

**TAB A**

Court File No.: T-143-18

**FEDERAL COURT  
CERTIFIED CLASS PROCEEDING**

Between:

**ANN CECILE HARDY and CECIL HARDY**

Plaintiffs

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant

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

**SETTLEMENT AGREEMENT**

**WHEREAS**

- A. This action was commenced by Ann Cecile Hardy against the Attorney General of Canada in Federal Court on January 25, 2018 and was amended in 2020 to include Cecil Hardy as a second plaintiff;
- B. Canada operated Federal Indian Hospitals for the treatment of Indigenous patients, and abuses were committed against those patients;
- C. This action was certified as a class proceeding on consent by order of the Honourable Justice Paul Favel, dated January 17, 2020;

- D. Between 2019 and 2025, the Parties attended numerous meetings and mediation sessions before two retired Judges, the Honourable Stephen T. Goudge and before the Honourable Michael L. Phelan;
- E. On December 13, 2024, the Parties entered into an Agreement in Principle to resolve abuse claims arising out of Federal Indian Hospitals (except Medical Claims, defined below as "claims connected to medical treatment at a Federal Indian Hospital"). The Parties committed to work together to prepare a final settlement agreement and supporting documents for claims administration and notice;
- F. This Settlement Agreement is intended to address claims of abuse at Federal Indian Hospitals. The Settlement Agreement is not intended to cover, and no compensation shall be payable for, claims involving any hospitals or medical facilities other than Federal Indian Hospitals;
- G. The Parties recognize that any claims connected to medical treatment at a Federal Indian Hospital have not been released through this Settlement Agreement. This Settlement Agreement is not intended to cover, and no compensation shall be paid for, Medical Claims. Such claims shall be discontinued on a without prejudice basis;
- H. The Parties intend there to be a fair, comprehensive and lasting settlement of abuse claims related to Federal Indian Hospitals and they further desire the promotion of healing, education, commemoration, and reconciliation. They have negotiated this Settlement Agreement with these objectives in mind;
- I. As part of the Agreement, the Parties assume that Claimants are acting honestly and in good faith throughout the Claims Process. The Parties acknowledge that a Claimant may in honesty provide erroneous information as to whether they were admitted to a Federal Indian Hospital;
- J. Subject to the Approval Order and the expiry of the Opt Out Period without the Opt Out Threshold having been met or waived by the Defendant, the claims of the

Primary Class Members and Family Class Members, save and except Medical Claims and any claims of Primary Class Members who have validly opted out of the Class Action before the end of the Opt Out Period, shall be settled on the terms contained in this Agreement;

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

## **SECTION ONE**

### **INTERPRETATION**

#### **1.01 Definitions**

In this Agreement, the following definitions apply:

**“Agreement”** or **“Settlement Agreement”** means this Agreement and the Schedules attached hereto;

**“Agreement in Principle”** means the Agreement in Principle dated December 13, 2024, and attached hereto as Schedule A;

**“Application”** means the claims form that all Claimants must complete to be considered for compensation under this Agreement. The Application will include two portions relating to: (1) admission to a Federal Indian Hospital; and (2) compensation under the Compensation Grid;

**“Approval Order”** means the order or orders of the Court approving this Agreement;

**“Approved Claimant”** means an Eligible Claimant who has made an Application in accordance with this Agreement which has been approved for payment by the Claims Administrator;

**“Business Day”** means a day other than a Holiday;

**“Canada”** or **“Defendant”** means His Majesty the King in Right of Canada, the Attorney General of Canada, and their legal representatives, employees, agents, servants, predecessors, successors, executors, administrators, heirs, and assigns;

**“Compensation Grid”** means the compensation grid attached hereto as Schedule B;

**“Certification Order”** means the order of the Federal Court dated January 17, 2020, certifying this class proceeding under the *Federal Courts Rules*, attached hereto as Schedule C;

**“Claimant”** means an individual, an Estate Representative, or a Personal Representative, who makes a claim by completing and submitting an Application to the Claims Administrator;

**“Claim Deadline”** means the date that is 30 months after the Implementation Date;

**“Claims Administrator”** means such entity as may be designated by the Parties from time to time, and appointed by the Court to carry out the duties assigned to it in this Agreement;

**“Claims Process”** means the process outlined in this Agreement and related protocols and forms, for the submission, assessment, determination, and payment of compensation to Claimants;

**“Class Action”** or **“Hardy”** means the class proceeding certified by the Federal Court on January 17, 2020, with the style of cause: *Ann Cecile Hardy v. The Attorney General of Canada* (Federal Court File #T-143-18);

**“Class Counsel”** means Koskie Minsky LLP, Cooper Regel LLP, Merchant Law Group LLP, and Klein Lawyers LLP;

**“Class Members”** means Primary Class Members and Family Class Members;

**“Class Period”** means the period from and including the date on which Canada assumed management and control of any particular Federal Indian Hospital, which shall be no

earlier than January 1, 1936, and ending on the earlier of the following dates: a) the date of closure of any particular Federal Indian Hospital, b) the date on which management of any particular Federal Indian Hospital was effectively transferred from Canada, or c) December 31, 1981. The Class Period for each Federal Indian Hospital is set out in the List of Federal Indian Hospitals attached hereto as Schedule D;

**“Court”** means the Federal Court of Canada unless the context otherwise requires;

**“Eligible Claimant”** means a Claimant, who has established that they, or the person on whose behalf the Application was submitted, were admitted to a Federal Indian Hospital;

**“Estate Representative”** means the executor, administrator, trustee or liquidator of a deceased individual's estate, or such other person or persons as may be permitted to make a claim under this Agreement on behalf of a deceased Claimant pursuant to the Estates Protocol to be developed by the Parties in consultation with the Claims Administrator and approved by the Court;

**“Exceptions Committee”** means the committee established in Section 8;

**“Family Class Members”** means all persons who are spouses or former spouses, children, grandchildren or siblings of the members of the Primary Class and the spouses of the children, grandchildren, or siblings of the Primary Class Members, or any other individual with a derivative claim in accordance with the applicable family law legislation arising from a relationship with a Primary Class Member;

**“Family Class Releasers”** means all Family Class Members who have not opted out of the Class Action on or before the expiry of the Opt Out Period as set out in section 9.03(1);

**“Federal Indian Hospitals”** means the hospitals, with applicable dates of operation, on the List of Federal Indian Hospitals attached hereto as Schedule D;

**“Foundation”** means the foundation or other similar entity established pursuant to Section 2.01;

**“Healing Fund”** means the fund that will be administered by the Foundation pursuant to Section 2.01, to promote and support Class Members and their descendants in healing, wellness, education, language, culture, heritage, commemoration and reconciliation activities;

**“Holiday”** means any 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 as set out in the *Interpretation Act*, RSC 1985, c I-21, s 35 or a holiday as set out in the *Federal Courts Rules*, SOR/98-106, s 2;

**“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 Primary Class Member or Family Class Member may appeal or seek leave to appeal the Approval Order; and
- c) The date of the final determination of any appeal brought in relation to the Approval Order.

**“Independent Reviewer”** means the person or persons appointed by the Court on the recommendation of the Parties to carry out the duties of the Independent Reviewer as specified in this Agreement and in the Claims Process;

**“Medical Claims”** means claims connected to medical treatment at a Federal Indian Hospital;

**“Opt Out Period”** means the period from publication of the notice of certification of the Class Action as a class proceeding until the date which is sixty (60) days from the date of the Approval Order;

**“Opt Out Threshold”** means the Opt Out Threshold set out in Section 5.02 herein;

**“Parties”** means the signatories to this Agreement;

**“Person Under Disability”** means 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 Personal Representative has been appointed;

**“Personal Representative”** means the person appointed to manage or make reasonable judgments or decisions in respect of the affairs of a Person Under Disability;

**“Primary Class Members”** means all persons who were admitted to a Federal Indian Hospital during the Class Period;

**“Primary Class Releasors”** means each Primary Class Member or their Estate Representative or Personal Representative who has not opted out of the Class Action on or before the expiry of the Opt Out Period as set out in Section 9.02 herein;

**“Representative Plaintiffs”** means Ann Cecile Hardy and Cecil Hardy;

**“Request for Deadline Extension”** means a request for an extension of the Claim Deadline made by a Claimant in accordance with Section 3.05 of this Agreement; and

**“Research and Commemoration Fund”** means the fund that will be administered by the Foundation to support the activities that concern research and education regarding Federal Indian Hospitals, the preservation of the history of Federal Indian Hospitals, and the location of burial sites;

## **1.02 No Admission of Liability**

This Agreement shall not be construed as an admission of liability by the Defendant

## **1.03 Headings**

The division of this Agreement into sections and the use of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

#### **1.04 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”.

#### **1.05 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.

#### **1.06 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.

#### **1.07 Computation of Time**

For the purpose of this Agreement, time will be computed pursuant to ss. 26-30 of the *Interpretation Act*, R.S.C. 1985, c. I-21.

#### **1.08 Final Order**

For the purpose 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 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.

### **1.09 Currency**

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

### **1.10 Compensation Inclusive**

The amounts payable to Claimants under this Agreement are inclusive of any prejudgment or post-judgment interest or other amounts that may be claimed by Claimants against Canada for claims arising out of this Class Action.

### **1.11 Schedules**

The following Schedules to this Agreement are incorporated into and form part of this Agreement:

Schedule A	Agreement in Principle
Schedule B	Compensation Grid
Schedule C	Certification Order
Schedule D	List of Federal Indian Hospitals
Schedule E	Fresh as Amended Statement of Claim in <i>Ann Cecile Hardy v. The Attorney General of Canada</i> (T-143-18), March 10, 2020

### **1.12 No Other Obligations**

All actions, causes of action, liabilities, claims, and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses, and interest which any Primary Class Member or Family Class Member ever had, now has, or may hereafter have arising in relation to the Class Action against Canada relating to abuse at a Federal Indian Hospital, whether such claims were made or could have been made in any proceeding, except for Medical Claims, 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.

### **1.13 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.

### **1.14 Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the Parties, Class Members and their respective heirs, Estate Representatives, and Personal Representatives.

### **1.15 Applicable Law**

This Agreement will be governed by and construed in accordance with the laws of the Province or Territory where the Primary Class Member or Family Class Member resides or, if the Class Member is deceased, where the Class Member last resided and the laws of Canada applicable therein.

### **1.16 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.

### **1.17 Official Languages**

A French translation of this Agreement shall be prepared as soon as possible after execution of this Agreement, to be approved by the parties. Canada will pay the costs associated with translating the Agreement into French. The French version shall be of equal weight and force at law.

### **1.18 Date when Binding and Effective**

On the Implementation Date, this Agreement will become binding and effective on the Parties and all Primary Class Members and Family Class Members. The Approval Order constitutes approval of this Settlement Agreement by all Class Members who have not opted out of the Class Action.

### **1.19 Effective in Entirety**

Subject to Section 10.01(3), none of the provisions of this Agreement will become effective unless and until the Federal Court approval of this Agreement becomes final.

## **SECTION TWO**

### **FOUNDATION**

#### **2.01 Establishing the Foundation**

- (1) In recognition of the legacy of the Federal Indian Hospitals, the Parties are committed to implementing the Settlement Agreement in a manner that contributes to promoting healing, wellness, truth, reconciliation, cultures, protection of languages, commemoration, research, and education. A Foundation will be established, which the Parties agree is intended to promote and support the Class Members and their descendants in these essential objectives, and to preserve the history of Federal Indian Hospitals. The Foundation will not duplicate the activities, programs, and services of the Government of Canada.

#### **2.02 Engagement and Foundation Plan**

- (1) The structure, activities, design, and establishment of the Foundation will be informed by engagement with external Indigenous stakeholders, including Class Members and Indigenous communities.
- (2) The engagement process is to be Indigenous-led and designed and facilitated by individuals with experience and expertise in facilitating engagement with Indigenous communities ("Engagement Facilitators").

- (3) Canada will support the work of the Engagement Facilitators by paying reasonable expenses, in accordance with Treasury Board policies, for the costs of the engagement.
- (4) The Engagement Facilitators will develop a Foundation Plan following engagement as set out in this Section. Canada will pay reasonable expenses, in accordance with Treasury Board policies, for the costs of developing the Plan including, but not limited to, retaining financial consultant(s) and/or lawyer(s), and per diem costs for the Engagement Facilitators.
- (5) The Foundation Plan shall set out the process for establishing the Foundation, the hiring criteria for the Directors, the hiring process for the Directors, duties of the Directors, the structure of the Board of Directors, the objectives of the Foundation, and the activities to be carried out by the Foundation through both the Healing Fund and the Research and Commemoration Fund.
- (6) Expenses incurred for the purpose of engagement and the development of the Foundation Plan will not be deducted from the Healing Fund or the Research and Commemoration Fund.
- (7) The Foundation Plan shall be approved by the Court prior to the Foundation being established.

