

**SCHEDULE "A" OF R.N. ON BEHALF OF C.N. TO THE COMPLAINT OF C.N.**

**8. What Happened**

**FORM 1, QUESTION 8: What Happened**

**Describe each event below you believe was discrimination.**

**For each event, be sure to say:**

- **What happened**
- **Who was involved**
- **When it happened (day, month, year)**
- **Where it happened**

**Be as complete and accurate as possible. Be sure to give details of every incident of discrimination you want to raise in the hearing.**

**The Parties**

1. C.N. is a 7 year-old Oji-Cree Aboriginal boy. C.N. is a member of the Mishkeegogamang First Nation and a resident of Thunder Bay. C.N. has two older brothers, T.N., age 13 and M.N., age 11. C.N. has two younger siblings. He has a 4 year-old sister named E.N., and a 2 year-old brother named J.J.N..
2. R.N. and J.N. are the parents of C.N. and his siblings. The N. family are members of the Mishkeegogamang First Nation and residents of Thunder Bay.
3. Ms. Nadeau is a teaching assistant employed by the Lakehead District School Board. Ms. Nadeau was a teaching assistant at McKellar Park Public School at the relevant time.
4. The Lakehead District School Board ("Board") is a school board established pursuant to the provisions of the *Education Act*, R.S.O 1990, Chapter E.2, and was at all material times responsible for the delivery of effective and appropriate education to its pupils. The Board is the employer of all teachers and educational assistants working in its schools. The Board has an obligation to provide students with a discrimination-free learning environment.
5. Detective Constable Shawn Harrison is a member of the Thunder Bay Police Service and was the officer in charge of the investigation into the assault against C.N.

6. Staff Sergeant Sylvia Hauth is a member of the Thunder Bay Police Service and was supervising officer of the investigation into the assault against C.N.
7. Chief Robert Herman was the Chief of the Thunder Bay Police Service at all material times, and was responsible for the supervision, training, direction and control of police officers employed by the Thunder Bay Police Service.
8. The Thunder Bay Police Services Board is a municipal police services board incorporated pursuant to the provisions of the *Police Services Act*, R.S.O. 1990, Chap. P.15 and was at all material times responsible for the provision of police services, law enforcement and crime prevention in the City of Thunder Bay. The Board is the employer of all Thunder Bay Police Service officers and the Chief of Police, and is the legal entity representing the Thunder Bay Police Service. Pursuant to section 45(1) of the *Ontario Human Rights Code*, R.S.O. 1990, c. H.19, the Thunder Bay Police Service Board is liable for the acts or omissions of its employees.
9. Dan Mitchell was the Crown Attorney in the Thunder Bay Crown Attorney's office at all material times. Mr. Mitchell was responsible for the prosecution of criminal offences in the city of Thunder Bay.
10. The Defendant, Attorney General of Ontario, is the legal entity that is liable in respect of any act or thing done or omitted to be done in the course of employment by servants and agents of Her Majesty the Queen in Right of Ontario pursuant to section 5(3) of the *Proceedings Against the Crown Act*, R.S.O. 1990, Chapter P. 27.

### **The Assault**

11. On Thursday April 16, 2009, C.N., a 7 year-old Oji-Cree Aboriginal boy was attending classes at McKellar Park Central Public School in Thunder Bay.

12. On that date, C.N.'s hair was grown long so that he could anchor his "roach" which is part of his ceremonial headdress when participating in Pow-wows.
13. C.N. was sitting in "reading circle" in the computer room with another young boy by the name of Josh.
14. Ms. Nadeau, a teaching assistant employed by the Respondent, Lakehead District School Board, approached C.N. and instructed him to stand up because she was going to cut his hair. C.N. asked Ms. Nadeau not to cut his hair and explained to her that his mother would be upset if his hair was cut. Because C.N. would not stand, Ms. Nadeau came directly behind him, and forcefully lifted him from his underarms, forcing him to stand on the chair. Ms. Nadeau then took a pair of scissors from the desk behind her and proceeded to cut C.N.'s hair.
15. More than once C.N. told Ms. Nadeau "No" and tried to squirm out of her grasp. Whenever he would move, Ms. Nadeau placed the scissors on his bare forehead to get him to remain still. C.N. was frightened and feared Ms. Nadeau would harm him with the scissors. When she completed cutting his hair she told C.N. to go to the mirror and look at himself, and she remarked "Look at you now!" Upon seeing himself in the mirror, C.N. began to cry.
16. C.N.'s mother, R.N., learned what happened when she came home and found C.N. crying on the couch. She observed that his bangs had been cut. R.N. asked C.N. who had cut his hair and he told her that a teacher had cut it. R.N., incredulous that a teacher could cut a child's hair, asked C.N. for a second time who cut his hair. C.N. told his mother that it was Ms. Nadeau.
17. The following morning, April 17, 2009, R.N. immediately called the principal, Michelle Probizanski, at McKellar Park School. Ms. Probizanski was already aware of the incident.

