

Federal Court



Cour fédérale

Date: 20230316

Docket: T-1542-12

Citation: 2023 FC 357

Ottawa, Ontario, March 16, 2023

PRESENT: Madam Justice McDonald

CLASS PROCEEDING

BETWEEN:

**CHIEF SHANE GOTTFRIEDSON, on behalf of the
TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the
TK'EMLUPS TE SECWÉPEMC INDIAN BAND, and
CHIEF GARRY FESCHUK, on behalf of the SECHELT INDIAN BAND
and the SECHELT INDIAN BAND**

Plaintiffs

and

**HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL OF CANADA**

Defendant

ORDER AND REASONS

[1] On this Motion, the parties seek approval of the Fee Agreement signed on February 3 and 8, 2023, where the Defendant Canada has agreed to pay the all-inclusive sum of \$20,000,000.00. This sum includes all past and future legal work, disbursements, costs incurred by Tk'emlúps te Secwépemc, shíshálh Nation (formerly known as Sechelt Indian Band), and the Grand Council of the Crees (Eeyou Istchee) [Funding Nations], the advance costs of

\$500,000.00, and honoraria payments of \$15,000.00 each of the two individual Representative Plaintiffs.

[2] By separate Order and Reasons reported at *Tk'emlúps te Secwépemc First Nation v Canada*, 2023 FC 327 on March 9, 2023, the Court approved the settlement agreement for the settlement of the Band Class claims [Settlement Agreement].

[3] This Motion for approval of the Fee Agreement was heard in Vancouver on February 28, 2023, immediately following the Motion for approval of the Settlement Agreement.

[4] For the reasons that follow, the Fee Agreement is approved in the form submitted.

I. Background

[5] The factual background to this class proceeding and the details of the Settlement Agreement for the Band Class are more fully outlined in the Order and Reasons approving the Settlement Agreement at 2023 FC 327.

[6] This class proceeding was commenced by Tk'emlúps te Secwépemc and shíshálh Nation in August 2012. In July 2016, the Grand Council of the Crees (Eeyou Istchee) joined this litigation as a funding Nation. Class Counsel agreed to share the risk of this litigation with the Funding Nations by working at substantially reduced hourly rates, that were subject to a funding cap.

[7] On January 18, 2023, the parties executed the Settlement Agreement.

[8] On January 21, 2023, this Court ordered, on consent, that the Defendant pay advanced costs to the Representative Plaintiffs in the amount of \$500,000.00 [Advanced Costs] for the purposes of setting up a not-for-profit entity to receive the settlement fund (*Tk'emlúps te Secwépemc First Nation v Canada*, 2023 FC 104).

[9] In support of this Motion for Court approval of the Fee Agreement, the following Affidavits were filed:

- Affidavit of Peter Grant, co-counsel for the Plaintiffs, sworn on February 20, 2023;
- Affidavit of Dr. Matthew Coon Come, former Grand Chief of the Grand Council of the Crees (Eeyou Istchee), affirmed on February 23, 2023;
- Affidavit of Shane Gottfriedson, individual Representative Plaintiff and former elected Chief of Tk'emlúps te Secwépemc, affirmed on February 21, 2023;
- Affidavit of Jasmine Paul, Vice President Negotiation, Governance, and Policy at Castlemain, retained by shíshááh Nation to review its expenses relating to the Band Class claim, sworn on February 22, 2023;
- Affidavit of Matthew Swallow, Treasurer of the Grand Council of the Crees (Eeyou Istchee), sworn on February 22, 2023; and
- Affidavit of Travis Anderson, a Certified Aboriginal Financial Manager and Executive Director of Finance with Tk'emlúps te Secwépemc, sworn on February 22, 2023.

II. Key Terms of Fee Agreement

[10] The key terms of the Fee Agreement are as follows:

- Section 3 provides that Canada will pay the all-inclusive sum of \$20,000,000.00 to Class Counsel in trust for legal fees, disbursements, and applicable taxes incurred in the initiation and prosecution of the class action, negotiating and implementing the Settlement Agreement, and honoraria to the individual Representative Plaintiffs;
 - Disbursements include the costs incurred by the Funding Nations, as well as costs incurred by Class Counsel in the prosecution of this Action; and
- Section 4 provides honoraria payments of \$15,000.00 to both of the individual Representative Plaintiffs, former Chief Shane Gottfriedson and former Chief Garry Feschuk, for the Band Class.