### **2.03 Board of Directors**

- (1) Oversight of the Foundation will be undertaken by a Board of Directors. The Board of Directors shall supervise the activities and affairs of the Foundation, which will receive, hold, invest, manage, and disburse the Foundation's monies for the Foundation's purposes.
- (2) Once the Foundation has been established and the funds have been invested, the expenses of the Foundation will be paid from its capital and its investment income.

## **2.04 Healing Fund, and Research and Commemoration Fund**

- (1) The activities of the Foundation will be supported through two distinct funds, which will remain separate:
  - a) The Healing Fund, which shall be used to support the healing, wellness, reconciliation, protection of languages, education, and commemoration activities of the Foundation, and
  - b) The Research and Commemoration Fund, which shall be used to support the activities of the Foundation that concern research and education regarding Federal Indian Hospitals, the preservation of the history of Federal Indian Hospitals, and the location of burial sites associated with Federal Indian Hospitals.
- (2) Within 30 days after the establishment of the Foundation, Canada shall transfer to the Foundation's trust account designated for the Healing Fund the amount of \$150 million.
- (3) Within 30 days after the establishment of the Foundation, Canada shall transfer to the Foundation's trust account designated for the Research and Commemoration Fund the amount of \$235.5 million.

## **SECTION THREE**

### **COMPENSATION FOR INDIVIDUAL CLAIMANTS**

#### **3.01 Purpose of Compensation**

- (1) This Settlement Agreement is intended to address claims for abuse at Federal Indian Hospitals.
- (2) The Agreement is not intended to cover, and no compensation shall be payable for, claims involving any hospitals or medical facilities other than Federal Indian Hospitals.
- (3) The Agreement is not intended to cover, and no compensation shall be payable for, Medical Claims.

### 3.02 Principles Governing Claims Administration

- (1) The Claims Process is intended to be trauma informed, culturally sensitive, expeditious, cost-effective, user-friendly, and confidential. The intent of the Parties is to minimize the burden on the Claimant in pursuing their claims and to mitigate any likelihood of re-traumatization through the Claims Process.
- (2) To ensure that Class Members are actively engaged in the settlement process, the Parties shall develop a trauma-informed, culturally safe process to provide assistance to Class Members during the Claims Process. This should include, but not be limited to, Claimant centered, in person, in community, virtual, or hybrid sessions to inform Class Members and communities about the settlement; assistance completing the Claims Form; available trauma informed, and culturally safe health supports.
- (3) The Claims Administrator, Independent Reviewer, and Exceptions Committee and its members, shall, in the absence of reasonable grounds to the contrary, assume that an Eligible Claimant is acting honestly and in good faith.
- (4) In considering whether a Claimant is an Eligible Claimant, their Application shall be evaluated on a balance of probabilities. Once a Claimant has been determined to be an Eligible Claimant, all reasonable and favourable inferences that can be drawn in their favour shall be drawn.

### 3.03 Verifying Eligible Claimant Status

- (1) All Claimants are required to establish, on a balance of probabilities, they, or the individual on whose behalf the Application was submitted, were admitted to a Federal Indian Hospital during the Class Period by submitting a completed Application to the Claims Administrator for assessment.
- (2) Claimants who establish admission to a Federal Indian Hospital on a balance of probabilities (the “**Eligible Claimants**”) will be eligible to have their applications for compensation under the Compensation Grid determined by the Claims Administrator.

- (3) A Claims Protocol, to be developed between the Parties and the Claims Administrator, and approved by the Court, will set out the Application requirements and process for the Claims Administrator to establish an Eligible Claimant.
- (4) The Claims Protocol shall include details on specific process and timelines and shall include the following:
  - A. That an Application will include two separate sections related to: (1) admission to a Federal Indian Hospital; and (2) compensation under the Compensation Grid.
  - B. That an Application shall require general identification information, dates of admission to a Federal Indian Hospital(s), reason for admission(s) (if known), supporting documentation (if available), and other identifying information to be set out in further detail in a Claims Protocol to be developed between the Parties and the Claims Administrator and approved by the Court.
  - C. That for a Claimant to be considered an Eligible Claimant:
    - i. The Application must have been submitted to the Claims Administrator in accordance with the provisions of this Agreement and Protocols;
    - ii. The Application must have been received by the Claims Administrator prior to the Claims Deadline or any extension thereof; and
    - iii. The individual on whose behalf the Application is made must have been alive on January 25, 2016.
  - D. That the Claims Administrator will forward Applications and supporting documentation to Canada from Claimants, as they are received, for review.
  - E. That as part of Canada's review, Canada will determine whether there are any documents relevant to establishing admission to a Federal Indian Hospital in Canada's possession.

- F. That Canada will be permitted to respond to information and documentation provided in support of the Claimant's Application.
- G. That after reviewing the Claimant's Application, together with any additional relevant information supplied by the Claimant, Canada may make a recommendation to the Claims Administrator regarding the eligibility of the Claimant.
- H. That if Canada submits information or documentation to the Claims Administrator that is inconsistent with the information in the Application, or if the Claimant's Application contains insufficient detail, information, or documentation to support the Claimant's admission to a Federal Indian Hospital on a balance of probabilities, the Claims Administrator may contact the Claimant and request further information, documentation, or clarification in respect of the Claimant's admission to a Federal Indian Hospital.
- I. That a Claimant shall have the right to provide additional information in reply to any information or documentation submitted by Canada.
- J. That the absence of a record of a Claimant's admission to a Federal Indian Hospital will not, in and of itself, disqualify the Claimant from being an Eligible Claimant.
- K. That if the Claims Administrator determines, on a balance of probabilities, that the Claimant is not an Eligible Claimant, the Claims Administrator shall notify the Claimant and provide an explanation for the determination.
- L. That if the Claims Administrator determines that, on a balance of probabilities, that the Claimant is an Eligible Claimant, the Claims Administrator shall notify Canada and provide an explanation for the determination.

- M. That the Claimant and Canada shall have the right to seek reconsideration of decisions on eligibility made by the Claims Administrator.
- N. That a process for reconsideration will be included within the Claims Protocol.
- O. That the process for reconsideration shall permit the Claimant or Canada to file additional documents and information in support of a request for reconsideration.
- P. That the decision of the Court-appointed Independent Reviewer shall be final and that neither the Claimant nor Canada shall have a right of appeal or judicial review before the Federal Court.
- Q. That once it has been finally determined that a Claimant is an Eligible Claimant, the Claims Administrator shall determine whether compensation, and at what level, should be payable under the Compensation Grid.
- R. That the Claims Administrator will not assess an Application for compensation under the Compensation Grid for Claimants that are not Eligible Claimants.

### **3.04 Compensation**

- (1) All Eligible Claimants, as set out in section 3.03 above, shall have the balance of their Application assessed by the Claims Administrator for compensation.
- (2) It is the intention of the Parties that compensation will be paid to all Eligible Claimants who have established verbal, psychological, physical, and/or sexual abuse at a Federal Indian Hospital.
- (3) An Application will be assessed for compensation based on the harms outlined in the Compensation Grid, attached as Schedule B to this Agreement.

- (4) Claimants shall specify the level of compensation claimed in accordance with the Compensation Grid within their Application.
- (5) A Claimant may not submit more than one Application related to or on behalf of a Primary Class Member, or amend the Application once submitted, to request a different level of compensation. This provision does not preclude a Claimant from providing additional information or documentation prior to the final adjudication of the Application in accordance with the Claims Protocol.
- (6) The Claims Administrator has authority to award compensation at a higher or lower level than the level specified in the Application and may request further information from the Eligible Claimant with respect to the compensation sought within the Application.
- (7) The Claims Administrator will award an Eligible Claimant the highest level of compensation that they have established. Compensation is not cumulative between levels within the Compensation Grid, and the Claims Administrator shall award only one level of compensation.
- (8) Subject only to the right to make a Request for Deadline Extension, as set out in Section 3.05 herein, Claimants must submit their Applications on or before the Claims Deadline.
- (9) An Eligible Claimant whose Application for compensation under the Compensation Grid is approved by the Claims Administrator is an Approved Claimant. Payments for Approved Claimants will be issued upon final approval by the Claims Administrator.
- (10) There is no limit or cap on Canada's total obligation to pay compensation to Approved Claimants. All compensation payable to Approved Claimants will be paid fully by Canada.
- (11) The Parties agree that all compensation payable under the Settlement Agreement is in the nature of non-pecuniary damages and not referable to income.

### **3.05 Request for Deadline Extension**

- (1) The Parties recognize that in extraordinary circumstances a Claimant should receive relief from the strict application of the Claims Deadline. Requests for Deadline Extension will be made in writing and decided by the Claims Administrator.
- (2) The Request for Deadline Extension will be accompanied by a completed Application that includes all of the information required to support an Application as well as information as to why the Claims Deadline was not met by the Claimant.
- (3) The deadline for making a Request for Deadline Extension will be 180 days after the Claims Deadline. In no event will a Request for Deadline Extension be considered if the Request for Deadline Extension is transmitted after that date.

### **3.06 Reconsideration of Compensation Decisions**

An Eligible Claimant whose Application for compensation was denied or assessed by the Claims Administrator to be at a level lower than the level identified in the Application may seek reconsideration by the Independent Reviewer. The procedures and timelines for reconsideration will be set out in the Claims Protocol.

### **3.07 Referrals to the Exceptions Committee**

- (1) The Independent Reviewer can refer an Application to the Exceptions Committee in the following circumstances:
  - a) Where the Independent Reviewer requires additional guidance or clarification from the Exceptions Committee in order to determine if a Claimant is an Eligible Claimant;
  - b) Where harm described in the Application is not contemplated in the Compensation Grid; or
  - c) Where the Independent Reviewer is unable to determine that an Eligible Claimant is entitled to compensation but having regard to the object, intention, and spirit of the Settlement Agreement, the circumstances are such that the Claimant, in the opinion of the Independent Reviewer, should receive compensation.

- (2) The Independent Reviewer shall provide a written explanation for the referral, together with the Application being referred, to the Exceptions Committee
- (3) The procedures for review by the Exceptions Committee will be set out in the Claims Protocol.

### **3.08 Finality of Decisions**

- (1) A decision of the Claims Administrator is final and binding upon the Claimant, Eligible Claimant, and Approved Claimant without any recourse or appeal, except as set out in this Agreement and the Claims Protocol.
- (2) A decision of the Independent Reviewer is final and binding upon the Claimant, Eligible Claimant, Approved Claimant, and the Claims Administrator without any review, recourse, or appeal.
- (3) Guidance, directions, and/or decisions of the Exceptions Committee are not subject to any review, recourse, or appeal.

### **3.09 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 an Approved Claimant pursuant to any legislation of any province or territory of Canada.
- (2) Further, Canada will make best efforts to obtain the agreement of the necessary Departments of the Government of Canada 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 an Approved Claimant pursuant to any Canadian social benefit programs including Old Age Security and the Canada Pension Plan.

## SECTION FOUR

### IMPLEMENTATION OF THIS AGREEMENT

#### 4.01 Federal Court Approval Order

The Parties agree that an Approval Order for this Settlement Agreement will be sought from the Federal Court substantially in the form agreed upon by the Parties and shall include the following provisions:

1. Reference r. 334.21 of the *Federal Courts Rules*, S.O.R./98-106;
2. Incorporate by reference this Agreement in its entirety, including all Schedules;
3. Order and declare that the Approval Order is binding on all Primary Class Members and Family Class Members, including Persons Under Disability, unless they have opted out on or before the expiry of the Opt Out Period;
4. Set the expiry date of the Opt Out Period determined in accordance with this Agreement;
5. Order and declare that on the expiry of the Opt Out Period, no Class Members save and except those who have opted out on or before expiry of the Opt Out Period may commence proceedings against Canada seeking compensation or other relief arising from the claims released by Sections 9.02-9.03 of the Agreement;
6. Declare that the plaintiffs and their counsel in the proceedings listed in Section 9.05 of the Settlement Agreement will obtain (or seek approval of) discontinuances as against Canada forthwith; and
7. Order and declare that the Class Members' Medical Claims are discontinued on a without prejudice basis as a term of the Settlement Agreement, and that the limitation periods for such claims are suspended from the date the action was filed, January 25, 2018, to the date on which the last of the proceedings listed in Section 9.05 of the Settlement Agreement is discontinued.

#### **4.02 Notice of Settlement Approval Hearing, Certification, and Settlement Approval**

- (1) The Parties, with the assistance of a notice provider, will cooperate on the drafting of a plan for notifying Class Members of the notice of certification and notice of settlement approval hearing. Approval of this plan shall be sought from the Federal Court.
- (2) The Parties, with the assistance of a notice provider and Claims Administrator, will cooperate on the drafting of a plan for notifying Class Members of the approval of the Settlement Agreement and Claims Process. Approval of this plan shall be sought from the Federal Court.
- (3) The plan for notifying Class Members of the approval of the Settlement Agreement and Claims Process will be developed with a focus on the following principles:
  - a) Notice shall be continuous and ongoing throughout the entirety of the claims period;
  - b) Notice shall be Class Member centred;
  - c) Notice shall be culturally sensitive;
  - d) Notice shall be trauma informed;
  - e) Notice shall include community focused elements; and
  - f) Notice shall be direct, whenever possible.
- (4) All costs of notifying Class Members in accordance with the notice plans described in this section shall be paid by Canada.

