

Federal Court



Cour fédérale

Date: 20230616

Docket: T-1417-18

Ottawa, Ontario, June 16, 2023

PRESENT: The Honourable Mr. Justice Pamel

CERTIFIED CLASS PROCEEDING

BETWEEN:

**REGINALD PERCIVAL, ALLAN MEDRICK MCKAY,
IONA TEENA MCKAY and LORNA WATTS**

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

ORDER

UPON motion made by the plaintiffs, on consent, for an Order approving notice of certification and of a settlement approval hearing, specifying the timing and manner for opting out and allocating the costs of notice;

THIS COURT ORDERS that:

1. The form of notice shall be substantially in the forms attached as Schedule A [Short Form Notice] and Schedule B [Long Form Notice] [together the Notice].

2. Class Counsel shall arrange for the Notice to be published in the manner described in the Notice Plan at Schedule C.
3. Class Counsel shall provide to the Court any Class Member statements of support or objection, and shall advise the Court of any request by any Class Member to participate in the Settlement Approval Hearing, as may be received in accordance with the Notice, no later than 1 week prior to the commencement of such hearing.
4. A Class Member may opt out of this class proceeding by delivering a signed opt-out form in substantially the form attached at Schedule D to Class Counsel or to Quebec Subclass Counsel by the opt-out deadline which will be set by the Court, and will be at least sixty (60) days from the date on which the Court issues an order regarding approval of the settlement.
5. The cost of notice shall be borne by the defendant.

"Peter G. Pamel"

Judge

Schedule A

Notice of Certification and Settlement Approval Hearing (Short Form)

Indian Boarding Homes Class Action

Were you placed in a private home by Canada for the purpose of attending school? If yes, please read this notice carefully because it affects your legal rights.

What is the class action about?

The Indian Boarding Home Program was an educational program in which the Government of Canada placed children from First Nations communities and Inuit villages in other communities (usually non-Indigenous) to stay with private families for the purpose of attending school. The class action alleges that Canada's actions in creating, operating, and maintaining the Indian Boarding Home Program were wrong. These actions created an environment where children were abused, harassed, and suffered other harms. The prolonged absence from family and community also caused loss of culture, language, and community bonding.

Who is included in the proposed settlement?

The classes are defined as follows:

a) Primary Class	Individuals who were placed in private homes, during the period of September 1, 1951 and June 30, 1992, for the purpose of attending school, not including placements for post-secondary education Individuals placed after June 30, 1992, are also included if Canada was responsible for their placement.
b) Family Class	Members of the individual's family who lost the guidance, care, or companionship they could expect from the individual

To be eligible for compensation, Class Members must have been alive on July 24, 2016.

What benefits does the proposed settlement provide?

The proposed settlement must be approved by the Federal Court before compensation will be available to class members. If approved, every Primary Class Member will be eligible for a Category 1 payment of \$10,000: a single payment to anyone who was in the Indian Boarding Homes Program.

You may also apply for Category 2 compensation ranging from \$10,000 to \$200,000 based on the harms that you suffered, such as physical or sexual abuse. You may hire your own lawyer to help prepare your application for Category 2 compensation. In that case, Canada will pay the lawyer an amount equal to 5% (plus tax) of the Category 2 payment you receive.

A foundation will be created to support commemoration, healing, and preserving languages and culture. Canada will pay \$50 million to be administered by the Foundation.

Family Class Members will not receive direct compensation. Their claims will be recognized and addressed by the indirect compensation available through the Foundation's reconciliation projects. More information on compensation can be found in the settlement agreement which is available at www.boardinghomesclassaction.com / www.FoyersFamiliauxFederaux.com.

What are your legal rights and options?

1. Do nothing- – If you agree with the proposed settlement, you do not have to take any action now.
2. Show your support – If you agree with the proposed settlement and would like the court to consider your support, you must write to either of the lawyers listed below. You must write no later than **August 25, 2023**.
3. File an objection – If you disagree with the proposed settlement and would like the court to consider your objection, you must write to one of the law firms listed below. You must send your objection no later than **August 25, 2023**.
4. Participate in the hearing – If you would like to talk to the court in person or by video, you must write to one of the law firms listed below. You must send your request no later than **August 25, 2023**.
5. Watch the hearing – If you would like to watch the hearing, you can attend in Federal Court, 701 W Georgia St., Vancouver, BC, or use the attendee link (public) https://cas-satj.zoom.us/webinar/register/WN_cOzZSGfQ2-bgs_p3JB_KQ. The hearing will be on September 12, 13, and 14, 2023, starting at 9:30 am PST (later in time zones further east).

