

Federal Court



Cour fédérale

**Date: 20180511**

**Docket: T-2212-16**

**Citation: 2018 FC 910**

**Saskatoon, Saskatchewan, May 11, 2018**

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

**BETWEEN:**

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

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ORDER**

**WHEREAS** by Order of Justice Michael D. Manson of this Court, dated May 3, 2018 and by consent of the parties before the Court, the mediator, Justice Michel M.J. Shore, shall preside over the motion for settlement approval in this action in accordance with section 391 of the *Federal Courts 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 Court approved the form of notice and plan for distribution of the notice of this motion by Order dated January 11, 2018 (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 November 30, 2017 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 records 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 Court approved the Settlement Agreement;
  - (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 Her Majesty the Queen;
- (v) “**Class Actions**” mean:
  - (a) *Wendy Lee White v The Attorney General of Canada* (Court File No. T-294-17);
  - (b) *Jessica Riddle v Her Majesty the Queen* (Court File No. T-2212-16);
  - (c) *Catriona Charlie v Her Majesty the Queen* (Court File No. T-421-17);
  - (d) *Meeches et al v The Attorney General of Canada* (Court File No. CI 16-01-01540);
  - (e) *Maggie Blue Waters v Her Majesty the Queen in Right of Canada et al.* (Court File No. QBG 2635/14);
  - (f) *David Chartrand, Lynn Thompson, and Laurie-Anne O’Cheek v Her Majesty the Queen et al* (Court File No. CI 15-01-94427);
  - (g) *Pelletier v Attorney General of Canada* (Court File No. QGB 631/17);
  - (h) *Simon Ash v Attorney General of Canada* (Court File No. QBC 2487/16);

- (i) *Ashlyne Hunt v Her Majesty the Queen in Right of Alberta* (Court File No. 1101-11452);
  - (j) *Sarah Glenn v Attorney General of Canada* (Court File No. 1601-13286);
  - (k) *Skogamhallait also known as Sharon Russell v The Attorney General of Canada* (Court File No. VLC-S-S113566);
  - (l) *Linda Lou Flewin v Attorney General of Canada e al* (Court File No. Hfx 458720);
  - (m) *Sarah Tanchak v Attorney General of Canada et al* (Court File No. 186178 Victoria);
  - (n) *Mary-Ann Ward v The Attorney General of Canada et al* (Court File No. 500-08-000829-164 Montreal); and
  - (o) *Catherine Morriveau v Her Majesty the Queen in Right of Ontario and Attorney General of Canada* (Court File No. CV-16-565598-00CP).
- (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:

- (a) thirty (30) days following the expiry of the Opt Out Period;
  - (b) the date following the last day on which a Class Member may appeal or seek leave to appeal either of the Approval Orders;
  - (c) 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 ending ninety days after the Approval Date, 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 dated November 30, 2017, attached as **Schedule “A”** 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 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 Courts 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 who 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*, RSO 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 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.
- 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) Collectiva Class Action Services Inc. shall be and hereby is appointed as Claims Administrator pursuant to the Settlement Agreement. A complete, significant, and detailed review must take place in regard to the Administrator for all eventual work pertaining to the Administrator's responsibilities, to ensure accurate and effective, wide dissemination of meaningful and pertinent information to the attention of all those who have gone through the "Sixties Scoop" and heirs to those who have been subjected to the "Sixties Scoop" as specified in the Settlement; and, in addition, to supervise and monitor all future work that must be carried out by the Administrator as it pertains to individual payments to Class Members, heirs and others as respectfully specified in the Settlement who will be part of the Exceptions category. The fees, disbursements and applicable taxes of the Claims Administrator shall be paid by the Defendant in accordance with section 6.06 of the Settlement Agreement.
- 20) 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.

- 21) 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.
- 22) Rule 334.21(2) does not apply to the plaintiffs in the Class Actions, and those plaintiffs are not excluded from this proceeding despite not having discontinued their parallel Class Actions prior to the Opt Out Deadline.
- 23) 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.
- 24) The amounts set out in paragraph 23 shall be paid by the Defendant to Class Counsel on the Implementation Date in accordance with the Settlement Agreement. The amounts set out in paragraph 23 shall be in addition to the funding in section 4.01 of the Settlement Agreement.
- 25) 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. 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.

- 26) Notice in the manner attached hereto as **Schedule “B”** 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 “C”**, at the expense of Canada.
- 27) 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.
- 28) 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.
- 29) 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.
- 30) The proposed representative plaintiffs in the Provincial Class Actions shall each receive the sum of \$10,000 as an honorarium to be paid by the Defendant out of the settlement fund.
- 31) 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.

- 32) The statutory provisions of the *Federal Courts Act*, RSC 1985, c F-7 and the *Federal Courts Rules*, SOR/98-106 shall apply in their entirety to the supervision, operation, and implementation of the Settlement Agreement and this Order.
  
- 33) Reasons will subsequently follow this order.

"Michel M.J. Shore"

---

Judge