## **SECTION FIVE**

### **OPTING OUT**

#### **5.01 Right to Opt Out**

Class Members have the right to opt out of the Class Action in accordance with the opt out procedures stipulated by the Court in an Order to be obtained by the Parties approving a notice to the class of the certification of this action as a class proceeding and of the right to opt out.

#### **5.02 Opt Out Threshold**

If the number of Primary Class Members opting out of the Class Action exceeds 10,000 individuals, this Settlement Agreement will be void and the Approval Order will be set aside in its 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 at any time, but within no more than thirty (30) days after the end of the Opt Out Period. The Opt Out Threshold does not include opt outs filed by Family Class Members.

## **SECTION SIX**

### **PAYMENTS TO ESTATE REPRESENTATIVE OR PERSONAL REPRESENTATIVES**

#### **6.01 Compensation if Deceased**

- (1) Where a Primary Class Member whose claim has been approved for compensation and is therefore an Approved Claimant, died or dies on or after January 25, 2016, and an Application has been submitted to the Claims Administrator prior to the Approved Claimant's death, or by his or her Estate Representative after the Approved Claimant's death, the Estate Representative shall be paid the compensation to which the deceased Approved Claimant would have been entitled under this Settlement Agreement as if the Approved Claimant had not died, even if they did not have a will.

- (2) The persons who may act as the Estate Representative of a deceased Primary Class Member are set out in the Estate Protocol to be developed by the Parties in consultation with the Claims Administrator and approved by the Court.
- (3) No payment under this Settlement Agreement is available for Primary Class Members who died before January 25, 2016.

## **6.02 Person Under Disability**

If a Primary Class Member who submitted an Application to the Claims Administrator is or becomes a Person Under Disability prior to their receipt of compensation, the Personal Representative of the Primary Class Member will be paid the compensation an Approved Claimant would have been entitled under this Settlement Agreement.

## **6.03 Canada, Claims Administrator, *Hardy* Plaintiffs, Class Counsel, Independent Reviewer and Exceptions Committee and its Members, Held Harmless**

Canada, the Claims Administrator, the *Hardy* Plaintiffs, Class Counsel, the Independent Reviewer and the Exceptions Committee and its members shall be held harmless from any and all claims, suits, actions, causes of action, or demands whatsoever by reason of or resulting from a payment to a Personal Representative or Estate Representative pursuant to this Settlement Agreement.

# **SECTION SEVEN**

## **THE CLAIMS ADMINISTRATOR**

### **7.01 Duties of the Claims Administrator**

The Claims Administrator's duties and responsibilities include the following:

- a) Developing, installing, and implementing systems, forms, information, guidelines, and procedures for processing and making decisions on Applications in accordance with this Agreement;
- b) Developing, installing, and implementing systems and procedures for making payments of compensation in accordance with this Agreement;

- c) Providing personnel in such reasonable numbers as are required for the performance of its duties, and training and instructing them;
- d) Keeping or causing to be kept accurate accounts of its activities and its administration, preparing such financial statements, reports, and records as are required by the Court;
- e) Reporting to the Exceptions Committee and the Parties on a regular basis respecting:
  - i. Applications received and determined; and
  - ii. Applications qualified outside the class period.
- f) Responding to enquiries respecting Applications, reviewing Applications, and making decisions in respect of Applications and giving notice of decisions and notice of deficiencies in an Application, in accordance with this Agreement;
- g) Communicating with Claimants in English and French, as the Claimant elects, and if a Claimant expresses the desire to communicate in a language other than English or French, making best efforts to accommodate the Claimant; and
- h) Such other duties and responsibilities as the Court may from time to time direct.

## **7.02 Appointment of the Claims Administrator**

The Claims Administrator will be appointed by the Court on the recommendation of the Parties.

## **7.03 Costs of Claims Process**

The costs of the Claims Process including those of the Claims Administrator and the Independent Reviewer will be paid by Canada.

## **SECTION EIGHT**

### **EXCEPTIONS COMMITTEE**

#### **8.01 Exceptions Committee**

- (1) There shall be an Exceptions Committee appointed by the Court consisting of four members: an individual that is representative of the Class Members that the Parties identify at a later date, one member of Class Counsel who participated in the negotiation of this Agreement, one of Canada's legal counsel who participated in the negotiation of this Agreement, and a former jurist agreed to by the Parties who will sit as chair. The individual that is representative of the Class Members will be selected by agreement of the Parties and will be submitted to the Court for approval.
- (2) The Exceptions Committee shall endeavour to reach agreement. If agreement cannot be reached, the former jurist agreed to by the Parties to chair shall cast the deciding vote.
- (3) Any of the four members to the Exceptions Committee may be substituted by agreement of the Parties.
- (4) Canada will pay the costs of the individual that is representative of the Class Members that the Parties identify at a later date, and the former jurist appointed to the Exceptions Committee.
- (5) For greater certainty, Class Counsel are responsible for the costs of their representative appointed to the Exceptions Committee.
- (6) The Exceptions Committee is a monitoring body established under this Settlement Agreement with the following responsibilities:
  - a) Monitoring the work of the Claims Administrator and the Claims Process;
  - b) Receiving and considering reports from the Claims Administrator, including on administrative costs;

- c) Giving guidance and clarification to the Claims Administrator as may, from time to time, be necessary;
- d) Considering and determining any disputes between the Parties in relation to the implementation of this Agreement;
- e) Considering any Applications referred to it by the Independent Reviewer as set out in section 3.07 of the Agreement above; and
- f) Dealing with any other matter referred to the Exceptions Committee by the Court or by the Independent Reviewer.

## **8.02 Dispute Resolution**

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

## **8.03 Decisions are Final and Binding**

The decisions of the Exceptions Committee are final and binding.

## **8.04 Jurisdiction Limited**

The Exceptions Committee will have no authority or jurisdiction to consider or determine matters other than as specifically set out in this Agreement and Claims Protocol. Subject to the provisions of the Claims Protocol, the Exceptions Committee is not a further level of appeal or review and has no jurisdiction to consider or determine motions or applications of any kind from a Claimant or their counsel.

# **SECTION NINE**

## **RELEASES**

### **9.01 Medical Claims Are Not Released**

- (1) Class Members have not released and are not deemed to have released any claims connected to medical treatment at a Federal Indian Hospital ("Medical Claims").

- (2) Class Members' Medical Claims are discontinued on a without prejudice basis as a term of the Settlement Agreement.
- (3) Canada agrees that the limitation periods for such claims are suspended from the date the action was filed, January 25, 2018, to the date on which the last of the proceedings listed in Section 9.05 of this Agreement is discontinued.

## **9.02 Primary Class Member Releases**

The Approval Order issued by the Court will declare that:

- (1) Each Primary Class Releasor has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, equity, 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 Primary Class 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 abuse claims relating to Hardy, and this release includes any such claim made or that could have been made in any proceeding, whether asserted directly by the Primary Class Releasor or by any other person, group, or legal entity on behalf of or as representative for the Primary Class Releasor, with the exception of the Medical Claims which are discontinued and not released.
- (2) For greater certainty, Primary Class 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, whether by statute or the common law, equity, Quebec civil law in relation to the abuse claims in Hardy, the Primary Class Releasor will expressly limit those claims so as to exclude any portion of Canada's responsibility.

- (3) Upon a final determination of an Application made under and in accordance with the Claims Process, Primary Class Releasors are also deemed to agree to release the Parties, Class Counsel, Canada, the Claims Administrator, members of the Exceptions Committee and the Independent Reviewer with respect to any claims that arise or could arise out of the application of the Claims Process, including but not limited to the sufficiency of the compensation received. Primary Class Releasors are not deemed to release any claim arising from the preparation of their individual Applications as against the lawyer or lawyers retained to assist them in the preparation of the Application.

### **9.03 Family Class Member Releases**

The Approval Order issued by the Court will declare that:

- (1) Each Family Class Releasor has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, equity, 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 Family Class 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 abuse claims in Hardy, and this release includes any such claim made or that could have been made in any proceeding, whether asserted directly by the Family Class Releasor or by any other person, group, or legal entity on behalf of or as representative for the Family Class Releasor, with the exception of the Medical Claims which are discontinued and not released.
- (2) For greater certainty, Family Class 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, whether by statute, common law, equity, or Quebec civil law, in relation to the abuse claims in Hardy, the Family Class Releasor will expressly limit those claims so as to exclude any portion of Canada's responsibility.

#### **9.04 Deemed Consideration by Canada**

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 Primary Class Releasors and Family Class 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.

#### **9.05 Discontinuance of Other Proceedings**

Within ninety (90) days of the Implementation Date, the plaintiffs and their counsel in the following related proposed class proceedings will move to discontinue or file a notice of discontinuance, as against Canada forthwith, the following actions:

- (a) *Azak and Louie v. Attorney General of Canada* (Supreme Court of British Columbia, CFN: VLC-S-S-186736);
- (b) *Pambrun v. Attorney General of Canada* (Court of King's Bench for Saskatchewan, CFN: QBG 1359/18);
- (c) *Bull v. Attorney General of Canada* (Court of King's Bench of Alberta, CFN: QBG 1903.03109); and
- (d) Any other existing related class actions concerning Federal Indian Hospitals filed by one or more of the law firms comprising Class Counsel.

### **SECTION TEN**

#### **LEGAL FEES**

##### **10.01 Class Counsel Fees**

- (1) The Parties will enter into a separate agreement for the legal fees, disbursements, and related taxes payable to Class Counsel by Canada for their past and future work in relation to the common issues on behalf of the class as a whole ("Class Counsel Fees"), and honoraria for the Representative Plaintiffs and the named Plaintiffs in the proceedings listed in Section 9.05 of the Settlement Agreement

- (2) The Class Counsel will bring a motion to the Court for approval of Class Counsel Fees.
- (3) Approval of the Settlement Agreement is not contingent on approval of Class Counsel Fees. If the Court approves this Agreement, the provisions of this Agreement will come into effect on the Implementation Date regardless of the date of which an order is made or appeal determined regarding Class Counsel Fees.

#### **10.02 Individual Legal Fees**

- (1) If an Approved Claimant has been assisted by a practising lawyer in good standing in any Canadian province or territory, Canada will pay the Approved Claimant's lawyer an amount of up to 5% of the Approved Claimant's award, inclusive of disbursements, plus applicable taxes, without additional Court approval beyond the approval of the Settlement Agreement.
- (2) The legal fees payable shall be determined by the Claims Administrator in accordance with an Individual Legal Fees Protocol, which will be negotiated by the Parties in consultation with the Claims Administrator and approved by the Court. The Individual Legal Fees Protocol will include provisions for the Claims Administrator to conduct appropriate due diligence prior to issuing any payment to the Approved Claimant's lawyer.
- (3) In exceptional circumstances, Canada will pay up to an additional 5% of the Approved Claimant's award, inclusive of disbursements, plus applicable taxes for legal fees and/or disbursements provided such amount is approved by the Federal Court in accordance with Rule 334.4 of the *Federal Courts Rules*, SOR/98/106 and the Individual Legal Fees Protocol to be developed by the Parties in consultation with the Claims Administrator and approved by the Court.

## **SECTION ELEVEN**

### **CLASS MEMBER SUPPORT**

#### **11.01 Class Member Support**

- (1) Class Members will have access to existing ISC culturally sensitive health programming, information, and other supports including for trauma for the duration of the Claims Process.
- (2) Upon Settlement Approval, Canada will commit to providing Indigenous Services Canada with \$150 million, under existing programming, to support Class Members' health and wellness throughout the implementation of the Settlement Agreement.

## **SECTION TWELVE**

### **TERMINATION AND OTHER CONDITIONS**

#### **12.01 Termination of Agreement**

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

#### **12.02 Amendments**

Except as expressly provided in this Agreement, no amendment may be made to this Agreement unless agreed to by the Parties in writing and approved by the Federal Court, with the exception of non-substantive changes, for which Federal Court approval is not required.

#### **12.03 No Assignment**

- (1) No amount payable under this Agreement can be assigned and any such assignment is null and void except as expressly provided for in this Agreement.

- (2) Payment will be made to each Approved Claimant by direct deposit or by cheque mailed to their provided address. Where the Approved Claimant is deceased or is a Person Under Disability, payment will be made to their Estate Representative or Personal Representative by direct deposit or by cheque mailed to their provided address.