What if I do not want to participate in the class action?

If the Settlement Agreement is approved, you will be able to exclude yourself (“opt-out”) if you do not want to receive compensation under the settlement and wish to keep your right to bring your own lawsuit regarding your participation in the Boarding Homes Program. To exclude yourself, you must submit an Opt Out form before expiry of the Opt Out period. To submit an opt out, please visit www.boardinghomesclassaction.com / www.FoyersFamiliauxFederaux.com to obtain an Opt Out form and submit the completed form to one of the law firms listed below. The Opt Out period will be set by the Court and will be at least sixty (60) days from the date on which the Court issues an order regarding approval of the settlement. .

Who are the lawyers for the class?

Klein Lawyers LLP 1385 W 8th Avenue #400	Dionne Schulze 507 Place d'Armes, Suite 502
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Vancouver, BC V6H 3V9 1-604-874-7171 ibhclassaction@callkleinlawyers.com	Montreal, QC H2Y 2W8 1-514-842-0748 percival@dionneschulze.ca
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How do I get more information?

If you want more information about your rights and options, information about the settlement and details about the settlement approval process in the Indian Boarding Homes Class Action, and see the settlement agreement, please visit the following website at www.boardinghomesclassaction.com / www.FoyersFamiliauxFederaux.com.

This notice has been authorized by the Federal Court of Canada

Schedule B

Notice of Certification and Settlement Approval Hearing (Long Form)

Indian Boarding Homes Class Action

Were you placed by the Government of Canada in a private home for the purpose of attending school? If yes, please read this notice carefully because it affects your legal rights.

- On June 28, 2019, the Federal Court certified the Indian Boarding Homes lawsuit as a class proceeding.
 - On December 7, 2022, the parties reached an Agreement in Principle to settle the case.
 - On September 12, 13, and 14, 2023, the Federal Court will hold a Settlement Approval Hearing. The Court will consider whether the settlement is fair, reasonable, and in the best interest of the class.
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What are my legal rights and options?

6. Do nothing – If you agree with the proposed settlement, you do not have to take any action now.
 7. Show your support – If you agree with the proposed settlement and would like the court to consider your support, you must write to either of the lawyers listed below. You must send your statement of support no later than **August 25, 2023**.
 8. File an objection – If you disagree with the proposed settlement and would like the court to consider your objection, you must write to one of the law firms listed below. You must send your objection no later than **August 25, 2023**.
 9. Participate in the hearing – If you would like to speak in court, either in person or by video, you must write one of the law firms listed below. You must send your request to participate no later than **August 25, 2023**.
 10. Watch the hearing – If you would like to watch the hearing, you can attend in Federal Court, 701 W. Georgia St., Vancouver, BC, or use the attendee video link (public) https://cas-satj.zoom.us/webinar/register/WN_cOzZSGfQ2-bgs_p3JB_KQ . The hearing will be on September 12, 13, and 14, 2023, starting at 9:30 am PST (later in time zones further east).
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1. What is a class action?

A class action is a lawsuit filed on behalf of multiple individuals with common claims. The individuals are called Class Members. Unless they exclude themselves, they are included in the lawsuit.

2. What was the Indian Boarding Home Program?

The Indian Boarding Home Program was an educational program in which the Government of Canada placed children from First Nations communities and Inuit villages in other communities (usually non-Indigenous) to stay with private families for the purpose of attending school. The program was part of Canada's policy of culturally assimilating Indigenous persons into mainstream Canadian society.

The Indian Boarding Home Program began during the 1950s as Canada began to end the Indian Residential Schools program. Canada continued to operate the Indian Boarding Home Program into the early 1990s.

3. What is the class action about?

The class action alleges that Canada's actions in creating, operating, and maintaining the Indian Boarding Home Program were wrong. These actions created an environment where children were abused, harassed, and suffered other harms. The prolonged absence from family and community also caused loss of culture, language, and community bonding. The class action alleges that Canada's conduct was negligent and in breach of its fiduciary duties owed to Indigenous persons. Class Members have suffered serious and lasting harms as a result.

