

Federal Court



Cour fédérale

Date: 20180621

Docket: T-2169-16

Citation: 2018 FC 642

Ottawa, Ontario, June 21, 2018

PRESENT: The Honourable Mr. Justice Phelan

CLASS PROCEEDING

BETWEEN:

**GARRY LESLIE MCLEAN,
ROGER AUGUSTINE,
ANGELA ELIZABETH SIMONE SAMPSON,
MARGARET ANNE SWAN and
MARIETTE LUCILLE BUCKSHOT**

Plaintiffs

and

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA as represented by THE ATTORNEY
GENERAL OF CANADA**

Defendant

ORDER

UPON MOTION, treated as a Rule 369 motion in writing, for an Order:

- a) certifying this proceeding as a class proceeding;
- b) certifying the Classes;
- c) stipulating the common issues for trial;

- d) appointing the Representative Plaintiffs;
- e) approving the Litigation Plan;
- f) appointing Gowlings WLG (Canada) LLP as Class Counsel;
- g) staying any other putative class action relating to this class proceeding pending further Order of this Court; and
- h) costs and other relief.

AND UPON the Defendant consenting in whole to the Motion as filed:

AND UPON the Court reading the materials filed;

AND UPON being satisfied that this is an appropriate proceeding for certification as a Class Action upon the terms proposed;

THIS COURT ORDERS that:

1. This action is certified as a class proceeding against the Defendant Her Majesty the Queen.
2. The Classes in this proceeding are defined as follows:
 - (a) ***Survivor Class*** means all persons, wherever they may now reside or be domiciled, who attended an Indian Day School during the Class Period.
 - (b) ***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.

3. The Class Period is defined as follows:

Class Period means the period from and including January 1, 1920 and ending on the date of closure of any particular Indian Day School, or the date on which management and control of any particular Indian Day School was effectively transferred from Canada.

4. The following persons are appointed as Representative Plaintiffs:

- (a) For the Survivor Class, Garry Leslie McLean;
- (b) For the Family Class, Mariette Lucille Buckshot.

5. The common questions of law or fact in this proceeding are certified as follows:

- (a) Did the Defendant, through the establishment, funding, control, and maintenance of Indian Day Schools in Canada throughout the Class Period [the IDS System] owe a duty of care to the Survivor Class and the Family Class, or any member of either Class?
- (b) Did the Defendant, through the establishment, funding, control, and maintenance of the IDS System, breach a duty of care owed by it to the Survivor Class and the Family Class, or any member of either Class?
- (c) Did the Defendant, through the establishment, funding, control, and maintenance of the IDS System, breach a fiduciary duty owed to the Survivor Class and Family Class, or any member of either Class?
- (d) Did the Defendant, through the establishment, funding, control, and maintenance of the IDS System, breach a statutory obligation owed under

the *Indian Act* or other statute to the Survivor Class and Family Class, or any member of either Class?

- (e) Did the Defendant, through the establishment, funding, control, and maintenance of the IDS System, breach the Aboriginal rights of the members of the Survivor Class and Family Class?
- (f) What injury and damages have the members of the Survivor and Family Class suffered as a result of the breaches of Canada's duties identified in issues (a) through (e) above?

6. Gowling WLG (Canada) LLP is appointed as Class Counsel.

7. No costs are payable on this motion for certification in accordance with Rule 334.39 of the *Federal Courts Rules*, SOR/98-106.

“Michael L. Phelan”

Judge