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Settlement Agreement and this Order.
26. Class Counsel shall report back to the Court on the administration of the Settlement Agreement at reasonable intervals not less than semi-annually, as requested by the Court and upon the completion of the administration of the Settlement Agreement.
27. The representative Plaintiffs Wendy White, Jessica Riddle, and Catriona Charlie shall each receive the sum of \$10,000 as an honorarium to be paid by the Defendant out of the settlement fund.
28. The proposed representative plaintiffs in the Provincial actions shall each receive the sum of \$10,000 as an honorarium to be paid by the Defendant out of the settlement fund.
29. This Order will be rendered null and void in the event that the Settlement Agreement is not approved in substantially the same terms by way of order of the Ontario Superior Court of Justice.

30. The statutory provisions of the Federal Courts Act, R.S.C. 1985, c. F-7 and shall apply in their entirety to the supervision, operation, and implementation of the Settlement Agreement and this Order.

---

Justice Shore

Schedule "J"

Court File No. CV-09-00372025-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) DAY, THE  
JUSTICE ● )  
) DAY OF , 2018

BETWEEN:

**MARCIA BROWN and ~~ROBERT COMANDA~~**

Plaintiffs

- and-

**THE ATTORNEY GENERAL OF CANADA**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION** made by the representative plaintiff for an order approving the settlement of this action was heard this day at ●, Toronto Ontario.

**WHEREAS** this action was certified as a class proceeding by the order of Justice Belobaba dated ●;

**AND WHEREAS** in accordance with the order of Justice Belobaba dated ●, the class members were provided an opportunity to opt out of this class proceeding;

**AND WHEREAS** the Plaintiff and the Defendant have entered into the Settlement Agreement in respect of the Plaintiff's claims against the Defendant;

Page: 2

**AND WHEREAS** the Settlement Agreement was approved in the action styled *Jessica Riddle et al. v. The Attorney General of Canada* (Court File No. ●) in the Federal Court (the "**Federal Court Action**") by order of Justice Shore dated ●;

**AND WHEREAS** this Honourable Court approved the form of notice and plan for distribution of the notice of this motion by Order dated ● (the "**Notice Order**");

**UPON HEARING** the motion made by the Plaintiffs, on consent, for an order approving the settlement agreement dated ● between the parties (the "**Settlement Agreement**" or "**Settlement**") and other ancillary orders to facilitate the Settlement;

**AND UPON READING** the joint motion record of the parties and the facts of the parties;

**AND UPON BEING ADVISED** of the Defendant's consent to the form of this Order,

**AND WITHOUT ADMISSION OF LIABILITY** on the part of the Defendant,

**AND UPON HEARING** the oral submissions of counsel for the Plaintiff, counsel for the Defendant, all interested parties, including objections, written and oral,

**IT IS ADJUDGED THAT:**

1. **THIS COURT ORDERS** that for the purposes of this Order, the following definitions shall apply:

- (i) "**Approval Orders**" means this order and the order approving the Settlement Agreement in the Federal Court Action;
- (ii) "**Canada**" means the defendant, the Government of Canada, as represented in this proceeding by the Attorney General of Canada;
- (iii) "**Class**" or "**Class Members**" means all Indian children who were taken from their homes on reserves in Ontario between December 1, 1965 and December 31, 1984 and were placed in the care of non-aboriginal foster or adoptive parents who did not raise the children in accordance with the aboriginal person's customs, traditions and practices, other than the Excluded Persons.
- (iv) "**Excluded Persons**" means any person who validly opted out of this proceeding.

- (v) **"Implementation Date"** means the latest of:
  - (i) the expiry of thirty (30) days following the expiry of the Opt Out Period;
  - (ii) the date following the last day on which a class member in any Province or Territory may appeal or seek leave to appeal either of the Approval Orders;
  - (iii) the date of a final determination of any appeal brought in relation to the Approval Orders;
- (vi) **"Releasees"** means individually and collectively, Canada, and each of the past, present and future Ministers of the federal government, its Departments and Agencies, employees, agents, officers, officials, subrogees, representatives, volunteers, administrators and assigns;
- (vii) **"Settlement Agreement"** means the executed Settlement Agreement between the parties on ●, attached as **Schedule "A"** to this Order; and
- (viii) **"Settlement Fund"** means the settlement fund established pursuant to section ● of the Settlement Agreement.

2. **THIS COURT ORDERS** that all applicable parties have adhered to and acted in accordance with the Notice Order and the procedures provided in the Notice Order have provided good and sufficient notice of the hearing of this motion.

#### **SETTLEMENT APPROVAL**

3. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Class Members.

4. **THIS COURT ORDERS** that the Settlement Agreement, which is expressly incorporated by reference into this Order, shall be and hereby is approved and shall be implemented in accordance with this Order and further orders of this Court.

5. **THIS COURT ORDERS** that the claims of the Class Members and the Class as a whole, shall be discontinued against the Defendant and are released against the Releasees in accordance with section ● of the Settlement Agreement, in particular as follows:

- (i) Each Class Member and his/her Estate Executor and heirs (hereinafter **"Releasers"**) has fully, finally and forever released Canada, her servants, agents,

officers and employees, from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which any such Releasor ever had, now has, or may hereafter have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the Sixties Scoop and this release includes any such claim made or that could have been made in any proceeding including this action whether asserted directly by the Releasor or by any other person, group or legal entity on behalf of or as representative for the Releasor.

- (ii) This Agreement does not preclude claims against any third party that are restricted to whatever such third party may be directly liable for, and that do not include whatever such third party can be jointly liable for together with Canada, such that the third party has no basis to seek contribution, indemnity or relief over by way of equitable subrogation, declaratory relief or otherwise against Canada.
- (iii) For greater certainty, the Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over under the provisions of the *Negligence Act*, R.S.O. 1990, c. N-3, or its counterpart in other jurisdictions, the common law, Quebec civil law or any other statute of Ontario or any other jurisdiction in relation to the Sixties Scoop, including any claim against provinces or territories or other entities for abuse while in care; then, the Releasors will expressly limit their claims to exclude any portion of Canada's responsibility;
- (iv) Canada's obligations and liabilities under this Agreement constitute the consideration for the releases and other matters referred to in this Agreement and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Releasors are limited to the benefits provided



and compensation payable pursuant to this Agreement, in whole or in part, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.

- (v) For greater certainty, the Parties agree this Settlement Agreement does compromise any claims that Class Members have against any Province, Territory or any other entity, other than as expressly stated herein;
- (vi) For greater certainty, the Parties agree that this Agreement does not affect the rights of:
  - (i) Class Members who opt out of any class action that is certified pursuant to this Settlement Agreement; or,
  - (ii) Individuals who are not Class Members.

6. **THIS COURT ORDERS** that this Order, including the releases referred to in paragraph ● above, and the Settlement Agreement are binding upon all Class Members, including those persons who are under a disability.

