

Form 27
[Rules 6.3 and 10.52(1)]

COURT FILE NUMBER 1914-00167

COURT COURT OF KING'S BENCH
OF ALBERTA

JUDICIAL CENTRE ST. PAUL

PLAINTIFF/APPLICANT CYNTHIA IRIS YOUNGCHIEF



DEFENDANTS/RESPONDENTS THE ATTORNEY GENERAL OF CANADA,
HER MAJESTY THE QUEEN IN RIGHT OF
ALBERTA, DIOCESE SANCTI PAULI, ST.
LOUIS PARISH and LAKELAND ROMAN
CATHOLIC SEPARATE SCHOOL DISTRICT
NO. 150

**Proceeding under the Class Proceedings
Act, S.A. 2006 c-16.5**

DOCUMENT **APPLICATION FOR CERTIFICATION OF
CLASS PROCEEDING**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS DOCUMENT

GREY WOWK SPENCER LLP
c/o Leighton B.U. Grey, Q.C.
#200, 5110-51 Ave; PO Box 1028 Cold
Lake, Alberta T9M 1P3
Ph: (780) 594-0299 Fax: (780) 594-0211
File No. RES-477

NOTICE TO RESPONDENTS: THE ATTORNEY GENERAL OF CANADA, HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, DIOCESE SANCTI PAULI, ST. LOUIS PARISH and LAKELAND ROMAN CATHOLIC SCHOOL DISTRICT NO. 150 (the “Defendants”)

This application is made against you. You are a respondent. You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: 28 November 2022

Time: 10:00 a.m.

Where: St. Paul Court of King’s Bench

Before: The Honourable Justice P.B. Michalyshyn

Go to the end of this document to see what else you can do and when you must do it

Remedy claimed or sought:

1. Cynthia Iris Youngchief, as proposed Representative Plaintiff, seeks an Order:

a. Certifying this Action as a class proceeding;

b. Defining the “Survivor Class” as follows:

all Aboriginal persons, wherever they may now reside or be domiciled, who attended Ecole Notre Dame Elementary School and/or Ecole Notre Dame High School in Bonnyville, Alberta (the “**Notre Dame Schools**”) during the Class Period;

c. Defining the “Family Law Class” as follows:

all Persons who are a spouse or former spouse, child, grandchild, parent, grandparent, brother or sister of a Survivor Class member and the spouse of a child, grandchild, parent, grandparent, brother or sister of a Survivor Class member;

d. Appointing Cynthia Iris Youngchief as Representative Plaintiff of the proposed Classes;

e. Stipulating the following common issues for trial:

- i. Did the Defendants, through the direct or indirect establishment, funding, control, and maintenance of the Notre Dame Schools throughout the Class Period owe a duty of care to the Survivor Class and/or Family Law Class, or any member of either Class?
 - ii. Did the Defendants, through the direct or indirect establishment, funding, control, and maintenance of the Notre Dame Schools throughout the Class Period breach the requisite standard of care owed by it to the Survivor Class and the Family Law Class, or any member of either Class?
 - iii. Did the Defendants, through the direct or indirect establishment, funding, control, and maintenance of the Notre Dame Schools breach a fiduciary duty owed to the Survivor Class or the Family Law Class, or any member of either Class?
 - iv. Did the Defendants, through the direct or indirect establishment, funding, control, and maintenance of the Notre Dame Schools breach the aboriginal rights of the Survivor Class and the Family Law Class, or any member of either Class?
 - v. Did the Defendants, through the direct or indirect establishment, funding, control, and maintenance of the Notre Dame Schools breach a statutory obligation owed, under the *Indian Act* or any other statute, to the Survivor Class and Family Law Class, or any member of either Class?
 - vi. What injury or damages have the Survivor Class and Family Law Class suffered as a result of the Defendants' malfeasance and/or nonfeasance identified in issues (i) through (v) above?
 - vii. Whether aggregate damages are available and, if so, on what basis and in what amount?
 - viii. What proportion of culpability should be attributed to each respective Defendant for the injuries and/or damages identified in issues (vi) and (vii) above?
- f. Approving the proposed Litigation Plan attached as **Appendix "A"** to this Application with any modifications, additions, or deletions as required by this Honourable Court;
 - g. Designating Grey Wowk Spencer LLP as exclusive legal counsel for the Survivor Class and Family Class;
 - h. Staying any other putative class actions relating to this class proceeding pending further order of this Honourable Court;

- i. Granting costs of this Application; and
- j. For any such further and other relief as counsel may request and this Court may permit.