4. Who is included in the proposed settlement?

The classes are defined as:

a) Primary Class	Individuals who were placed in private homes, during the period of September 1, 1951 and June 30, 1992, for the purpose of attending school, not including placements for post-secondary education. Individuals placed after June 30, 1992, are also included if Canada was responsible for their placement.
b) Family Class	Members of the individual's family who lost the guidance, care,

	or companionship they could expect from the individual.
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An individual who was placed in a private home without government involvement is not included in this settlement; individuals who were placed by Indigenous governing bodies after June 30, 1992, are not included.

To be eligible for compensation, the Primary Class Member must have been alive on July 24, 2016.

5. What benefits does the proposed settlement provide?

The proposed settlement must be approved by the Federal Court before compensation will be available to class members. If approved, eligible Primary Class Members will receive compensation under two categories:

- Category 1 compensation is a single payment for each Eligible Primary Class Member – it will be paid to anyone who was in the Indian Boarding Homes Program.
- Category 2 compensation will be determined in accordance with a compensation grid – it will be based on the harms that an individual suffered.

You may apply for Category 1 compensation and make a separate application for Category 2 compensation. You may qualify for payment under both Category 1 and Category 2. You will not be entitled to receive more than one payment under Category 1 and one payment under Category 2.

If the settlement is approved by the Court, the deadline to submit applications will be specified in the Court order.

You may hire your own lawyer to help prepare your application for Category 2 compensation. In that case, Canada will pay the lawyer an amount equal to 5% (plus tax) of the Category 2 payment you receive.

A foundation will be created to support commemoration, healing, and preserving languages and culture. To support these reconciliation projects for the benefit of the class members, Canada will pay \$50 million to be administered by the Foundation.

Family Class Members will not receive direct compensation. Their claims will be recognized and addressed by the indirect compensation available through the Foundation's reconciliation projects.

6. How much will I get?

Every eligible Primary Class Member will be eligible for a Category 1 payment of \$10,000 for placement in the Boarding Home Program.

You may also apply for Category 2 compensation, with amounts to be paid based on the harm you suffered. The settlement agreement will define 5 levels of increasingly severe psychological, physical or sexual abuse, to be compensated at the following levels:

2A	\$10,000
2B	\$50,000
2C	\$100,000
2D	\$150,000
2E	\$200,000

You will be compensated for the most severe abuse you suffered.

7. How do I receive a payment?

If the Federal Court approves the settlement, you will need to submit an application form for each category of compensation. If your application for Category 1 compensation is approved, you will receive a Category 1 payment of \$10,000. If your application for a Category 2 compensation is approved, you will receive a payment based on the level of harm that you suffered.

The application process has not started, and you cannot request compensation at this time. Applications will be available if the Court approves the settlement.

8. Who are the lawyers for the class?

Class Counsel	Counsel for the Quebec Subclass
Klein Lawyers LLP 1385 W 8th Avenue #400 Vancouver, BC V6H 3V9 1-604-874-7171 ibhclassaction@callkleinlawyers.com	Dionne Schulze 507 Place d'Armes, Suite 502 Montreal, QC H2Y 2W8 1-514-842-0748 percival@dionneschulze.ca

9. How are the class action lawyers paid?

Canada has agreed to pay class counsel fees to Class Counsel and Quebec Subclass Counsel for their work on behalf of the class as a whole in an amount the Court approves as fair and reasonable. No part of the class counsel fee will be paid by class members and there will be no reduction in any amount payable to a class member to pay for class counsel fees.

10. What if I do not want to participate in the class action?

If the Settlement Agreement is approved, you will be able to exclude yourself (“opt-out”) if you do not want to receive compensation under the settlement and wish to keep your right to bring your own lawsuit regarding your participation in the Boarding Homes Program. To exclude yourself, you must submit an Opt Out form before expiry of the Opt Out period. To submit an opt out, please visit www.boardinghomesclassaction.com / www.FoyersFamiliauxFederaux.com to obtain an Opt Out form and submit the completed form to one of the law firms listed below.

The Opt Out Deadline will be set by the Court and will be at least sixty (60) days from the date on which the Court issues an order regarding approval of the settlement.

