

McLean v Canada: Federal Indian Day Schools Class Action

PRESENTED AT M'CHIGEENG FIRST NATION
OCTOBER 2, 2019



INDIAN DAY SCHOOLS CLASS ACTION

Overview

- Overview of *McLean* Class Action
- What are “Indian Day Schools?”
- The Class Action & Classes
- Claims Form
- Current Status of Action & Next Steps
- Contact Information

HOPE FOR WELLNESS HOTLINE

**Need to Talk? Contact the
[Hope for Wellness Hotline](#)**

[1-855-242-3310](tel:1-855-242-3310)

Phone and chat counselling is available in English and French. On request, phone counselling is also available in:

- Cree
- Ojibway
- Inuktitut

OVERVIEW OF *MCLEAN* ACTION

Garry McLean v Attorney General of Canada

- Action started in 2009
- Class Action against the Federal Government for its operation of Day Schools
- Former Federal Indian Day School and Federal Day School students were not included in the Residential Schools Settlement
- *McLean* seeks justice for harms suffered by students and their families



Garry Leslie McLean (1951 – 2019)

WHAT ARE “FEDERAL INDIAN DAY SCHOOLS?”

- **List of Federal Indian Day Schools and Federal Day Schools are available on the website: www.indiandayschools.com**
 - Schedule K to the Settlement Agreement
 - Approximately 700 schools established, funded, administered and managed by the Department of Indian Affairs
- **Students attended Indian Day Schools by day only, returning home at night.**
- **Students suffered physical, sexual, and psychological abuse, as well as loss of language and culture.**

WHAT “FEDERAL INDIAN DAY SCHOOLS” ARE NOT

- 1. Federal Indian Day Schools are not Indian Residential Schools; they used the same curriculum but were separate institutions.**
 - ❖ The *McLean* action does not include “Day Scholars,” who were students that attended Residential Schools by day only (*Gottfriedson*).
- 2. Federal Indian Day Schools are not provincial or territorial schools.**
- 3. Church Schools run separate and independently from government.**

CLASS ACTIONS AND CLASSES

- Nature of a class action lawsuit
- ❖ The “**Survivor Class**” includes all persons who attended a Federal Indian Day School or Federal Day School after January 1, 1920.
 - As of October 2017, an estimated 120,000 to 140,000 Survivors remain alive.
 - Approximately 2,000 Survivors will die each year.
- ❖ The “**Family Class**” includes all spouses, former spouses, children, grandchildren, and siblings of Survivor Class members.
 - Total number unknown, but much larger than Survivor Class.

CLASS PERIOD

- **Starts in 1920**
 - *Indian Act* and related regulations allow for the establishment of Day Schools and forced attendance.
- **Ends on:**
 - Date of school closure, or
 - Transfer of administration and control to another entity (province, territory, Nation, community etc.)

SCHEDULE K – FEDERAL INDIAN DAY SCHOOLS

SCHEDULE K – LIST OF FEDERAL INDIAN DAY SCHOOLS

Province	School Name	Name Variants	Opening Date	Closing or Transfer Date	Location	Religious Affiliation
Ontario	West Bay		1875	June 30, 1966	West Bay Reserve	Roman Catholic

COMPENSATION FOR SURVIVORS

- **Direct Compensation**
 - Draft Claims Forms are available for review and claims preparation
 - Compensation payments will begin after the Implementation Date
- **Class Counsel is available to help at no cost to Class Members**
 - ❖ **The Claims Administrator is not currently receiving Claims Forms**