She apologized and informed R.N. that the school was investigating the matter, and that pending that investigation, Ms. Nadeau had been temporarily suspended.

18. Ms. Probizanski requested that R.N. not undertake any further action, so that the school could resolve the situation. Ms. Probizanski informed R.N. that she would advise her in advance when Ms. Nadeau returned to duty. R.N. responded that she would not allow her children to attend the school if Ms. Nadeau returned.
19. Despite learning of the assault on April 16, 2009, no one from the school contacted R.N. about the assault that day or subsequently, no one from the school or school board contacted the police to report the assault upon one of their students.

### **The Police Investigation**

20. Later in the evening on April 17, 2009, R.N. contacted the Thunder Bay Police Service regarding the assault. Detective Constable Shawn Harrison came to her home at approximately 8 p.m. that evening.
21. As C.N. was already in bed, Detective Constable Harrison took a statement from R.N. Mrs. N. described what she had been told about the assault and informed the police that Ms. Nadeau had in the past made discriminatory comments about the manner in which her older son wore his hair. R.N. indicated that she would like assault charges laid against Ms. Nadeau and was informed by the police that they believed an assault had taken place and that charges would be laid. R.N. made arrangements to have C.N. brought to the police station for pictures, and to give a statement.
22. On April 20, 2009, Detective Constable Beaulieu interviewed C.N. at the Thunder Bay Police station located at 1200 Balmoral Street. R.N., along with Evelyn Pelletier of Dilico Anishinabek Family Care, and Cathy Beardy of the Nishnawbe Aski Nation, were present

in the monitoring room to observe the interview. C.N. gave the same account of the assault to Detective Constable Beaulieu that he had given to his mother four days earlier.

23. After C.N.'s interview, the police continued their investigation but failed to interview the subject of the investigation, Ms. Nadeau. According to Detective Constable Harrison's notes, on April 24, 2009, he completed a formal information package and submitted it to the Office of the Crown Attorney for review with regards to laying a charge.
24. Seeking advice from a Crown Attorney about laying a charge of assault is contrary to Thunder Bay Police Service policy and practice, as is deferring the decision about whether to lay a charge to the Crown Attorney.

#### **Crown Attorney Dan Mitchell's Review of the File**

25. Crown Attorney Dan Mitchell reviewed the file and advised Detective Constable Harrison on May 4, 2009, that the matter had been reviewed and that it would not be appropriate to lay charges. He stated that laying a charge in the circumstances was contrary to Ministry standards. No clarification has been provided by the Crown Attorney's office with respect to what Ministry Standards, if any, Mr. Mitchell relied upon in arriving at his decision.
26. The Thunder Bay Crown Attorney's Office took the position that there would be no reasonable prospect of conviction and that it would not be in the public interest to lay a charge in this case. (see May 30, 2009 Globe and Mail: Family outraged after student's hair cut).
27. On May 4, 2009, R.N., Principal Probizanski, and Sherry Farrand, who is the Superintendent with the Lakehead District School Board, were informed by Staff Sergeant Hauth of the Crown's decision not to lay charges.

28. The process by which the decision was made not to lay a charge by Crown Attorney Dan Mitchell completely disregarded standard procedural requirements to take into account the perspectives and interests of the victims, C.N. and his family. No one from the Crown Attorney's office contacted the victim's family to ascertain their wishes. At no time did the Crown Attorney or the Chief of Police communicate with the family as to the rationale for determining that prosecuting the assault of C.N. was not in the public interest. This complete disregard for the perspective and interests of First Nations communities stands in stark contrast to the tender treatment of the assistant Ms. Nadeau, whose conduct was never the subject of rigorous police investigation.

### **The Significance of the Events**

29. Hair plays an important part in many Aboriginal cultures. It is considered sacred, and a symbol of strength and Aboriginal heritage. The N family is Oji-Cree, and the length of C.N.'s hair is important for participation in their ceremonial and traditional dances at Pow-wows.
30. As stated above, C.N. wore his hair long so that he would be able to wear his "roach" which is part of the ceremonial head-dress for dancing in Pow-wow. As a result of the forced haircut C.N. is not able to properly anchor the roach on his head or to wear the ceremonial head-dress.
31. There is a long history of forced cultural assimilation of Aboriginal peoples, particularly through the education system. The manner in which Ms. Nadeau forcibly cut C.N.'s hair is reminiscent of the actions taken against Aboriginal students in residential school settings.