Grounds for making this application:

2. This Application is brought by the proposed Representative Plaintiff on the following grounds:
 - a. Rules 2(1)-(3), 5(1)-(3), 8, 9(1) and (3), 20(1)-(2), and 30(1) of the *Class Proceedings Act*, SA 2003, c C-16.5 (the “**CPA**”);
 - b. The nature of the claims brought on behalf of the Survivor Class and Family Law Class, or any member of either Class, are as set out in the Amended Statement of Claim filed with this Honourable Court on 27 August 2020;
 - c. The Amended Statement of Claim discloses a cause of action in negligence against any or all of the Defendants pursuant to Rule 5(1)(a) of the *CPA*;
 - d. There is an identifiable Class of 2 or more persons as identified in the pleadings pursuant to Rule 5(1)(b) of the *CPA*;
 - e. The claims of the Survivor Class and Family Law Class raise common issues of law and fact as disclosed in the pleadings pursuant to Rule 5(1)(c) of the *CPA*;
 - f. A class proceeding is the preferable procedure for the fair and efficient resolution of the common issues pursuant to Rule 5(1)(d) as it will avoid duplication of fact, finding and legal analysis while achieving the public policy aims of access to justice, judicial economy, and behavioural modification;
 - g. The pleadings disclose that the proposed Representative Plaintiff, will fairly and adequately represent the interests of the Survivor Class and Family Law Class pursuant to Rule 5(1)(e)(i);
 - h. The proposed Representative Plaintiff has prepared a Litigation Plan, attached hereto as **Appendix “A”**, which sets out a workable method of advancing the Action on behalf of the proposed Classes and notifying the Class Members pursuant to Rule 5(1)(e)(ii);
 - i. The proposed Representative Plaintiff does not have, on the common issues of law or fact, an interest that is in conflict with the interests of the other Class Members or prospective Class Members pursuant to Rule 5(1)(e)(iii).

Material or evidence to be relied on:

3. The proposed Representative Plaintiff will rely on the following material and evidence for this Application:

- a. Amended Statement of Claim, filed 27 August 2020;
- b. Affidavit of Cynthia Iris Youngchief, filed 27 August 2020; and
- c. Such further and other materials and evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

4. Rules 2.6(1)-(2), 2.9, and 6.3(1)-(3) of the Alberta *Rules of Court*;
5. Rules 2(1)-(3), 5(1)-(3), 8, 9(1) and (3), 20(1)-(2), and 30(1) of the *Class Proceedings Act*, SA 2003, c C-16.5; and
6. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

7. *Class Proceedings Act*, RSA 2003, C-16.5;
8. *Constitution Act, 1987*, 30 & 3' Victoria, c. 3 (U.K.);
9. *Constitution Act, 1982*, s.35 being Schedule B to the *Canada Act, 1982* (U.K.), 1982 C. 11;
10. *Family Law Act*, R.S.O., 1985, c. F-7 and equivalent legislation in other provinces and territories in Canada;
11. *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50;
12. *Crown Liability Act*, S.C. 1952-53, c. 30;
13. *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12;
14. *Fatal Accidents Act*, RSA 2000, Chapter F-8; and
15. *School Act*, RSA 2000, c S-3 (and all prior versions thereof, including *An Act Respecting School Attendance*, and the *Compulsory School Attendance Act*[O1]).

Any irregularity complained of or objection relied on:

16. None.

How the application is proposed to be heard or considered:

17. This Application will be heard as directed by Case Management Justice, the Honourable Justice P.B. Michalyshyn.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.