11. How do I get more information?

If you want more information about your rights and options, information about the settlement and details about the settlement approval process in the Indian Boarding Homes Class Action, and see the settlement agreement, please visit the following website at www.boardinghomesclassaction.com / www.FoyersFamiliauxFederaux.com

This notice has been authorized by the Federal Court of Canada

Schedule C

Overview

The purpose of this document is to detail the components of the Notice Plan (the “Plan”) that are recommended for the certification and settlement approval hearing phase of the Indian Boarding Homes Class Action.

Proposed Notice Plan Objective

The Plan aims to provide fair, reasonable, and adequate notice to Class Members.

For a notification campaign to be approved by the Federal Court, the Plan must be designed to reach Class Members without prejudice to region, gender, education, income or language. In addition, the Plan must raise class awareness of the proposed settlement and facilitate the general understanding of the court approval hearing process.

Target Audience Definition

By order of the Federal Court dated June 28, 2019, Justice Strickland certified the Indian Boarding Homes action as a class proceeding and defined the classes as follows:

- Primary Class means persons who were placed by the Government of Canada in private homes for the purpose of attending school, excluding placements made for the purpose of attending a post-secondary educational institution; and
- Family Class means all persons who have a derivative claim in accordance with applicable family law legislation arising from a family relationship with a member of the Primary Class.

The class period was subsequently established as September 1, 1951, through June 30, 1992.

Demographic statistics on the class population and particularly individuals who participated in the national Boarding Homes Program were not available during the preparation of the Plan. The parties have confirmed that the Program was national in scope, including all provinces and territories.

According to information shared by the Counsel group, we understand that payments for room and board were made to private homeowners who hosted Indigenous children under the program from 1951 up to and including 1992. Records suggest that program participants typically ranged from 7 to 18 years of age during its period of operation. Based on this information, the youngest participant of the program in 1992 (DOB 1985) would be 38 years old in 2023, and the oldest participant in 1951 (DOB 1933) would be 90 years old in 2023. As such, the class population in 2023 would range from 38 to 90 years of age.

The Plan involves communications activities selected to reach potential Class Members while fulfilling the above objective. In the selection of appropriate media, the target audience for the Plan has been defined as individuals who are:

- Approximately 38 to 90 years of age;
- Women and men of Indigenous heritage;
- English-speaking and French-speaking; and
- Geographically located throughout all Canadian provinces and territories.

Communications Strategy

Given the breadth of jurisdictions in which the class population resides, the Plan will reach the target audience through the following components:

- A dedicated administration website;
- Direct mail to registered Class Members;
- Direct mail to First Nations band offices and AFN head office;
- Published notices in Indigenous print and digital media;
- Online advertisements in social media; and
- A press release.

Summary of Legal Notices

Notice will be available to the class population in English and French in the following formats:

- Long Form Notice;
- Short Form Notice;
- Paid Notice; and
- Banner advertisement.

Media Selection Rationale

Website Content

A bilingual website will be developed and hosted at www.boardinghomesclassaction.com to provide potential Class Members with 24-hour online access to information about the proposed settlement. Specifically, electronic copies of all relevant court documents, including a Long Form Notice, a Short Form Notice, an Opt-Out Form, and essential filing deadlines, will be prominently displayed on the administration website.

Additional web-based communications will be accessible via the websites of both Class Counsel (www.callkleinlawyers.com/class-actions/indian-boarding-homes-class-action/) and Counsel for the Quebec Subclass (www.dionneschulze.ca/class-action/placement-in-boarding-homes-by-the-government-of-canada/).

Direct Mailing

Before this phase of the Indian Boarding Homes Class Action, Class Counsel and Counsel for the Quebec Subclass compiled lists of potential Class Members by inviting affected individuals to self-identify themselves and register for periodic updates. As a result, approximately 1,400 potential Class Members have registered with Counsel and will be sent a Short Form Notice in either English or French via email or mail.

Community Outreach

To ensure that notice is broadly distributed throughout the Indigenous community, a mailing effort will be undertaken to notify (i) First Nations band offices across Canada, (ii) head offices of the Assembly of First Nations, (iii) Inuit villages, (iv) Inuit land claim organizations, (v) Inuit Tapiriit Kanatami head office, and (vi) Friendship Centres. The mailing effort will include a Short Form Notice to advise potential Class Members of the proposed settlement and encourage them to visit the dedicated website (www.boardinghomesclassaction.com) or contact either Class Counsel or Counsel for the Quebec Subclass for further information regarding their legal rights.

