



[2022] 2 F.C.R. D-12

INDIGENOUS PEOPLES

Related Subject: Practice (Class Proceedings)

Motion for approval of settlement agreement reached in class proceeding seeking reparations for loss of language, culture caused to Indian bands by residential school system (Band Class claims) — Terms of Agreement providing that Canada will pay \$2,800,000,000.00 to fully, finally resolve Band Class claims — Objectives of settlement, noted in clause M thereof, setting out four pillars: a. Revival and protection of Indigenous languages; b. Revival and protection of Indigenous cultures; c. Protection and promotion of heritage; and d. Wellness for Indigenous communities and their members — Such objectives to be facilitated by creation of Indigenous led/controlled not-for-profit entity responsible for establishing trust fund, distributing trust funds to Band Class members — Whether settlement agreement fair, reasonable — Only objection, concern expressed regarding settlement relating to wording of release therein — Concern about release language arose in face of ongoing discovery of unmarked graves, burial sites at former residential school sites — Worry was that release language may prevent future efforts to hold Canada to account for these tragic discoveries — Here, release language in settlement agreement specifically crafted to only apply to claims raised in class proceeding — Release provisions not releasing, impairing, or otherwise restricting any claims that may be brought against Canada relating to unmarked graves or children who died or disappeared while attending residential schools — As to whether settlement agreement fair, reasonable, in best interests of class as a whole, factors outlined in Federal Court case law considered — Settlement agreement providing certainty, recovery, and closure for Band Class members — Approach adopted reflecting attempts to learn from past experiences, design settlement agreement that is better tailored to Band Class members' long-term interests — Settlement historic both in terms of its quantum, unique structure — Court could not have provided this type of relief to Band Class members even if they had been fully successful on all issues at trial — But for settlement, safe to presume litigation would have continued for another decade — Numerous Band Class representatives speaking in support of settlement — Representative plaintiffs overwhelmingly in support of settlement — Present agreement aptly described as “monumental”, “historic”, “transformational” — Flexibility agreement affording to Band Class members to set their own priorities to work within the four pillars and thereby address needs unique to their Nations, unprecedented — Settlement agreement approved.

TK'EMLÚPS TE SECWÉPEMC FIRST NATION V. CANADA (T-1542-12, 2023 FC 327, McDonald J., reasons for order dated March 9, 2023, 39 pp. + 132 pp.)