



## NOTICE OF CERTIFICATION AND HEARING FOR APPROVAL OF SETTLEMENT (Long Form)

### INDIAN DAY SCHOOL LITIGATION

If you attended an Indian 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.**

- 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 by them as a result of their attendance.
- This legal action was certified on June 21, 2018, on consent, as a class proceeding in the Federal Court.
- The Certification Order appoints Roger Augustine and Claudette Commanda as representative plaintiffs of the Survivor Class and Mariette Buckshot as representative plaintiff of the Family Class.
- The Government of Canada (“**Canada**”) has agreed to an out-of-court Settlement with Class Members in relation to its establishing and funding of Federal Indian Day Schools (“**Indian Day Schools**”) and its subsequent control and management of the Indian Day Schools.
- As part of the Settlement, Canada will provide compensation to Eligible Class Members.
- The Settlement must be approved by the Federal Court before compensation will become available to Class Members. 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)).
- The date and location for the proposed Settlement Approval Hearing is **May 13, 14 and 15, 2019** at the **Federal Court, 363 Broadway, Winnipeg, MB R3C 3N9**.
- Class Counsel will also ask the Court to approve fees and disbursements for their work in achieving the Settlement.

#### **Your Legal Rights And Options In This Proposed Settlement:**

- 1. Do Nothing:** If you support the Settlement Agreement, you do not have to do anything at this time. Please note that you will give up any right to object to the Settlement under this option.
- 2. Submit a Statement of Support:** If you support the proposed Settlement, you can choose to file a Statement in Support by delivering a Statement of Support to Class Counsel at the address below **by May 3, 2019**. Class Counsel will file your Statement of Support with the Court in advance of the Settlement Approval Hearing. Do not send your Statement of Support directly to the Court.
- 3. Object to the Proposed Settlement:** If you disagree with the proposed Settlement, you have the right to object. You can object by delivering an Objection Form to Class Counsel at the address below **by May 3, 2019**. Class Counsel will file your Objection Form with the Court in advance of the Settlement Approval Hearing. Do not send your Objection Form directly to the Court.
- 4. Attend the Hearing:** Go to the **Federal Court, 363 Broadway, Winnipeg, MB R3C 3N9**. If you have submitted either a Statement of Support or an Objection Form to Class Counsel, you can ask to make oral submissions to the Court. Your Statement of Support or Objection Form should indicate your intention to make oral submission at the hearing.

***The following pages provides more information on the Class Action and the Settlement Approval Hearing.***

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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:

**First**, you submitted an *Indian Day Schools Class Action Registration Form* to Gowling WLG. Your Registration Form provided Class Counsel with an up-to-date record on how to contact you with updates about the class action and a potential Settlement.

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

**Third**, you found this Notice in a public area. In an effort to reach as many Class Members as possible, these Notices have been sent to First Nations 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 an Indian Day School?

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

### 3. What is a class action?

In a class action, 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.

### 4. What is the Indian Day School class action about?

The legal action, *McLean v Canada* (Court File No. T-2169-16), was brought to claim damages from Canada for harms suffered by students who attended an Indian Day School. Indian Day School students have reported suffering physical, sexual, and psychological abuse by teaching staff, officials, students and other third parties. In some cases, the abuse was severe. These abuses were in addition to students who were mocked, denigrated or humiliated by reason of their Indigenous culture and language. *McLean v Canada* seeks recognition of and justice for the harms inflicted on former students of Indian 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. They may be contacted through Class Counsel at the address below.

### 5. Why is there a settlement?

Canada has agreed to an out-of-court settlement with Class Members in relation to its establishment and funding of Indian Day Schools and its subsequent control and management of the Schools. By reaching a settlement, the parties avoid the significant costs and uncertainty of a trial, as well as potential delays in obtaining a final judgment.

## WHO IS INCLUDED IN THE SETTLEMENT?

### 6. Who is included in the Settlement?

Former Indian Day School students (“**Survivor Class Members**”) and their family members (“**Family Class Members**”) are included in this Settlement.

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

**Family Class Members** will receive no direct compensation under the proposed 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.

The Representative Plaintiffs and their lawyers think the proposed Settlement is in the best interests of all Class Members.

