

NOTICE OF SETTLEMENT APPROVAL

FEDERAL INDIAN DAY SCHOOL CLASS ACTION

If you attended a Federal Indian Day School or Federal Day School, this Notice may affect your legal rights.
Please read it carefully.

The Federal Court authorized this Notice. This is not a solicitation from a lawyer.

- On August 19, 2019, the Federal Court approved a Canada-wide out-of-court settlement between the Government of Canada (“**Canada**”) and Class Members in relation to Canada’s establishing and funding of Federal Indian Day Schools and Federal Day Schools (“**Day Schools**”) and its subsequent control and management of those Day Schools.
- In the class action, *McLean v Canada* (Court File No. T-2169-16), students who attended a Federal Indian Day School sought damages from Canada for harms suffered as a result of their attendance. Their legal action was certified on June 21, 2018, on consent, as a class proceeding in the Federal Court.
- As part of the Approved Settlement of this Class Action, Canada will provide compensation to Eligible Class Members; that is, those students who attended a Federal Indian Day School or Federal Day School identified in Schedule K to the Settlement Agreement.
- **The order of the Court will bind all of the Class Members who do not opt out of the proceeding (Federal Courts Rules, Rule 334.32(5)(f)).**

Your Legal Rights and Options In This Settlement:

- 1. Opt out:** If you do not wish to participate under the terms of the Settlement Agreement, you must submit an Opt Out Form by **November 18, 2019**. Opting out will preserve your rights to independently sue Canada for harms suffered while you were a student at a Day School. **Opt out forms** are available on the Class Action Website or by contacting Class Counsel.
- 2. Make a claim for compensation:** If you are an eligible Class Member, you can make a claim for compensation. You must fill in an application form and send it to the Claims Administrator by the **Claims Deadline**, defined as two and a half (2.5) years after the Implementation Date. **Claims forms** will be available on the Class Action Website or by contacting Class Counsel and must be submitted to the Claims Administrator.
- 3. Deemed Opt Out:** If you have commenced a legal proceeding against Canada relating to its funding, control, and management of Day Schools and you do not discontinue it on or before **November 18, 2019**, you will be deemed to have opted out of the settlement. You will not be eligible to apply for compensation under this Class Action.

If you do not submit a Claims Form and/or you do not opt out of this class action, you will be deemed to have released Canada from liability as outlined in the Settlement Agreement. It is important therefore that you choose one of the two options above.

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If you have previously commenced a legal proceeding against Canada relating to its funding, control, and management of a Federal Indian Day School and if you do not discontinue your individual claim on or before November 18, 2019, **you will be deemed to have opted out of the settlement.**

The following pages provides more information on the Class Action and the Settlement Agreement.

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BASIC INFORMATION ABOUT THIS SETTLEMENT

1. Why did I get this Notice?

You received this Notice for one of three reasons.

One, you submitted a *Day Schools Class Action Registration Form* to Gowling WLG. Your Registration Form gave Class Counsel up-to-date record on how to contact you about the Day Schools class proceeding and Settlement Approval.

Two, someone you know sent you this information because they believe that the Day Schools Settlement will impact your rights. Please read the entire Notice carefully as your legal rights will be affected even if you do nothing.

Three, you found this Notice in a public area. In an effort to reach as many Class Members as possible, copies of this Notices have been sent to Indigenous organizations across the country including First Nations Councils and Bands and Friendship Centres across Canada, as well as other groups and organizations. Please read the entire Notice carefully as your legal rights will be affected even if you do nothing.

2. What is a Day School?

Federal Indian Day Schools and Federal Day Schools include all those schools established or designated as such by the Federal Departments of Indian Affairs and Northern Affairs and National Resources in which Indigenous students across Canada were required to attend by law (the *Indian Act*, Orders in Council, Territorial Ordinances and other legislation), and were funded in part or solely by Canada. Unlike Indian Residential Schools, students did not reside at Day Schools. Only in very limited circumstances (seasonal weather conditions etc.) would a student reside at a Day School.