7. **THIS COURT ORDERS** that the claims of the Class Members are dismissed against the Defendant, without costs and with prejudice and such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

8. **THIS COURT ORDERS** that this Court, without in any way affecting the finality of this Order, reserves exclusive and continuing jurisdiction over this action, the Plaintiff, all of the Class Members, and the Defendant for the limited purposes of implementing the Settlement Agreement and enforcing and administering the Settlement Agreement and this Order.

9. **THIS COURT ORDERS** that save as set out above, leave is granted to discontinue this action against the Defendant without costs and with prejudice, and that such discontinuance shall be an absolute bar to any subsequent actions against the Defendant in respect of the subject matter hereof.

10. **THIS COURT ORDERS** that ● shall be and hereby is appointed as Claims Administrator pursuant to the Settlement Agreement. The fees, disbursements and applicable taxes of the Claims Administrator shall be paid by the Defendant in accordance with section ● of the Settlement Agreement.

11. **THIS COURT ORDERS** that no person may bring any action or take any proceeding against the Administrator, the Foundation Table, ● or the members of such bodies, the adjudicators, or any employees, agents, partners, associates, representatives, successors or assigns, for any matter in any way relating to the Settlement Agreement, the administration of the Settlement Agreement or the implementation of this judgment, except with leave of this Court on notice to all affected parties.

12. **THIS COURT ORDERS** that in the event that the number of persons who appear to be eligible for compensation under the Settlement Agreement who opt out of this class proceeding and the Federal Court Action exceeds two thousand (2,000), the Settlement Agreement will be void and this judgment will be set aside in its entirety, subject only to the right of Canada, at its sole discretion, to waive compliance with section ● of the Settlement Agreement.

13. **THIS COURT ORDERS** that the legal fees, disbursements and applicable taxes owing to Class Counsel shall be determined by further order of this Court.

14. **THIS COURT ORDERS** that no counsel or law firm listed in Schedule "K" to the Settlement Agreement or who accepts a payment for legal fees from Canada will charge any Class Member any fees or disbursements in respect of an Individual Payment; and, each counsel listed in Schedule "K" to the Settlement Agreement undertakes to make no further charge for legal work for any Class Member with respect to claims under this Agreement.

15. **THIS COURT ORDERS** that within five (5) business days of this Order, notice shall be given of this judgment, the approval of the Settlement Agreement and the claims period by the commencement of the Notice Plan attached here to Schedule "B", at the expense of Canada.

16. **THIS COURT ORDERS** that the Notice Plan provided for in paragraph ● above satisfies the requirements of the applicable class proceedings law and this Court, and is the best notice practicable under the circumstances.

17. **THIS COURT ORDERS** that this Court may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Settlement Agreement and this Order.

18. **THIS COURT ORDERS** that Class Counsel shall report back to the Court on the administration of the Settlement Agreement at reasonable intervals not less than semi-annually, as requested by the Court and upon the completion of the administration of the Settlement Agreement.

19. **THIS COURT ORDERS** that the representative Plaintiff Marcia Martel shall receive the sum of \$20,000 as an honorarium to be paid by the Defendant out of the settlement fund.

20. **THIS COURT ORDERS** that the Order will be rendered null and void in the event that the Settlement Agreement is not approved in substantially the same terms by way of order of the Federal Court.

21. **THIS COURT ORDERS** that the statutory provisions of the Class Proceedings Act, S.O. 1992, c.6 shall apply in their entirety to the supervision, operation, and implementation of the Settlement Agreement and this order.

**MARCIA BROWN**

Plaintiff

**THE ATTORNEY GENERAL OF CANADA**

and

Defendant

Court File No.: CV-09-00372025-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Toronto  
Proceeding under the *Class Proceedings Act*, 1

**ORDER**

**WILSON CHRISTEN**  
137 Church Street  
Toronto, ON M5B 1Y4  
**Jeffrey Wilson** LS#17649K  
**Jessica Braude** LS# 64806F  
Tel: 416-360-5952 /Fax: 416-360-1350

**MORRIS COOPER**  
99 Yorkville Avenue  
Toronto, ON M5R 3K5  
LS#: 15904C  
Tel: 416-961-2626 /Fax: 416-961-4000

Lawyers for the Plaintiff

Schedule "K"

Counsel Contact Information

**Wilson-Christen LLP**

Email: [thesixtiesscoopclaim@gmail.com](mailto:thesixtiesscoopclaim@gmail.com)

Telephone: 416-360-5952 ext. 217

Toll Free: 1-866-360-5952 ext. 217

**Koskie Minsky LLP**

Toll Free: 1-855-595-2626

Email: [federalcourt60sscoopclassaction@kmlaw.ca](mailto:federalcourt60sscoopclassaction@kmlaw.ca)

**Merchant Law Group LLP**

Email: ●

Toll Free: 1-888-567-7777

**Klein Lawyers**

Email: ●

Telephone: (604) 714-2070

**Schedule "L"**

**OPT OUT FORM – EXCLUSION FROM RECEIVING MONEY**

This is **NOT** a claim form. If you submit this form, you will **NOT** receive any money from the Sixties Scoop settlement.

I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding. I understand this means I will not receive any money from the settlement.

I confirm that by signing this form, and answering "yes" the below box, I am forever waiving my right to collect approximately \$25,000.00 in this settlement for being removed from my home and placed into the care of non-indigenous parents.

I decline payment from the settlement for being scooped from my home:

\_\_\_\_\_ [Yes or No]

To opt out, this coupon must be properly completed and received at the address below no later than September 30, 2018.

**Choose one of the below:**

I am a Registered Indian and my status number is: \_\_\_\_\_

I am not a Registered Indian but I am entitled to be a Registered Indian for the following reason: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

I am a non-Status Indian: \_\_\_\_\_

I am Inuit: \_\_\_\_\_

I am Innu: \_\_\_\_\_

I am Metis: \_\_\_\_\_

Between January 1, 1951 and December 31, 1991, I was taken from my biological parents and placed with non-Indigenous parents:    yes        no

I understand that any lawsuit I have against Canada for the Sixties Scoop must be commenced within a specified time period or it might be legally barred. I understand that the time period will resume running against me if I opt out of this class proceeding. I understand that by opting out, I take full

- 2 -

responsibility for the resumption of the running of any relevant time periods and for taking all necessary legal steps to protect any claim I may have.

