

NOTICE PLAN

FEDERAL INDIAN DAY SCHOOL CLASS ACTION

(Phase Two)

1. BACKGROUND/OVERVIEW

This document applies to “Phase Two” referenced in the Notice Plan contained in Schedule F of the Settlement Agreement. The information contained herein reflects increases in the number of class members registered with Gowling WLG since the commencement of Phase One of the Notice Plan. This document should be read together with the Long Form Notice Plan contained in Schedule F of the Settlement Agreement.

An Agreement-in-Principle was announced jointly by Garry McLean, lead representative plaintiff, and Minister of Crown-Indigenous Relations, The Honourable Carolyn Bennett, on December 6, 2018.

On March 12, 2019, the parties entered into a **Settlement Agreement**, which has been approved by the Federal Court. The Settlement Agreement provides for individual compensation for harms suffered by former students while attending a Federal Indian Day School or Federal Day School, as they were known in the north. Compensable harms suffered by individual children include physical and sexual abuse as well as humiliation and denigration for use of Indigenous languages and culture in the school-setting. In addition to the individual compensation, the Settlement Agreement provides for \$200 million to be used for the establishment of a Settlement Fund to be administered by the McLean Day School Settlement Corporation, which will advance projects for healing, wellness, education, language, culture and commemoration.

Under the Certification Order, members of the **Survivor Class** are all persons, wherever they may now reside or be domiciled, who attended a Federal Indian Day School or Federal Day School during the Class Period. The Class Size¹ is estimated to be between 120,000 to 140,000 persons, with a single number “best estimate” of 127,000 being alive in October 2017. The Class Size is thought to be diminishing at a rate of approximately 2,000 individuals per year. The majority of Class Members are thought to be First Nation and Inuit. Since the majority of Federal Indian Day Schools and Federal Day Schools that are the subject of this litigation were located on reserve or Inuit lands, the former student population will largely be First Nation and Inuit.

The **Family Class** means all persons who are a spouse or former spouse, child, grandchild or sibling of a member of the Survivor Class and the spouse of a child, grandchild or sibling of a Survivor Class member.

Class Period covers the period from and including January 1, 1920 and ending on the date of closure of any particular Indian Day School or Federal Day School, or the date on which management and control of any particular Day School was effectively transferred from Canada or if not transferred from Canada, the date on which the offer of such transfer was not accepted by the affected Indigenous Nation or Community.

A list of the **Federal Indian Day Schools and Federal Day School** covered by the *McLean* Class Action Settlement has been publically available since March 15th, 2019 through the Day School website; www.indiandayschools.com. **Survivor Class** students who attended a Day School included on Schedule K during the time that a particular school was under the funding, management and control of

¹ JDM Actuarial Expert Services, *Estimating the Class Size of Scholars Attending a Federal Day School in Canada*, Prepared by Peter Gorham, 15 May 2018 at 18.

Canada will be invited to make application for compensation under the Claims Process. Compensation to **Survivor Class** students is based on harms suffered. **Family Class** members will receive no personal compensation under the Settlement, however Canada will pay \$200 million to support Legacy Projects, including commemoration ceremonies at the community level, wellness and healing programs for Survivor and Family Class members, and projects for the restoration of Indigenous languages and culture.

2. Plan Summary

The *McLean et v Canada Notice Plan* reflects the scope and breath of the Class Members across Canada, particularly in terms of age of the target class members, individual school experiences, geographic distribution, language representation and familiarity with traditional and social media means of communication.

The Notice Plan was divided into two phases:

The first phase announced the proposed settlement, the dates and location for the settlement approval hearing, where and how to access information about the settlement and the settlement approval hearing, as well as provided information to class members on how to object, if desired.

The second phase, which is the subject of this **Notice Plan** will:

- 1) Announce the **Settlement Approval** and briefly outline the settlement and its terms;
- 2) Advise class members of their legal rights as a result of the Settlement Approval; namely, the binding nature of settlement approval on all class members who do not opt-out of the settlement in the manner prescribed;
- 3) Describe the procedures and deadlines whereby those who wish to **opt-out** of the settlement may do so; and
- 4) Provide general information to Survivor Class Members on how to access the claims procedure including registration and Claims Forms.

Objective. To notify the greatest practicable number of former Federal Indian Day School students and Federal Day School students in the North², as well as their family members, and to provide them with opportunities to see, read, or hear notice and to understand their rights, and respond if they choose following Settlement Approval.

Situation Analysis. The following factors guide dissemination methods needed to achieve an effective notice effort:

- The Survivor Class is defined as all persons who attended a Federal Indian Day School or Federal Day School during the Class period.

² Current listing of Federal Day Schools indicates that historically, there 11 Federal Day Schools in Northern Québec; 29 in the Northwest Territories; 7 in Nunavut; and 8 in Yukon.