[11] The Fee Agreement takes into account any amounts previously paid by Canada during this class proceeding, including the Advanced Costs.

III. Issues

[12] The issues for determination on this Motion are as follows:

- A. Approval of the Fee Agreement; and
- B. Approval of honoraria payments to the individual Representative Plaintiffs.

IV. Analysis

A. *Approval of the Fee Agreement*

General Principles

[13] Rule 334.4 of the *Federal Courts Rules*, SOR/98-106 requires that the Court approve all legal counsel fees in a class proceeding.

[14] The test applied by the Court on a motion to approve counsel fees is whether the legal fees are “fair and reasonable” in the circumstances (*McLean v Canada*, 2019 FC 1077 at para 2 [*McLean*]).

[15] The “fair and reasonable” considerations were outlined at paragraph 25 of *McLean* as follows:

The Federal Court has an established body of non-exhaustive factors in determining what is “fair and reasonable”. In *Condon v Canada*, 2018 FC 522 at para 82, 293 ACWS (3d) 697 [*Condon*]; *Merlo v Canada*, 2017 FC 533 at paras 78-98, 281 ACWS (3d) 702 [*Merlo*]; and *Manuge* at para 28, the factors included: results achieved, risk undertaken, time expended, complexity of the issue, importance of the litigation to the plaintiffs, the degree of responsibility assumed by counsel, the quality and skill of counsel, the ability of the class to pay, the expectation of the class, and fees in similar cases. The Court’s comments follow but it should be borne in mind that the factors weigh differently in different cases and that risk and result remain the critical factors (*Condon* at para 83).

[16] Class Counsel in this class proceeding were not acting on a contingency fee basis. Rather, Class Counsel worked on a fixed and discounted hourly rate basis, up to a maximum of \$1,800,000.00. Any hours worked over this cap were borne by Class Counsel themselves.

[17] The absence of a contingency fee agreement is a distinguishing feature in considering and weighing the “fair and reasonable” considerations noted above. However, in my view, it is still necessary to consider these factors as against the fees sought to be approved.

(a) Results Achieved

[18] The Representative Plaintiffs’ objectives for resolution of the class proceeding were:

- (a) a generational solution to the Class Members' loss of languages and culture, in response to generations of harms caused by Residential Schools;
- (b) a solution that provides Indigenous peoples autonomy over the programs and initiatives they develop to revitalize Indigenous languages and cultures; and
- (c) a resolution guided by the Four Pillars.

[19] The Settlement Agreement of the Band Class met and exceeded these objectives. The Settlement Agreement creates a \$2.8 billion dollar fund, which provides for Indigenous-led initiatives to support language, culture, and heritage revitalization initiatives for the Band Class members. The fund will be managed by a not-for-profit entity made up of Indigenous directors.

[20] The Band Class members will identify and develop their own language and culture revitalization programs and initiatives, with a focus on the needs of their individual communities. Those programs will be funded as detailed in the Settlement Agreement. The settlement will provide for 20 years of sustainable funding thus providing a generational focus for the revitalization of Indigenous language and culture.

[21] In this case, the Fee Agreement was negotiated independently from the Settlement Agreement. Isolating these agreements ensured that even if the Fee Agreement was not approved, the Settlement Agreement (if approved) could still be implemented. The two Agreements are also independently funded by Canada.

(b) Risk Undertaken

[22] This was risky litigation and success was far from certain. The claims advanced were novel and untested legal claims seeking damages for loss of language and culture. Canada vigorously defended this class proceeding and raised a number of defenses, including limitation defenses, the Indian Residential Schools Settlement Agreement [IRSSA] releases, and denying any duty of care on the part of Canada. This class action was litigated to the eve of trial and the parties had undergone extensive preparations.

[23] The risk of non-recovery for the Band Class and Class Counsel legal fees was high. Class Counsel nonetheless pushed forward with this proceeding and assumed the risk of only being paid the reduced rate portion of their legal fees, up to the funding cap, if the matter was not successfully concluded. Class Counsel describe this as a risk-sharing arrangement. The contribution cap from the Funding Nations had already been reached prior to trial, meaning Class Counsel were prepared to litigate the ten-week Common Issues Trial without payment.