Indigenous Media

Indigenous media print publications and their respective digital channels will be used to reach the target audience across Canada. A paid Notice will be placed in Indigenous media publications and digital channels on the day each has the highest readership. The Notice will instruct potential Class Members to access the dedicated website (www.boardinghomesclassaction.com) for details regarding the proposed settlement.

Indigenous media publications have been selected as they can provide broad reach of the target audience defined above and provide targeted regional coverage.

The Indigenous media publications proposed include the following:

Media Publication	Frequency	Type
Turtle Island News	Weekly	Print and Digital
Alberta Native News	Monthly	Print and Digital
Ha-Shilth-Sa	Biweekly	Print and Digital
Nunavut News North	Weekly	Print and Digital
Nunatsiaq News	Weekly	Print and Digital
NWT News North	Weekly	Print and Digital
Mi'kmaq-Maliseet	Monthly	Print and Digital
Wawatay News	Monthly	Print and Digital
Sioux Lookout Bulletin	Bimonthly	Print and Digital
Eagle Feather News	Monthly	Print and Digital
Inuktitut Magazine	Biannual	Magazine
Salish Sea Sentinel	Bimonthly	Print and Digital
Windspeaker	Weekly	Digital
Ku'ku'kwes News	Monthly	Digital
Anishinabek News	Biannual	Print and Digital
APTN National News	Weekly	Digital
NationTalk	Weekly	Digital
Grassroots News	Biweekly	Print and Digital
The Nation Magazine	Biweekly	Magazine
CBC North Cree Unit	Weekly	Digital
James Bay Cree (JBCCS)	Continuous	Radio
Taqramiut Nipingat Inc.	Continuous	Radio
Atikamekw-Montagnais (SOCAM)	Continuous	Radio
First Nations Drum	TBD	Digital

Social Media

According to information provided by Counsel, the target audience is heavy users of social media and other forms of online content. For this reason, an online advertising campaign will be deployed across Facebook (Meta) and Google, targeting 3 million impressions over a multiweek period.

Press Release

A press release will be distributed electronically using Canada Newswire - CSW Group - Cision Canada media outlet to reach national, regional and local print/broadcast media:

Canada Newswire operates Canada's most recognized newswire service. While Canada Newswire cannot guarantee publication in national, regional or local media, any publications resulting from exposure through the newswire will provide the target audience with further opportunities to become aware of the proposed settlement and to visit the website.

Schedule D

Opt Out Form

Indian Boarding Homes Class Action

This is NOT a claim form. Completing this OPT OUT FORM will prevent you from receiving any compensation or other benefits arising out of any settlement or judgment in the class proceeding named below.

Note: To opt out, this form must be properly completed and submitted to Class Counsel or to Counsel for the Quebec Subclass using the online opt out form at boardinghomesclassaction.com /www.FoyersFamiliauxFederaux.com or via email at optout@boardinghomesclassaction.com or mailed to the address below as soon as possible. The opt out deadline will be set by the Court and will be at least sixty (60) days from the date on which the Court issues an order regarding approval of the settlement.

Class Counsel	Counsel for the Quebec Subclass
Klein Lawyers LLP 1385 W 8th Avenue, Suite 400 Vancouver, BC V6H 3V9	Dionne Schulze, S.E.N.C. 507 Place d'Armes, Suite 502 Montreal, QC H2Y 2W8

Court File No.: T-1417-18

**REGINALD PERCIVAL, ALLAN MEDRICK MCKAY, IONA TEENA MCKAY AND
LORNA WATTS**

Plaintiffs

-and-

HIS MAJESTY THE KING

Defendant

I understand that by opting out on this form, I am confirming that I do not wish to participate in this class action.

I understand that the certification of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding.

- Contact Information**

First Name**Last Name****Street Address****City/Municipality****Province/Territory****Postal Code**

--	--

Telephone Number

Email Address

--	--

Reasons for opting out (optional):

--

-

• **Signature**

Date

--	--

Name of Class Member

--	--

Signature of Class Member Opting Out

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• **Privacy Statement**

Personal information regarding the Opt Out process is collected, used, and retained by the Administrator pursuant to privacy principles:

- For the purpose of administering the Indian Boarding Homes Class Action; and,
- To notify the Court and the parties that the individual has excluded themselves from the class action.