

Court File No.: T-1417-18

FEDERAL COURT
CERTIFIED CLASS PROCEEDING

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F I L E D	FEDERAL COURT- COUR FÉDÉRALE
July 24, 2023	
Abbie Abe	
VAN	63

Between:

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

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

Brought pursuant to the *Federal Courts Rules*, SOR/98-106

AFFIDAVIT OF KENNETH WEISTCHE

I, KENNETH WEISTCHE, of the community of Waskaganish, in the Province of Quebec, DO SOLEMNLY AFFIRM THAT:

1. I am the Court-appointed Representative Plaintiff for the Quebec Subclass in this proceeding. This affidavit is further to my affidavit sworn May 1, 2019 (my "First Affidavit"). I have personal knowledge of the matters addressed in this affidavit. Where my knowledge is based on information and belief, I believe the information to be true and reliable.

2. I attended the mediation in Toronto before Madam Justice Strickland on November 14-16, and December 6-7, 2022. I witnessed first-hand the negotiating efforts and skills of Dionne Schulze's lawyers on behalf of the Quebec Subclass. I am happy with the work done by my counsel in representing the Quebec Subclass.

3. I support the Settlement Agreement. I am proud of all of the work that went into obtaining it and I want its benefits to be available to aging class members as soon as possible.

4. For decades, I have worked hard to bring justice and healing to my community and other Cree communities in Quebec. As set out in my First Affidavit, I worked as a counsellor and community support worker at the Waskaganish band council, I cofounded and worked at the Waskaganish Wellness Society and I was involved in the implementation of the Indian Residential School Settlement Agreement as a resolution support worker and as a Cree interpreter in Independent Adjudication Process hearings.

5. As Representative Plaintiff for the Quebec Subclass in this proceeding, I have been committed to continuing this work for former students who were placed in boarding homes like me and to make sure that this never happens again to anyone else. I have done my best to represent the interests of Quebec Subclass Members fairly and adequately throughout the litigation and the negotiation process.

6. I applied both my experience as a survivor of the Boarding Homes Program and my knowledge as a support worker to discussions on key components of the Settlement Agreement. I maintained constant direct communication with David Schulze and other lawyers at Dionne Schulze to discuss issues and to provide instructions as necessary.

7. As a survivor of the Boarding Homes Program, I insisted that to bring justice, it was absolutely necessary to acknowledge the harm caused by sending children away from their communities to live with other families to attend school. Separation from the community had lasting impacts on transmission of culture and language, often at an age where important teachings are supposed to be shared for adolescents to become adults in the community. This harm is separate from the abuse that occurred in the boarding homes. Even for a child who did not suffer physical or sexual abuse, placement in itself was harmful and this had to be recognized in the Settlement Agreement.

8. For that reason, I am happy that each survivor will receive at least a payment for placement in the Boarding Homes Program, separately from any abuse they might have suffered. This is an

important recognition of the harm caused simply by the placement. I am also happy that the process for this payment will be a simple application and that survivors will have time to prepare a more detailed application describing the abuse they experienced in the boarding homes, with the necessary support.

9. In that regard, I made clear to counsel that it was very important that Class Members receive adequate assistance and support. As a support worker, I understand the challenges for survivors to share their experience and describe the trauma they suffered as children or youth. I have seen how different settlement agreements were implemented in my community and I can tell what works and what does not.

10. I believe that the approach taken in this Settlement Agreement will benefit Class Members because they will have access to a lawyer of their choice. It is also important that survivors have access to existing cultural and mental health support to help them through the process. Members will need to have access to support in their language with people they know and trust.

11. Another important aspect of the claims process, especially for Cree communities, is that a simple procedure could be established for estates. Crees typically do not make a will and we are not subject to the estates rules in the *Indian Act*. Therefore it has been very difficult for our members, under some previous settlement agreements, to seek compensation for deceased class members, in the absence of estate executors and without the assistance of Indigenous Services Canada. The provision in the Settlement Agreement for the implementation of a simple procedure for deceased members without estate executors will address this real issue for our communities.

