

Civil Litigation

Canada strikes agreement-in-principle to resolve Indigenous boarding homes program class action

By **Elizabeth Raymer**

(January 3, 2023, 4:48 PM EST) -- An agreement-in-principle has been reached in a multimillion-dollar class action concerning Federal Indian Boarding Homes, which the government operated for four decades.

"The signing of the Agreement-in-Principle marks a significant milestone for thousands of Indigenous people who suffered cultural loss and abuse while residing in a boarding home placement overseen by the federal government for the purpose of attending school from September 1, 1951, to June 30, 1992," Crown-Indigenous Relations and Northern Affairs Canada announced on Jan. 3.

"The Agreement-in-Principle combines individual compensation for having been placed in a boarding home and compensation for incidents of physical and sexual or other abuse with forward-looking investments to support commemoration, healing, language and culture."

Representative plaintiff Reginald Percival "has been lobbying for this for about 15 years," his lawyer David Klein told *The Lawyer's Daily*.

"For Reg, and for the class, it represents after all these years perseverance, an acknowledgement that a wrong was committed, and that there should be recognition and recompense," said Klein, who is principal of Klein Lawyers LLP in Vancouver.

"It puts them on a path towards healing and reconciliation. It's a very important step for these 40,000 class members," he said, adding that the program wasn't well-known or understood.

The total payout to claimants is anticipated to be about \$2.2 billion, he added, based on the class size of 40,000, two years of research and review of Canada's documents and archival documents, and a detailed analysis with input from an actuary. "It's a significant settlement."

Starting in the 1950s, about 40,000 Indigenous children were part of a boarding home placement for the purpose of attending school. A large number of these placements were overseen by the federal government until program delivery slowly devolved to Indigenous control. Although boarding homes still exist for Indigenous youth where high schools are not available in their own communities, First Nations authorities and band councils are now responsible for the students' placement.

"This case deals with cases where Canada was responsible for selecting, placing, and overseeing their needs, care and well-being," Klein explained.

"Because of a lack of oversight, there was a lot of neglect, and emotional, physical and sexual abuse that occurred in these private homes," which is documented in archives and in reports that noted "the lack of screening for placement and supervision while the children were away from home."

According to the announcement, key elements of the Agreement-in-Principle include:

- "Individual compensation of \$10,000 in recognition of the losses caused by placement in a boarding home by Canada for the purpose of attending school from September 1, 1951, to June 30, 1992;
- "Compensation, ranging from \$10,000 to \$200,000, for incidents of physical and sexual or other abuse while residing in a boarding home placement based on severity of the abuses suffered;

- “\$50 million will be invested to support the commemoration, healing, language, and culture;
- “Funding to support class members who require assistance from legal counsel and other forms of support on their abuse claims.”

“I was taken from my family and community in 1968 when I was 13 years old,” Percival said in the statement.

“The impact on me, and on other kids like me, was devastating. I have spent decades since then, working to heal, to help others, and to explain to the broader community what happened. It has been a long journey, but I am gratified by the steps we are now taking, as a country, to acknowledge past wrongs and to move forward together.”

The dislocation suffered by Indigenous children and youth “sent hundreds of miles away” from families, homes and communities is significant, noted Klein, who was also class counsel in the Sixties Scoop class action.

“There’s a huge sense of loss. You compound that with the racism, and being placed into a community where everyone looks different from you,” with a different skin colour, language and culture, only returning home for perhaps two months in the summertime. “The impact is profound.”

Percival had a hard time getting a law firm to take on the case, Klein noted; it was “not a straightforward case, with many challenges. When we filed in 2018, there hadn’t been very many successful resolutions for cases involving Indigenous children.” (The federal government agreed in principle to pay \$40 billion for First Nations youth in the child welfare system in January 2022, and Klein acknowledges that the tide “appears to be changing, for now.”)

This agreement in principle has been signed by counsel for the plaintiffs and for Canada, and “we’re working on the full settlement agreement,” Klein said. “This sets out the basic terms; now we have to work out the full agreement, put together the materials, allow class members to participate in that process, obtain court approval, and open up the claims process.”

The government will also pay for administrative costs, notices and legal fees.

If you have any information, story ideas or news tips for The Lawyer’s Daily on business-related law and litigation, including class actions, please contact Elizabeth Raymer at elizabeth.raymer@lexisnexis.ca or 905-415-5888.