

McLean Day School
Class Action

Proposed Settlement Agreement

Mclean Day School Class Action

- Is 1 of 4 class actions launched in Canada
- Federal Court certified Mclean CA June 2018
- Agreement in Principle signed December 2018
- March 12, 2019 – Minister Bennett signed agreement quietly released on Class Counsel Website
- Hearings will be held at Federal Court May 13-14-15, 2019 for Approval

McLean Day School Class Action

- Class size estimated to be 140,000-200,000
- Mclean Class Action covers same serious physical and sexual abuse as the residential school IRSSA agreement (5 levels of abuse ranging from \$10,000-\$200,000) (See handout)
- There will be a one year deadline to file a claim.

Mclean Day School Class Action

- No Hearings-proposes a strictly paper-filing-claims process expected to be a self-help process with survivors;
- filing their own applications and self-identifying the level of abuse
- collecting their own supporting documents, validation criteria.
- responding to denials from the Claims Administrator
- requesting reconsideration and third-party assessor.

Mclean Day School Class Action

- Only one law firm (Class Counsel Gowling WLG) can provide legal services
- They will receive 55 Million within 30 days of the court approving Agreement without assisting any survivors!
- They will receive a further 7 Million over 4 years and have not offered a plan for providing any direct legal services to day school clients.
- They have no law offices in SK and MB.

Key Areas of Concern

1. One Year Deadline
2. Issues with Eligibility and Validation Criteria
3. No Procedural Fairness (for claims that are denied or deemed ineligible)
4. No access to your own lawyer to assist
5. No support for healing or mental health

McLean Day School Agreement: Current Status

- The Federal Court will hold hearings on the Mclean Day School Class Action May 13-15, 2019 in Winnipeg, MB.
- The Federal Court can not make unilateral changes to the Class Action Agreement without the Parties (Gowling WLG and Attorney General for Canada's) consent. Gowlings WLG will accept forms for "Support" and Objections" until May 3, 2019.
- If approved at the Federal Court there will be a 60 day Opt-Out period.

Mclean Day School Class Action

- Unlike the IRSSA, for the Mclean Day School Agreement there was no meaningful engagement, consultation or input into the design of settlement process or terms of the agreement by any of our Day School survivors or their representative leadership including Chiefs, FSIN or AFN.
- To ensure the fairest settlement possible for Day School survivors, FSIN and Saskatchewan Chiefs will coordinate an effort to pressure both Parties [Gowling WLG and Minister Carolyn Bennett] to amend the Agreement and fix the 5 areas of concern.

Mclean Day School Class Action

- At this stage Indian Day school survivors can send objections to Gowling WLG on or before May 3, 2019-to make sure your friends and family receive a fairer settlement process.
- **Key Message.** If the Mclean Day School Class Action Agreement is NOT amended and is approved by the Federal Court, AS IS, every day school survivors with claims above level one should be encouraged to seek independent legal advice during the opt out period.

Key Issues/Considerations

- **1. One Year Deadline**
- There will be a one year deadline to file a claim with all supporting documents. There has been no reason offered for such a short timeframe.
- Under the IRSSA survivors had 4 years to file CEP application and up to 5 years to file an IAP application for claims of physical and sexual abuse.
- With a day school class member size of 140,000 should be at least 5 years like the IRSSA IAP claims process.

Key Issues/Considerations

- This will be a self-help process with survivors expected to fill out their forms and collect their own supporting documents all within 1 year.
- There are varying education and literacy levels, language and cultural barriers, access to justice issues for many northern, remote and rural communities.
- Many of the day school survivors have also been negatively impacted and suffer trauma-related symptoms such as addictions and substance use, homelessness and poverty.

Key Issues/Considerations

- This very short deadline to file, may result in many of our most vulnerable survivors being left out completely. Others may rush to submit claims without all supporting documents to support validate their claims required under the Agreement. This may result in denial of the claims or ineligibility at higher award levels.
- **Key Message:** One year is not enough time, this sets up our Indian Day School survivors to fail, want the fairest settlement and demand the proper time to prepare our claims. Demand at a minimum 5 years.