CLAIMS FORM
INDIAN DAY SCHOOL CLASS ACTION SETTLEMENT
This Settlement is applicable to all students who attended and suffered abuse or harm at a Federal Indian Day School or Federal Day School operated by the Government of Canada.
Claim Due By: TBA*
<small>*The Claims Deadline is defined in the Settlement Agreement as two and a half (2.5) years after the Implementation Date. A date for the Claims Deadline will be announced in the coming months.</small>
Starting in 1920, Indigenous students were required to attend school. Some Indigenous students attended a Federal Indian Day School or Federal Day School (" Day School ") that was funded, managed and controlled by the Federal Government of Canada ("Canada").
The Federal Indian Day School Class Action Settlement Agreement ("Settlement") provides compensation to any former day student who attended a Day School <u>and</u> who suffered abuse or harm when attending the school.
A list of the eligible Day Schools, along with relevant dates of their management and control by Canada, is available at www.indiandayschools.com (Schedule K of the Settlement).
Class Counsel and available legal advice: legal advice with respect to eligibility and harms experienced is available at no cost to you from Class Counsel, Gowling WLG, by contacting dayschools@gowlingwlg.com or 1-844-539-3815.

CLAIMS FORM

- **Paper-based Process**
- **Compensation Principles**
 - ❖ The Claims Process is intended to be **expeditious, cost-effective, user-friendly, and culturally sensitive**
 - ❖ The goal is to minimize the burden on Class Members and lessen the likelihood of re-traumatization
 - ❖ Class Members are assumed to act honestly and in good faith

The Settlement provides for compensation to former Day School students who **both**:

- a) **attended** Federal Indian Day School(s) and Federal Day School(s) funded, managed and controlled by Canada
- AND**
- b) **suffered abuse or harm from** teaching staff, officials, students and other third parties at the school.

To be eligible for compensation, students must not have not already received a settlement from Canada for the same or related incident(s) at a Federal Indian Day School or Federal Day School as identified in this Claim Form.

Former Day School students are collectively identified as Survivor Class Members.

If you believe you are a Member of the Class, please complete this Claim Form to the best of your ability.

Part 1	Your name, contact details and date of birth	p. 3
Part 2	Day School(s) and the years you attended	p. 4
Part 3	Consent and Signature Page	p. 5
Part 4	IF claiming Level 1 Verbal / Physical Harm	p. 6
Part 5	IF claiming Level 2, 3, 4, or 5 Sexual / Physical Harm	p. 7-11
Part 6	Complete <u>only</u> if you are a legal representative of a Claimant	p. 12

Before sending, please review the Retention Policy and Submission Process on pgs. 14 and 15

Please make sure to keep a copy of your Claim Form and any attached documents for your personal records.

Original photographs or records are not required – clear copies will be accepted.

LEVEL 1 CLAIMS

- Supporting documents, Sworn Declaration and Written Narrative are not required
- Compensation based upon harms
 - Single payment of \$10,000, regardless of the number of schools attended

Part 4: Claim for Level 1 Harm– Verbal/Physical Abuse

If the abuse/harm described in Level 1 (\$10,000) represents the most serious abuse/harm(s) that you experienced while attending the Day School, please complete this section by placing a mark in the below.

Abuse/harm may have been from teachers, officials, students, and/or other third parties.

If the abuse/harm in Level 1 does not represent the most serious harm(s)/abuse you experienced, please skip this section and complete a higher Claim Level (Levels 2 to 5) in Part 5, as appropriate.

LEVEL 1 – Description of Verbal / Physical Abuse or Harm

Verbal Abuse or Harm, including:

- Mocking, or denigration (e.g. belittling or abusive language), or humiliation (e.g., shaming) by reason of Indigenous identity or culture; or
- Threats of violence or intimidating statements; or
- Sexual comments or provocations.

OR

Physical Abuse or Harm, including

- Unreasonable or disproportionate acts of discipline or punishment.

LEVEL 1 – Selection

If the description of abuse/harm above represents the most serious abuse/harm that you experienced, please select Level 1 by placing a mark such in this box.

NEXT STEPS

If you selected Level 1 above, no further description or documentation is required.