## **SECTION THIRTEEN**

### **CONFIDENTIALITY**

#### **13.01 Confidentiality**

- (1) Any information provided, created or obtained in the course of this Settlement, whether written or oral, will be kept confidential by the Parties, Class Counsel, the Claims Administrator, the Independent Reviewer and the Exceptions Committee, except as required to be disclosed by law, and will not be used for any purpose other than this Agreement unless otherwise agreed by the Parties.
- (2) Except as may otherwise be agreed between the Parties, the undertaking of 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.

#### **13.02 Destruction of Primary Class Member Information and Records**

The Claims Administrator will destroy all Claimants' information and documentation in its possession on a schedule beginning no sooner than two years after completing the compensation payments, in accordance with the Data Disposition Protocol to be developed by the Parties in consultation with the Claims Administrator and approved by the Court.

## SECTION FOURTEEN

### COOPERATION

#### 14.01 Cooperation with Canada

Upon execution of this Agreement, the Representative Plaintiffs appointed in *Hardy* and Class Counsel will cooperate with Canada and make best efforts to obtain approval of this Agreement and to obtain the support and participation of Primary Class Members and Family Class Members in all aspects of this Agreement.

#### 14.02 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 Settlement Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Feb 26, 2025

For the Representative Plaintiffs and  
Class Counsel  
Koskie Minsky LLP

Feb 26, 2025

For the Representative Plaintiffs and  
Class Counsel  
Merchant Law LLP

Feb 26, 2025

For the Representative Plaintiffs and  
Class Counsel  
Cooper Regel LLP

Feb 26, 2025

For the Representative Plaintiffs and  
Class Counsel  
Klein Lawyers LLP

NadeauBeaulieu, Manon

Digitally signed by  
NadeauBeaulieu, Manon  
Date: 2025.02.28 10:18:57  
-05'00'

For the Defendant  
Chief, Finances, Results and Delivery  
Officer, Crown-Indigenous Relations  
and Northern Affairs Canada

## **SCHEDULE “A”**

### **AGREEMENT IN PRINCIPLE**

Court File No. T-143-18

FEDERAL COURT OF CANADA  
CLASS PROCEEDING

BETWEEN:

ANN CECILE HARDY AND CECIL HARDY

PLAINTIFFS

- AND -

THE ATTORNEY GENERAL OF CANADA

DEFENDANT

**AGREEMENT IN PRINCIPLE**

**PREAMBLE**

1. WHEREAS Canada operated Federal Indian Hospitals for the treatment of Indigenous patients, and abuses were committed against those patients;
2. AND WHEREAS the Parties desire a fair, comprehensive, and lasting resolution of the legacy of the Federal Indian Hospital system;
3. AND WHEREAS the Parties further desire to promote healing, truth, reconciliation, education, and commemoration;
4. AND WHEREAS this class proceeding was certified on consent by order of the Honourable Justice Paul Favel, dated January 17, 2020 (the "**Certification Order**");
5. AND WHEREAS between 2019 and 2024, the Parties attended numerous meetings and mediation sessions before the Honourable Stephen T. Goudge and before the Honourable Michael L. Phelan;
6. AND WHEREAS the Parties intend to reach a full, final, and comprehensive settlement of the claims of Class Members on the terms set out below;

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7. AND WHEREAS the Parties have reached this Agreement in Principle and have committed to working towards reaching a final settlement agreement (the "Settlement Agreement") within 60 days;
8. AND WHEREAS the Parties will work in good faith to finalize the supporting documents for claims administration and notice as quickly as possible after execution of the Settlement Agreement;

**THE PARTIES AGREE AS FOLLOWS:**

**SETTLEMENT AGREEMENT**

9. This Settlement Agreement is intended to address claims of abuse at Federal Indian Hospitals. The Settlement Agreement is not intended to cover, and no compensation shall be payable for, claims involving any hospitals or medical facilities other than Federal Indian Hospitals.
10. This Settlement Agreement is not intended to cover, and no compensation shall be payable for, claims connected to medical treatment.
11. Class Members shall not release nor be deemed to release any claims connected to medical treatment. Such claims will be discontinued on a without prejudice basis as a term of the Settlement Agreement. Canada agrees that the limitation periods for such claims are suspended from the date the action was filed, January 25, 2018, to the date of discontinuance.
12. The following related proposed class proceedings will also be discontinued, subject to court approval as necessary, as a term of the Settlement Agreement:
  - (a) *Azak and Louie v. AGC* (Supreme Court of British Columbia, CFN: VLC-S-S-186736);
  - (b) *Pambrun v. AGC* (Court of King's Bench for Saskatchewan, CFN: QBG 1359/18);
  - (c) *Bull v. AGC* (Court of King's Bench of Alberta, CFN: QBG 1903.03109);

- (d) Any other existing related class actions filed by members of the plaintiffs' counsel consortium.

### **CLASS DEFINITION AND CLASS PERIOD**

13. The Classes are defined in the Certification Order as follows:
- (a) Primary Class means all persons who were admitted to an Indian Hospital during the Class Period; and
  - (b) Family Class means all persons who are a spouse or former spouse, child, grandchild or sibling of a member of the Primary Class and the spouse of a child, grandchild or sibling of a member of the Primary Class.
14. The Class Period, as defined in the Certification Order, means the period from and including the date on which Canada assumed management and control of any particular Indian Hospital, which shall be no earlier than January 1, 1936 and ending on the earlier of the following dates:
- (a) The date of closure of any particular Indian Hospital; or
  - (b) The date on which management and control of any particular Indian Hospital was effectively transferred from Canada; or
  - (c) December 31, 1981.

### **LIST OF FEDERAL INDIAN HOSPITALS**

15. The Parties have agreed on a list of Federal Indian Hospitals, and their dates of operation, set out in Schedule A to this Agreement ("**Hospital List**") for the purpose of the Settlement Agreement.

### **ELIGIBLE CLAIMANTS**

16. Only Primary Class Members admitted to a Federal Indian Hospital during the applicable date(s) of operation, as set out in the Hospital List, shall be entitled to compensation under the Compensation Grid ("**Eligible Claimants**").

17. There shall be a preliminary screening process, to be determined on a balance of probabilities, to verify each Primary Class Members' admission to a Federal Indian Hospital and the date(s) of such admission (the "**Screening Process**") before claims are referred to the Claims Administrator.
18. Subject to further negotiation, the Screening Process will permit Canada to respond to information and documentation provided in support of the Claimant's application. Canada may approve the Claimant's eligibility at any stage and refer the claim to the Claims Administrator.
19. The absence of a record of the Claimant's admission to a Federal Indian Hospital will not, in and of itself, disqualify the Claimant from eligibility.
20. The Screening Process will include an adjudication process and reconsideration by a third-party Reconsideration Officer, with all costs paid by Canada.

#### **INDIVIDUAL COMPENSATION**

21. Payments shall be made to Eligible Claimants for general damages in accordance with a grid ("**Compensation Grid**"), attached as Schedule B, composed of five categories or levels ("**Levels**").
22. The claims determination process ("**Claims Process**") will be simple, user-friendly and culturally sensitive. The intent is to minimize the burden on Claimants in pursuing their claims and to mitigate any likelihood of re-traumatization through the Claims Process.
23. In assessing an Eligible Claimant's compensation level, in the absence of reasonable grounds to the contrary, it will be assumed that an Eligible 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 Eligible Claimant shall be drawn. Any doubt as to whether a claim has been established shall be resolved in favour of the Eligible Claimant.
24. There will be a deadline to submit claims, subject to any provision in the Settlement Agreement for an extension of the claim submission deadlines.

25. There will be no limit or cap on Canada's total obligation to pay approved claims under the Compensation Grid. All approved claims will be paid fully by Canada.
26. Eligible Claimants may apply for Level 1-5 compensation in accordance with the Compensation Grid.
27. Eligible Claimants shall specify the Level of compensation claimed. An Eligible Claimant shall be awarded only the highest Level of compensation for which the Eligible Claimant is eligible. Compensation shall not be cumulative between Levels.
28. A Claimant will not be able to submit more than one claim, or amend their claim once submitted, to request a different Level of compensation. This provision does not preclude an Eligible Claimant from providing additional information or documentation in support of their submission prior to the final adjudication of their claim.
29. The Claims Administrator will have authority to award compensation at a higher or lower Level than the one specified by the Eligible Claimant in their claim form and may request further information from the Eligible Claimant with respect to the claim.
30. A reconsideration process will be developed for Eligible Claimants who were awarded a lower Level of compensation than for which they applied.
31. Payments for approved claims shall be issued upon approval by the Claims Administrator.
32. The Parties agree that all compensation payable under the Settlement Agreement will be in the nature of non-pecuniary damages and not referable to income.

#### **HEALING, WELLNESS, LANGUAGE, CULTURE AND COMMEMORATION**

33. A foundation, or other similar entity (the "**Foundation**"), will be created to further the objects of healing, wellness, language, culture, and commemoration. Canada will support the Foundation for the benefit of both the Primary and Family Class members including payment of \$150 million. The precise terms of the work of the Foundation will be determined following engagement with representatives of the parties and outside stakeholders.

34. Upon Settlement Approval, Canada will commit \$235.5 million towards an Indigenous led initiative that would have the objectives of preserving the history of Federal Indian Hospitals, supporting efforts to locate the burials of former patients connected to Federal Indian Hospitals, and undertaking research and education regarding Federal Indian Hospitals. The precise terms and work of this initiative would be determined following engagement with representatives of the parties and outside stakeholders.

#### **NOTICE AND ADMINISTRATION**

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

#### **CLASS MEMBER SUPPORT AND ASSISTANCE**

36. Culturally sensitive health, information, and other supports will 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.
37. Upon Settlement Approval, Canada will commit to providing Indigenous Services Canada with \$150 million, under existing programming, to support Class Members health and wellness throughout the implementation of the Settlement Agreement.

#### **RELEASES**

38. With the exception of claims connected to medical treatment, which shall be discontinued, the Class Members will 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**

39. The Settlement Agreement is subject to approval by the Federal Court.

#### **EXCEPTIONAL CIRCUMSTANCES**

40. The Parties agree to establish a mechanism to consider exceptional circumstances that may arise out of the Claims Process.

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## **SOCIAL BENEFITS**

41. 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.
42. 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 the Canada Pension Plan.

## **FAMILY CLASS**

43. The Family Class Members shall not receive direct compensation under the Settlement Agreement; however, such claims shall be recognized and addressed by the indirect compensation made available through reconciliation projects supported by the Foundation.

## **CLAIMS FOR DECEASED PRIMARY CLASS MEMBERS**

44. Claims can be made where the deceased Primary Class Member was alive on or after January 25, 2016.
45. 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 deceased Primary Class Member even where the deceased Primary Class Member did not leave a will.

## **INDIVIDUAL LEGAL SERVICES TO CLASS MEMBERS**

46. If a Claimant has been assisted by a lawyer, Canada will pay the Claimant's lawyer an amount up to 5% percent of the Claimant's award plus applicable taxes without additional Court approval beyond the approval of the Settlement Agreement. The Claims

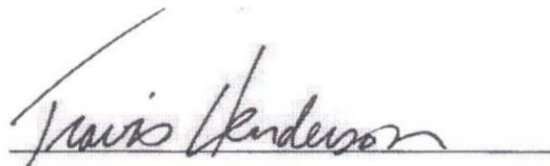
Administrator will conduct due diligence prior to the issuance of payments. In instances of concern, the Claims Administrator will withhold payment until the completion of additional due diligence is undertaken, which may include the request for additional documents.

47. Canada will pay up to an additional 5% percent of the Claimant's 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.

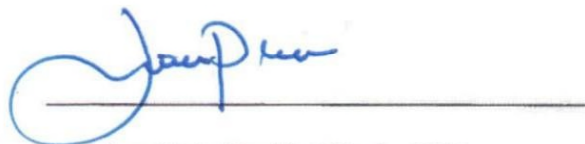
**LEGAL FEES FOR CLASS COUNSEL AND HONORARIA FOR REPRESENTATIVE PLAINTIFFS**

48. The Parties will enter into a separate agreement ("**Fee Agreement**") as to the legal fees, disbursements, and related taxes owing to Class counsel in relation to the work on the common issues up to the date of Settlement Approval and for the benefit of the Class Members during the implementation of the settlement, and honoraria for the representative plaintiffs. Approval of the Settlement Agreement is not contingent on approval of the Fee Agreement.
49. This Settlement 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.