Date: \_\_\_\_\_

Name of Class  
Member: \_\_\_\_\_

Signature of Class  
Member: \_\_\_\_\_

Name of Witness: \_\_\_\_\_

Signature of  
Witness: \_\_\_\_\_

If Class Member is  
Deceased or Disabled,  
Name of Estate  
Administrator or  
Guardian of Property: \_\_\_\_\_

If Class Member is  
Deceased or  
Disabled, Signature  
of Estate  
Administrator or  
Guardian of  
Property \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**If the class member is deceased or disabled, you must enclose a copy of the document appointing you as guardian of property or estate administrator.**

To: **Sixties Scoop Class Action Administrator**  
c/o \_\_\_\_\_  
Email: \_\_\_\_\_  
Toll Free Phone Number: \_\_\_\_\_

### **Schedule M**

#### **Individual Payment Application Process**

The Administrator and the Reconsideration Officer are instructed to draw all reasonable and favourable inferences that can be drawn with respect to the application, as well as resolving any doubt as to whether a claim has been established in favour of the applicant.

Successful determination requires confirmation that applicant

- is a registered Indian or Inuit;
- was adopted or made a permanent ward; AND,
- was placed with non-Indigenous parents.

**1. Application received:**

- a. Administrator checks for completeness and that form contains information that, if confirmed, demonstrates that applicant is an Eligible Class Member.
- b. Administrator contacts applicant if form is incomplete.

**2. Confirmation that Registered Indian or Inuit:**

- a. Registered Indian: name, DOB, registration number sent to INAC for confirmation.
- b. Entitled to be Registered: name, DOB and Request for Registration sent to INAC for processing.
- c. Inuit: name, DOB, land claims agreement enrolment sent to INAC for confirmation.

**3. Confirmation of Adoption or Permanent Wardship:**

- a. Administrator checks for confirming records attached to application.
- b. If unable to confirm from records attached to the application;
  - i. If the application indicates that the applicant is a registered Indian and adopted, Administrator request confirmation of adoption from INAC; or,
  - ii. For all other applicants, Administrator initiates records check with appropriate province or territory.
- c. If still unable to confirm, Administrator reviews other information provided in claim and may:
  - i. Determine whether applicant is an Eligible Class Member; or
  - ii. Seek corroborating information.

**4. Reconsideration Process**



- a. If the Administrator is unable to confirm that applicant is a registered Indian or Inuit; AND, was adopted or made a permanent ward, the Administrator will advise the applicant in writing why he or she was not determined to be an Eligible Class Member and that the applicant may request a reconsideration of his or her application within 30 days;
- b. If an applicant requests a reconsideration, the Administrator will transmit the entire file to the Reconsideration Officer;
- c. The Reconsideration Officer may:
  - i. determine whether the applicant is an Eligible Class Member;
  - ii. seek more information from the applicant either in writing or otherwise; or
  - iii. refer the matter to the Exceptions Committee along with reasons as to why the referral is being made.

**Schedule "N"**

**Eligible Class Member Address Search Plan**

1. After six months have elapsed from the distribution of Individual Payments (the "Search Commencement Date", the Administrator will identify all claimants to whom cheques have been mailed but who have not deposited their cheques (the "Missing Eligible Class Member").
2. For each Missing Eligible Class Member, the Administrator will conduct or cause to be conducted all of the following searches in order to find the Missing Eligible Class Member's current contact information:
  - a. Canadian national change of address database or U.S. Best Addresses, as the case may be;
  - b. reverse phone number lookup;
  - c. Canada 411; and
  - d. general internet searches.
3. The searches identified in (2), above, will be conducted within forty-five (45) days of the Search Commencement Date (the "Search Deadline Date").
4. Within thirty (30) days of the Search Deadline Date, for Missing Eligible Class Members for whom current contact information has not been located, the Administrator will conduct or cause to be conducted additional searches to locate current contact information with all costs associated with such additional searches to be paid from the Individual Payment.
5. If the Administrator locates more than one new mailing address for a Missing Eligible Class Member, the Administrator will make further inquiries to determine which address is correct.
6. If the Administrator locates a new mailing address for a Missing Eligible Class Member, the Administrator will issue and mail a new settlement cheque to the Missing Eligible Class Member, to be stale dated within two months of issuance.

## SCHEDULE "B"

### Sixties Scoop Settlement Agreement Fees Amendment

WHEREAS the Parties desire that the implementation of the terms of the Settlement Agreement other than fees begin as soon as possible;

NOW THEREFORE, in consideration of mutual agreements, covenants and undertakings set out herein and in the Settlement Agreement, the Parties agree with each other as follows:

1. In Section 1.01:

- a. the definition of "Opt Out Period" is deleted and the following text is substituted:

"Opt-Out Period" means the ninety (90) day period commencing on the date the Federal Court approves this Amendment.

- b. the definition of "Implementation Date" is deleted and the following text is substituted:

"Implementation Date" means the latest of:

- (a) Thirty (30) days after the expiry of the Opt-Out Period;
- (b) The day following the last day on which a Class Member in any jurisdiction may appeal or seek leave to appeal any of the Orders approving this Amendment; and,
- (c) The date of a final determination of any appeal brought in relation to the Orders approving this Amendment, subject to 11.01 with respect to appeals only on costs.

2. Section 11.01 is deleted and the following text is substituted:

Canada agrees to pay class counsel in the Omnibus Federal Court Class Action for their legal fees and disbursements an amount not to exceed seven and one half percent (7.5%) of the Designated Amount in the amount approved by the Federal Court plus applicable taxes. Canada will pay this amount on the later of the Implementation Date or a final order in the Omnibus Federal Court Class Action, including any appeals in the Omnibus Federal Court Class Action, as to the amount owing. Canada agrees to pay class counsel in the Brown Class Action for their legal fees and disbursements an amount not to exceed seven and one half percent (7.5%) of the Designated Amount in the amount approved by the Ontario Court plus applicable taxes. Canada will pay this amount on the later of the Implementation Date or a final order in the Brown Class Action, including any appeals in the Brown Class Action, as to the amount owing.

IN WITNESS WHEREOF the Parties have executed this agreement as of the 26<sup>th</sup> day of July, 2018.



For the Plaintiff Jessica Riddle:

  
\_\_\_\_\_

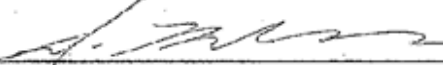
Merchant Law Group LLP

For the Plaintiff Wendy Lee White:

\_\_\_\_\_

Koskie Minsky LLP

For the Plaintiff Catriona Charlie:

  
\_\_\_\_\_

Klein Lawyers

For the Plaintiff Marcia Brown:

\_\_\_\_\_

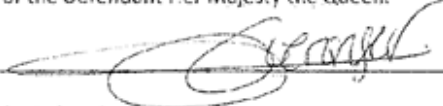
Wilson Christen LLP

For the Plaintiff Marcia Brown:

\_\_\_\_\_

Morris Cooper

For the Defendant Her Majesty the Queen:

  
\_\_\_\_\_

*FLR*

Alex Lakroni

Chief Finances, Results and Delivery Officer

Crown Indigenous Relationship Northern Affairs Canada

For the Plaintiff Jessica Riddle:

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Merchant Law Group LLP

For the Plaintiff Wendy Lee White:

---

Koskie Minsky LLP

For the Plaintiff Catriona Charlie:

---

Klein Lawyers

For the Plaintiff Marcia Brown:



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Wilson Christen LLP

For the Plaintiff Marcia Brown:

---

Morris Cooper

For the Defendant Her Majesty the Queen:

---

Alex Lakroni

Chief Finances, Results and Delivery Officer

Crown Indigenous Relationship Northern Affairs Canada

For the Plaintiff Jessica Riddle:

---

Merchant Law Group LLP

For the Plaintiff Wendy Lee White:



---

Koskie Minsky LLP

For the Plaintiff Catriona Charlie:

---

Klein Lawyers

For the Plaintiff Marcia Brown:

---

Wilson Christen LLP

For the Plaintiff Marcia Brown:

---

Morris Cooper

For the Defendant Her Majesty the Queen:

---

Alex Lakroni

Chief Finances, Results and Delivery Officer

Crown Indigenous Relationship Northern Affairs Canada

For the Plaintiff Jessica Riddle:

---

Merchant Law Group LLP

For the Plaintiff Wendy Lee White:

---

Koskie Minsky LLP

For the Plaintiff Catriona Charlie:

---

Klein Lawyers

For the Plaintiff Marcia Brown:

---

Wilson Christen LLP

For the Plaintiff Marcia Brown:



---

Morris Cooper

For the Defendant Her Majesty the Queen:

---

Alex Lakroni  
Chief Finances, Results and Delivery Officer  
Crown Indigenous Relationship Northern Affairs Canada

**SCHEDULE "C"**  
**Proposed Class Actions**

<b>Province</b>	<b>Court</b>	<b>Style of Cause</b>	<b>CFN</b>
Alberta	Court of Queen's Bench	Peter Christopher van Name v. Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian and Northern Affairs of Canada; Her Majesty the Queen in Right of Alberta as represented by the Attorney General and Minister of Justice of Alberta	1101-11452
British Columbia	Supreme Court	Skogamhallait aslo known as Sharon Russell v. The Attorney General of Canada	VLC-S-S-113566
Manitoba	Queen's Bench	Priscilla Meeches and Stewart Garnett v. The Attorney General of Canada	CI 16-01-01540
Saskatchewan	Court of Queen's Bench	Maggie Blue Waters also known as Maggie Nelson v. Her Majesty the Queen in Right of Canada (as represented by the Minister of Indian Affairs and Northern Development of Canada and the Attorney General of Canada) and the Queen in Right of the Province of Saskatchewan (as represented by the Minister of Social Services of Saskatchewan and the Attorney General of Saskatchewan)	QBG 2635-2014
Alberta	Court of Queen's Bench	Sarah Glenn v. Attorney General of Canada	1601-13286
Manitoba	Queen's Bench	Lynn Thompson, David Chartrand and Laurie-Anne O'Cheek v. Her Majesty the Queen in Right of Manitoba, as represented by the Minister of Justice of Manitoba and Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian and Northern Affairs of Canada	CI 15-01-94427
Saskatchewan	Court of Queen's Bench	Simon Ash v. Attorney General of Canada	QBG 2487/16
Quebec	Superior Court	Marry-Ann Ward v. The Attorney General	500-06-



		of Canada and the Attorney General of Quebec	000829-164
Ontario	Superior Court	Catherine Morrissette v. Her Majesty the Queen in Right of Ontario and Attorney General of Canada	CV-16-56559800CP
British Columbia	Supreme Court	Sarah Tanchak v. Her Majesty the Queen in Right of the Province of British Columbia and Attorney General of Canada	186178
Nova Scotia	Supreme Court	Linda Lou Flewin v. Attorney General of Canada and the Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia	458720

## SCHEDULE "D"



***Indigenous People of Canada – Phase II***  
**Highlights of Notice Program Recommendation**

### **Relevant Case Experience**

KCC's Legal Notification Services team members have been involved in the design and implementation of several Canadian action notice programs. Particularly relevant to this case are the following actions: *Anderson v. The Attorney General of Canada*, No. 2007 01T4955CP (Sup. Ct. NL); *Anderson v. Government of Canada*, No. 2008NLTD166 (Sup. Ct. NL); and *In re Residential Schools Litig.*, No. 00-CV-192059 (Ont. S.C.J.).

### **Case Analysis**

The following known factors were considered when determining our recommendation:

1. It is our understanding that the class consists of approximately 22,000 Canadian class members located throughout Canada, including large cities, rural areas and possibly Aboriginal lands.
2. A reasonable effort cannot identify and locate class members; therefore, class members must be reached through a consumer media campaign.
3. Effective reach and notice content is vital to convey the importance of the information affecting class members' rights.

### **Objective**

To design a notice program that will effectively reach class members and capture their attention with notice communicated in clear, concise, plain language so that their rights and options may be fully understood.

### **Target Audience**

It is our understanding that the class includes indigenous children who removed from their homes between January 1, 1960 and December 31, 1991 and placed in the care of non-indigenous foster or adoptive parents.

We believe that Canadian class members are now 25 years of age or older (Adults 25+), and—because they have been stripped of their native language and culture—we recommend a target of Canadian English-speaking Adults 25+ (English Adults 25+) and Canadian French-speaking Adults 25+ (French Adults 25+).

### **Target Analysis**

To provide the most reliable information, Canada's 2016 Census (2016 Census) population and language data tables were analyzed.<sup>1</sup> Additional demographic data is based on Canada's Census Program 2012 Aboriginal Peoples Survey data (2012 APS).<sup>2</sup>

#### **➤ Population/Size**

As of 2016, there are 1,086,235 Aboriginal persons in Canada, identifying as either First Nations (North American Indian), Inuk (Inuit), other Aboriginal, or of multiple Aboriginal backgrounds.

<sup>1</sup> Canada Census Program data is updated every 5 years. At the time of this writing, 2016 Census data was the most recently released.

<sup>2</sup> The Aboriginal Peoples' Survey is a national survey of First Nations people living off reserve, Métis and Inuit living in Canada. Survey data is collected once every 5 years. At the time of this writing, 2017 survey data had been scheduled for 2018 release.