[24] Further, two of the senior Class Counsel, Peter Grant and Diane Soroka, are sole practitioners, with no colleagues to share the litigation risk.

[25] The Affidavit of Peter Grant summarizes the litigation risk in this class proceeding as follows:

25. The Band Class claim is based on the conduct of Canada throughout the 77-year Class Period from 1920 to 1997 regarding 139 Indian Residential Schools located in ten provinces and territories that were operated in partnership with several different religious entities. The Band Class claim seeks damages for the collective impacts of those Residential Schools on 325 Bands located across Canada.

26. Throughout this litigation, Canada routinely used this scope and complexity to attack the very premise of the Band Class claim, continually arguing that this complexity meant that the common questions of law or fact simply could not be answered in common. In fact, Canada suggested in the Trial Brief of the Defendant that, as a result of this complexity, the action should be decertified.

27. The Band Class litigation involved significant risk and uncertainty primarily because of the sheer novelty of the claim. The following issues, amongst others, had never been addressed by a court in Canada:

- (a) Is loss of language and culture a compensable harm?
- (b) Is there a generic right to Indigenous language and culture under s. 35 of the Constitution?
- (c) Can First Nations and other Indigenous groups claim for loss of language and culture of the collective as a whole?
- (d) Who is the proper rights holder for collective rights of language and culture?
- (e) Can a court quantify damages for a claim of collective loss of language and culture? If so, how are they measured?
- (f) What are the damages for collective loss of language and culture?

28. A loss on any one of the above questions could have been fatal to the entire case.

[26] The fact that no other claims were initiated in Canada on behalf of Indian Bands for collective harms of Residential Schools, or for the loss of language and culture as a result of Residential Schools, highlights the uncertainty that surrounded these claims and the risks undertaken by Class Counsel in committing years of time and resources to pursue the action.

(c) Time Expended

[27] This litigation has been ongoing for over a decade. The legal issues were complex and success was uncertain.

[28] The Settlement Agreement was reached immediately before the September 2022 Common Issues Trial was scheduled to begin. Tremendous legal work had been undertaken to prepare this matter for trial. Class Counsel have provided a detailed Affidavit outlining the work performed and has attached copies of time dockets providing a breakdown of the description of the work performed, by who, and the amount of time expended.

[29] Between March 2021 and January 2023, Class Counsel recorded over 8,500 hours. Their legal work will continue as they will provide legal services in the implementation of the Settlement Agreement and in establishing the not-for-profit entity that will administer the settlement fund. This work is over and above any legal work compensated for in the Day Scholars Fee Agreement, following the settlement of the Survivor Class and Descendant Class claims in this class action (*Tk'emlúps te Secwepemc First Nation v Canada*, 2021 FC 1020).

[30] In considering the risks and obligations undertaken by Class Counsel and the success achieved for the Band Class, I have no hesitation in finding that Class Counsel have very much earned the right to a legal fee premium in excess of any docketed time.

(d) Complexity of the Issues

[31] The complexity of this class action cannot be overstated as referenced in more detail in the Order approving the Settlement Agreement. The claims advanced were novel and untested. The evidence was historic and voluminous.

[32] As set out in the Grant Affidavit:

34. In fact, after certification, only 98 out of 640 Nations elected to opt into this proceeding. During the intense negotiations in 2016-2017, the return to litigation and the lead up to the trial, no other action of a similar nature was commenced. No Band that did not opt in to this proceeding has yet started its own action against Canada for collective harms caused by Residential Schools.

35. These facts strongly suggest that, within the legal community of both class action counsel and Aboriginal law counsel, there was no appetite for taking on the enormous risks involved in advancing the novel claims in this Action.

(e) Importance of the Litigation to the Plaintiffs

[33] The damages caused to First Nations language, culture, and heritage through the operation of Residential Schools in Canada are described in the Truth and Reconciliation report as cultural genocide. These losses have not been acknowledged in previous Residential Schools litigations, but the impacts on the Band Class members are still felt in these communities today.