**Signed this 13<sup>th</sup> day of December 2024**



Travis Henderson  
On behalf of The Attorney General of Canada



Jonathan Ptak, Koskie Minsky LLP  
On behalf of the Plaintiffs

**SCHEDULE "A" – LIST OF FEDERAL INDIAN HOSPITALS**

	<b>HOSPITAL</b>	<b>OPERATIVE DATES</b>	<b>STATUS OF AGREEMENT</b>
1)	<b>Blackfoot Indian Hospital</b>	January 1, 1936- April 1, 1976	Agreed
2)	<b>Blood Indian Hospital</b>	January 1, 1936- December 31, 1981	Agreed
3)	<b>Charles Camsell Indian Hospital</b>	November 1, 1945-December 1, 1980	Agreed
4)	<b>Hobbema Indian Hospital</b>	January 1, 1952- June 30, 1963	Agreed
5)	<b>Morley Stoney Indian Hospital</b>	January 1, 1936- December 31, 1960	Agreed
6)	<b>Peigan Indian Hospital</b>	January 1, 1936- December 31, 1954	Agreed
7)	<b>Sarcee Indian Hospital</b>	January 1, 1936- March 31, 1946	Agreed
8)	<b>Coqualeetza Indian Hospital</b>	September 1, 1941-September 30, 1969	Agreed
9)	<b>Miller Bay Indian Hospital</b>	September 16, 1946-October 1, 1971	Agreed
10)	<b>Nanaimo Indian Hospital</b>	September 1, 1946-November 20, 1966	Agreed
11)	<b>Brandon Indian Hospital</b>	June 15, 1947- January 31, 1961	Agreed
12)	<b>Clearwater Lake Indian Hospital</b>	September 24, 1945-February 28, 1965	Agreed
13)	<b>Dynevor Indian Hospital</b>	September 1, 1939-November 1, 1957	Agreed
14)	<b>Fisher River Indian Hospital</b>	July 6, 1940- June 18, 1973	Agreed
15)	<b>Fort Alexander Indian Hospital</b>	December 1, 1937-November 18, 1964	Agreed
16)	<b>Norway House Indian Hospital</b>	January 1, 1936- December 31, 1981	Agreed
17)	<b>Percy E. Moore Hospital</b>	June 18, 1973- December 31, 1981	Agreed

	HOSPITAL	OPERATIVE DATES	STATUS OF AGREEMENT
18)	Tobique Indian Hospital	January 1, 1936-March 31, 1950	Agreed
19)	Edzo Cottage	August 7, 1974-December 31, 1981	Agreed
20)	Fort Norman Indian Hospital	September 1, 1943-January 21, 1946	Agreed
21)	Fort Simpson Indian Hospital	September 20, 1973-December 31, 1981	Agreed
22)	Frobisher Bay Indian Hospital	April 1, 1959-December 31, 1981	Agreed
23)	Inuvik Indian Hospital	January 13, 1961-December 31, 1981	Agreed
24)	Watson Lake	March 1, 1966-December 31, 1981	Agreed
25)	Lady Willington Indian Hospital	January 1, 1936-September 30, 1968	Agreed
26)	Manitowaning Indian Hospital	January 1, 1941-March 31, 1951; January 1, 1959-March 31, 1962	Agreed
27)	Moose Factory Indian Hospital	September 9, 1950-December 31, 1981	Agreed
28)	Sioux Lookout Indian Hospital	December 12, 1949-December 31, 1981	Agreed
29)	Squaw Bay Indian Hospital	May 1, 1942-May 31, 1953	Agreed
30)	Fort Qu'Appelle Indian Hospital	May 1, 1936-December 31, 1981	Agreed
31)	North Battleford Indian Hospital	May 15, 1949-August 26, 1977	Agreed
32)	Whitehorse Indian Hospital	April 1, 1959-December 31, 1981	Agreed
33)	Mayo Hospital	April 1, 1970-December 31, 1981	Agreed

## SCHEDULE "B" – COMPENSATION GRID

FOR GREATER CERTAINTY, THE INCIDENTS LISTED BELOW SHALL BE COMPENSABLE ONLY IF THEY OCCURRED WHILE ADMITTED AT A FEDERAL INDIAN HOSPITAL IDENTIFIED IN SCHEDULE "A" AND DID NOT CONSTITUTE MEDICAL TREATMENT.

FOR PRIMARY CLASS MEMBERS OVER THE AGE OF 18 AT THE TIME OF THE INCIDENT, INCIDENTS OF A SEXUAL NATURE MUST HAVE BEEN UNWANTED OR WITHOUT THE PRIMARY CLASS MEMBER'S CONSENT.

### Level 1 - \$10,000

- Sexual comments or sexualized provocation; OR
- Unreasonable or disproportionate acts of discipline or punishment; OR
- One or more incidents of mocking, denigration (e.g. belittling or abusive language), or humiliation (e.g. shaming); OR
- Threats of violence or intimidating statements or gestures; OR
- One or more incidents of abuse, such as:
  - Unreasonable confinement unrelated to medical treatment and interventions; OR
  - Being forced to consume alcohol and/or illegal substances, excluding the administration of necessary medication including narcotics.

### Level 2 - \$50,000

- One or more incidents of:
  - Nude photographs taken of the primary class member with no medical purpose (such as for medical treatment or interventions including X-rays); OR
  - Non-patients exposing their genitals or other private parts to primary class member; OR
  - Touching genitals or other private parts (directly or through clothing), excluding touching for a medical purpose (e.g. with a thermometer, scope, or other medical device); OR
  - Fondling or kissing; OR
  - Simulated intercourse through clothing; OR

- One or more incidents of physical assault causing:
  - Minor impairment or disfigurement that was not permanent (e.g. loss of consciousness, broken bones, loss of or damage to teeth, black eye, bruise, abrasion, laceration, fracture) excluding extractions of teeth or minor impairment or disfigurement that is the result of medical treatment or interventions.

### **Level 3 - \$100,000**

- One incident of:
  - Masturbation; OR
  - Oral or attempted oral intercourse; OR
  - Attempted penetration (including vaginal or anal, digital penetration or penetration with an object) excluding attempted penetration for a medical purpose (e.g. with a thermometer, scope, or other medical device); OR
- Recurring (pattern or repetitive) physical assaults causing:
  - Minor impairment or disfigurement that was not permanent (e.g. loss of consciousness, broken bones, loss of or damage to teeth, black eye, bruise, abrasion, laceration, fracture) excluding extractions of teeth or minor impairment or disfigurement that is the result of medical treatment or interventions.

### **Level 4 - \$150,000**

- One incident of penetration (including vaginal or anal, digital penetration or penetration with an object) excluding penetration for a medical purpose (e.g. with a thermometer, scope, or other medical device); OR
- Two or more incidents of:
  - Attempted oral intercourse; OR
  - Attempted penetration (including vaginal or anal, digital attempted penetration or attempted penetration with an object) excluding attempted penetration for a medical purpose (e.g. with a thermometer, scope, or other medical device); OR
- One or more physical assaults causing permanent or long-term mental or physical impairment, injury, or disfigurement.

**Level 5 - \$200,000**

- Two or more incidents of:
  - Masturbation; OR
  - Oral intercourse; OR
  - Penetration (including vaginal or anal, digital penetration or penetration with an object) excluding penetration for a medical purpose (e.g. with a thermometer, scope, or other medical device); OR
- Any pregnancy resulting from an incident of sexual assault (including pregnancy that is interrupted by miscarriage or therapeutic abortion); OR
- One or more physical assaults causing permanent loss of mobility or brain injury.

**SCHEDULE “B”**  
**COMPENSATION GRID**

## **SCHEDULE "B" – COMPENSATION GRID**

**FOR GREATER CERTAINTY, THE INCIDENTS LISTED BELOW SHALL BE COMPENSABLE ONLY IF THEY OCCURRED WHILE ADMITTED AT A FEDERAL INDIAN HOSPITAL IDENTIFIED IN SCHEDULE "A" AND DID NOT CONSTITUTE MEDICAL TREATMENT.**

**FOR PRIMARY CLASS MEMBERS OVER THE AGE OF 18 AT THE TIME OF THE INCIDENT, INCIDENTS OF A SEXUAL NATURE MUST HAVE BEEN UNWANTED OR WITHOUT THE PRIMARY CLASS MEMBER'S CONSENT.**

### **Level 1 - \$10,000**

- Sexual comments or sexualized provocation; OR
- Unreasonable or disproportionate acts of discipline or punishment; OR
- One or more incidents of mocking, denigration (e.g. belittling or abusive language), or humiliation (e.g. shaming); OR
- Threats of violence or intimidating statements or gestures; OR
- One or more incidents of abuse, such as:
  - Unreasonable confinement unrelated to medical treatment and interventions; OR
  - Being forced to consume alcohol and/or illegal substances, excluding the administration of necessary medication including narcotics.

### **Level 2 - \$50,000**

- One or more incidents of:
  - Nude photographs taken of the primary class member with no medical purpose (such as for medical treatment or interventions including X-rays); OR
  - Non-patients exposing their genitals or other private parts to primary class member; OR
  - Touching genitals or other private parts (directly or through clothing), excluding touching for a medical purpose (e.g. with a thermometer, scope, or other medical device); OR
  - Fondling or kissing; OR
  - Simulated intercourse through clothing; OR

- One or more incidents of physical assault causing:
  - Minor impairment or disfigurement that was not permanent (e.g. loss of consciousness, broken bones, loss of or damage to teeth, black eye, bruise, abrasion, laceration, fracture) excluding extractions of teeth or minor impairment or disfigurement that is the result of medical treatment or interventions.

### **Level 3 - \$100,000**

- One incident of:
  - Masturbation; OR
  - Oral or attempted oral intercourse; OR
  - Attempted penetration (including vaginal or anal, digital penetration or penetration with an object) excluding attempted penetration for a medical purpose (e.g. with a thermometer, scope, or other medical device); OR
- Recurring (pattern or repetitive) physical assaults causing:
  - Minor impairment or disfigurement that was not permanent (e.g. loss of consciousness, broken bones, loss of or damage to teeth, black eye, bruise, abrasion, laceration, fracture) excluding extractions of teeth or minor impairment or disfigurement that is the result of medical treatment or interventions.

### **Level 4 - \$150,000**

- One incident of penetration (including vaginal or anal, digital penetration or penetration with an object) excluding penetration for a medical purpose (e.g. with a thermometer, scope, or other medical device); OR
- Two or more incidents of:
  - Attempted oral intercourse; OR
  - Attempted penetration (including vaginal or anal, digital attempted penetration or attempted penetration with an object) excluding attempted penetration for a medical purpose (e.g. with a thermometer, scope, or other medical device); OR
- One or more physical assaults causing permanent or long-term mental or physical impairment, injury, or disfigurement.

**Level 5 - \$200,000**

- Two or more incidents of:
  - Masturbation; OR
  - Oral intercourse; OR
  - Penetration (including vaginal or anal, digital penetration or penetration with an object) excluding penetration for a medical purpose (e.g. with a thermometer, scope, or other medical device); OR
- Any pregnancy resulting from an incident of sexual assault (including pregnancy that is interrupted by miscarriage or therapeutic abortion); OR
- One or more physical assaults causing permanent loss of mobility or brain injury.

## **SCHEDULE “C”**

### **CERTIFICATION ORDER**

Federal Court



Cour fédérale

**Date: 20200117****Docket: T-143-18****Citation: 2020 FC 73****Ottawa, Ontario, January 17, 2020****PRESENT: Mr. Justice Favel****PROPOSED CLASS PROCEEDING****BETWEEN:****ANN CECILE HARDY****Plaintiff****and****THE ATTORNEY GENERAL OF CANADA****Defendant****ORDER**

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

- a) Certifying this action as a class proceeding;
- b) Certifying the classes;
- c) Appointing the representative plaintiff;
- d) Setting out the common issues of fact or law for the classes; and
- e) Appointing class counsel;

**AND UPON** considering that this actions concerns allegations by the Plaintiff that Canada breached duties owed to persons admitted to Indian Hospitals;

**AND UPON** considering that the Plaintiff and the Defendant have consented to the form of a draft order;

**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 proceeding on the proposed terms;

**THIS COURT ORDERS that:**

1. This action is hereby certified as a class proceeding against the Attorney General of Canada.

2. The Classes are defined as follows:

Primary Class means all persons who were admitted to an Indian Hospital during the Class Period; and

Family Class means all persons who are a spouse or former spouse, child, grandchild or sibling of a member of the Primary Class and the spouse of a child, grandchild or sibling of a member of the Primary Class.

(“Class Members”)

3. The Class Period means the period from and including the date on which Canada assumed management and control of any particular Indian Hospital, which shall be no earlier than January 1, 1936 and ending on the earlier of the following dates:

- a) The date of closure of any particular Indian Hospital; or
  - b) The date on which management and control of any particular Indian Hospital was effectively transferred from Canada; or
  - c) December 31, 1981.
4. The representative Plaintiff of the Primary Class hereby appointed is Ann Cecile Hardy.
  5. The representative Plaintiff of the Family Class hereby appointed is Cecil Hardy.
  6. This proceeding is certified on the basis of the following common issues:
    - a) Did Canada owe duties to Class Members in respect of Indian Hospitals?
    - b) If the answer to a) is yes, did Canada breach any of those issues?
  7. Koskie Minsky LLP, Cooper Regel, a member of Masuch Law LLP, Klein Lawyers LLP and Merchant Law Group LLP are appointed as Class Counsel.
  8. The relief sought by the Class Members is damages and declarations.
  9. The Parties shall, as part of a joint litigation plan, specify the time and manner for Class Members to opt out of the class proceeding, and shall bring a motion in writing seeking to amend this Order to reflect the opt out provisions, all pursuant to Rules 334.17(1)(f) and 334.19 of the *Federal Courts Rules*.
  10. No costs are payable on this motion for certification in accordance with Rule 334.39 of the *Federal Courts Rules*.

