

Federal Court



Cour fédérale

**Date: 20190819**

**Docket: T-2169-16**

**Citation: 2019 FC 1076**

**Ottawa, Ontario, August 19, 2019**

**PRESENT: The Honourable Mr. Justice Phelan**

**CLASS PROCEEDING**

**BETWEEN:**

**GARRY LESLIE MCLEAN,  
ROGER AUGUSTINE,  
CLAUDETTE COMMANDA,  
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  
(Fees Approval)**

**THIS MOTION**, made by the Plaintiffs for judgment approving legal fees in accordance with the terms of a Settlement Agreement entered into on March 12, 2019 and amended May 13,

2019 [the Settlement Agreement], was heard on May 15, 2019, at the Federal Court, 363 Broadway, Winnipeg, Manitoba, R3C 3N9.

**WHEREAS** this Court certified this action as a class proceeding by Order dated June 21, 2018;

**AND WHEREAS** the Parties entered into an Agreement in Principle on November 30, 2018;

**AND WHEREAS** the Parties entered into the Settlement Agreement;

**AND WHEREAS** the Parties agree that it is their intention that all payments to Survivor Class Members under this Settlement Agreement are to be made without any deductions including amounts on account of legal fees or disbursements.

**UPON READING** the Motion Record of the parties and the facts of the parties;

**AND UPON HEARING** the motion made by the Plaintiffs for approval of the Settlement Agreement;

**AND UPON HEARING** the within Motion for approval of the legal fees set out in the Settlement Agreement;

**AND UPON HEARING** the oral submissions of counsel for Class Counsel, counsel for the Defendant, the Court-appointed *amicus curiae* in the within Motion, Derry Millar, QC, and other interested parties;

**FOR THE REASONS ISSUED, IT IS ORDERED that:**

1. For the purposes of this Order, the following definitions shall apply:
  - a. “**Approval Date**” means the date that this Court approved the Settlement Agreement;
  - b. “**Approval Order**” means the Order of this Court approving the Settlement Agreement;
  - c. “**Canada**” means Her Majesty the Queen in Right of Canada, the Attorney General of Canada, and their legal representatives, employees, agents, servants, predecessors, successors, executors, administrators, heirs, and assigns;
  - d. “**Class Counsel**” means Gowling WLG (Canada) LLP;
  - e. “**Honorarium**” means an award to each of the named plaintiffs in the within class proceeding;
  - f. “**Implementation Date**” means the latest of:
    - i. thirty (30) days after the expiry of the Opt-Out Period; and
    - ii. the day following the last day on which a member of the Survivor Class or the Family Class may appeal or seek leave to appeal the Approval Order; and,
    - iii. the date of the final determination of any appeal brought in relation to the Approval Order.
  - g. “**Legacy Projects**” means the projects described in the Legacy Fund Distribution Plan, attached as Schedule J to the Settlement Agreement;
  - h. “**McLean Day Schools Settlement Corporation**” means the Not-for-Profit Corporation to be established pursuant to 4.01 of the Settlement Agreement; and

- i. **“Opt Out Period”** or **“Opt Out Deadline”** means the ninety (90) day period, commencing on the date of the Approval Order.

### **LEGAL FEES APPROVAL**

2. Paragraphs 13.01 to 13.05 of the Settlement Agreement, which are expressly incorporated by reference into this Order, shall be and are hereby approved and shall be implemented in accordance with this Order and further orders of this Court.
3. Class Counsel fees payable to Gowling WLG (Canada) LLP are hereby set at fifty-five million dollars (\$55,000,000) inclusive of disbursements;
4. Canada will pay to Class Counsel the amount of fifty-five million dollars (\$55,000,000), plus applicable taxes, within thirty (30) days after the Implementation Date.
5. Also within thirty (30) days after the Implementation Date, Canada will pay to Class Counsel the additional sum of seven million dollars (\$7,000,000) to be held in trust for legal fees and disbursements to be incurred by Class Counsel or its agents on account of legal services rendered to individual Survivor Class Members for a period of four (4) years after the Implementation Date, in accordance with the Settlement Agreement.
6. Fees and disbursements of Class Counsel referred to in Paragraph 5 of this Order, including those of its agents, shall be approved by the Court on a quarterly basis. Four years after Implementation Date and after payment of all fees and disbursements that have been previously approved by the Court, any amount remaining in trust including interest shall be transferred by Class Counsel to the McLean Day Schools Settlement Corporation to be used for Legacy Projects or as may be ordered by the Court.
7. No amounts, including legal fees or disbursements, may be charged to Survivor Class Members or to Family Class Members in respect of compensation under this Settlement

or any other advice, including legal advice, relating to this Settlement by anyone, including legal counsel, other than Class Counsel or its agents, without the prior approval of such amounts by the Federal Court on a motion under Rule 334.4 of the *Federal Courts Rules*, SOR/98-106, on notice to the Parties.

8. This Court orders the payment of an honorarium of \$7,500 to each of the six named plaintiffs, such payments to be paid from Class Counsel fees. The honorarium for the late Garry McLean shall be paid by Class Counsel to a charity of his family's choosing.
9. This Court may issue, from time to time, such further and ancillary orders as are necessary to implement and enforce the provisions of the Settlement Agreement and this Order.

“Michael L. Phelan”

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Judge