[34] The Affidavits of the individual Representative Plaintiffs, Chief Shane Gottfriedson and Chief Garry Feschuk, submitted for the Motion to approve the Settlement Agreement, attest to the significance and importance of this litigation to their communities.

[35] Class Counsel Peter Grant noted, in his Affidavit:

31. Based on my experience with First Nations and my observations of class action lawyers involved in Residential School claims, boarding home claims, and claims relating to the apprehensions of Indigenous children, it is remarkable that, in the thirty years since litigation regarding Residential Schools began in earnest, there has been no other lawsuit filed either by class action counsel nor by other legal counsel claiming damages for collective harms caused to Indigenous collectives as a whole as a result of Canada's IRS policies.

32. Similarly, other than the James Bay Cree in this proceeding, no other First Nation or Indigenous collective in Canada was willing to join the Representative Plaintiffs and take on the case for collective harms arising from Canada's IRS policies.

[36] Importantly, the Settlement Agreement demonstrates that Canada has changed its understanding and treatment of Indigenous language and culture as collective rights.

(f) Degree of Responsibility Assumed by Class Counsel and Quality and Skill of Counsel

[37] Class Counsel are a team of highly experienced lawyers, combining their expertise in Aboriginal law and class-action litigation. The three lead counsel were involved in the IRSSA settlement and were specifically sought out to act on this matter because of their particular expertise.

[38] Class Counsel were clearly committed to the class action and prosecuted the claims diligently, in spite of significant procedural and legal hurdles, and were prepared to push forward with the litigation even at the risk of no recovery of their legal fees.

[39] Ultimately, after many years, Class Counsel were able to achieve a settlement that met and exceeded the objectives of the Band Class members. Counsel will continue to be involved in providing legal services in the implementation of the Settlement Agreement and the establishment of the not-for-profit entity to administer the settlement fund.

(g) Ability of the Class to Pay and the Expectation of the Class

[40] The Affidavits of Chief Shane Gottfriedson, one of the individual Representative Plaintiffs, and Dr. Matthew Coon Come, former Grand Chief of the Grand Council of Crees (Eeyou Istchee), support the approval of the Fee Agreement and confirm the Fee Agreement is in keeping with their understanding of how fees were to be paid on a successful resolution of the class action. They also confirm that, in their opinion, the fees are fair and reasonable.

[41] There were no objections to the Fee Agreement voiced at the Motion.

[42] As noted, Class Counsel were acting on a fee-for-services retainer and not a contingency fee agreement. Class Counsel Peter Grant's Affidavit and the Affidavits of Dr. Matthew Coon Come and Chief Shane Gottfriedson provide details on the Funding Nations'-retainer agreements and funding agreements.

[43] These funding and retainer arrangements were set out in the Grant Affidavit as follows:

136. The financial arrangement between the Three Nations and Class Counsel was modified after the settlement of the Day Scholars Settlement Agreement at the request of the Three Nations. The Three Nations agreed to fund disbursements and legal fees at fixed and reduced rates to a maximum of \$1,800,000 through to the completion of the first phase of the common issues trial. Any unfunded amounts over and above the cap would be borne by Class Counsel.

...

152. As described above, we agreed with the [Three Nations] that their contribution to legal fees and disbursements associated with phase one of the common issues trial would be capped at \$1.8 million. As a result of the manner in which the DOJ conducted the litigation, the unanticipated costs of re-opening the opt-in period, and the size, scope and importance of the Band Class claim, our actual docketed fees and disbursements are \$4,838,837, far in excess of the \$1,800,000 in funding provided by the Three Nations. This left an unfunded amount of over \$3 million for docketed fees and disbursements that were not paid by the Three Nations, and that were borne by Class Counsel. If the case had gone to trial, the unfunded amount would have been at least this amount or more for a full trial with all the costs of bringing in witnesses and experts to Vancouver, all of which costs would have been borne by Class Counsel.

153. This lawsuit was litigated to the literal eve of trial. Given that we had exhausted the contribution paid by the [Three Nations] before the trial was set to commence, Class Counsel had to be, and were, prepared to fully litigate a ten-week common issues trial without any payment.