"Paul Favel"

\_\_\_\_\_  
Judge

**SCHEDULE “D”**  
**LIST OF FEDERAL INDIAN HOSPITALS**

**SCHEDULE D**  
**LIST OF FEDERAL INDIAN HOSPITALS**

	<b>HOSPITAL</b>	<b>DATES OF OPERATION UNDER MANAGEMENT AND CONTROL BY CANADA</b>
1.	Blackfoot Indian Hospital	January 1, 1936- April 1, 1976
2.	Blood Indian Hospital	January 1, 1936- December 31, 1981
3.	Charles Camsell Indian Hospital	November 1, 1945- December 1, 1980
4.	Hobbema Indian Hospital	January 1, 1952- June 30, 1963
5.	Morley Stoney Indian Hospital	January 1, 1936- December 31, 1960
6.	Peigan Indian Hospital	January 1, 1936- December 31, 1954
7.	Sarcee Indian Hospital	January 1, 1936- March 31, 1946
8.	Coqualeetza Indian Hospital	September 1, 1941- September 30, 1969
9.	Miller Bay Indian Hospital	September 16, 1946- October 1, 1971
10.	Nanaimo Indian Hospital	September 1, 1946- November 20, 1966
11.	Brandon Indian Hospital	June 15, 1947- January 31, 1961
12.	Clearwater Lake Indian Hospital	September 24, 1945- February 28, 1965
13.	Dynevov Indian Hospital	September 1, 1939- November 1, 1957
14.	Fisher River Indian Hospital	July 6, 1940- June 18, 1973
15.	Fort Alexander Indian Hospital	December 1, 1937- November 18, 1964

	<b>HOSPITAL</b>	<b>DATES OF OPERATION UNDER MANAGEMENT AND CONTROL BY CANADA</b>
16.	Norway House Indian Hospital	January 1, 1936- December 31, 1981
17.	Percy E. Moore Hospital	June 18, 1973- December 31, 1981
18.	Tobique Indian Hospital	January 1, 1936- March 31, 1950
19.	Edzo Cottage	August 7, 1974- December 31, 1981
20.	Fort Norman Indian Hospital	September 1, 1943- January 21, 1946
21.	Fort Simpson Indian Hospital	September 20, 1973- December 31, 1981
22.	Frobisher Bay Indian Hospital	April 1, 1959- December 31, 1981
23.	Inuvik Indian Hospital	January 13, 1961- December 31, 1981
24.	Watson Lake	March 1, 1966- December 31, 1981
25.	Lady Willington Indian Hospital	January 1, 1936- September 30, 1968
26.	Manitowaning Indian Hospital	January 1, 1941- March 31, 1951 January 1, 1959- March 31, 1962
27.	Moose Factory Indian Hospital	September 9, 1950- December 31, 1981
28.	Sioux Lookout Indian Hospital	December 12, 1949- December 31, 1981
29.	Squaw Bay Indian Hospital	May 1, 1942-May 31, 1953
30.	Fort Qu'Appelle Indian Hospital	May 1, 1936- December 31, 1981
31.	North Battleford Indian Hospital	May 15, 1949- August 26, 1977
32.	Whitehorse Indian Hospital	April 1, 1959- December 31, 1981

	HOSPITAL	DATES OF OPERATION UNDER MANAGEMENT AND CONTROL BY CANADA
33.	Mayo Hospital	April 1, 1970- December 31, 1981

## **SCHEDULE “E”**

**FRESH AS AMENDED STATEMENT OF CLAIM IN ANN CECILE  
HARDY ET AL V. THE ATTORNEY GENERAL OF CANADA (T-143-  
18), MARCH 10, 2020**

Court File No.: T-143-18

**FEDERAL COURT OF CANADA**

**PROPOSED CLASS PROCEEDING**

**BETWEEN :**

**ANN CECILE HARDY and CECIL HARDY**

Plaintiffs

- and -

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**FRESH AS AMENDED STATEMENT OF CLAIM**

**TO THE DEFENDANT**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

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

Issued by: \_\_\_\_\_  
(Registry Officer)

**Address of local office:** 180 Queen Street West, Suite 200  
Toronto, Ontario  
M5V 1Z4

**TO: The Attorney General of Canada**  
Department of Justice Canada  
130 King Street West, Suite 3400, Box 36  
Toronto, Ontario M5X 1K6

## CLAIM

### A. RELIEF SOUGHT BY THE PLAINTIFFS AGAINST CANADA

1. The plaintiffs claims on behalf of themselves and the other members of the proposed class:

- (a) an order certifying this action as a class proceeding and appointing Anne Cecile Hardy as the representative plaintiff for the Primary Class and Cecil Hardy as the representative plaintiff for the Family Class pursuant to rule 334.16 of the *Federal Court Rules*, SOR/98-106 (the "*Federal Court Rules*");
- (b) a declaration that Canada owed a fiduciary duty and a duty of care to the plaintiff Anne Cecile Hardy and all Primary Class members in relation to the funding, oversight, operation, supervision, control, maintenance and support of Indian Hospitals;
- (c) a declaration that Canada was negligent in the funding, oversight, operation, supervision, control, maintenance and support of Indian Hospitals;
- (d) a declaration that Canada was in breach of its fiduciary duty to the plaintiff Anne Cecile Hardy and Primary Class members as a consequence of its funding, operation, supervision, control, maintenance, oversight and support of Indian Hospitals;
- (e) a declaration that the defendant is vicariously liable to the plaintiff Anne Cecile Hardy and the Primary Class members for the physical, sexual and psychological abuse by its servants, employees, representatives and agents;
- (f) a declaration that Canada is liable to the plaintiff Anne Cecile Hardy and Primary Class members for damages caused by its breach of its fiduciary duty and for negligence in relation to the funding, operation, supervision, control, maintenance, oversight and support of Indian Hospitals;
- (g) damages for vicarious liability, negligence and breach of fiduciary duty in the amount of \$1 billion;
- (h) punitive and exemplary damages in the amount of \$100 million;
- (i) on behalf of the Family Class members, damages pursuant to the *Family Law Act*, R.S.O. 1990 c. F-3 and equivalent legislation in other provinces and territories in Canada;
- (j) prejudgment and post-judgment interest pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7;

- (k) costs of this action on a substantial indemnity scale or in an amount that provides full indemnity;
- (l) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to rule 334.38 of the *Federal Courts Rules*; and
- (m) such further and other relief as this Honourable Court deems just and appropriate in all the circumstances.

## B. DEFINITIONS

2. The following definitions apply for the purposes of this Statement of Claim:

- (a) "**Aboriginal**" or "**Aboriginal Person(s)**" means any person whose rights are recognized and affirmed by the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act, 1982* (U.K.), 1982. c. 11, specifically, Indian, Inuit and Métis peoples of Canada;
- (b) "**Agents**" mean the servants, contractors, officers and employees of Canada and the operators, managers, administrators, doctors, nurses, clinicians and all other staff members of Indian Hospitals;
- (c) "**Canada**" means the defendant in this proceeding as represented by the Attorney General of Canada;
- (d) "**Class Period**" means the period from January 1, 1936 and ending on the earlier of the following dates:
  - (i) the date of closure of any particular Indian Hospital; or
  - (ii) the date on which management and control of any particular Indian Hospital was effectively transferred from Canada; or
  - (iii) December 31, 1981;
- (e) "**Family Class**" means all persons who are a spouse or former spouse, child, grandchild or sibling of a member of the Primary Class and the spouse of a child, grandchild or sibling of a Primary Class member;
- (f) "**Indian Advisory Committee**" means a joint committee of the Canadian Tuberculosis Association comprised of federal and provincial bureaucrats and tuberculosis sanatorium;
- (g) "**Indian Health Services**" or "**IHS**" means the department of Canada responsible for the health care of Aboriginal Persons;
- (h) "**Primary Class**" means all persons who were admitted to an Indian Hospital during the Class Period; and

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- (i) **"Sanatorium/Sanitoria"** means provincially-mandated care facilities predominantly designated for non-Aboriginal Persons with the mandate of curing tuberculosis.

### **C. OVERVIEW OF THIS ACTION**

3. This action concerns the defendant's conduct in its operation of Indian Hospitals during the Class Period. During that time, the defendant had sole jurisdiction over the operation of the Indian Hospitals.

4. The defendant established, funded, oversaw, operated, supervised, controlled, maintained and supported Indian Hospitals through common national policies and procedures.

5. Indian Hospitals, as operated by the defendant, were substandard facilities intended to segregate Aboriginal Persons from the rest of the Canadian population.

6. The defendant forcibly confined Primary Class members to Indian Hospitals where they were kept in overcrowded, poorly staffed and unsanitary facilities where they suffered consistent physical and sexual abuse.

7. The defendant was negligent and breached its fiduciary duty owed to the Primary Class members.

8. The defendant's systemic negligence and breach of fiduciary duty resulted in enormous harm to the Primary Class and the Family Class.

### **D. THE PARTIES**

#### **a) The Representative Plaintiffs and the Class**

9. The representative plaintiff, Ann Cecile Hardy, resides in Edmonton, Alberta and is a member of the Métis Nation. Hardy was admitted as a patient in the Charles Camsell Indian Hospital ("**Charles Camsell**") in 1969 when she was ten (10) years old.

10. The representative plaintiff, Cecil Hardy, resides in Edmonton Alberta. He is a family member of a Primary Class member.

11. The plaintiffs brings this action pursuant to the *Federal Court Rules* on her own behalf and on behalf of the following Classes:

- (a) all persons who were admitted to an Indian Hospital during the Class Period ("**Primary Class**"); and
- (b) all persons who are a spouse or former spouse, child, grandchild or sibling of a member of the Primary Class and the spouse of a child, grandchild or sibling of a Primary Class member ("**Family Class**").

**b) The Defendant**

12. The defendant, Canada, is represented in this proceeding by the Attorney General of Canada pursuant to section 23 of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50 ("*Crown Liability and Proceedings Act*").

13. At all material times, Canada was responsible for the maintenance, funding, operation, oversight and/or management of Indian Hospitals.

14. Canada employed and/or authorized its Agents to operate, manage, and oversee Indian Hospitals. It also gave instructions to such Agents as to the manner in which Indian Hospitals were to function and operate.

15. Canada's maintenance, funding, operation, oversight and/or management of Indian Hospitals, through its Agents, breached its duty of care owed to Primary Class members. Canada was also in breach of its fiduciary duty owed to Primary Class members.

16. By virtue of its responsibility to ensure the safety, care and protection of Primary Class members and its authority and control over its Agents, and in accordance with section 3 of the *Crown Liability and Proceedings Act*, Canada is vicariously liable for the acts and omissions of its Agents in respect of the maintenance, funding, operation, oversight and/or management of Indian Hospitals.

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17. Furthermore, as many of the Primary Class members were vulnerable children when they were taken from their homes and families, Canada assumed *loco parentis* responsibility for the care and supervision of those Primary Class members during the Class Period.

## **E. THE INDIAN HOSPITAL SYSTEM**

### **a) Background**

18. In or around 1928, jurisdiction over the healthcare of Aboriginal Persons in Canada fell under IHS, which initially provided funding, together with provincial governments, to community hospitals. These community hospitals maintained segregated wards meant only for Aboriginal Persons.

19. In or around 1936, IHS became a branch of the federal Department of Mines and Resources.

### **b) The Tuberculosis Epidemic**

20. The tuberculosis disease ("TB") is a communicable disease that attacks the lungs and causes coughing, sneezing, headaches and weakness. It can result in premature death.

21. In or around the 1920s and 1930s, TB began to spread rapidly among Aboriginal Persons at a rate far higher than among non-Aboriginal Persons. In order to develop a vaccine to combat TB, the provinces of Manitoba and Saskatchewan authorized hospitals to carry out TB vaccine trials on Aboriginal children.

22. In 1936, the Province of Saskatchewan established the Fort Qu'Appelle Indian Hospital to test the potential TB vaccine, *bacillus-calmette-guerin*, on Aboriginal children.

23. In 1937, the Indian Advisory Committee recommended that an Indian Hospital program be established under Canada's jurisdiction to isolate Aboriginal patients so that TB would not spread among non-Aboriginal Persons.

24. The Indian Advisory Committee's recommendation to create a separate Indian Hospital system resulted initially in the conversion of an aging infirmary building into the Dynevor Indian Hospital ("Dynevor"). Dynevor was an unsanitary facility with crumbling infrastructure in which 29% of its patients died in the first five years after it was established.