PLEASE PROCEED TO PART 6, if applicable, on p.12 and review p.13

LEVELS 2 TO 5 CLAIMS

- Range based upon harms
 - Harms Assessment Grid - \$50,000 to \$200,000
 - Single payment, regardless of the number of schools attended

Part 5: Claims Process for Levels 2, 3, 4, or 5												
STEP 1: Identify the ABUSE or HARM you suffered from <i>teachers, officials, students, and/or other third parties.</i>												
Abuse / Harm	LEVEL 2	LEVEL 3	LEVEL 4	LEVEL 5								
Sexual Abuse/Harm	At least one sexual incident of any one of:			Repeated sexual incidents of any one of:								
	<ul style="list-style-type: none"> touching with sexual purpose; adult(s) exposing themselves; fondling/kissing; nude photos taken 	<ul style="list-style-type: none"> masturbation; oral intercourse; attempted penetration 	<ul style="list-style-type: none"> penetration; penetration with an object 	<ul style="list-style-type: none"> masturbation; oral intercourse; penetration; penetration with an object 								
OR												
Physical Abuse	At least one incident of physical abuse / assault, <u>causing</u> :	At least one incident of physical abuse / assault, <u>causing</u> :	Repeated (at least two) incidents of physical abuse / assault, <u>causing</u> :	During an incident of any one sexual abuse / assault described above <u>at least one</u> incident of physical abuse / assault, <u>causing</u> :								
Harm	CAUSING:											
	<u>serious but temporary</u> harm: <ul style="list-style-type: none"> injury requiring bed rest or infirmity stay (e.g., in school medical room or hospital); or loss of consciousness; or broken bone(s) 	<u>permanent or long-term</u> harm: <ul style="list-style-type: none"> injury; or impairment (e.g., physical or mental); or disfigurement 										
STEP 2: SELECT YOUR CLAIM LEVEL <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">Level 2 \$50,000</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Level 3 \$100,000</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Level 4 \$150,000</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Level 5 \$200,000</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>					Level 2 \$50,000	<input type="checkbox"/>	Level 3 \$100,000	<input type="checkbox"/>	Level 4 \$150,000	<input type="checkbox"/>	Level 5 \$200,000	<input type="checkbox"/>
Level 2 \$50,000	<input type="checkbox"/>	Level 3 \$100,000	<input type="checkbox"/>	Level 4 \$150,000	<input type="checkbox"/>	Level 5 \$200,000	<input type="checkbox"/>					

SUPPORTING DOCUMENTS

- **Claimants:**

- Must provide a written narrative
- Are encouraged to start gathering documents early
- Can submit a **Sworn Declaration** if “Required” documents do not exist

STEP 3: Provide SUPPORT for the Level selected by completing sections listed below

Support	LEVEL 2	LEVEL 3	LEVEL 4	LEVEL 5
Your Written Narrative of events	Complete 5A			
List of position/ person(s) who inflicted or caused the abuse/harm	Only if available Complete 5B		Required* Complete 5B	
Evidence of School attendance	Required* Complete 5C and attach documents			
Family / Friend narratives or other records	Only if available Complete 5D and attach documents		Required* Complete 5D and attach documents	
Medical, Dental, Nursing or Therapy Records	Only if available Complete 5E and attach documents		Required* Complete 5E and attach documents	

*** If you do not have the documents marked above as required, you may complete a Sworn Declaration; see Part 5F**

SWORN DECLARATION

- **The Claimant swears that the contents of the Claims Form are true**
 - Only certain individuals can be a Guarantor
 - **Guarantors do not read the Claims Form**
 - Different from a “Witness Signature” on Part 3 of the Claims Form