[44] In his Affidavit, Chief Shane Gottfriedson stated:

Tk'emlúps te Secwépemc and shíshálh Nation negotiated a retainer with Class Counsel that apportioned the risk of this litigation between Class Counsel, on the one hand, who agreed to take on the significant burden of a risky highly-complex, multiyear lawsuit at heavily-discounted hourly rates, and Tk'emlúps te Secwépemc and shíshálh Nation, on the other hand, who agreed to provide some ongoing funding in order to make the lawsuit sustainable, given the financial pressures on our communities.

[45] The Representative Plaintiffs negotiated heavily reduced, fixed rate fees with Class Counsel, subject to a cap. After the cap was reached, Class Counsel took on the burden of any unpaid legal fees. Additionally, the costs of litigation were borne by the three Funding Nations equally, to facilitate litigation of this claim and distribute the financial burden. None of the Indian Bands who chose not to opt-in to this class action have commenced an individual action for collective compensation.

(h) Fees in Similar Cases

[46] The total value of the settlement is \$2.8 billion. Accordingly, legal fees of \$20 million represent less than 1% of the settlement.

[47] By comparison, in *McLean*, the Indian Day Schools settlement was approximately \$2 billion and the approved legal fees were \$55 million, plus \$7 million for legal fees for services rendered for a period of four years afterward.

[48] In *Riddle v Canada*, 2018 FC 641, a ‘Sixties Scoop’ class action, the settlement was \$750 million and a \$75 million legal fee agreement was approved.

[49] In this case, the legal fees sought to be approved are modest by comparison to fees in similar cases.

[50] Overall, I am satisfied the Fee Agreement is fair and reasonable.

B. *Approval of Honoraria Payments to the Individual Representative Plaintiffs*

[51] This Court has noted that compensation to representative plaintiffs is appropriate in situations where there are services which are over and above the usual duties of a representative plaintiff (*Merlo v Canada*, 2017 FC 533 at para 73 [*Merlo*]).

[52] The list of factors relevant for consideration on whether the individual Representative Plaintiffs should receive honoraria includes: significant personal hardship; active involvement in

the initiation of the litigation and retainer of counsel; time spent and activities undertaken in the litigation; communications and interactions with other class members; and participation at various stages of the litigation (*Merlo* at para 72; *Toth v Canada*, 2019 FC 125 at para 96).

[53] The litigation required exceptional efforts on the part of the individual Representative Plaintiffs, who spent 11 years shouldering the burden of this difficult and psychologically taxing litigation. Former Chief Shane Gottfriedson and former Chief Garry Feschuk continued their active involvement in this litigation for years after their terms as elected Chiefs of their respective Nations ended.

[54] Chief Shane Gottfriedson and Chief Garry Feschuk both provided personal Affidavits for trial, detailing their personal experiences and their families' experiences at Residential Schools. They endured cross-examinations and were prepared to testify openly at trial. In doing so, they exposed themselves to re-traumatization at great personal effort, but done for the collective benefit of the Class members.

[55] The Grant Affidavit describes these cross-examinations as follows:

Both Representative Plaintiffs endured many hours of questioning about the following matters, among other things:

- (a) their relatives' and community members' experiences at Residential Schools;
- (b) the traumas experienced by their families and community members, including from physical, sexual, and emotional abuse;
- (c) the effects of the Canada's assimilationist policies on their languages, cultures, and religions (before and throughout the Class Period); and

- (d) the decline of their nations' languages and cultural practices during the Class Period.

[56] The individual Representative Plaintiffs spent significant time travelling to meetings, gathering and reviewing documents, attending examinations and hearings, and reviewing materials to stay up-to-date and informed on the status of the litigation. The individual Representative Plaintiffs have met regularly with Class Counsel to receive updates and provide instructions.

[57] They have also participated in media interviews in relation to this class-action proceeding. At the Settlement Approval Hearing, the Court also heard from Band Class members who praised the vision, commitment, and conviction demonstrated by Chief Gottfriedson and Chief Feschuk in seeing these claims to the end.

[58] In the circumstances, I have no difficulty in finding that this is an appropriate case to recognize the extraordinary efforts of the individual Representative Plaintiffs and I approve the honoraria payments of \$15,000.00 to each of Chief Gottfriedson and Chief Feschuk.

V. Conclusion

[59] For the above reasons, the Fee Agreement, including the honoraria payments to the individual Representative Plaintiffs, is approved.