- There were an estimated 140,000 Survivor Class Members alive at the commencement of the Federal Court *McLean* Claim in 2016. It is estimated that the Survivor Class is decreasing by approximately 2,000 members per year as a result of age and illness.
- Former students are located throughout Canada on reserve, within Indigenous communities/settlements including northern communities, as well as within the general population. Those residing outside of an Indigenous community are located in both rural and urban areas.
- The education level of the Class varies widely. While a significant number of Class Members did not complete high school, others have received a university education.
- A small percentage of the Class is in correctional institutions or resides outside of Canada.
- Notice materials must be provided in languages appropriate for communicating with those affected (i.e., English, French, and five Indigenous languages).

Gowling WLG Database of Registered Class Members

<u>Geographic Location</u>	<u>Number of Registrants</u>
Canada	78,184
Alberta	10,006
British Columbia	13,847
Manitoba	16,262
Saskatchewan	9,153
Ontario	11,254
Quebec	5,956
Newfoundland and Labrador	28
Prince Edward Island	159
Nova Scotia	2,550
New Brunswick	1,877
Nunavut	919
Northwest Territories	3,416
Yukon	211
USA	943
Australia	5
Germany	1
UK	2

Total	79,135
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3. **Effective Notice**

The goal of Notice is to reach as many class members as is practicable in a clear, easily understandable manner, taking into account any special concerns about the education level or language needs of the class members. The notice must include: (1) contact information for Class Counsel to answer questions; (2) the address for the website, maintained by the Claims Administrator or Class Counsel and that provides links to the Settlement Agreement as amended, Notices of Certification and of Settlement Approval, motion materials for Settlement Approval and for Approval of Class Counsel Fees as well as other important documents in the case. The Notice of Settlement Approval must state all deadline dates, including those for the 90-day Opt Out period, the Implementation Date [to be updated as developments provide] and, if available, the period [start date/end date] within which claims forms will be available and will be accepted by the Claims Administrator.

Methods of Communication

Given the importance of unrepresented class members understanding and preserving their legal rights through the claims process or the opt-out process, notice to all class members must be robust. As with the first phase notice, information regarding i) **Settlement Approval** including a summary of the Court's Decision, ii) **Opt-Out** process and date deadlines, and iii) anticipated **Implementation Date** will be communicated by email, telephone, facsimiles, community messaging; by television and radio; by social media as well as digital/internet advertising; and by letter mailing where required and practical. The goal of Notice is to reach as many anticipated class members as is practicable.

Languages of Communication

Survivor Class Members in the *McLean* Class Action and related family Class Members reside both in urban centres and remote regions across Canada. In the 2016 Census of Population, the majority of Aboriginal people identified English or French as their mother tongue, at 1,303,260 and 187,055 respectively, while approximately 208,735 identified an Indigenous language as their mother tongue.³ Among Indigenous languages used, Cree has the largest number of speakers, at 94,410, with Inuktitut and Ojibway following at 35,865 and 35,375 respectively.

Notice materials and Opt-Out forms will be made available in English, French, Cree, Ojibwe, Dene, Inuktitut and Mi'kmaq.

4. **Class Counsel Availability to Class Members**

³ Knowledge of Aboriginal Languages (90), Knowledge of Languages: Single and Multiple Language Responses (3), Aboriginal Identity (9), Aboriginal Mother Tongue (11), Registered or Treaty Indian Status (3), Residence by Aboriginal geography (10) and Age (12) for the Population in Private Households of Canada, Provinces and Territories, 2016 Census - 25% Sample Data, Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016157.

Gowling WLG (Canada) LLP was appointed as Class Counsel by Justice Phelan of the Federal Court on June 21, 2018. You may contact Class Counsel at:

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Since being retained in May 2016, Class Counsel has kept a database of class members. It is now comprised of approximately 79,135 unique claimants and is being constantly updated. Class Counsel receive between 90 and 250 calls per day depending on the level of publicity and related activity. The 1-800 call centre averages 190 calls a day.

Callers are directed to the Day School Class Action website, which contains details about the McLean Class Action and access to information to be submitted by way of registration form. <https://ca.gowlingwlg.com/dayschoolclassaction/> and www.IndianDaySchools.com. All information submitted by way of a registration form is then uploaded to the primary database.

Approximately 50% of registered class members have provided an email address as a means of contacting them. The majority of registered class members (95%) have provided a telephone number as their point of contact, being either their own phone number or that of a family member or community centre. Some have fax numbers and have asked that these be used to contact them. Class Counsel have also maintained close relationships with the Assembly of First Nations, Regional Chiefs, Tribal Councils, Indigenous Bands across Canada and Community and Friendship Centres throughout.

On December 6, 2018, the Special Chiefs Assembly passed by consensus Resolution No. 82/2018 (moved by Chief Brendan Mitchell, Qalipu Mi'kmaq First Nation in Newfoundland & Labrador, seconded by Chief Marcel Moody, Nisichawawsihk Cree Nation in Manitoba), which supports the National Indian Day Schools Class Action, *McLean v Canada*. Class Counsel have communicated with leaders within the Inuit communities including the Nunavut Tunngavik Inc., Makivik Corporation and the Inuvialuit Regional Corporation. In the North, Federal Day Schools presented fundamentally similar concerns as Federal Indian Days Schools. Membership in the Survivor Class and related Family Class is fully encompassing of all students who attended Federal Day Schools, as they were known in the North.