Part 5: Claim for Levels 2, 3, 4, 5 only	
Part 5F – Sworn Declaration (if applicable)	
You must complete the following Sworn Declaration only if you are missing one or more of the required documents (see p. 8) for Level 2, 3, 4 or 5 .	
A Sworn Declaration is a statement signed by the claimant and <u>any one of</u> the following Guarantors:	
<ul style="list-style-type: none"> ▪ Notary Public or Commissioner of Oaths including Northern Villages' Secretary Treasurer ▪ Elected Official or Community leader (e.g. Chief, Councilor, Inuit Community Leader) ▪ Other Professional (e.g. Lawyer, Doctor/Physician, Accountant (CPA), Police Officer) 	
Sworn Declaration by Claimant:	
<i>I declare that the information I have provided is true to the best of my knowledge</i>	
Claimant Full Name - First, Last	
Signature of Claimant	Date MM ____ DD ____ YY ____
Above declaration must be witnessed by a Guarantor.	
The Guarantor only needs to <u>see</u> the Claimant <u>sign this page</u> . As Guarantor, you are <u>not required</u> to read the Form or verify the accuracy of the events described in this Form.	
Guarantor Full Name - First, Last	
Guarantor Title/Position	Organization
Guarantor Address: Street Name and Number; Unit Number (if applicable)	
City/Town/Community	
Province/Territory	Postal Code
	Country
Telephone Number	Email Address (if available)
Signature of Guarantor	Date MM ____ DD ____ YY ____

CLAIMS FORM - ESTATES

- Estates of Survivor Class Members who passed away on or after July 31, 2007 may submit a Claims Form
- Contact **Crown-Indigenous Relations and Northern Affairs** for information about Estate Executors and Administrators - *Estate services for First Nations people*
 - Toll-Free Number: 1-800-567-9604
 - Email: aadnc.infopubs.aandc@canada.ca

Part 6: Are you applying as a Representative of a Claimant? (if applicable)	
A Personal Representative must be either:	
a) Appointed by a Court to manage or make reasonable judgments or decisions in respect of the affairs of the person under disability	
OR	
b) The Estate Executor of a Claimant who is deceased on or after July 31, 2007	
If you are applying as a Representative, on behalf of a Claimant, check this box:	Yes <input type="checkbox"/>
If you selected Yes, Representative to provide details below	
Representative Full Name - First, Last	
Representative Address: Street Name and Number; Unit Number	
City/Town/Community	
Province/Territory	Postal Code
	Country
Telephone Number	Email Address (if available)
Describe your relationship to the Claimant	
Provide Documentation	
If you are acting as a Personal Representative, you must attach documentation to verify your eligibility to act on the Claimant's behalf. Examples include:	
a) an Executor, for a Claimant who is deceased, including a Death Certificate and a Will, Revenue Québec Estate Form or Court Order appointing you as the Estate Administrator for the deceased Claimant;	
OR	
b) for a Claimant who is under disability, this may include evidence that you have Power of Attorney over the Claimant's finances.	
List the attached documentation you have submitted:	

COMPENSATION TIMELINE

1. Appeals Period

- 60 days after August 19, 2019
- An appeal may delay the Implementation Date

2. Opt Out Period

- August 19, 2019 to November 19, 2019 (90 days)

3. Implementation Date

- 120 days after the Approval Order, subject to the final determination of appeals
- Claims Administrator begins to process Claims Forms
- Compensation payments begin shortly afterward

CLAIMS PROCESS

- **Claims Deadline**
 - 2.5 years after the Implementation Date
- **Deadline Extension**
 - Additional 6 months for those qualify for an extension
 - Must complete a Request for Deadline Extension Form

LEGACY FUND

- **Survivors** and their **family members** will be helped by the Legacy Fund established to address the wrongs suffered by all Indigenous peoples.
- **\$200M Legacy Fund** for
 - Healing Initiatives
 - Cultural and Language Revitalization
 - Community based/focused Commemorative Events
 - Truth Telling Forum
- **The McLean Day School Settlement Corporation will administer the Legacy Fund**

NEXT STEPS

- **Ongoing efforts to publicize *McLean* and provide support to Class Members:**
 - Continue to make community visits when invited to do so
 - Ongoing engagement with community leaders and support workers

CONTACT INFORMATION



KAISHA THOMPSON
Associate



**ALYSSA FLAHERTY-
SPENCE**
Associate

Toll Free Number: 1 (844) 539 3815

Day Schools Email Address: dayschools@gowlingwlg.com

Day Schools Website: <http://www.indiandayschools.com/>

Facebook: @McleanClassAction



gowlingwlg.com

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at gowlingwlg.com/legal



QUESTIONS?



GOWLING WLG