**c) Department of National Health and Welfare**

25. On November 1, 1945, by Order in Council P.C. 6495, IHS was transferred from the Department of Mines and Resources to the Department of National Health and Welfare ("DNHW"). Under the DNHW, numerous other Indian Hospitals were created where Aboriginal Persons were forcibly segregated from the rest of the Canadian population. Initially, Indian Hospitals were limited to Aboriginal Persons who had contracted or were suspected to have contracted TB. Subsequently, Aboriginal Persons with other illnesses were also treated. At all material times, admission to Indian Hospitals was exclusively based on Aboriginal status.

26. The DNHW's central aim was to ensure uniform policies and practices were carried out at Indian Hospitals across the country. This is exemplified in its 1964 policy document entitled, *Health Services for Indians*, which states, "[t]he Indian Health Services program is national in scope and relatively uniform across Canada, having regard for the particular requirements in each area. It does not, and is not intended to resemble individual health unit programs which may exist for similarly situated non-Indians."

27. Over the course of the Class Period, Canada operated, *inter alia*, the following Indian Hospitals:

- (a) Tobique Indian Hospital (NB);
- (b) Parc Savard Indian Hospital (QC);
- (c) Manitowaning Indian Hospital (ON);
- (d) Lady Willington Indian Hospital (ON);
- (e) Squaw Bay Indian Hospital (ON);

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- (f) Moose Factory Indian Hospital (ON);
- (g) Sioux Lookout Indian Hospital (ON);
- (h) Brandon Indian Hospital (MB);
- (i) Dynevor Indian Hospital (MB);
- (j) Fisher River Indian Hospital (MB);
- (k) Fort Alexander Indian Hospital (MB);
- (l) Clearwater Lake Indian Hospital (MB);
- (m) Norway House Indian Hospital (MB);
- (n) Crerar Indian Hospital (MN);
- (o) Fort Qu'Appelle Indian Hospital (SK);
- (p) North Battleford Indian Hospital (SK);
- (q) Peigan Indian Hospital (AB);
- (r) Sarcee Indian Hospital (AB);
- (s) Blood Indian Hospital (AB);
- (t) Morley / Stoney Indian Hospital (AB);
- (u) Hobbema Indian Hospital (AB);
- (v) Blackfoot Indian Hospital (AB);
- (w) Charles Camsell Indian Hospital (AB);
- (x) Coqualeetza Indian Hospital (BC);
- (y) Miller Bay Indian Hospital (BC);
- (z) Nanaimo Indian Hospital (BC);
- (aa) Fort Simpson Hospital (NWT);
- (bb) Fort Norman Indian Hospital (NWT);
- (cc) Frobisher Bay Hospital (NWT);
- (dd) Inuvik Hospital (NWT); and
- (ee) Whitehorse Hospital (YK).

28. Under the DNHW and any other similarly-situated federal department, as may be applicable, all of the above Indian Hospitals operated under the same or substantially similar policies and procedures in providing health care to Aboriginal Persons.

29. The policies and procedures promulgated by the DNHW or other departments through the IHS were carried out as part of their mandate as Agents of the Government of Canada.

30. Canada owned and operated Indian Hospitals until they were closed or, otherwise, transferred to the jurisdiction of the provinces. The last Indian Hospital was closed or transferred to provincial jurisdiction in 1981.

#### **d) The *Indian Act* and its *Regulations***

31. In 1953, Canada enacted the *Indian Health Regulations* (the "***Regulations***") to the *Indian Act*, S.C. 1951, c. 29 outlining common policies to be undertaken at Indian Hospitals across the country. The *Regulations* were administered through the centralized office of the Indian Superintendent with Indian agents and medical officers present at each Indian Hospital.

32. The *Regulations* required reporting to Indian Hospitals if the Indian Superintendent or the individual had reason to believe that he or she had contracted an infectious disease. There were no comparable obligations placed upon non-Aboriginal Persons requiring them to be admitted into non-Indian Hospitals.

33. Persons admitted to an Indian Hospital were required to remain in the hospital until being discharged. If a person tried to leave an Indian Hospital without the express permission of the Indian Superintendent or a medical officer, that person would be arrested, returned to the Indian Hospital and held in isolation. There were no comparable provisions of detention and return for non-Aboriginal Persons utilizing non-Indian Hospitals.

34. Those found to have contravened any provision of the *Regulations* were subject to imprisonment and/or a fine. Non-Aboriginal Persons were not subject to comparable penalties.

#### **e) Conditions and Practices in Indian Hospitals**

35. Indian Hospitals were facilities that were substandard, ill equipped, overcrowded and inadequately staffed. According to the Royal Commission on Government Organization in 1962, "the quality of care of Indian and Northern Health Services hospitals is not comparable with that provided in community hospitals in the same area ... moreover, it is evident that the Department [DNHW] finds it hard to get suitable personnel, particularly in the lower ranks."

36. As discussed below, during the Class Period, Canada segregated Aboriginal Persons in substandard hospital facilities where they were repeatedly physically and sexually abused. Aboriginal Persons were unable to leave Indian Hospitals on their own accord and were forcibly detained, isolated and, at times, restrained to their beds.

37. Canada negligently operated Indian Hospitals in a manner that resulted in harm to Primary Class members. The following are examples of common and systemic substandard conditions and inappropriate practices in Indian Hospitals during the Class Period.

#### **i) Physical and Sexual Abuse**

38. Throughout the Class Period, due to the defendant's systemic failures, the Primary Class members were subjected by Canada and its Agents to widespread, common and systemic physical and sexual abuse.

39. Common incidents of physical abuse incurred by Primary Class members include, but are not limited to:

- (a) beating with rods and sticks;
- (b) isolation in hospital rooms for prolonged periods of time;

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- (c) food and drink deprivation without any medical reason;
- (d) physical restraint to hospital beds; and
- (e) forced feeding and forcibly requiring Class Members to eat their own vomit.

40. In addition to physical abuse suffered by Primary Class members, there was widespread and common sexual abuse carried out by hospital staff members who were Agents of the defendant. The defendant failed to implement appropriate policies and procedures to prevent such harm and, to the contrary, permitted it to occur.

41. The defendant also failed to establish and implement mechanisms through which Primary Class members could complain and seek redress against hospital staff members, who were Agents of the defendant.

42. The defendant failed to establish and implement adequate policies and procedures to oversee the actions of hospital staff towards vulnerable Primary Class members, which could have prevented the widespread physical and sexual abuse that took place in Indian Hospitals.

43. The defendant's failure to establish and implement adequate policies and procedures resulted in Primary Class members being physically harmed and emotionally and psychologically traumatized.

44. The defendant's systemic failures created a toxic environment in which physical and sexual abuse was rampant.

## **ii) Forced Confinement and Restraints**

45. In addition to being forcibly detained in Indian Hospitals, many Primary Class members were inappropriately restrained to their hospital beds without any medical reason. Primary Class members were, at times, tied down by Indian Hospital staff to their beds for days, weeks or even months at a time and only untied for mandatory meals and washroom breaks. In some cases, Primary Class members were fitted with body casts that prevented movement for months or years.

46. As a result of being tied to their beds or from body casting for a prolonged period of time, Primary Class members were unable to sit up in their beds, leave their rooms, interact with others or even take care of their basic hygienic needs.

47. Primary Class members were restrained to their hospital beds against their will without medical justification for doing so. Forced bed confinement continued in Indian Hospitals for Aboriginal patients long after the practice had been abandoned by medical practitioners treating non-Aboriginal patients for TB.

48. Starting in the 1940s, antibiotic drug treatment for TB was used in Canada for non-Aboriginal patients who could be treated at home without the need to be confined to a bed.

### **iii) Unsanitary and Dangerous Facilities**

49. Many buildings in which Indian Hospitals operated during the Class Period were converted military barracks owned and/or operated by the Canadian or United States governments during the Second World War.

50. Indian Hospitals were old and crumbling buildings that lacked the proper sanitation to be operated as hospitals. They also often lacked proper plumbing, electricity and infrastructure. As a result, Primary Class members suffered harm to their health and well-being.

### **iv) Poorly Trained Staff**

51. The defendant employed staff in Indian Hospitals who were not adequately trained to provide the necessary health care services to Primary Class members.

52. According to the Royal Commission on Government Organization, from 1957-1962, of the 117 physicians who joined the DNHWS, 47% were graduates of foreign medical schools with the majority of those individuals not having passed the requisite Canadian licensing examinations. Therefore, those physicians were not qualified to practice medicine in Canada yet were allowed to do so in Indian Hospitals.

53. In addition, during the Class Period, most medical and administrative staff in Indian Hospitals did not speak any Aboriginal languages and did not have an adequate understanding of Aboriginal cultures, beliefs, understandings, protocols and/or practices. As a result, Indian Hospital staff members were unable to properly communicate with Primary Class members and their families, receive instructions on medical care and carry out their responsibilities with the requisite standard required of medical and/or administrative hospital staff in the circumstances.

#### **F. THE PLAINTIFFS' EXPERIENCES**

54. The representative plaintiff, Ann Cecile Hardy, was a patient in Charles Camsell from January to May 1969 when she was 10 years old. She was admitted after contracting TB.

55. While admitted as a patient in Charles Camsell, Ann was repeatedly sexually abused by medical technicians at the hospital. She also witnessed other patients being sexually abused.

56. After witnessing her roommate undergo repeated sexual abuse by a hospital staff member, Ann was physically threatened by that staff member to not report, or otherwise seek redress.

57. Ann was released from Charles Camsell in May 1969. As a result of her experiences as a patient in the hospital, Ann was left physically, emotionally and psychologically battered. She underwent therapy and counselling for several years after her release from Charles Camsell and continues to suffer flashbacks and psychological harm.

58. The representative plaintiff, Cecil Hardy, is married to Ann Hardy, a member of the Primary Class.

59. Mr. Hardy has incurred, among other things, loss of support, guidance, care and companionship that he might reasonably have expected to receive from his spouse.

## **G. CANADA'S BREACHES OF DUTIES TO THE CLASS MEMBERS**

### **a) Negligence**

60. The defendant owed a duty of care to Primary Class members through its establishment, funding, oversight, operation, supervision, control, maintenance and support of Indian Hospitals. Primary Class members were, in effect, wards of Canada and therefore under its reasonable care.

61. Through itself or its Agents, the defendant was in a relationship of proximity with Primary Class members as a result of its operation of Indian Hospitals during the Class Period.

62. During the Class Period, Primary Class members were in the care and control of the defendant's Agents during their time as patients in Indian Hospitals and expected that they would not be treated by the defendant in a manner that would cause them physical or emotional harm.

63. The defendant knew or ought to have known that in its establishment, funding, oversight, operation, supervision, control, maintenance and support of Indian Hospitals, its negligence would result in compensable physical and emotional harm to Primary Class members.

64. Canada knew or ought to have known that its failure to take reasonable care in ensuring that Indian Hospitals were established, funded and operated with standards substantially similar to non-Indian Hospitals operated by the provinces during the Class Period would result in harm to Primary Class members.

65. Primary Class members had the reasonable expectation that Canada would operate Indian Hospitals in a manner that was substantially similar to the care, control and supervision provided to patients of non-Indian Hospitals during the Class Period.

66. Canada was obliged to establish, fund and operate Indian Hospitals with a reasonable standard of care, which includes, but is not limited to:

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- (a) ensuring the safety and well-being of Primary Class members;
- (b) providing an environment free from sexual, physical, emotional and psychological abuse;
- (c) establishing, implementing and enforcing appropriate policies and procedures to ensure that Primary Class members would be free from sexual, physical, emotional and psychological abuse;
- (d) establishing, implementing and enforcing appropriate policies and procedures to ensure that Primary Class members would not be unnecessarily or inappropriately confined, isolated or restrained during their time as patients in Indian Hospitals;
- (e) ensuring that Indian Hospital buildings were adequately built and maintained in a manner that would not cause Primary Class members physical, emotional or psychological harm;
- (f) ensuring that Indian Hospital buildings were clean, sanitary and functioning facilities, which were free from substantial engineering and/or design defects that could cause Primary Class members physical, emotional or psychological harm;
- (g) ensuring that Indian Hospital staff members, who were Agents of the defendant, were adequately educated, licensed and trained in order to fulfill their employment obligations in a manner that would not cause physical, emotional or psychological harm to Primary Class members;
- (h) investigating, adjudicating and, if necessary, reporting to the appropriate law enforcement authorities complaints by Primary Class members of physical, sexual or emotional abuse;
- (i) acting in a timely and concerted fashion by, among other things, establishing and implementing policies and procedures to ensure that incidents of physical and sexual abuse would not re-occur; and
- (j) such other and further obligations of the defendant as the plaintiffs may advise and this Honourable Court may consider.