32. After the events of April 16<sup>th</sup>, 2009, R.N.'s older son, T.N., was chased by another student and had his hair cut at McKellar Park Public School. No action was taken by the school or the school board. In fact, the principal, Ms. Probizanski, blamed the N. family for the incident stating that the student cut T.N.'s hair because the family had communicated with the media about the assault on C.N.
33. Aboriginal peoples are overrepresented as victims of crime in Canada. Despite overrepresentation as victims, Aboriginal People are less likely to receive assistance from police.
34. The Royal Commission on Aboriginal People in *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (1996) noted that the Aboriginal community experiences the extremes of both over-policing and under-policing. Under-policing refers to situations where the police choose not to act, or act inadequately, where there is evidence that crime has been committed against an Aboriginal person.
35. Statistics Canada released a report entitled "Victimization and offending among the Aboriginal population in Canada" and found that Aboriginal people were three times more likely than non-Aboriginal people to experience violent victimization. The report noted:

Not only are Aboriginal people at an increased risk of being victims of violent crimes such as sexual assault, assault and robbery, they are also overrepresented as victims of the most serious forms of violence. Specifically, while Aboriginal people represented on average, about 3% of the population between 1997 and 2004, in incidents where the Aboriginal status of the victim was known, Aboriginal people made up 17% of victims of homicide over the same time period.

The average victim homicide rate between 1997 and 2000 for Aboriginal people was 8.8 per 100,000 population, almost seven times higher than that for non-Aboriginal people (1.3 per 100,000 population)

36. In light of clear evidence that C.N. had been the victim of an assault, the decision not to lay charges against the Caucasian teaching assistant, Ms. Nadeau, only further victimized C.N. and his family.

### **Elements of Discrimination by Ms. Nadeau and the Lakehead District School Board**

37. Ms. Nadeau had demonstrated a history of hostility towards Aboriginal students in general and the N. brothers in particular. Her hostility towards Aboriginal students and the way they choose to wear their hair displayed a lack of respect and cultural awareness of the significance of long hair in Aboriginal culture.

38. When Ms. Nadeau cut C.N.'s hair on April 16<sup>th</sup>, 2009, it was as a result of her total disregard for Aboriginal culture, beliefs and practices and reflected a view that Aboriginal students were less worthy of dignity and bodily integrity.

39. Lakehead District School Board has an obligation to provide its students with an environment that is tolerant, respectful and that does not discriminate on the basis of racial, ethnic, and cultural differences. They failed to meet this obligation.

40. The actions of Ms. Nadeau were contrary to the Lakehead District School Board's policies, and were in violation of the *Human Rights Code*. As a result of Ms. Nadeau's prior conduct McKellar Park Public School and the Lakehead District School Board had been put on notice about Ms. Nadeau's discriminatory behaviour but took no action to put any preventative measures in place. The inability of the Board to recognize and discipline the previous behaviour of Ms. Nadeau created the environment in which she felt authorized to cut the hair of an Aboriginal Student. The Board is responsible at law for the discriminatory conduct of its employees.

**Actions of the Thunder Bay Police Service and the Office of the Crown Attorney**

41. The Thunder Bay Police Service was aware that Ms. Nadeau had in the past displayed cultural and racial discrimination towards the boys of the N. family, yet decided to deal with the assault against C.N. as “trifling”.
42. The Thunder Bay Police Service failed to adequately train their officers to deal with the uniqueness of Aboriginal culture when providing policing services in Aboriginal communities.
43. The police conduct failed to take account of the historical and contemporary experiences of discrimination faced by Aboriginal people in Canada’s educational and justice systems. That this was done in a clear case where all the elements of the offence could be readily proven perpetuates discriminatory attitudes in the educational and justice systems in Ontario.
44. The Crown Attorney, Dan Mitchell reviewed the investigation file and determined that it was not in the public interest for charges to be laid. At no time during the review of the file did Mr. Mitchell contact the family to discuss their wishes with respect to charges being laid. These actions by Mr. Mitchell are in violation of the principles which apply to the treatment of victims of crime in the *Victims’ Bill of Rights*, S.O. 1995, Chapter 6, which specifically provides that victims should be treated with courtesy, compassion and respect and that victims should have access to information about the reasons why no charges are laid and the victim’s role in the prosecution. In failing in his obligation to these victims, Mr. Mitchell was motivated by discriminatory attitudes.
45. The Attorney General, and its agents, does not direct or cause charges to be laid. While Crown Attorney’s may provide legal advice to the police, the responsibility for the decision whether to lay charges is with the police. The process by which the Crown Attorney’s

office came to the conclusion that charges should not be laid against Ms. Nadeau failed to take account of the historical and contemporary experiences of discrimination faced by Aboriginal people in Canada's educational and justice systems.