### 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 with questions, visit [www.IndianDaySchools.com](http://www.IndianDaySchools.com) or call the following toll free phone number: 1 (844) 539-3815.

## SETTLEMENT BENEFITS

### 8. What does the Settlement provide?

If the Settlement Agreement is approved by the Federal Court, it will provide for direct compensation to Survivor Class Members who experienced harm while they were a student at a listed Indian Day School during the relevant period (“**Eligible Class Members**”). The listed Indian Day Schools are provided in Schedule K of the Settlement Agreement. Eligible Class Members will be required to apply to a Claims Administrator to receive compensation.

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 by the McLean Day Schools Settlement Corporation, which will distribute the money as proposal-based funding to existing organizations and initiatives.

Canada has agreed to pay compensation to Eligible Class Members in accordance with the severity of harms they suffered while attending an Indian Day School. This severity 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 in the amount associated with the most severe harm they suffered while attending an Indian Day School, irrespective of the number of schools attended. Each level contains verification requirements. The Harms Assessment Grid and other details are available in Schedule B of the Settlement Agreement. The Settlement Agreement is available at [www.indiandayschools.com](http://www.indiandayschools.com).

## 9. How will the lawyers be paid?

No portion of Class Counsel fees will come from the compensation paid to Survivor Class Members or to the Legacy Fund. Canada has agreed to pay Class Counsel \$55,000,000 (CDN) plus taxes for legal fees and disbursements.

Class Counsel fees and disbursements are subject to Court approval at the Settlement Approval Hearing.

## 10. When will I receive my payment?

If the proposed Settlement Agreement is approved by the Federal Court, and all appeals from that approval are resolved, Class Members can begin submitting their Applications.

Eligible Class Members will receive compensation after their Application 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 Application may increase. Under certain circumstances, a Third Party Assessor may review the decision of the Claims Administrator with respect to the level of compensation being assigned to a claim.

An announcement will be made shortly before the Applications are made available.

## 11. What am I giving up in the Settlement?

**If an Order is granted by the Court approving the Settlement of this action, the judgment will be binding on all class members who do not opt out of the proceedings.**

If you do NOT opt out of the Settlement, as described below, and the proposed Settlement Agreement becomes final, you will not be able to advance a lawsuit of your own for Canada's management and control of Indian Day Schools. You will be "releasing" Canada from liability for all actions at Federal Indian Day Schools, but you will receive compensation in recognition of the harms that you experienced.

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

The proposed Settlement Agreement provides a specific description of the Release. Please read the Settlement Agreement carefully and contact Class Counsel if you have any questions.

## 12. Can I remove myself from the Settlement?

The order of the Court, whether favourable or not, 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 with an **Opt Out Form** found in Schedule H of the Settlement Agreement before the end of the Opt Out period. The **Opt Out Period** is sixty (60) days after the Federal Court approves the Settlement Agreement, if the Court chooses to do so.

More information on the Opt Out Period will be announced at [www.IndianDaySchools.com](http://www.IndianDaySchools.com).

## RECEIVING A PAYMENT

### 13. How can I receive a payment?

If the proposed Settlement Agreement is approved by the Federal Court, all Class Members will be required to submit an Application to the Claims Administrator. The Claims Administrator will review your claim and 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 provided in Schedule B of the Settlement Agreement. The compensation will be paid directly either to you, your court-appointed representative, or, in the event of your death, your estate executor.

Application forms will be available at [www.IndianDaySchools.com](http://www.IndianDaySchools.com) or by calling the Claims Administrator after the proposed Settlement Agreement is approved by the Federal Court.

#### **14. What if my claim is denied?**

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

Your Application will be denied if (a) you are not an Eligible Class Member or (b) you have already been compensated, in another proceeding, for your attendance at an Indian Day School.

#### **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, the Claims Administrator will assess your Application and approve a level of compensation in accordance with the Harms Assessment Grid.