3. What is a class proceeding?

In a class proceeding, one or more people called “**plaintiffs**” sue on behalf of people who have similar claims. All of these people are called a “**class**” or “**class members**.” The courts resolve the issues for everyone affected, except for those who exclude themselves from the lawsuits. A class member becomes excluded from the class proceeding by “opting out” of it.

4. What is the Federal Day School class proceeding about?

The legal action, *McLean v Canada* (Court File No. T-2169-16), was brought to recover compensation for class members from Canada for harms suffered by students who attended a Federal Indian Day School or Federal Day School. Students of Federal Indian Day Schools or Federal Day Schools have reported suffering physical, sexual, and psychological abuse by teaching staff, officials, students and

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other third parties. In some cases, the abuse was severe. These abuses were in addition to the mocking, denigration and humiliation of students by reason of their Indigenous culture and language. Through *McLean v Canada*, the Plaintiffs have sought the recognition of and justice for the harms inflicted on former students of Day Schools and their family members.

The legal action was certified on consent as a class proceeding by Justice Phelan of the Federal Court on June 21, 2018. The case was started by Garry McLean, who passed away before a Settlement was reached. The Court has appointed Roger Augustine and Claudette Commanda as Representative Plaintiffs for the Survivor Class and Mariette Buckshot as Representative Plaintiff for the Family Class. They may be contacted through Class Counsel at the address below.

5. Why is there a settlement?

The Federal Court has now approved a Canada-wide out-of-court settlement between Canada and Class Members in relation to Canada's establishment, funding, control, and management of Federal Indian Day Schools and Federal Day Schools. **Following the Settlement Approval Hearing held on May 13th to 15th, 2019 in Winnipeg, Manitoba, the Federal Court has determined that the settlement reached between Canada and the Class is fair, reasonable, and in the best interests of the Class as a whole.**

As a result of reaching a settlement and having it approved by the Federal Court, the parties have avoided the uncertainty of the outcome of a trial, the potential delays in obtaining a final judgment and the likelihood of significant costs related to lawsuit of this size and complexity. In addition to compensation received by individual Survivor Class Members, the approved settlement provides for benefits that would not be available under a judgment including the establishment of a \$200,000,000 (CDN) Legacy Fund to support commemoration projects, health and wellness projects, and language and culture initiatives.

WHO IS INCLUDED IN THE SETTLEMENT?

6. Who is included in the Settlement?

Former Federal Indian Day School and Federal Day School students ("**Survivor Class Members**") and their family members ("**Family Class Members**") are included in this settlement.

To be eligible for compensation as a **Survivor Class Member**, the claimant must have attended at least one of the identified Day Schools during the time that it was operated and/or controlled by Canada and must have suffered a recognized harm as a result of that school attendance. The identified Day Schools are listed on **Schedule K to the Settlement Agreement**, available on the Class Action website for review and confirmation. Each eligible Survivor Class Member will be required to provide supporting material for his or her claim.

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Survivor Class Members who passed away on or after July 31, 2007 may also be eligible to receive compensation. All payments will be made to the Estate Executor. More information on Estate Services can be found on the Indigenous and Northern Affairs Canada website: <https://www.aadnc-aandc.gc.ca/eng/1100100032357/1100100032361>.

Family Class Members will receive no direct compensation under the Settlement. Instead, a \$200,000,000 (CDN) Legacy Fund is being established to support projects for commemoration, wellness/healing, and the restoration and preservation of Indigenous languages and culture.

7. What if I am not sure whether I am included in the settlement?

If you are not sure whether you are included in the settlement, you may call Class Counsel directly or at the following toll free phone number: 1 (844) 539-3815 or you may visit www.IndianDaySchools.com

SETTLEMENT BENEFITS

8. What does the Settlement provide?

The Settlement provides direct compensation to Survivor Class Members who experienced harm while they were a student at a listed Federal Indian Day School or Federal Day School during the relevant period (“**Eligible Class Members**”). The listed Day Schools are provided in **Schedule K** of the Settlement Agreement.