Aboriginal Population by Age/Sex (2016 Census)

Age	Total Canada	Total Aboriginal Identity	First Nations (North American Indian)	Inuk (Inuit)	Multiple Aboriginal Responses	Other Aboriginal
<b>Total – All Ages</b>	34,460,065	1,673,780	977,235	65,025	21,305	22,670
Male	16,971,580	813,520	471,510	32,030	10,165	10,380
Female	17,488,490	860,265	505,725	32,995	11,145	12,290
<b>0 to 14 years</b>	5,817,045	448,865	285,825	21,490	6,015	4,545
Male	2,981,145	228,565	145,435	10,845	3,105	2,465
Female	2,835,900	220,300	140,395	10,645	2,910	2,080
<b>15 to 24 years</b>	4,231,725	283,385	170,700	11,995	3,485	3,110
Male	2,170,395	142,550	85,670	6,015	1,635	1,620
Female	2,061,325	140,840	85,030	5,980	1,850	1,495
<b>25 to 34 years</b>	4,576,575	235,900	136,925	9,910	2,835	2,650
Male	2,264,965	111,050	64,195	4,830	1,240	1,345
Female	2,311,615	124,850	72,730	5,080	1,595	1,300
<b>35 to 44 years</b>	4,507,775	202,860	116,625	7,475	2,285	2,285
Male	2,195,070	95,065	54,180	3,595	1,075	1,140
Female	2,312,700	107,795	62,450	3,875	1,210	1,145
<b>45 to 54 years</b>	4,991,975	212,190	117,945	6,805	2,340	3,035
Male	2,442,660	100,160	54,675	3,260	1,015	1,480
Female	2,549,320	112,030	63,265	3,550	1,325	1,560
<b>55 to 64 years</b>	4,855,060	168,905	87,140	4,285	2,355	3,625
Male	2,365,860	79,720	40,100	2,005	1,085	1,265
Female	2,489,195	89,190	47,040	2,280	1,270	2,355
<b>65 years and over</b>	5,479,910	121,665	62,070	3,060	2,000	3,415
Male	2,551,480	56,405	27,255	1,480	1,010	1,060
Female	2,928,430	65,265	34,810	1,585	990	2,350

Based on the above:

- Aboriginal persons make up approximately 4.9% of Canada's total population;
- 51.4% of Aboriginal persons are female and 48.6% are male;
- Approximately 56.3% of the Aboriginal population are Adults 25+ and 54.3% are 35 years of age and older; and
- First Nations people make up the majority of Canada's Aboriginal population – approximately 58.4% of Aboriginals are First Nations (North American Indian), 3.9% are Inuk (Inuit), 1.4% are other Aboriginal, and 1.3% are of multiple Aboriginal descents.



➤ **Geographic Location**

**Aboriginal Population by Province/Territory (2016 Census)**

Province/Territory	Total Canada	Total Aboriginal Identity	First Nations (North American Indian)	Inuk (Inuit)	Multiple Aboriginal Responses	Other Aboriginal
Alberta	3,978,145	258,640	136,585	2,500	2,905	2,275
British Columbia	4,560,240	270,585	172,520	1,615	4,350	2,695
Manitoba	1,240,695	223,310	130,505	610	2,020	815
New Brunswick	730,705	29,380	17,575	385	470	755
Newfoundland and Labrador	512,250	45,725	28,375	6,450	555	2,560
Northwest Territories	41,135	20,860	13,185	4,080	160	55
Nova Scotia	908,340	51,495	25,830	795	835	720
Nunavut	35,580	30,550	190	30,140	55	10
Ontario	13,242,160	374,395	236,680	3,860	5,730	7,540
Prince Edward Island	139,685	2,740	1,875	75	20	65
Quebec	7,965,450	182,890	92,655	13,945	2,760	4,170
Saskatchewan	1,070,560	175,015	114,570	360	1,300	905
Yukon	35,110	8,195	6,690	225	160	105

Based on the above:

- While the largest populations of Aboriginals are in Ontario, British Columbia, and Alberta, they represent smaller percentages of the total Canadian populations in those provinces – Aboriginal persons only make up 2.8% of the total population of Ontario, 5.9% of British Columbia, and 6.5% of Alberta;
- In comparison, Aboriginal persons have the strongest concentration in Nunavut, Northwest Territories, and Yukon – approximately 85.9% of Nunavut's population is comprised of Aboriginal persons, while 50.7% of Northwest Territories are and 23.3% of Yukon are Aboriginals;
- First Nations persons make up the majority of Aboriginal persons in all provinces/territories except for Nunavut – First Nations persons account for less than 1% of the Aboriginal population in Nunavut, whereas they account for 50% or more of Aboriginals in all other provinces/territories; and
- Inuk (Inuit) persons are concentrated in Nunavut, accounting for 98.7% of the Aboriginal population in that territory, 19.6% in Northwest Territories, and 14.1% in Newfoundland and Labrador.



Aboriginal Population Adults 25+ by Province/Territory (2016 Census)

Province/Territory	Total A25+	Total Aboriginal Identity A25+	First Nations (North American Indian) A25+	Inuk (Inuit) A25+	Multiple Aboriginal Responses A25+	Other Aboriginal A25+
<b>TOTAL – Canada</b>	24,411,295	941,520	520,705	31,535	11,815	15,010
Alberta	2,712,000	137,805	67,965	1,345	1,465	1,355
British Columbia	3,328,390	155,530	96,685	850	2,220	1,890
Manitoba	835,500	113,700	59,515	280	895	520
New Brunswick	539,200	18,090	9,680	200	340	530
Newfoundland and Labrador	383,200	29,295	18,150	4,075	295	1,790
Northwest Territories	26,650	12,005	7,535	2,220	65	30
Nova Scotia	668,230	31,380	14,345	455	540	540
Nunavut	17,795	13,750	130	13,475	20	10
Ontario	9,342,635	221,360	133,685	1,995	3,285	4,830
Prince Edward Island	100,130	1,455	945	25	10	35
Quebec	5,710,270	116,605	56,230	6,355	1,980	2,920
Saskatchewan	722,225	85,520	51,680	205	605	485
Yukon	25,075	5,035	4,130	95	80	90

Concerning Aboriginal Adults 25+, the geographic distribution and population ratios are similar to the distribution in overall Canadian population:

- Aboriginal Adults 25+ are most numerous in Ontario, British Columbia, and Alberta, but they represent smaller percentages in those provinces – Aboriginal Adults 25+ only make up 2.4% of the total Adult 25+ population of Ontario, 5.1% of Alberta, and 4.7% in British Columbia;
- They make up 3.9% of Canada's adult 25+ population, compared to 4.9% of Canada's overall population – this means that the current Aboriginal population skews younger relative to the total population in Canada;
- The ratio of Aboriginal Adults 25+ to total Adults 25+ in each province/territory is similar to the entire population – Aboriginal Adults 25+ make up 77.3% of the Adult 25+ population in Nunavut, 45.1% in Northwest Territories, and 20.1% in Yukon; and
- Inuk Adults 25+ still account for the largest proportion of Aboriginals in Nunavut.

However, the distribution of specific Aboriginal identities skews when filtering for Adults 25+. While the overall population of First Nations persons made up the majority of Aboriginal persons in nearly all provinces/territories except for Nunavut, First Nations Adults 25+ no longer account for the majority Aboriginal group in Nova Scotia, Quebec, or Alberta, as well as Nunavut.