67. Particulars of the defendant's systemic breaches of its duty of care and fiduciary duty owed to Primary Class members include, but are not limited to:

- (a) failure to adequately, properly and effectively care for patients;
- (b) failure to adequately construct, maintain and operate Indian Hospitals to the detriment of the emotional, psychological and physical health of Primary Class members;

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- (c) failure to implement appropriate policies and procedures to ensure the hospitals were a safe environment free from physical, sexual, emotional, psychological and verbal abuse;
- (d) failure to periodically reassess its regulations, procedures and guidelines when it knew or ought to have known of serious systemic failures in Indian Hospitals during the Class Period;
- (e) failure to protect Primary Class members who were subjected to sexual abuse;
- (f) failure to establish or implement standards of conduct for patients to ensure that no employee or patient would endanger the health or well-being of any patient;
- (g) failure to provide any or an adequate program or system through which abuse could be recognized, reported, investigated or addressed;
- (h) failure to establish and implement practices, standards and systems that would allow patients to maintain their Aboriginal heritage and culture;
- (i) failure to establish or implement practices and procedures that would allow patients to have visitors during their stay in an Indian Hospital;
- (j) failure to ensure that medical and administrative staff members working in Indian Hospitals were properly trained and had the appropriate certification to provide health care services to Primary Class members;
- (k) failure to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed;
- (l) failure to ensure that Primary Class members would not be unnecessarily restrained to their beds by being tied down or as a result of body casting;
- (m) failure to properly maintain medical and administrative records; and
- (n) such other and further grounds as the plaintiffs may advise and this Honourable Court may consider.

68. Canada and its Agents compelled Primary Class members to leave their homes, families and communities, and forced them to be confined in Indian Hospitals against their will or desire. Such confinement was wrongful, arbitrary and for improper purposes.

69. Primary Class members were systemically subjected to sub-standard and inappropriate institutional conditions in Indian Hospitals, described above, and, as a

result, suffered physical, emotional and psychological harm for which they have yet to be compensated.

**b) Breach of Fiduciary Duty**

70. At all material times, the defendant was in a fiduciary relationship with Primary Class members by virtue of its relationship with Primary Class members being one of trust, reliance and dependence. Canada established, funded, oversaw, operated, supervised, controlled, maintained and supported Indian Hospitals during the Class Period through its Agents.

71. At all material times, Primary Class members were within the knowledge, contemplation, power or control of Canada and were subject to the unilateral exercise of it or its Agents' power or discretion.

72. Through its establishment, funding, oversight, operation, supervision, control, maintenance and support of Indian Hospitals, Canada undertook the express and implied responsibility to act in the best interests of Primary Class members at all times.

73. Primary Class members, many of whom were vulnerable children, had the reasonable expectation that they would receive reasonable health care services in Indian Hospitals without being subjected to physical, verbal, emotional or sexual harm or, otherwise, the sub-standard conditions described above. Primary Class members relied upon Canada, to their detriment, to fulfill its fiduciary obligations.

74. Additionally, Canada had a fiduciary duty to act in the best interests of Primary Class members pursuant to its exclusive jurisdiction in respect of Aboriginal Persons pursuant to section 91 (24) of the *Constitution Act, 1867*, the common law, and court rulings of high and binding authority.

75. By virtue of its constitutional obligations in conjunction with its quasi-constitutional obligations under the *Indian Act* and its *Regulations*, the defendant had discretionary control over Primary Class members and was required to act in their best interests at all material times. In particular, the defendant was obliged to protect the

physical, emotional, social, spiritual and cultural well-being of Primary Class members as a result of their rightful status as Aboriginal Persons under the *Constitution Act, 1867*.

76. The defendant's fiduciary duty in respect of Aboriginal Persons in Canada is non-delegable in nature in light of the *sui generis* relationship with Aboriginal Persons.

77. Particulars of the defendant's breach of its fiduciary duty owed to Primary Class members are set out at paragraph 64, above.

78. Furthermore, in failing to ensure that Indian Hospitals were free from physical and sexual abuse, substandard conditions and forced confinement and restraints, Canada put its own interests ahead of the interests of the plaintiff Anne Cecile Hardy and the Primary Class. Canada ignored, remained wilfully blind and permitted harm to Primary Class members in order to avoid scrutiny and unwanted publicity about its inappropriate, common practices and procedures concerning Indian Hospitals.

79. In breach of its fiduciary duty to Primary Class members, Canada failed and continues to fail to adequately remedy the damage caused by its failures and omissions set out herein. In particular, Canada has failed to compensate Primary Class members for the physical, emotional, psychological and sexual abuse they suffered in Indian Hospitals during the Class Period.

80. In light of the practices and procedures promulgated in Indian Hospitals during the Class Period, Canada breached its fiduciary duty owed to Primary Class members thereby affecting their legal or substantial practical interests.

### **c) Vicarious Liability**

81. The Crown is vicariously liable for the physical, sexual and psychological sexual abuse committed by its servants, employees, agents and representatives to the Primary Class members.

82. By virtue of its quasi-parental, or in *loco parentis*, responsibility for the safety, care and control of the Primary Class members, the Crown is vicariously liable for the

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harms perpetrated upon them by the Crown's servants, employees, representatives and agents.

83. The relationship between the Crown and its servants, employees, agents and representatives was close and direct. The Crown exercised or ought to have exercised control over its employees, agents and representatives including the power of assignment and supervision, the power to remove and the power to discipline them.

84. The Crown's servants, employees, agents and representatives were afforded the opportunity to abuse their power over and to physically, sexually, and psychologically abuse Primary Class members by virtue of their relationship with the Crown:

- (a) they were constantly placed in direct contact with Primary Class members;
- (b) they were provided with opportunities to physically, sexually, and psychologically abuse Primary Class members by virtue of their employment or representation of the Crown;
- (c) the physical, sexual, and psychological abuse committed by the Crown's employees, agents and representatives took place while the Primary Class members were required by the Crown to reside at Indian Hospitals;
- (d) the Crown's employees, agents and representatives were permitted to be alone with the Primary Class members and supervise them in intimate activities, such as bathing and toileting and the provision of medical care;
- (e) by virtue of their roles with the Primary Class, the Crown's servants, employees, agents and representatives were conferred with power over Primary Class members, including power to organize and discipline them; and
- (f) by virtue of their power and authority as servants, employees, agents and representatives of the Crown, they were allowed and encouraged to exercise a degree of control over the Primary Class members that was parental in nature.

85. The Crown's servants, employees, agents and representatives' physical, sexual, and psychological abuse was directly related to the friction, confrontation and psychological intimacy inherent in their roles:

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- (a) the Crown was discharged with caring for and treating Primary Class members;
- (b) the Crown encouraged physical and psychological intimacy between its servants, employees, agents and representatives and Primary Class members;
- (c) the Crown's servants, employees, agents and representatives and the Primary Class members were in a parent-like and role-model relationship; and
- (d) this psychological intimacy encouraged the plaintiff Anne Cecile Hardy and the Primary Class members' submission to the Crown's servants, employees, agents and representatives' abuse and increased their opportunity to physically, sexually, and psychologically abuse the plaintiff Anne Cecile Hardy and the Primary Class members.

86. The Crown conferred significant power on its servants, employees, agents and representatives relative to the Primary Class members who were vulnerable to the wrongful exercise of their power, in part because:

- (a) the Primary Class members vulnerable due to their medical conditions and dislocation;
- (b) the length of the Primary Class members' detention was indeterminate;
- (c) the Crown required the exercise of power and authority for its own successful operation, and it required and encourages its servants, employees, agents and representatives to stand in a position of respect, which was required for the successful operation of the Indian Hospitals; and
- (d) the Indian Hospitals were located in geographically isolated areas, which enhanced the opportunity for, extent, and frequency of physical, sexual, and psychological abuse remaining unchecked for years.

87. The relationship between the Crown's servants, employees, agents and representatives and the Crown was close and direct. The connection between the Crown's servants, employees, agents and representatives and the Crown created and enhanced the risk of physical, sexual and psychological abuse.

## **H. DAMAGES SUFFERED BY THE CLASS MEMBERS**

88. The defendant knew or ought to have known that as a consequence of its negligence and breach of fiduciary duty, the plaintiff Anne Cecile Hardy and Primary Class members would suffer injury and damages including, but not limited to:

- (a) assault and battery;
- (b) forced confinement;
- (c) sexual abuse;
- (d) emotional abuse;
- (e) psychological abuse;
- (f) psychological illness;
- (g) an impairment of mental and emotional health amounting to a severe and permanent disability;
- (h) emotional and psychological pain and suffering;
- (i) a propensity to addiction;
- (j) an impaired ability to participate in normal family life;
- (k) isolation from family and community;
- (l) alienation from family, spouses and children;
- (m) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
- (n) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the hospital experience;
- (o) depression, anxiety and emotional dysfunction;
- (p) suicidal ideation;
- (q) pain and suffering;
- (r) loss of self-esteem and feelings of degradation;
- (s) fear, humiliation and embarrassment as a child and adult, and sexual confusion and disorientation as a child and young adult;
- (t) loss of ability to fulfill cultural duties;

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- (u) prohibition of the use of Aboriginal language and the practice of Aboriginal religion and culture and the consequential loss of facility and familiarity with Aboriginal language, religion and culture;
- (v) loss of ability to live in community;
- (w) loss of income;
- (x) loss of enjoyment of life; and
- (y) such other and further damages as the plaintiffs may advise and this Honourable Court may consider.

89. As a result of the conduct alleged herein, the Family Class members have suffered and will continue to suffer damages, including, but not limited to, the following, which were reasonably foreseeable to the defendant:

- (a) actual expenses reasonably incurred for the benefit of the Primary Class members;
- (b) travel expenses incurred on the rare occasions Family Class members were allowed to visit Primary Class members in Indian Hospitals;
- (c) loss of income or the value of services provided to Primary Class members, including nursing and housekeeping; and
- (d) loss of support, guidance, care and companionship that they might reasonably have expected to receive from Primary Class members.

90. Canada and its Agents knew or ought to have known that as a consequence of its negligence and breach of its fiduciary duty, Primary Class members would suffer the damages described above.

# **I. PUNITIVE AND EXEMPLARY DAMAGES**

91. Canada and its Agents had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses incurred by Primary Class members which were occurring at Indian Hospitals during the Class Period. Despite this knowledge, Canada continued to operate Indian Hospitals and permit the perpetration of grievous harm to the Primary Class members throughout the Class Period.

92. In establishing and operating Indian Hospitals during the Class Period, Canada acted in a high-handed and callous manner towards Class Members warranting a finding of punitive and/or exemplary damages that are reasonable in the herein circumstances. Canada conducted its affairs with wanton disregard for Class Members' interests, safety and well-being.

## J. QUEBEC LAW

93. Where the actions of the defendant and its Agents took place in Québec, they constitute:

- (a) fault giving rise to the extra-contractual liability of the defendant, its employees, servants and agents to the Primary Class members pursuant to the *Civil Code of Québec*, S.Q. 1991, c. 64, Art. 1457 ("*Civil Code of Québec*"), and the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12 (the "*Québec Charter*"), ss. 1, 4, 10, 10.1 and 16 and its predecessors;
- (b) fault giving rise to the extra-contractual liability of the defendant pursuant to the *Crown Liability and Proceedings Act*, s. 3, and the *Interpretation Act*, R.S.C. 1985, c. 1-16, s. 8.1; and
- (c) unlawful and intentional interference with the rights of the plaintiffs and Primary Class members under the *Québec Charter*, ss. 1, 4, 10, 10.1 and 16, giving rise to the liability of the defendant to pay punitive damages to the plaintiffs and Class Members, pursuant to the *Québec Charter*, s. 49 and the *Civil Code of Québec*, Art. 1621.

94. The plaintiffs pleads and relies upon the following:

- (a) *Federal Courts Act*, R.S.C. 1985, c. F-7;
- (b) *Federal Courts Rules*, SOR/98-106;
- (c) *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.);
- (d) *Constitution Act, 1982*, s.35(1), being Schedule "B" to the *Canada Act, 1982* (U.K.), c. 11;
- (e) *Crown Liability Act*, S.C. 1952-53, c. 30;
- (f) *Crown Liability and Proceedings Act*, R.S.C. 1985, c C-50;
- (g) *Civil Code of Québec*, S.Q. 1991, c. 64;

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- (h) *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12; and
- (i) *Family Law Act*, R.S.O., 1985, c. F-7 and equivalent legislation in other provinces and territories in Canada, including the *Tort-feasors Act*, R.S.A. 2000 c. T-5 and the *Civil Code of Quebec*.

95. The plaintiffs proposes this action be tried in Toronto, Ontario.

September 25, 2019

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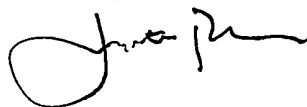
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Court File No.: T-143-18

**FEDERAL COURT OF CANADA**

Proceeding commenced at Toronto

**FRESH AS AMENDED STATEMENT OF  
CLAIM**

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