ORDER IN T-1542-12

THIS COURT ORDERS that:

1. The Fee Agreement attached as Schedule “A”, is fair, reasonable and is hereby approved pursuant to Rule 334.4 of the Federal Courts Rules, SOR/98-106, and shall be implemented in accordance with its terms;
2. Within thirty (30) days of the Implementation Date, the Defendant shall pay the total and all-inclusive amount of \$19,500,000.00 [the Fee Amount, being \$20 million less the Advance Costs already paid by the Defendant] to Class Counsel in trust for the legal fees, disbursements, and taxes applicable thereon incurred in the prosecution of the Band Class claim, and for the honoraria payments to the individual Representative Plaintiffs;
3. Honoraria payments of \$15,000.00 to the two individual Representative Plaintiffs for the Band Class, former Chief Shane Gottfriedson and former Chief Garry Feschuk, are approved and shall be paid by Class Counsel from the Fee Amount; and
4. There will be no costs on this Motion.

"Ann Marie McDonald"

Judge

Schedule "A"

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Court File No. T-1542-12

**FEDERAL COURT
CLASS PROCEEDING**

B E T W E E N :

CHIEF SHANE GOTTFRIEDSON, on behalf of the TK'EMLUPS TE
SECWEPENC INDIAN BAND and the TK'EMLUPS TE SECWEPENC
INDIAN BAND, and CHIEF GARRY FESCHUK, on behalf of the
SECHELT INDIAN BAND and the SECHELT INDIAN BAND

PLAINTIFFS

and

HIS MAJESTY THE KING IN RIGHT OF CANADA as represented by THE
ATTORNEY GENERAL OF CANADA

DEFENDANT

BAND CLASS SETTLEMENT FEE AGREEMENT

1. Fee Agreement

- 1.01 The Band Class Settlement Fee Agreement ("Fee Agreement") is the standalone legal agreement regarding legal fees, honoraria, and disbursements as defined in the proposed Band Class Settlement Agreement in the certified class proceeding bearing Court File No. T-1542-12, *Gottfriedson et al. v. His Majesty the King in Right of Canada* ("Settlement Agreement").
- 1.02 The Fee Agreement was negotiated separately from the Settlement Agreement. All legal fees, disbursements, taxes, and expenses, in addition to the proposed Representative Plaintiff honoraria, are the subject of the Fee Agreement, which is subject to review and approval by the Court.
- 1.03 Court approval of the Fee Agreement is separate and distinct from Court approval of the Settlement Agreement. In the event that the Court does not approve the Fee

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Agreement, in whole or in part, it will have no effect on the approval or implementation of the Settlement Agreement.

- 1.04 In the event that the Court does not approve the Settlement Agreement, the Fee Agreement becomes null and void.

2. Definitions

- 2.01 Defined terms in the Settlement Agreement have the same meaning as those terms in the Fee Agreement.

- 2.02 In this Fee Agreement, the following additional definitions apply:

“Advanced Costs” means \$500,000.00 to be paid by Canada for costs associated with establishing and running the Trust/Not-For-Profit Entity prior to the Implementation Date;

“Honorarium” means the award, subject to court approval, to each of the Representative Plaintiffs for the Band Class in the Action for their contributions of time and effort to the litigation.

3. Legal Fees, Disbursements, Taxes, and Expenses

- 3.01 Canada agrees to pay the total and all-inclusive amount of **\$20,000,000.00** in respect of legal fees, disbursements, and taxes related to initiating and prosecuting the Action, negotiating and implementing the Settlement Agreement, and honoraria to the representative Plaintiffs.

- 3.02 For greater clarity, disbursements include:

- 3.02.1 costs incurred by class counsel on behalf of the class in the prosecution of the Action;

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- 3.02.2 costs incurred by Tk'emlúps te Secwépemc, shíshálh Nation and the Grand Council of the Crees (Eeyou Istchee) in the prosecution of the Action;
- 3.02.3 Advanced Costs include:
 - 3.02.3.1 securing legal counsel to provide legal services and advice;
 - 3.02.3.2 recruiting, hiring and paying interim staff, including an interim executive director and executive assistant;
 - 3.02.3.3 securing and leasing office space;
 - 3.02.3.4 opening an account at an accredited Canadian financial institution to receive the funds for the Trust; and
 - 3.02.3.5 securing the services of financial advisors to provide investment advice.
- 3.03 Payment of the Advanced Costs shall be made in accordance with the Federal Court Order dated January 21, 2023. Payment of the Advanced Costs will be made to Waddell Phillips PC, in trust.
- 3.04 Payment of the amount set out in section 3.01, with the exception of the Advanced Costs, will be made to Waddell Phillips PC, in trust, within thirty (30) days after the Implementation Date.