#### ➤ Language

Based on an assessment of the below tables, the majority of Canada's population can speak English or French. A very small portion of likely Canadian class members who do not speak either English or French are likely to be located in Nunavut and speak only an Inuit language (largely Inuktitut).



Mother Tongue of Canadian Population of Adults 25+ by Province/Territory (2016 Census)

Province/Territory	Total A25+	English A25+	French A25+	Non-Official Language A25+	English & French A25+	English & Non-Official Language A25+	French & Non-Official Language A25+	English, French, & Non-Official Language A25+
<b>TOTAL – Canada</b>	24,679,055	13,225,430	5,247,880	5,727,280	91,805	319,640	51,345	15,690
Alberta	2,748,590	1,973,930	59,300	660,705	6,145	45,595	2,090	825
British Columbia	3,362,510	2,243,075	50,520	1,007,595	6,095	52,480	1,695	1,035
Manitoba	850,010	581,290	33,050	215,820	2,465	16,680	530	190
New Brunswick	544,125	340,175	181,615	16,755	4,400	930	200	55
Newfoundland and Labrador	386,470	375,280	1,965	8,260	300	600	35	15
Northwest Territories	26,830	18,945	905	6,480	60	405	30	5
Nova Scotia	671,575	609,795	25,270	31,765	2,060	2,410	170	110
Nunavut	17,875	5,140	455	11,995	15	255	10	0
Ontario	9,405,845	5,966,490	385,440	2,838,785	29,595	171,255	9,505	4,775
Prince Edward Island	101,135	91,590	4,130	4,875	250	245	25	5
Quebec	5,807,490	407,785	4,490,840	806,085	39,020	18,410	36,805	8,555
Saskatchewan	731,150	591,535	13,150	114,740	1,270	10,095	250	115
Yukon	25,440	20,400	1,225	3,410	120	265	10	5

- The majority of Canadian Adults 25+ (53.6%) claim English, 21.3% claim French, and 23.2% claim a non-official language as their mother tongue;
- English dominates as the mother-tongue language in nearly all provinces except Quebec and Nunavut – 77.3% of Quebec Adults 25+ claim French and 67.1% of Nunavut Adults 25+ claim a non-official language as their mother tongue; and
- The majority of Adults 25+ in each territory identifies either English or French (with or without an additional language) as their mother tongue – Nunavut is the only region where only 36.4% of Adults 25+ identify English or French as their mother tongue (as part of a single or multiple response).


**Knowledge of Languages – Single and Multiple Language Responses (2016 Census)**

Languages	Total	Single Responses	Multiple Responses
<b>Any</b>	34,460,060	21,025,925	13,434,140
Official Languages	33,818,210	20,464,040	13,354,170
English	29,748,260	16,794,015	12,954,250
French	10,242,950	3,670,030	6,572,920
Non-Official Languages	9,369,280	561,885	8,807,400
Aboriginal Languages	263,840	7,295	256,545
Cree-Montagnais	116,585	2,405	114,175
Eastern Algonquin (Mi'kmaq)	9,765	20	9,740
Ojibway-Potawatomi	46,680	525	46,160
Athabaskan (Dene Majority)	23,655	320	23,340
Inuit (Inuktitut Majority)	42,985	3,985	38,995
Other Aboriginal	26,660	30	26,625

- The majority of Canadians (98.1%) can speak any English or French;
- Only 1.6% of Canadians speak neither English nor French;
- Of the non-official language speakers, only 1.3% represents Aboriginal-only speakers, meaning less than 1% of the overall Canadian population speaks only an Aboriginal language;
- Only 2.8% of those who speak an Aboriginal language do not know any other language;
- The majority of Canadians who cannot speak an official language only speak an Inuit language (Inuktitut Majority) – 54.6% of those who speak only an Aboriginal language only speak an Inuit language (Inuktitut Majority); and
- 9.3% of those who speak an Inuit language (Inuktitut Majority), 2.1% of those who speak Cree, 1.4% of those who speak an Athabaskan language, and 1.1% of those who speak Ojibway do not know any other language.

**Primary Aboriginal Language Spoken  
and Self-Rated Ability to Speak Primary Aboriginal Language  
Aboriginal Population Aged 6 Years and Over (2012 APS)**

Primary Aboriginal Language	Any Aboriginal <sup>3</sup>	Very Well or Relatively Well	With Effort or Only a Few Words
<b>Any</b>	345,890	--	--
Cree	129,470	20,990	108,320
Mi'kmaq	10,090	820	9,260
Ojibway	59,040	7,720	51,290
Dene	9,360	4,270	5,080
Inuktitut	39,510	26,840	12,640
Other	86,790	12,780	73,890
<b>None</b>	598,840	--	--

<sup>3</sup> Defined as being able to speak any Aboriginal language, even if only a few words.



Not Specified	11,630	--	--
<b>TOTAL</b>		<b>73,420</b>	<b>260,480</b>

- Of the 963,110 Aboriginal persons aged 6 years and over who were surveyed, only 345,890 (35.9%) said they can speak any Aboriginal language, if only a few words;
- Of the majority of Aboriginals who can speak any Aboriginal language, only 73,420 (21.2%) said they can speak their primary Aboriginal language very well or relatively well – the majority (75.3%) can only speak with effort or only a few words;
- The largest share of Aboriginal spoken is Cree (37.4%), followed by other Aboriginal language (25.1%), Ojibway (17.1%), and Inuktitut (11.4%); and
- Inuktitut is the only primary language where the majority of speakers (67.9%) are fluent – Aboriginals who identify any other Aboriginal language as their primary are less fluent, with Ojibway speakers (86.9%) being the least fluent in their primary language.

### Proposed Notice Strategies

The Notice Plan consists of a combination of notice placements in leading newspapers, consumer magazines, a variety of mainstream websites, broadcast television programs, as well as aboriginal-focused publications, websites, and broadcast television programs. Activity also includes the distribution of a national and international press release and organizational outreach efforts.

The Notice Plan is designed to reach approximately 90% of Canadian adults 25 years of age or older.

### Proposed Notice Tactics

Following is a summary of the recommended notice tactics.

1. **Consumer Publications (Print & Digital Replica):** We recommend a full-page notice placement in a leading English and French consumer magazine. The Notice will be translated into French for the French-language publication. We also recommend an ad placement in Coffee News.

Publication	Issuance	Notice Size	Language	# of Insertions
<i>Reader's Digest</i>	10x/year	Full Page	English	1
<i>Sélection du Reader's Digest</i>	10x/year	Full Page	French	1
<i>Coffee News</i>	Weekly	One-Size	English	1
<b>TOTAL</b>				<b>3</b>

**Reader's** **Sélection**  
digest READER'S DIGEST



- Semi-monthly English (*Reader's Digest*) and French (*Sélection du Reader's Digest*) general interest family magazines
  - Combined Print & Digital Circulation: 301,284





- o Audience (digital & print): 4,463,900

- *Coffee News* is Canada's premier paper that patrons can pick up at their favourite restaurant, coffee shop, waiting room, reception area, doctor's office and anywhere else they wait for service. The Short Form Notice will be published in several *Coffee News* editions throughout British Columbia, Ontario, Alberta, Manitoba and Atlantic provinces.