46. The law is undisputable that the act of cutting hair by force is an assault. It is impossible that the Crown Attorney could not meet the burden of the elements of the charge. The only inference that can be drawn was that the assault was too "trifling" for prosecution.
47. It is the complainant's contention that there was a failure on the part of all Respondents to treat the violation of C.N. as a significant assault because of their lack of understanding of the cultural significance that the hair plays in the family's life.
48. Being culturally misinformed, the Crown Attorney treated the assault of C.N. as "trifling". The complainant relies on the substantial body of system reports bearing out that police and Crown treat First Nations as victims whose rights warrant less vigorous investigation and protection.

### **9. How the Events You Described Affected You**

*Tell us how the events you described affected you. What was the effect (financial, social, emotional or mental health, or any other)?*

1. All of the events described above, including the conduct of the School Board, police and Crown respondents in responding to the haircutting assault, have had a significant impact upon C.N., including but not limited to:
  - a. Emotional and mental distress, including feelings of intimidation, vulnerability, stress, anger, humiliation and helplessness.
  - b. Loss of self-respect and dignity.

- c. Loss of confidence and self-esteem. For example, when telling his mother what had happened, C.N. cried. He told her that he felt “ugly” and that he feared the other students would laugh at him. He became defensive and suspicious that people – even friends – were laughing at him. Several days after the incident, then-Deputy Grand Chief of NAN, Alvin Fiddler, a friend of the family, came to the N. home to visit C.N.. When he observed Deputy Grand Chief Fiddler smiling at him, C.N. asked why he was looking at him, and whether he was laughing at him. C.N.’s overall demeanour changed quite dramatically, in that he became self-conscious, afraid and withdrawn.
- d. For several days following the assault, C.N. woke up at night screaming and complained that he was having bad dreams in which someone was “coming after him”. He became withdrawn and ashamed of his appearance, to the point where R.N. had to coax him to leave the house. The incident has had ongoing impacts upon his feelings of self-worth.
- e. Fear and anxiety. C.N. experienced significant fear and stress when Ms. Nadeau forcibly cut his care. Feelings of fear and anxiety have continued. C.N. did not want his brothers and sister to go back to school because he was afraid that the teacher would “hurt them too” by cutting their hair. Indeed, the day after the incident, C.N. had an anxiety attack when he saw his siblings getting ready to leave for school. As a result, R.N. decided to keep all of her five children home from school on April 17, 2009.
- f. Cultural harm. Hair plays an important part in Aboriginal cultures. It is considered sacred, and a symbol of strength and Aboriginal heritage. Cutting C.N.’s hair thus caused significant emotional harm as a result of the importance hair plays in his cultural beliefs and traditions.

- g. Loss of ability to participate in Aboriginal ceremonies and activities. C.N. has missed days of school, became withdrawn in class, tearful while at school, and suffered a lowered academic performance, which will have an ongoing impact.
  - h. Bullying. Other students bullied him and made fun of C.N. as a result of the incident, and told him he was ugly.
2. In addition the events caused enormous stress to C.N.'s family members, affecting his home life and family relationships and thereby deepening and extending the harm:
- a. As a result of the assault upon her child, R.N. felt uncertain about the safety of her children at school.
  - b. All of C.N.'s siblings experienced fear for their own safety as well as concern over C.N.'s well-being. In the days following the incident, the older boys in the family, T.N. and M.N. attempted to allay his fears by reassuring C.N. that they would be alright, and that no one would cut their hair. T.N. expressed guilt that he had not been able to intervene to prevent Ms. Nadeau from cutting C.N.'s hair. C.N.'s younger sister, E.N., stated that she was sad and fearful that she would get her hair cut too.
  - c. Shortly after the assault of C.N., his brother, T.N., was attacked at school by another student with a pair of scissors. The principal, Ms. Probizanski, informed R.N. about the incident and told her that she believed T.N. was attacked because the N. family had spoken to the media regarding the incident involving C.N.. The school took no action with respect to this attack on T.N., further contributing to the harm caused to C.N. and the family. The school placed the blame on the family for the attack rather than acknowledging and taking steps to rectify the poisoned environment for Aboriginal students at the school. The family thereby suffered reprisals for having raised concerns about the discrimination.
3. Subject to further clarification and particularization as these matters proceed to hearing.