Class Counsel have travelled across the country visiting some 55 communities to date at the invitation of the Chief and Council leaders in the community. Nine presentations have been made to Indigenous organizations representing 50 additional communities. Three presentations have been made to the Assembly of First Nations. Class Counsel make presentations on the litigation including the background to the case, the scope of class membership, and the details about the Indian Day Schools Settlement. Class Counsel have reached out to other Indigenous organizations including the Inuit, Inuvialuit, and

Métis leaders. Further visits to local communities are planned should the Settlement Agreement receive Court Approval.

5. NOTICE PLAN DELIVERY

To deliver the second phase Notice Plan, Class Counsel have again partnered with Argyle Public Relationships (“Argyle PR”), a Toronto-based communications firm that provides expertise in communication strategy, digital and social media, video production services and public engagement, among other services. Class Counsel and Argyle PR are working together to create a coherent narrative and key messages regarding the Settlement Agreement and Claims Process, as well as a robust Q&A for issues raised. We intend to produce several videos that can be readily made available to Class Members; topics may include an overview of the Approved Settlement: information on opting-out describing the legal implications of doing so/not doing so; a walk through the claims process and the claims form including the type of information that is to be filed in support; and an outline of various means of securing further information.

The Notice Plan, if approved, contemplates dividing responsibility for Notice to Survivor Class Members as follows:

CLASS COUNSEL will be responsible for direct communication with Indigenous communities by uploading and updating court approved information throughout the Notice period as follows:

- to all Federal Indian and Federal Day School registrants by way of telephone numbers, email addresses, mailing addresses based on ongoing and updated contact information.⁴ A breakdown of the available modes of communication are listed below:

Mode of Communication	Number of Registered Class Members
Email	40,164
Fax	4,566
Telephone	77,543
Mailing Address	39,671

- to Band Offices, Community Centres, Friendship Centres and Indigenous local government offices in the approximately 700 Indigenous communities where a list Indian Day School was located by email and facsimile (B&W to allow it to be printed and posted)
- to all Assembly of First Nations including the National Chief and all Regional Chiefs by email and facsimile (B&W to allow it to be printed and posted)
- to Tribal Councils and National Association of Friendship Centres, including 112 Regional Centres, by email and facsimile (B&W to allow it to be printed and posted)

⁴ As most registered Class Members are available via telephone and email, particular emphasis will be placed on delivering notice using voicemail broadcast and recorded voice calling technology, as well as in electronic format.

- to Inuit and Inuvialuit organizations (ITK, NTI, Makivik Corporation) and their Friendship Centres including, but not limited to, Tungasuvvingat Inuit
- to Regional and National Indigenous Governments by email and facsimile
- to correctional facilities in accordance with outreach efforts in the first phase of Notice
- continued visits to local communities as Class Counsel may be invited to attend

ARGYLE PR will develop and be responsible for uploading and updating media services (traditional and digital) throughout the Notice Period developed in multiple languages, as follows:

- Canadian Newswire (CNW) Release(s) announcing Notice of Settlement Approval, if granted, through wire services and multi-media sites
- PSAs for Aboriginal Radio PSAs (APTN online, CBC Radio/CBC Indigenous/CBC North)
- videos to be carried on Aboriginal and mainstream television
- information videos on specific topics for distribution to indigenous communities
- oversight of the Indian Day Schools Facebook Page (to be updated bi-weekly or as required) throughout the second phase Notice Period with key messages as directed by Class Counsel, based on culturally sensitive message
- oversight of Indian Day Schools website (to be updated bi-weekly or as required) throughout Phases One and Two of the Notice Period with key messages as directed by Class Counsel, based on culturally sensitive message
- create and maintain an Indian Day Schools Twitter account (to be updated bi-weekly or as required)
- development and delivery of PSAs on Indigenous Radio
- development and delivery of PSAs on Indigenous Television (for Phase Two only)
- development and delivery of interviews, articles in Indigenous publications (e.g., Assembly of First Nations publications, NationTalk <http://nationtalk.ca/>; First Nations Drum <http://www.firstnationsdrum.com/>; Turtle Island News <http://theturtleislandnews.com/> ; Nunatsiaq News <https://nunatsiaq.com/>)
- development and delivery of interviews, articles in mainstream publications (e.g., Canadian Press, The StarPhoenix, Winnipeg Free Press, other)
- interviews with leading spokespeople for radio, television, publications as interest warrants
- development of a social media content calendar prior to Phase Two Notice and subsequent management of social media content and social media advertising

Argyle PR will develop key messaging in the following languages based on primary languages used across major Indigenous populations: English, French, Cree, Inuktitut, Ojibway, Dene and Mi'kmaw.

For further detail on background statistics and information on which the proposed Notice Plan is based, see the *McLean et v Canada Notice Plan, Long Form*, posted on www.indiandayschools.com.