2. **Daily Newspapers:** We recommend placing an approximate quarter-page notice once in the weekend edition, as available, of Canada's leading mainstream newspapers. The papers include three national papers and 21 leading local dailies within the highest populated Census Metropolitan Areas (CMAs), for a total of 24 insertions. The Notice will be translated into French for the four French-language newspapers.

Province/Territory	City/Newspaper	Language	Average Daily Circulation
National/ Ontario	<i>The Globe and Mail</i>	English	336,487
National/ Ontario	<i>The National Post</i>	English	186,108
Alberta	<i>Calgary Herald</i>	English	106,916
Alberta	<i>Edmonton Journal</i>	English	92,542
British Columbia	<i>Vancouver Sun</i>	English	136,787
Manitoba	<i>Winnipeg Free Press</i>	English	106,473
Nova Scotia	<i>Halifax Chronicle-Herald</i>	English	91,490
New Brunswick	<i>Saint John Telegraph Journal</i>	English	26,850
Newfoundland	<i>Charlottetown Guardian</i>	English	14,377
Prince Edward Island	<i>St. John's Telegram</i>	English	28,509
Québec	<i>Le Journal de Montréal</i>	French	232,332
Québec	<i>Montréal La Presse*</i>	French	289,933
Saskatchewan	<i>Saskatoon Star Phoenix</i>	English	39,008
Saskatchewan	<i>Regina Leader Post</i>	English	34,136
National	<i>StarMetro (Toronto, Calgary, Edmonton, Halifax, Vancouver)</i>	English	NA
Ontario	<i>Toronto Sun</i>	English	111,515
Alberta	<i>Edmonton Sun</i>	English	35,359
Alberta	<i>Calgary Sun</i>	English	42,744
British Columbia	<i>Victoria Times Colonist</i>	English	58,124
British Columbia	<i>The Province</i>	English	112,115
Manitoba	<i>Winnipeg Sun</i>	English	42,674
Québec	<i>Montreal Gazette</i>	English	91,384
Québec	<i>Le Soleil</i>	French	91,411
Québec	<i>Le Journal de Québec</i>	French	160,993
<b>TOTAL</b>			<b>2,468,267</b>

\* La Presse discontinued its print edition in the beginning of 2018, however its website and tablet platform advertising is available to purchase. The Notice in La Presse will publish as a quarter screen tablet.

3. **Internet Banners:** To further extend reach, we recommend purchasing over 25 million of internet impressions over an approximate one-month period. The internet impressions will be delivered over a variety of ad networks and websites such as the Google Display Network (GDN), the



social media site Facebook, MSN, Hotmail, Yahoo, AutoTrader, Kijiji, The Weather Network, and CBC News. The internet banners will be targeted to Adults 25+, where possible, in Canada, include an embedded link to the case website, and be displayed in English and/or French as appropriate.



- GDN is a vast ad network that reaches over 90% of internet users and harnesses the power of advertising opportunities to over two million websites, including some of the most-visited websites and most recognizable properties on the entire internet.
- Facebook is the largest social media platform in terms of both audience size and engagement.
- Yahoo! is an Internet portal that incorporates a search engine and a directory of websites organized in a hierarchy of topic categories. The directory provides users with a structured view of hundreds of thousands of websites and millions of webpages. It also provides one of the best ways to search the internet for a given topic.
- CBC News is the largest news broadcaster in Canada. Its website provides regional, national, and international news coverage, and arts and entertainment, and sport news. Many reports are accompanied by podcasting, audio and video from the CBC's television and radio news services.
- MSN content network comprises all Microsoft properties, including MSN Money, MSN Autos, Jobs, and Windows Marketplace net is a web portal and collection of Internet services and apps for Microsoft Windows and mobile devices.
- Hotmail is one of the most popular free online email services, provided by Microsoft. Hotmail is a Webmail service. Users can access it from any web browser anywhere in the world with an Internet connection, username and password.
- AutoTrader is an online marketplace for car shoppers and sellers. Designed to give users more control of the buying process and make finding a vehicle easier than ever before. It aggregates millions of new, used, and certified second-hand cars from thousands of dealers and private sellers.



- Kijiji is a web platform that enables Canadians to connect locally to exchange goods and services. Its goal is to keep buying and selling simple, local, and personal.
- The Weather Network provides users with current, reliable, detailed whether forecasts, maps and storm alerts.

The digital media campaign proposed here will be routinely monitored by KCC's digital specialists to analyze key campaign performance indicators (KPIs), like click-through rates (CTRs) and costs per action (CPAs). This knowledge will be leveraged to allocate placements to sites that have demonstrated successful KPIs throughout the course of the campaign.

4. **Broadcast Television:** Broadcast television is a broad-reach medium:

- Nearly 99% of households own a television<sup>4</sup>
- On average, people watch 27 hours of television per week, making it one of the most effective mediums available for notice<sup>5</sup>

Due to its accessibility and visual/audio capabilities, television is also a responsive medium that will likely increase claims.

We recommend placing English and French spots over a variety of networks, programs, and dayparts (e.g., morning/evening news, day, prime access, prime, late night) in order to maximize reach (the number of people exposed to the notice) and frequency of exposure (the number of times people are exposed). Strategically, conventional channels typically offer larger audiences, subsequently reaching more people, while specialty channels allow an increase in the frequency of exposure.

Creative conception and production will commence with the TV advertising purchase, a comprehensive planning process beginning with: expert plain language scripting; theme and call to action development; conceptualization of the look and feel through consultation with counsel and sample artwork; comprehensive storyboarding of the aforementioned elements as text and stills; scheduled approvals and revisions of artwork stills; audio production and approvals; followed by the production of final audio/visual animated creative based on the approvals of the planning stage.