Key Issues/Considerations

- **2. Issues with eligibility (for individuals, schools and dates covered) and validation criteria**
- For many survivors the first challenge will be getting access to information on which schools and which periods of operation are included.
- Mclean Day school list in Schedule K not complete (See handout)- Unlike the IRSSA the Mclean Day School Agreement does not allow for the addition of Day Schools that were left off the list or a process to challenge eligibility of day school periods or operation.

Key Issues/Considerations

- **Level One:**
- Not everyone will be eligible for the base payment of \$10,000 like the CEP.
- To be eligible for level one you must disclose a very defined type of verbal or physical abuse that caused harm.
- There is no proper appeals process for claims that are denied at level one
- Many day school survivors may not even for level one if their application does not meet this eligibility criteria.
- This will be a shock to people who were expecting a CEP like payment for all eligible class members!

Key Issues/Considerations

- **Levels Two-Five:**
- For all claims above level one, there is additional validation criteria to prove attendance during eligibility dates, the Agreement sets out you can provide supporting records such as report cards and enrolment forms.
- In the IAP process Canada provided this information to claimant counsel because only Canada had access to those kinds of records and even when provided there were challenges with missing records in many cases.

Key Issues/Considerations

- **Physical Abuse:**
- For claims above level one, Day School survivors will be expected to fill out the form and collect all their supporting documents, if the claim is for serious physical abuse medical records and other records will be required.
- In the IAP process lawyers collected these mandatory documents which were costly and time consuming. Without support/assistance most survivors will not be able to get these on their own within the one year deadline.

Key Issues/Considerations

- **Sexual Abuse:**
- At the higher claim levels \$50,000 + \$200,000 there is a validation criteria requirement to get witnesses and other “evidence” such as diaries and contemporaneous documents, similar narratives from family/siblings and sworn declarations.

Key Issues/Considerations

- This may discourage survivors from making more serious claims of sexual abuse, as many have not disclosed to friends and family and these kinds of abuses rarely had witnesses.
- No IAP residential school complainant was asked to produce corroborating witnesses and witness statements. For many residential school survivors, given issues with confidentiality and the nature of their abuse their lawyer was the first person they disclosed their most serious abuse.

Key Issues/Considerations

- **3. No procedural fairness: limited review and oversight for claims that are denied or deemed ineligible at higher claims awards:**
- Canada can challenge eligibility levels by reviewing all claims (2-5) before the claims are sent to the Claims Administrator. Canada can submit supplementary “factual information” to challenge or deny eligibility. This factual information will not be shared with the applicant
- Decisions of the Claims Administrator and a Third Party Assessor will be final and binding with no review or oversight by the courts.

Key Issues/Considerations

- **4. No access to legal counsel: Day Schools Schoolers will not be able to hire their own lawyers to assist with their claims**
- This Day School Class Action will be a Self-Help strictly paper filing compensation process.
- Even if there will be no hearings all day school complainants should have access to accessible legal counsel for serious claims of physical and sexual abuse (levels 2-5)
- Gowling WLG (Class Counsel) gets paid and does not have to provide any DIRECT legal assistance to survivors- it is Canada's best interest that people do not receive legal assistance for their claims!

Key Issues/Considerations

- Gowling WLG did not negotiate for legal fees to assist all 140,000 survivors.
- Class Counsel will receive 55 Million within 30 days of Agreement approved by Federal Court. They negotiated for a further 7 Million (in trust) to provide services over 4 years.
- There is no plan put forward by Class Counsel on how one law firm will service 140,000 clients within the 1 year deadline.
- Gowling WLG will not be providing direct legal services to 300-500 clients a day for 365 days because it is not possible to provide effective accessible trauma informed legal services to a class that size.

Key Issues/Considerations

- The IRSSA specified that the Government of Canada would contribute up to an additional 15 per cent of the awarded compensation amount, to help claimants with their legal fees. The IRSSA also allowed lawyers to charge an additional 15% to survivors.
- In some cases, there was predatory behavior by some lawyers and resulted in some high profile cases against law firms engaged in sharp practices. However, most law firms did not charge their clients any legal fees above the 15% payable by Canada as a top-up to the claim.
- No one wants to see vulnerable class member taken advantage of, but this should not be the reason to deny people who need and want access to own legal counsel they know and trust to assist!

