

INDIAN DAY SCHOOL SETTLEMENT: BACKGROUND AND KEY FACTS

On March 12, 2019, plaintiffs in the McLean case [announced the settlement](#) of a nation-wide class action lawsuit against Canada brought to compensate survivors for harms they suffered while attending federally operated Indian Day Schools. The settlement includes all survivors who attended [federally-run Indian Day Schools](#), including First Nations, Inuit, and Métis peoples.

[The settlement](#) followed two years of focused engagement with thousands of Indian Day School survivors and community members, as well as Indigenous leaders across Canada. Importantly, the Indian Day School Settlement was designed to avoid the re-traumatization of class members that was often seen in the Indian Residential School Settlement.

The March announcement marked the beginning of a 60-day “notice period,” during which survivors across Canada can learn about the settlement and raise questions leading up to the Settlement Approval Hearings, scheduled for May. Class Counsel continues to visit and speak with survivors, Indigenous communities, and leaders across the country to receive their input on the Settlement. Class members are also encouraged to share their feedback by filing [statements of objection or support](#), which will be considered during the settlement hearings.

Case Timeline

2009: Garry McLean, original lead plaintiff, and others initiated the Federal Indian Day School class action.

2016: After seven years in legal limbo, Mr. McLean engaged Gowling WLG to take over the case.

Jun. 2018: The case was certified with Gowling WLG appointed as Class Counsel.

Nov. 2018: An agreement in principle was reached with Canada

Mar. 2019: Lead plaintiffs and Canada signed a settlement agreement. 60-Day notice period begins.

May 3, 2019: Deadline for Class members to file objections or statements in support of the settlement.

May 13 – 15, 2019: Settlement approval hearings to take place in Winnipeg

Concerns and Facts:

Following the settlement announcement, concerns about the settlement have been reported by news media. Below we provide important facts and context about the settlement related to each of these concerns:

Concern: *The compensation for Indian Day School (IDS) survivors is less than the compensation that Indian Residential School (IRS) survivors received, and there is no “common experience payment.”*

Facts: IDS offers a “base payment” of \$10,000 to survivors for harms associated with attending a Federal IDS and is comparable to the “common experience payment” when ultimately received in the hands of IRS survivors. In IDS, there is no reduction in the amount received as no amount is deducted to pay lawyers.

As the experience of attending an Indian Day School was inherently harmful, everyone who attended an IDS will be eligible for this base compensation. To claim for compensation, survivors will be asked to

complete a simple, confidential form. There are no onerous requirements for proof or evidence. The settlement agreement explicitly states that survivors' reports of the harms will be taken at face value, in good faith.

This is a very different process from IRS, in which people endured a difficult and lengthy "Independent Assessment Process" (IAP) where their stories were cross-examined. Lawyers who assisted people through the IAP received 15% in legal fees from Canada and up to 15% directly from survivor's compensation.

The Indian Day School claims process eliminates both the retraumatizing experience of an IAP and the out-of-pocket legal costs associated with it.

Concern: *The settlement does not include compensation for future care.*

Facts: The settlement includes provision of a \$200 million McLean Legacy Fund dedicated to community and family healing and well-being as well as for programs that support younger generations in regaining their languages, cultures, and traditions.

Concern: *There is only one year to apply for compensation.*

Facts: Recognizing that IDS survivors are aging and that we lose 2,000 survivors every year, the need for an expedient process that enables people to see justice and compensation in their life time is clear. In meeting after meeting, survivors expressed to Class Counsel the need for a timely resolution, particularly after almost a decade of waiting. The one-year timeline is a direct response to this input from community members and leaders, focused on the Level 1 applicants and the expedited claims process. Steps will be taken to reach out to class members to support and facilitate the claims process. The claims process is not anticipated to begin until later in 2019 once approvals are received from the court and the settlement is being implemented. Also a process is provided for in the Settlement Agreement for class members to receive extensions in the filing deadline.

Concern: *Claimants will not have the cultural, legal, or emotional support needed to complete the claims process.*

Facts: Through significant and ongoing engagement with Indigenous community members and leaders across Canada, Class Counsel have heard and deeply understand the need for local, culturally-appropriate support for claimants as they go through this process. Counsel is committed to and is currently designing in conjunction with Deloitte a robust support program for claimants, which will include on-the-ground, as well as digital, language, legal, and culturally-appropriate mental health supports for people across the country. This program will be presented in full at the settlement approval hearings in May.

Concern: *One law firm is not capable of supporting a Class of this size*

Facts: Class counsel are, and remain, available and attentive to all Class Members across Canada. Through our legal team and call centre, we respond to as many as 700 calls and 300 voicemails per day. Further, Class Counsel have travelled to more than 80 communities across the country, at the invitation of community leaders, and have spoken to thousands of survivors about the settlement. Counsel continues to visit and get input from communities every week. Class Counsel have offices across Canada and service clients across the country. The [Gowling WLG Indigenous practices](#) consists of more than 55 practitioners. In addition, Class Counsel have close ties to local counsel in provinces in which it has no local offices.

Regardless, Counsel is currently designing a robust claimant support program that will ensure survivors across the country have access to on-the-ground and virtual language, legal, and culturally-appropriate mental health services as they go through the claims process.

Concern: *The law suit does not allow survivors to choose their own lawyer.*

Facts: The point of the IDS process is to ensure that no one *has* to hire a lawyer to submit a claim. The process is simple, paper-based, and non-adversarial. The requirements for verifying documents are minimal. For example, personal photos and correspondence can be used. A robust claimant support program will ensure that people have on-the-ground and virtual access to legal, language, and culturally-appropriate mental health services, all at no cost to the Class member.

Nothing prevents a class member from retaining their own counsel. However, independently incurred legal fees would have to be approved by the Court or paid for out of pocket.

Concern: *People will not be able to tell their stories.*

Facts: Once the settlement is approved, the McLean Legacy Fund will receive project proposals for commemorative truth telling across Canada. Survivors who wish to gather and share their stories as part of their own healing process will be able to do so, though this will not be required. Sharing stories through these forums will be completely voluntary and separate from the claims process.

Concern: *There's a lack of confidentiality*

Facts: All claims documents will be held in strict confidence. While a witness signature is required, it is a separate sheet from the application form; the witness only must see the member sign the application (the witness does not see any of the information that application contains unless the survivor wishes that them to do so). Documentation filed as part of the claims process will either be destroyed or returned to the Class member at the end of the process, at the Class member's direction. A criteria for choosing the claims administrator included that they have robust privacy compliance policies in place.

Concern: *The claims process will be complex and retraumatizing*

Facts: While the claims forms are being finalized for court approval, which will happen at the settlement hearing, The Principles Governing Claims Administration explicitly state that the process must be simple, easy for people to use, and avoid retraumatizing survivors. Examples of this include:

- No cross-examination. Survivors will not be put on a stand and questioned about their stories.
- Documentation that's easy to obtain and personal rather than institutional. The need verify documents is minimal (particularly for base level harm), and the type of documents accepted (personal correspondence, personal photos, personal diaries, school records) will not require a third-party or difficult process to obtain. Class Counsel will be available to help with accessing documents, should this be needed.
- Accepting survivors' stories in good faith. This Principle is explicit in the settlement agreement:

In considering an Application, the Claims Administrator, Third Party Assessor, and Exceptions Committee and its Members, shall draw all reasonable and favourable inferences that can be drawn in favour of the Claimant, as well as resolving any doubt as to whether a Claim has been established in favour of the Claimant.