

Federal Court



Cour fédérale

Date: 20190628

Docket: T-1417-18

Ottawa, Ontario, June 28, 2019

PRESENT: Madam Justice Strickland

CLASS PROCEEDING

BETWEEN:

**REGINALD PERCIVAL, ALLAN MEDRICK
MCKAY, IONA TEENA MCKAY AND
LORNA WATTS**

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

ORDER

UPON MOTION in writing, brought pursuant to Rules 369 and 334.12(2) of the *Federal Courts Rules*, SOR/98-106 [Rules], seeking an order:

- a) certifying this action as a class proceeding;
- b) certifying the class and subclass;
- c) appointing the representative Plaintiffs;
- d) setting out the common issues of fact or law for the class and subclass; and
- e) appointing class and subclass counsel;

AND UPON review of the Amended Notice of Motion filed by the Plaintiffs on June 10, 2019;

AND UPON considering that the Plaintiffs and the Defendant have, on June 10, 2019, filed a joint consent to the Amended Notice of Motion and to the form of a draft order;

AND UPON considering that this action, commenced on July 24, 2018, concerns allegations by the Plaintiffs that Canada breached common law and fiduciary duties owed to Indigenous people in relation to “boarding home” programs that Canada operated in connection with providing educational programs to Indigenous students. These boarding home programs are alleged to have involved Canada placing Indigenous students in private homes, away from their families and communities, where they were not provided with reasonable access to their language, culture, identity, religion, heritage, customs and Aboriginal and treaty rights and where it is alleged that they experienced racism and physical, psychological, and sexual abuse, all as set out in the Statement of Claim;

AND UPON considering that a related proposed class action commenced in the Quebec Superior Court on September 21, 2016, *Anne Smith v Attorney General of Canada*, in the District of Montreal, Court file no. 500-06-000812-160, is proposed to be incorporated in this proposed class action by way of the proposed subclass. The Quebec proposed class action deals with similar subject matter, the boarding home program. However, because it also raises common questions of civil law that are not shared by all of the proposed class members from common law jurisdiction provinces, the proposed subclass has been identified;

AND UPON considering the certification conditions that must be met and, the matters to be considered as set out in Rule 334.16;

AND UPON being satisfied that this is an appropriate proceeding for certification as a class action on the proposed terms;

THIS COURT ORDERS that:

1. This action is certified as a class proceeding against the Defendant, Her Majesty the Queen in Right of Canada;
2. The classes in this proceeding are defined as follows:
 - (a) Primary Class means persons who were placed by the Government of Canada in private homes for the purpose of attending school, excluding placements made for the purpose of attending a post-secondary educational institution;
 - (b) Family Class means all persons who have a derivative claim in accordance with applicable family law legislation arising from a family relationship with a member of the Primary Class;

The Primary Class and the Family Class and their members are collectively described as the “Class” or “Class Members”;

3. A subclass in this proceeding, in which subclass members are Class Members but are separately represented, is defined as follows:
 - (a) Quebec Subclass means Class Members resident in Quebec at the time of their placement by Canada in such private homes;
4. The following persons are appointed as Representative Plaintiffs for the Class:
 - (a) Reginald Percival;
 - (b) Allan Medrick McKay;

(c) Iona Teena McKay; and

(d) Lorna Watts

5. The following person is appointed as the Representative Plaintiff in the Quebec

Subclass:

(a) Kenneth Weistche

6. Klein Lawyers LLP is appointed as Class Counsel;

7. Dionne Schulze S.E.N.C. is appointed as Quebec Subclass Counsel;

8. The following common questions of fact or law in this proceeding are certified for both the Class and the Quebec Subclass:

(a) Did Canada owe duties to Class Members as alleged in the Statement of Claim?

(b) If the answer to (a) is yes, did Canada breach any of those duties?

9. The relief sought by the Class is as set out in the Statement of Claim;

10. The parties shall, as a part of a joint litigation plan, specify the time and manner for Class Members to opt out of the Class proceeding, and shall bring an informal motion seeking to amend this Order to reflect the opt out provisions, all pursuant to Rules 334.17(1)(f) and 334.19. Should the parties fail to reach an agreement, a formal motion shall be brought in writing for determination by the Court;

11. No costs are payable on this Motion for certification, in accordance with Rule 334.39.

“Cecily Y. Strickland”

Judge