If the Claims Administrator approves your Application for a lower level of compensation than what you believe you are entitled to under the Harms Assessment Grid, you will have the option to provide further information and 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 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 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**

Robert Winogron, Partner  
+1 613 786 0176  
[robert.winogron@gowlingwlg.com](mailto:robert.winogron@gowlingwlg.com)

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+1 613 786 0246  
[jeremy.bouchard@gowlingwlg.com](mailto:jeremy.bouchard@gowlingwlg.com)

Mary M. Thomson, Partner  
+1 416 862 4644  
[mary.thomson@gowlingwlg.com](mailto:mary.thomson@gowlingwlg.com)

Vanessa Lessard, Law Clerk  
[vanessa.lessard@gowlingwlg.com](mailto:vanessa.lessard@gowlingwlg.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 35 years of litigation experience. Gowling WLG is a national law firm which is consistently recognized for its representative work on behalf of First Nations and Aboriginal organizations across Canada.

**There is no charge to speak to Class Counsel.**

## THE APPROVAL HEARING

### 17. Is there a way for me to show my support for the proposed Settlement?

You can support the proposed Settlement by submitting a Statement in Support or email to Class Counsel. It should include:

- Your name, address, and telephone number;
- The reasons you support the proposed Settlement;
- The Indian Day School that you attended and the years that you attended; and
- Your signature.

You must mail or email your Statement of Support, postmarked by **May 3, 2019** to:

**Indian Day School Class Action – Support**

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

Attention: [vanessa.lessard@gowlingwlg.com](mailto:vanessa.lessard@gowlingwlg.com)

Class Members may speak at the Approval Hearing. If you are a Class Member, you can ask the Court for permission to speak at the Approval Hearing. To do so, please indicate on your Statement of Support that you would like to speak at the Approval Hearing.

### 18. How do I object to the proposed Settlement?

You can object to the proposed Settlement if you do not like some or all of its terms. The Court will consider your views. To object, you must submit an Objection Form to Class Counsel that includes the following:

- Your name, address, and telephone number;
- A statement saying that you object to the Indian Day School proposed Settlement;
- The reasons you object to the proposed Settlement, along with any supporting materials;
- The Indian Day School that you attended and the years that you attended; and
- Your signature.

You must mail or email your Objection Form, postmarked by **May 3, 2019** to:

**Indian Day School Class Action – Objection**

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

Attention: [vanessa.lessard@gowlingwlg.com](mailto:vanessa.lessard@gowlingwlg.com)

#### **Objecting to the Settlement Agreement is not the same as Opting Out.**

If you object to the Settlement Agreement, you should do so by submitting a Notice of Objection and, if you desire, appearing at the Settlement Approval Hearing.

**Although Class Members may make objection to the proposed Settlement, the Final Decision on Approval of the Settlement is that of the Judge alone.**

Class Members may speak at the Approval Hearing. If you are a Class Member, you can ask the Court for permission to speak at the Approval Hearing. To do so, please indicate on your Objection Form that you would like to speak at the Approval Hearing.

## 19. When and where will the Court decide whether to approve the proposed Settlement?

A motion to approve the Settlement is scheduled to be heard on **May 13, 14 and 15, 2019** at the **Federal Court, 363 Broadway, Winnipeg, MB R3C 3N9**.

If you are unable to attend the hearing but wish to address the Court, live video conferencing may be arranged at other Federal Court locations in Canada. If you wish to address the Court by video conference, you must contact Class Counsel at the contact information above no later than May 3, 2019. The addresses of Federal Court locations with video conferencing will be posted at [www.indiandayschools.com](http://www.indiandayschools.com) by May 6, 2019. If you are unable to appear either in person or by video conference but still want your views on the settlement heard, you can put them in writing as described above.

## 20. Do I have to attend the hearing?

You do **NOT** have to attend the hearing. Class Counsel will answer questions that the Court may have about the proposed Settlement Agreement. If you sent an Objection Form or Statement of Support to Class Counsel, you do not have to attend the hearing. Class Counsel will file your document with the Court in advance of the Settlement Approval hearing.

## 21. May I speak at the hearing?

Class Members may speak at the Approval Hearing. If you are a Class Member, you can ask the Court for permission to speak at the Approval Hearing. To do so, please indicate on your Objection Form or Statement of Support that you would like to speak at the Approval Hearing.

## 22. What if I do nothing?

If you choose to do nothing, the Court will consider the merits of the Settlement Agreement without your input.

## MORE INFORMATION

### 23. How do I get more information?

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

You can get a copy of the proposed Settlement Agreement at [www.IndianDaySchools.com](http://www.IndianDaySchools.com). You can send your questions to **Indian Day School Class Action**, c/o Class Counsel.