

***McLean v Canada:***  
**The Indian Day Schools**  
**Class Action**

APRIL 2019

# INDIAN DAY SCHOOLS CLASS ACTION

## Overview

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- What are “Indian Day Schools?”
- Class Action, Classes, Compensation
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# 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 Indian Day Schools.**
- **Indian Day School students were not included in the Residential Schools Settlement.**
- ***McLean* seeks justice for harms suffered by students and their families.**

# WHAT ARE “INDIAN DAY SCHOOLS?”

- **Over 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.**
- **Often single room building constructed in First Nation Community.**
- **Students suffered severe physical, sexual, and psychological abuse, as well as loss of language and culture.**
- **List of Indian Day Schools are available on the website: [www.indiandayschools.com](http://www.indiandayschools.com)**
  - Schedule K to the Settlement Agreement
  - List to be finalized

# WHAT “INDIAN DAY SCHOOLS” ARE NOT

- Indian Day Schools are not Indian Residential Schools; they used the same curriculum but were separate institutions.
- Indian Day Schools are not Provincial Schools.
- The *McLean* action does not include “Day Scholars,” who were students that attended Residential Schools by day only (*Gottfriedson*).

# CLASS ACTIONS AND CLASSES

- **Nature of a class action lawsuit.**
- **The “Survivor Class” includes all persons who attended an Indian 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 the Nation

# COMPENSATION – SURVIVOR CLASS

- **Direct Compensation**
- **Paper-based Process**
- **Range based upon harms**
  - Harms Assessment Grid - \$10,000 to \$200,000
  - Single payment, regardless of the number of schools attended
- **Estates**
  - Estates of Survivor Class Members who died after July 31, 2007 are eligible



# COMPENSATION – PRINCIPLES

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

# COMPENSATION - PROCESS

## **Step 1 – Class Member submits application**

- Applicants self-identify to the Level that they think best fits their harms

## **Step 2 – Assessment by Claims Administrator**

- Additional documents may be required
- Applicant can request that the Claims Administrator reconsider their application

## **Step 3 – Third Party Review**

- Applicant can request that a independent/third party review whether the self-identified Level was supported by the materials submitted

## **Step 4 – Exceptions Committee**

# COMPENSATION – FAMILY CLASS

- **Families and communities 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

# CURRENT STATUS OF ACTION

- **On June 21, 2018, Justice Phelan of the Federal Court certified *McLean* as a “class proceeding” and:**
  1. Affirmed the proposed definitions of the Survivor and Family Classes and common issues;
  2. Appointed Garry McLean and Mariette Buckshot as the Representative Plaintiffs; and
  3. Appointed Gowling WLG Class Counsel.
- **On December 6, 2018, Garry McLean and Minister Bennett announced an Agreement in Principle**
- **On March 12, 2019, the named plaintiffs and Minister Bennett announced the signing of a Settlement Agreement**

# NEXT STEPS

- **Ongoing efforts to publicize *McLean* and provide updates to Class Members and First Nations:**
  - Contacting First Nations to identify a “point person” in each community
  - Continue to make presentations in communities, when invited to do so
- **Apply for Court approval of the Settlement Agreement**
  - Settlement Approval Hearing scheduled for May 13th – 15<sup>th</sup>, 2019 in Winnipeg, MB
  - Live video conferencing may be arranged at other Federal Court locations across Canada
- **If the Court approves the settlement, its terms will bind all Class Members who do not opt out**

# CONTACT INFORMATION



**ROBERT WINOGRON**  
*Partner*



robert.winogron@gowlingwlg.com

+1 (613) 786-0176



**JEREMY BOUCHARD**  
*Partner*



jeremy.bouchard@gowlingwlg.com

+1 (613) 786-0246

**Toll Free Number:**  
1 (844) 539 3815

**Day Schools Email Address and Websites:**  
[dayschools@gowlingwlg.com](mailto:dayschools@gowlingwlg.com)  
<http://www.indiandayschools.com/>

**QUESTIONS?**



**GOWLING WLG**