Key Issues/Considerations

- Some day school survivors may want to be unrepresented but there are others who will need and want support!
- Instead of completely denying day school claimants legal services, Canada could and should provide a lower legal fee top-up for: all level 2-5 claims and claims that have been denied or deemed ineligible at higher levels. No legal fees should be charged to the clients.
- The Law Societies of every province could establish and screen a “roster” of lawyers who are culturally competent and who can provide trauma-informed legal services.

Key Issues/Considerations

- **5. No opportunity for healing and support for survivors.**
- Strictly a compensation paper-filing-process with no opportunity to share the harm day school has caused or deal with opening old wounds and being re-triggered.
- While not having to attend a hearing is seen as positive step, it will be just as difficult for survivors to disclose the most serious traumatizing acts of abuse on a paper with no support before during or after and this has the potential to create further re-victimization.
- Day school survivors will have not access to same level of mental health and services provided to residential school survivors through Regional Health Support Workers program and Future Care.

Summary of Issues:

- **5 key areas of concern with the Mclean Day School Class Action:**
- (1) **Deadline-** the current deadline is only 1 years for class member size of 140,000 it should be at minimum 5 years like the IRSSA IAP claims process.
- (2) **Eligibility and validation criteria:** some day schools and operation periods not covered (ex. Big River Indian Day School), The validation criteria for levels 2-5 will be onerous (timely, costly, confidentiality concerns) and difficult to meet for survivors working on their own.

Summary of Issues:

- (3) **No procedural fairness:** no disclosure requirements on Canada for denying claims and no fair appeals, review and oversight for claims that are denied or deemed ineligible at higher claims awards.
- (4) **No access to legal counsel** for serious claims of physical and sexual abuse (levels 2-5) which may result in claim denials and/or under compensation, no assistance for denials and requests for review.
- (5) **No opportunity for healing and support** for survivors before, during or after their claims.

Key Messages:

- The current Mclean Day School Agreement only benefits Gowling WLG (Class Counsel) and Canada.
- The one year deadline is not enough time-we want to ensure no one is left behind.
- Our survivors will be on their own (filing application, all supporting documents and handling denials and eligibility reconsiderations) for very serious physical and sexual abuse and it is unconscionable that Canada would not provide this legal assistance for claims against itself.
- Class Counsel should be working for us the class members and pushing to ensure there is procedural fairness and proper appeals/reviews in the design of this paper-filing claims process so every survivor has a fair chance at proper compensation.
- Our Day School Survivors deserve and demand a fairer deal!

Experiences	Indian Residential Schools	Indian Day Schools
Funded and Operated by	The Federal Government, Church Groups, and Bands	The Federal Government, Church Groups and Bands
Attendance Mandatory	Yes, for a period	Yes, for a period
Neglect, sub-standard food and conditions, inadequate education.	Yes	Yes
Harsh discipline including strapping, hitting, ear and hair pulling and other things	Yes	Yes
Verbal abuse and racism	Yes	Yes
Suppression of Indigenous cultures, languages, spirituality and traditions	Yes	Yes
Physical and Sexual Abuse	Yes	Yes
Psychological harms from experience	Yes	Yes

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Features and Compensation	Indian Residential Schools Settlement Agreement	Proposed Indian Day Schools Settlement
Common Experience Payment	Yes, \$10,000 for attending plus \$3,000 for each additional year	\$0
Compensation for sexual and physical abuse	Up to \$275,000 (in addition to CEP)	Up to \$200,000 (total amount).
Additional Compensation for income loss	Up to and additional \$250,000 for Actual Income Loss	\$0
Additional Compensation for Future Care	Up to \$10,000	\$0
Recognition and Compensation for actual psychological harms	Yes	No
Deadline	5 years	1 year
Choice of lawyer to help apply and receive compensation	Yes	No
Court Oversight	Yes	No

Next Steps: What You Can Do

- You can and should be vocal and advocate for a fairer settlement!
- You can assist your Indian Day School Survivors to file an Objection Form (see handout) Before May 3, 2019
- You can write a letter or email to Minister Carolyn Bennett (see Draft letter)
- You can share your concerns on social media to spread the word.
- Once the Mclean Day School Agreement is Approved-you can and should take steps to get independent legal advice during the opt-out period.