

Federal Court



Cour fédérale

Date: 20220208

Docket: T-1542-12

Ottawa, Ontario, February 8, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

CHIEF SHANE GOTTFRIEDSON, on his own behalf and on behalf of all the members of the TK'EMLUPS TE SECWÉPEMC INDIAN BAND and the TK'EMLUPS TE SECWÉPEMC INDIAN BAND, CHIEF GARRY FESCHUK, on his own behalf and on behalf of all the members of the SECHELT INDIAN BAND and the SECHELT INDIAN BAND, VIOLET CATHERINE GOTTFRIEDSON, CHARLOTTE ANNE VICTORINE GILBERT, DIENA MARIE JULES, AMANDA DEANNE BIG SORREL HORSE, DARLENE MATILDA BULPIT, FREDERICK JOHNSON, DAPHNE PAUL, and RITA POULSEN

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

ORDER

(Representative Plaintiffs' Motion to Extend the Band Class Opt-In Period)

UPON MOTION by the Representative Plaintiffs for an Order varying the Certification Order dated June 18, 2015 (the "Certification Order"), an Order that the opt-in period for Indian Bands to be added as Class members be extended to May 31, 2022, an Order approving a Notice to potential Class members in the form attached as Schedule "A", an Order directing the

Representative Plaintiffs to distribute the Notice to potential Class members in accordance with the Representative Plaintiffs' plan of notice, as set out in the affidavit of Peter R. Grant, and an Order granting leave to amend the First Re-Amended Statement of Claim in the form attached hereto as Schedule "B";

AND UPON ON READING the Affidavit of Peter R. Grant, sworn January 12, 2022, filed, and upon reviewing the Certification Order and the pleadings and proceedings herein;

AND UPON NOTING the consent of the Defendant to the relief sought on this motion;

AND CONSIDERING that the relief sought herein is in the best interests of the Class as a whole;

THIS COURT ORDERS that:

1. Pursuant to Rule 334.19 of the *Federal Courts Rules*, the definition of "Band Class" set out at paragraph 1(a) of the Certification Order, as previously amended to "Class" by paragraph 13 and Schedule G of the Order dated September 24, 2021, is hereby struck and amended with the definition of "Class" below, and the definition of "Indian Band" is added as paragraph 1 (f) m. of the Certification Order, as follows:

1 (a) "Class" means the Tk'emlúps te Secwépemc Indian Band and the shíshálh band and any other Indian Band that:

- (i) has or had some members who are or were Survivors, or in whose community a Residential School is or was located; and
- (ii) is specifically added to this claim in relation to one or more specifically identified Residential Schools.

1 (f) m. "Indian Band" means any entity that:

- (i) Is either a "band" as defined in s.2(1) of the *Indian Act* or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and
 - (ii) Asserts that it holds rights recognized and affirmed by section 35 of the Constitution Act, 1982.
2. All Indian Bands, as defined in paragraph 1 of this Order that otherwise meet the eligibility requirements set out in paragraph 1(a) of this Order for being a Class member but have not already opted into and therefore been added to the claim shall have from the date of this Order until May 31, 2022 at 11:59 pm PST (the "Additional Opt-in Period") to opt into this action;
3. Pursuant to Rule 334.32(5) of the *Federal Courts Rules*, the form of notice of the Additional Opt-in Period, and opt in form included in the notice, set out at Schedule "A" to this Order (the "Notice") is approved for dissemination to Indian Bands not already Class members by this Court;
4. Pursuant to Rule 334.32(4) of the *Federal Courts Rules*, that the Representative Plaintiffs shall provide notice of the Additional Opt-in Period to all Indian Bands not already Class members as soon as reasonably practicable, by:
 - (a) Posting the Notice on this class proceeding's websites at www.justicefordayscholars.ca and www.bandrepairs.ca.
 - (b) Posting the Notice (or links to the notice) on the website of Class Counsel;
 - (c) Direct mailing and emailing the Notice to all Indian Bands known to Class Counsel, or made known to Class Counsel by the Defendant that are not already Class members;

5. Class Counsel, within 7 days of this Order, shall produce to the Defendant a list of all Indian Bands known to Class Counsel to whom Class Counsel intends to disseminate the Notice in accordance with paragraph 4(c) (the “List of Bands”);
6. The Defendant shall produce to Class Counsel a list of, and contact information for, any other Indian Band it believes may be eligible to opt-into this action that is not on the List of Bands, Class Counsel shall thereafter promptly disseminate the Notice to that/those Indian Band(s);
7. Within 14 days of the expiry of the Additional Opt-in Period, Class Counsel shall provide to the Court a list of Indian Bands that have opted into this action during the Additional Opt-in Period;
8. Within 14 days of the expiry of the Additional Opt-in Period, Class Counsel shall provide to the Defendant a list of Indian Bands that have opted into this action during the Additional Opt-in Period, together with the bases identified by each Indian Band of its eligibility to opt into the Class, including the Indian Residential School(s) at issue and the years at issue (“Opt-in Information”);
9. By March 1, 2022, Class Counsel shall provide the Defendant with Opt-in Information relating to each Indian Band that is a Class Member as of the date of this Order;
10. Within 60 days of expiry of the Additional Opt-in Period, the Defendant may examine the Representative Plaintiffs for discovery for up to two hours each, unless extended by further Order, solely for the purpose of addressing any issues arising from the addition of new Class members;

11. A case management conference shall be arranged with the Court prior to August 5, 2022 to address any outstanding issues related to pre-trial deadlines or issues raised by newly opted in Class members;
12. The style of cause is amended, with immediate effect, as proposed by the Representative Plaintiffs in Schedule “B”, and the Representative Plaintiffs are granted leave to amend the First Re-Amended Statement of Claim in the form attached hereto as Schedule “B”; and
13. There shall be no costs of this motion.

"Ann Marie McDonald"

Judge