

**FEDERAL COURT
CLASS PROCEEDING**

BETWEEN:

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

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

Brought pursuant to the *Federal Courts Rules*, SOR/98-106

AGREEMENT IN PRINCIPLE

PREAMBLE

1. WHEREAS this class action was certified on consent by order of Madam Justice Strickland, dated June 28, 2019 (the "Certification Order");
2. AND WHEREAS a dispute resolution conference was held in this proceeding in Toronto before Madam Justice Strickland on November 14-16, 2022, and December 6-7, 2022 (the "Dispute Resolution Conference");
3. AND WHEREAS the Parties have reached this Agreement in Principle at the Dispute Resolution Conference and have committed to work together to prepare a final settlement



agreement (the “Settlement Agreement”) and supporting documents for claims administration and notice;

THE PARTIES AGREE AS FOLLOWS:

CLASS DEFINITION AND CLASS PERIOD

4. The class definition is as defined in the Certification Order, but it shall be modified to be temporally bounded to include a class period with a start date of September 1, 1951 and an end date of June 30, 1992.

5. There may be individuals who fall within the class definition but outside the class period. The Settlement Agreement will include a procedure for those individuals to participate in the settlement. For greater certainty, band or private placements are not included.

INDIVIDUAL COMPENSATION

6. Payments shall be made to eligible Primary Class Members (“Claimants”) for general damages in accordance with a compensation grid.

7. The claims determination process will be simple, user-friendly, and culturally sensitive. The intent is to minimize the burden on the Claimants in pursuing their claims and to mitigate any likelihood of re-traumatization through the claims process. In the absence of reasonable grounds to the contrary, it will be assumed that a Claimant is acting honestly and in good faith. In considering a claim, all reasonable and favourable inferences that can be drawn in favour of the Claimant shall be drawn. Any doubt as to whether a claim has been established shall be resolved in favour of the Claimant.

8. There will be no limit or cap on Canada’s total obligation to pay approved claims. All approved claims will be paid fully by Canada.

9. Claimants may apply for Category 1 compensation and make a separate application for Category 2 compensation. This will facilitate prompt payments to Claimants receiving awards under Category 1, and allow Claimants additional time to prepare claims under Category 2 if they wish.

10. There will be a deadline by which Claimants must submit Category 1 and 2 claims, subject to any provision in the Settlement Agreement for extension of the claims deadlines.

11. A Claimant may qualify for payment under both Category 1 and Category 2. Claimants will not, however, qualify for more than one payment under Category 2.

12. Upon submission of a simple application, every class member will be eligible for a Category 1 payment of \$10,000 for placement in a boarding home by Canada.

13. Claimants may apply for Category 2 compensation in accordance with a five-level grid as follows:

2A - \$10,000

2B - \$50,000

2C - \$100,000

2D - \$150,000

2E - \$200,000

Criteria for each level will be in the Settlement Agreement reflecting increasing degrees of severity of abuse.

14. Claimants will specify the level of compensation claimed (i.e., Category 2 A, B, C, D, or E). The Claims Administrator will have authority to award compensation at a higher or lower level than the one specified by the Claimant in their claim form and may request further information from the Claimant with respect to the claim. A reconsideration process will be developed for Claimants who were awarded a lower level of compensation than they applied for.

15. The Parties specifically agree that the payments for both Category 1 and Category 2 are in the nature of non-pecuniary damages and not referable to income.



COMMEMORATION, HEALING, LANGUAGES AND CULTURE

16. A foundation will be created to further the objects of commemoration, healing, languages and culture (the "Foundation"). Canada will support reconciliation projects for the benefit of class members including payment of \$50 million to be administered by the Foundation. The precise terms of the reconciliation projects and work of the Foundation will be subject to further negotiation by the Parties; however, the objectives of the Foundation will not include the generation of profit.

NOTICE AND ADMINISTRATION

17. The Parties shall jointly agree on a notice program and administration process to be paid for by Canada.

CLASS MEMBER SUPPORT AND ASSISTANCE

18. The Parties will agree to culturally sensitive health, information, and other supports to be provided to Claimants for the duration of the claims process as well as funding to deliver support to Claimants who suffer or may suffer trauma, to be paid by Canada.

RELEASES

19. The class members agree to release Canada from any and all claims that have been pleaded or could have been pleaded with respect to this action and agree to limit any claims against any third parties to prevent the third party from claiming over against Canada

SETTLEMENT APPROVAL

20. The Parties agree that the Settlement Agreement shall be approved in the Federal Court.

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PARALLEL PROCEEDINGS

21. The Parties shall co-operate to obtain the stay or dismissal or other suitable final disposition of related class proceedings in other jurisdictions covered by the Settlement Agreement. The Parties are presently aware of only one such action, filed in the Quebec Superior Court as *Anne Smith v. Attorney General of Canada*, District of Montreal, Court File No. 500-06-00812-160.

EXCEPTIONAL CIRCUMSTANCES

22. The Parties agree to establish a mechanism to consider exceptional circumstances that may arise out of the claims process.

SOCIAL BENEFITS

23. Canada will make its best efforts to obtain the agreement of the provinces and territories that the receipt of any payments pursuant to the Settlement Agreement will not affect the quantity, nature, or duration of any social benefits or social assistance benefits payment to a Claimant pursuant to any legislation of any province or territory of Canada.

24. Canada will make its best efforts to obtain the agreement of the necessary federal government departments that the receipt of any payments pursuant to the Settlement Agreement will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Claimant pursuant to any social benefit program of Canada such as Old Age Security and Canada Pension Plan.

FAMILY CLASS

25. The Family Class Members shall not receive direct compensation under the Settlement Agreement but rather such claims will be recognized and addressed by the indirect compensation made available through reconciliation projects supported by the Foundation.

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ESTATE CLAIMS

26. The Parties shall work collaboratively with the Claims Administrator to design claims forms and procedures to permit claims to be made by representatives of deceased Primary Class Members. The intention of such procedures is to provide a cost-effective procedure for the surviving family members of a deceased Primary Class Member to obtain compensation on behalf of the Class Member even where the Class Member did not leave a will.

27. Estate claims can be made where the deceased Class Member was alive on or after July 24, 2016.

INDIVIDUAL LEGAL SERVICES TO CLASS MEMBERS

28. If the Claimant has been assisted by a lawyer, Canada will pay the Claimant's lawyer an amount equal to 5% of the Claimant's Category 2 award plus applicable taxes without additional Court approval beyond the approval of the Settlement Agreement. Canada may pay up to an additional 5% of the Claimant's Category 2 award plus applicable taxes for legal fees and/or disbursements provided such amount is approved by the Federal Court in accordance with Rule 334.4 and guidelines to be agreed by the Parties and approved by the Court. Canada will not pay any legal fees or disbursements associated with a claim under Category 1.

LEGAL FEES FOR CLASS COUNSEL

29. The Parties will enter into a separate agreement ("Fee Agreement") as to the legal fees, disbursements and related taxes owing to Class Counsel and Quebec Subclass Counsel in relation to the work 1) on the common issues up to the date of settlement approval, and 2) for the benefit of the Class during the implementation of the settlement. Approval of the Settlement Agreement is not contingent on approval of the Fee Agreement.



Signed at Toronto this 7th day of December, 2022

His Majesty the King ("Canada"), as represented by the
Attorney General of Canada by:



Attorney General of Canada
For the Defendant

The Plaintiffs, as represented by Class Counsel by:



Klein Lawyers LLP
For the Plaintiffs

Kenneth Weistche, as represented by Quebec Subclass
Counsel by:



Dionne Schulze, s.e.n.c.
For the Quebec Subclass