Sample networks/programs for a two-week TV notice program *may* include:

**English<sup>†</sup>**

**Conventional Programming**

- **CTV** – News, Rosanne, Quantico, Blindspot, Ellen, The View
- **Global** – Seal Team, Hawaii Five-O, Border, News, Y&R

**Specialty Programming**

- **TSN** – NBA, Jay & Dan, Sports Center
- **Sportsnet** – Blue Jays, Tim & Sid, Sportsnet Central
- **W Network** – All Daypart Rotation
- **Showcase** – NCIS, Hunters, Movie Rotation
- **History** – Truck Night, Pawn Stars, The Scroll
- **Discovery** – Finding Bigfoot, Cash Cab Mythbusters, Deadliest Catch
- **HGTV** – Homes and Hammers, Master Flip, House Hunters, Buyers Bootcamp

**French<sup>†</sup>**

<sup>4</sup> Canadian Statistics PPT, Television Bureau of Canada, 2014

<sup>5</sup> Communications monitoring report, CRTC, 2015



**Conventional Programming**

- **TVA** – Salut, Bonjour, Mario, TVA Nouvelles, Cinema
- **SRC** – Tout Le Monde, Ricardo, Echangistes, Le Telejournal

**Specialty Programming**

- **RDS** – Hockey World Champs, MLB, NBA, Sports Center
- **Canal D** – Humour, Storage Wars, Gold Rush, Strange WeatherRire
- **Canal Vie** – Decore ta Vie, Manon, Belle Gang, Encan et Flip

**Buying Strategy:**

The goal will be to optimize reach and frequency of exposure. Spots will be purchased during peak viewing times, as well as throughout the day, on both conventional and specialty networks, based on program availability at the time of purchase. This buying approach will allow the broadest viewership (i.e., not all viewers watch during peak times only).

† Actual scheduling (frequency, specific time of day, etc.) must be determined closer to the broadcasting date at the time of purchasing. Please see a sample schedule below.

5. **Aboriginal Publications:** To extend coverage among indigenous communities that may be in contact with Canadian class members, a half-page or full-page notice placement will appear in the following Aboriginal publications: *First Nations Drum*; *Turtle Island News*; *Alberta Native News*; *Ha-Shilth-Sa*; *Nunavut News North*; *Nunatsiaq News*; *NWT News North*; *Mi'kmaq-Maliseet*, *Wawatay News*, *Sioux Lookout Bulletin*, *Eagle Feather News*, *Inuktitut Magazine*, and *Salish Sea Sentinel*.
6. **Aboriginal Internet Banners:** To further extend coverage among indigenous communities, internet banner impressions will appear on a variety of Aboriginal websites, including the *windspeaker.com*, *wawataynews.ca*, *siouxbulletin.com*, *kukukwes.com*, *eaglefeathernews.com*, *anshinabeknews.ca*, *aptn online*, and *theturtleislandnews.com*.
7. **Informational Press Release:** We recommend issuing an informational press release in both English and French across Canada Newswire (CNW), Canada's main and oldest newswire company. The press release will be disseminated to all major digital, print and broadcast news outlets across Canada plus all local newspapers in smaller urban and significant rural markets. CNW will also post the release on the wire's Twitter and Facebook pages. The press release distribution will be supplemented with delivery to a national list of Aboriginal multi-media CNW subscribers (indigenous publications, websites, radio stations and television). The press release will also be supplemented with an English and French audio news release. Although we are not able to speculate on the number of press outlets that would report the story, the press release will provide a valuable role in distributing information in a cost-effective manner.
8. **Organizational Outreach:** To extend awareness, Aboriginal agencies and organizations will be asked to provide voluntary assistance in the distribution of Notices to potential class members. For example: a Long Form Notice and Claim Form will be mailed to Indigenous Organizations and Friendship Centres alerting them to the settlement and attaching a Claim Form for distribution, publication or public posting; Provincial Ministries will be mailed a Long Form Notice and cover letter advising them of the settlement and the process created to provide the record checks to be performed by the administrator; and homeless shelters and organizations will be mailed a Short Form Notice together with a cover letter requesting their voluntary assistance by posting the Short Form Notice in a visible area and otherwise providing the information to those who may be affected by the settlement. In addition, Class Counsel will provide a notice to lawyers throughout Canada via the Federal Confederation of Law Societies, to inform them that Class Counsel is working on behalf of the Class and, as such, will assist Class members with the completion of Claim Forms free of charge. Counsel will also engage an expert to develop an outreach strategy for federal and provincial correctional institutions.



9. **International Media:** To extend awareness to those class members that may reside abroad, an informational press release will be issued to press outlets throughout the United States and the United Kingdom. The press release will be disseminated to all major digital, print, and broadcast news outlets. As previously stated, although we are not able to speculate on the number of press outlets that would report the story, the press release will provide a valuable role in distributing information internationally in a cost-effective manner.



***Media Costs for the Above Program***

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Media Type	Cost (CAD)
Consumer Publications	\$35,015
Newspapers	\$122,900
Internet Banners & Facebook	\$53,500
Broadcast Television	\$537,648
Aboriginal Publications	\$21,500
Aboriginal Internet Banners	\$10,325
Press Release with ANR	\$3,355
Organizational Outreach	\$5,024
International Media	\$2,600
Translations	\$7,670
<b>Total:</b>	<b>\$799,667</b>

*\*All prices are based on best estimates and are subject to change at the time of placement due to increased word counts, documents, ad units, impressions, broadcasts, etc.*

*\*\*All media placements subject to final review and approval by the vendor*



May 15, 2018

We write in respect of additions to the Phase II notice of settlement approval and the right to opt out from the Sixties Scoop class action settlement.

Arising from concerns identified with the scope and breadth of the Phase II notice, KCC has added the following elements to the notice proposal:

1. The Phase II notice will be published on a variety of Aboriginal websites and publications, including (a) windspeaker.com; (b) wawataynews.ca; (c) siouxbulletin.com; (d) kukukwes.com; (e) eaglefeathernews.com; (f) anshinabeknews.ca; (g) aptn online; (h) theturtleislandnews.com; (i) First Nations Drum; (j) Turtle Island News; (k) Alberta Native News; (l) Ha-Shilth-Sa; (m) Nunavut News North; (n) Nunatsiaq News; (o) NWT News North; (p) Mi'kmaq-Maliseet, Wawatay News; (q) Sioux Lookout Bulletin; (r) Eagle Feather News (s) Inuktitut Magazine; and (t) Salish Sea Sentinel.
2. Homeless shelters and organizations will be mailed a Short Form Notice together with a cover letter requesting their voluntary assistance by posting the Short Form Notice in a visible area and otherwise providing the information to those who may be affected by the settlement.
3. The Phase II requires counsel to engage an expert to develop an outreach strategy for notice to correctional institutions.
4. The Phase II notice will be provided to lawyers throughout Canada via the Federal Confederation of Law Societies.
5. The Phase II notice will be published in 10 additional newspapers with a cumulative additional circulation of approximately 1.5 million.
6. The Phase II notice internet banners will be published on additional internet websites including MSN, Hotmail, AutoTrader, Kijiji, The Weather Network, and CBC News.
7. The Phase II television notice will run on additional speciality programming channels, including Sportsnet, W Network, and HGTV.
8. Provincial Ministries will be mailed a copy of the Phase II notice.
9. The Phase II notice will be issued by way of press releases in the United States and the United Kingdom.

In total, these changes to the Phase II notice have increase the Phase II notice cost by \$102,328.

Sincerely,

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Carla Peak  
VP, KCC Legal Notification Services