4. Representative Plaintiff Honoraria

- 4.01 The Court will be asked to approve an Honorarium in the amount of \$15,000.00 each to be paid to former Chiefs Garry Feschuk and Shane Gottfriedson in recognition of their time and extraordinary efforts devoted to the litigation. The Honorarium payments will be funded from the amount set out in s. 3.01.
- 4.02 If approved, payment of the Honorarium amounts will be made to the Representative Plaintiffs by Waddell Phillips PC within seven (7) days of payment of the amount set out in s. 3.01.

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4.03 In the event that the Court does not approve any or all of the Honorarium payments, in whole or in part, it will have no effect on the approval or implementation of the Settlement Agreement or the remainder of this agreement.

5. No Other Fees or Disbursements to Be Charged

5.01 The Parties agree that it is their intention that payment of the Fund to the Trust will be made without any deductions on account of legal fees or disbursements other than the ongoing operating costs of the Trust/Not-for-Profit-Entity after the Implementation Date including professional fees.

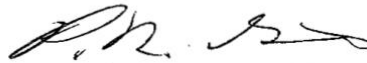
6. Counterpart

6.01 This Fee 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.

IN WITNESS WHEREOF the Parties have executed this Fee Agreement as of this 21st day of February, 2023.

For the Plaintiffs

Waddell Phillips Professional Corporation,
per John K. Phillips, K.C.
Class Counsel



For the Plaintiffs

Peter R. Grant Law Corporation,
per Peter R. Grant
Class Counsel

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4.03 In the event that the Court does not approve any or all of the Honorarium payments, in whole or in part, it will have no effect on the approval or implementation of the Settlement Agreement or the remainder of this agreement.

5. No Other Fees or Disbursements to Be Charged

5.01 The Parties agree that it is their intention that payment of the Fund to the Trust will be made without any deductions on account of legal fees or disbursements other than the ongoing operating costs of the Trust/Not-for-Profit-Entity after the Implementation Date including professional fees.

6. Counterpart

6.01 This Fee 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.

IN WITNESS WHEREOF the Parties have executed this Fee Agreement as of this 3rd day of February, 2023.



For the Plaintiffs

Waddell Phillips Professional Corporation,
per John K. Phillips, K.C.
Class Counsel

For the Plaintiffs

Peter R. Grant Law Corporation,
per Peter R. Grant
Class Counsel

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For the Plaintiffs

Diane Soroka Avocate Inc.,
per Diane H. Soroka
Class Counsel

**Bess,
Darlene**

Digitally signed by Bess, Darlene
Date: 2023.02.08 15:22:39 -05'00'

For the Defendants

Darlene Bess
Chief Finances, Results and Delivery
Officer Crown-Indigenous Relations and
Northern Affairs Canada

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1542-12

STYLE OF CAUSE: CHIEF SHANE GOTTFRIEDSON ET AL v HIS
MAJESTY THE KING IN RIGHT OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: FEBRUARY 28, 2023

ORDER AND REASONS: MCDONALD J.

DATED: MARCH 16, 2023

APPEARANCES:

Peter R. Grant FOR THE PLAINTIFFS
Diane Soroka
John Kingman Phillips, KC
W. Cory Wanless
Jonathan Schachter
Flora Yu

Travis Henderson FOR THE DEFENDANT
Ainslie Harvey

SOLICITORS OF RECORD:

Peter Grant Law FOR THE PLAINTIFFS
Barrister & Solicitor
Vancouver, BC

Diane Soroka
Advocate, Barrister & Solicitor Inc.
Westmount, QC

Waddell Phillips
Professional Corporation
Toronto, ON

Attorney General of Canada
Department of Justice
Vancouver, BC

For The Defendant