The Settlement Agreement also provides \$200,000,000 (CDN) to support commemoration projects, health and wellness projects, and language and culture initiatives. This compensation will be made available as proposal-based funding by the McLean Day Schools Settlement Corporation, which will distribute the money to existing organizations and initiatives.

Eligible Class Members will be required to apply to the Claims Administrator in order to receive compensation. Canada has agreed to pay compensation to Eligible Class Members in accordance with the severity of harms they suffered while attending a Day School listed on Schedule K. The severity of harm is measured against a Harms Assessment Grid that contains five (5) levels of compensation. The level and associated compensation are the following:

Level 1:	\$10,000 (CDN)
Level 2:	\$50,000 (CDN)
Level 3:	\$100,000 (CDN)
Level 4:	\$150,000 (CDN)
Level 5:	\$200,000 (CDN)

Under the Settlement, Eligible Class Members will receive a single payment associated with the most severe harm they suffered while attending a Federal Indian Day School or Federal Day School, regardless of the number of schools attended. Each level of harm contains validation requirements. The Harms Assessment Grid and other details are available at www.indiandayschools.com.

9. Fees Approval

Canada has agreed to pay Class Counsel fees and disbursement in the amount of \$55,000,000 (CDN) plus applicable taxes. The Federal Court has now approved these fees and disbursements. **No portion of Class Counsel Fees will come from compensation paid to Survivor Class Members or to the Legacy Fund.**

The Court has also approved \$7,000,000 (CDN) to be paid by Canada to Class Counsel for legal services in support of Class Members during the Claims Process. All legal fees and disbursements including those of Class Counsel are subject to Court approval.

There is no charge to Class Members who receive assistance from Class Counsel during the Claims Process.

10. What am I giving up in the Settlement?

The Court's approval of this Settlement is binding on all class members who do not opt out of the proceedings by November 18, 2019.

If you do **NOT** opt out of the Settlement, as described below, you will be unable to advance a lawsuit of your own relating to harms caused through Canada's management and control of Day Schools. If you do **NOT** opt out of the Settlement, as described below, you will be deemed to have "released" Canada from liability for all harms suffered by you at the Day School(s) you attended. In return however, and if eligible, you will receive compensation for the harms that you experienced.

Nothing in this Settlement requires you to give up your right to sue a province or religious institution for its involvement in its management or control of a Federal Indian Day School or Federal Day School.

The Settlement Agreement provides a specific description of the Release. Please read the Settlement Agreement carefully and contact Class Counsel if you have any questions. The details of the Release are also available in the Order of the Federal Court approving the Settlement.

OPTING OUT

11. Can I remove myself from the Settlement?

The Order of the Court will bind all of the Class Members who do **not** opt out of the proceeding (*Federal Courts Rules*, Rule 334.32(5)(f)).

If you are an Eligible Class Member, you can remove yourself from the Settlement by delivering a signed and dated **Opt-Out Form** before the end of the Opt Out period. The **Opt Out Period** is ninety (90) days after the Federal Court approves the Settlement Agreement.

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If you have previously commenced a legal proceeding against Canada relating to its funding, control, and management of a Federal Indian Day School and if you do not discontinue your individual claim on or before November 18, 2019, you will be **deemed to have opted out** of the settlement.

More information on the Opt Out Period is available at www.IndianDaySchools.com or by contacting Class Counsel. Further, a copy of the Opt-Out Form is available on request through Class Counsel or the Claims Administrator.

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RECEIVING A PAYMENT

12. When will I receive my payment?

Class Members may begin submitting Claims Forms on the **Implementation Date** following the end of the opt-out period of **90 days** and after all appeals from the Court's approval are resolved. An Estate Executor is responsible for submitting a Claims Form for a deceased Class Member who passed away before they submitted a Claims Form on their own behalf.

An announcement will be made shortly before Claims Forms are made available. Class Counsel will be available to assist with the completion of each claimant's form however a **Claims Form must be signed and submitted by the class member**, either directly to the Claims Administrator or by Class Counsel on request.

Eligible Class Members will receive compensation after their Claims Form has been reviewed and approved by the Claims Administrator. If the Claims Administrator requires additional information to review a claim, the time required to review and approve the Claims Form may increase.

Under certain circumstances and on request by the class member, a Third Party Assessor may review the decision of the Claims Administrator with respect to the level of compensation being assigned to a claim.

13. How do I make a claim for compensation?

To receive compensation under the approved Settlement, Class Members are required to submit a completed Claims Form to the Claims Administrator. (Class Counsel is available to assist with completion and submission of the Claims Form). The Claims Administrator will review each Claims Form to make one of three determinations: (1) approve the claim; (2) deny the claim; or (3) request additional information.

If your Claim is approved, you will receive compensation based on the Harms Assessment Grid attached to the Settlement Agreement and available through Class Counsel and the Day Schools website; www.IndianDaySchools.com. The compensation will be paid directly either to you, your court-appointed representative, or, in the event of your death, your estate trustee.

Claims Forms are available through the Day Schools website at www.IndianDaySchools.com or through Class Counsel or by calling the Claims Administrator.

14. What if my claim is denied?

The Claims Administrator will notify you if your claim is denied.

Your Claim will be denied if (i) you are not an Eligible Class Member; (ii) you have already been compensated, in another proceeding, for your attendance at a Federal Indian Day School or Federal Day School; or (iii) you removed yourself from this Settlement by submitting an Opt Out Form.

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15. What if I disagree with the level of compensation awarded?

If you are an Eligible Class Member and have not previously been compensated for your attendance at a Federal Indian Day School or Federal Day School, the Claims Administrator will assess your Claim and approve a level of compensation in accordance with the Harms Assessment Grid.

If the Claims Administrator approves your claim for a lower level of compensation than which you believe you are entitled to receive under the Harms Assessment Grid, you have the option to provide further information and to have your claim re-assessed in light of that further information. You will then be notified of the Claims Administrator's re-assessment.

If the Claims Administrator confirms its initial assessment, you will have the option of having your claim reviewed by a Third Party Assessor. The decision of the Third Party Assessor is final.

THE LAWYERS REPRESENTING YOU

16. Who are the lawyers for the plaintiffs?

Gowling WLG (Canada) LLP was appointed as Class Counsel by Justice Phelan of the Federal Court on June 21, 2018. You may contact Class Counsel at:

**Gowling WLG (Canada) LLP 160 Elgin Street
Suite 2600 Ottawa, Ontario K1P 1C3**

**Toll-free Day School Support Services:
1 (844) 539-3815**

Email: dayschools@gowlingwlq.com

Robert Winogron, Partner
+1 613 786 0176
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+1 416 862 4644
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+1 613 786 0246
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Vanessa Lessard, Law Clerk
vanessa.lessard@gowlingwlq.com

About Class Counsel

Lead Class Counsel are Robert Winogron, Jeremy Bouchard and Mary M. Thomson of the law firm, Gowling WLG (Canada) LLP. Mr. Winogron and Mr. Bouchard have over 30 years of combined legal experience in the area of Aboriginal Law and Litigation. Ms. Thomson is a class action specialist and has more than 35 years of litigation experience. Gowling WLG (Canada) LLP is a national law firm,

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which is consistently recognized for its representative work on behalf of Indigenous organizations across Canada.

There is no charge to speak to Class Counsel.

MORE INFORMATION

17. How do I get more information?

This Notice summarizes the Settlement. More details are in the Settlement Agreement.

You can get a copy of the Settlement Agreement and the Decision of the Federal Court at www.IndianDaySchools.com.

You may also send questions to Class Counsel by

Email: dayschools@gowlingwlq.com

Phone (Toll-free): 1 (844) 539-3815

Mail: **Indian Day School Class Action**, c/o Class Counsel
Gowling WLG (Canada) LLP 160 Elgin Street
Suite 2600 Ottawa, Ontario K1P 1C3

Or using the contact information listed above.