12. Money alone cannot bring healing to our communities. We need to make sure that what happened in the Boarding Homes Program is known and that it never happens again. The Boarding Homes Program did not only affect survivors; their families and communities also suffered from the consequences of this program. I believe that the establishment of a foundation with a mandate to fund commemoration projects will contribute to bringing healing to our communities.

13. Throughout the process, personally and through counsel, I have kept my community informed of developments and spoken to leaders about the agreement and its implementation. In

addition to regular phone calls with counsel, I organized in-person meetings with them to discuss the Settlement Agreement and to plan the next steps leading to implementation. I also requested briefing notes to share important information with our leadership. I have talked to many survivors about this Settlement Agreement.

14. I contacted Cree leadership at the level of the nation to discuss aspects of the negotiations that were crucial to us. I spoke personally to Grand Chief Mandy Gull of the Cree Nation Government (“CNG”) about the settlement negotiations. She eventually sent a letter to Marc Miller, Minister of Crown-Indigenous Relations, and Patty Hajdu, Minister of Indigenous Services Canada, to express her satisfaction with key components of the Agreement and to raise concerns about availability of adequate support for Class Members, as appears from **Exhibit A**.

15. I also sought guidance from Matthew Coon Come, former Grand Chief of the Grand Council of the Crees (“GCC,” now the CNG) and representative for the CNG in the negotiation of the settlement agreement for the Band class litigation on the collective harm caused by the residential schools system. Mr. Coon Come met with counsel and reported to the GCC on the Agreement-in-Principle.

16. I have also been in touch with media regarding the agreement. I was quoted in the press release announcing the Agreement-in-Principle on January 3, 2023, attached as **Exhibit B**, and in the press release announcing the Settlement Agreement on June 29, 2023, attached as **Exhibit C**. I have responded to media requests, and I have discussed the Agreement at the Cree Radio Network, as appears from **Exhibit D**. I did an in-depth interview about the Agreement-in-Principle with the Cree magazine *The Nation*, published on March 24, 2023, attached as **Exhibit E**.

17. Lastly, I have cooperated through counsel with the Wiichihiiwewin Centre, representative plaintiff in the related proposed class action in the Quebec Superior Court entitled *Wiichihiiwewin Centre of Waskaganish and Anne Smith v. Attorney General of Canada*, in the District of Montreal, Court File No. 500-06-000812-160. I am informed by my lawyers that the *Anne Smith* proposed class action was suspended in order to reach an agreement in this proceeding and that it will be discontinued as part of the proposed settlement agreement. I am also informed that my lawyers have met with representatives from the Wiichihiiwewin Centre, who expressed satisfaction with

the Settlement Agreement.

18. I am eager to have the Settlement Agreement approved and to start working on its implementation. Many members have contacted me and insisted on the urgency to bring its benefits to our communities.

19. I retained Dionne Schulze on a contingency fee basis. I could not have pursued this class action through an hourly-rate retainer.

20. I understand that under the Settlement Agreement, Canada will pay Dionne Schulze's fees in the amount that the Court decides and that compensation for Class Members will not be used to pay for their fees. In other words, Dionne Schulze is not asking for the percentage that I agreed to under the contingency fee agreement I signed as Quebec Subclass Representative Plaintiff and as a result, more compensation can go to Class Members. I support this approach.

21. I understand that Klein Lawyers and Dionne Schulze as Class Counsel and Quebec Subclass Counsel will be asking the court to fix the sum payable by Canada as counsel fees in the amount of \$50 million. From my perspective, Dionne Schulze achieved results that I am confident will benefit survivors and their communities. They have pursued this litigation and the negotiation of the Settlement Agreement with a strong understanding of the realities and needs of Quebec Subclass Members. I appreciate the risk they took and all the work they did and I fully support their request.

SWORN BEFORE ME in the
City of Montréal, in the
Province of Quebec
this 21st day of July, 2023


Rose Victoria Adams
Barreau du Québec n°358105-5


Kenneth Weistche

Court File No.: T-1417-18

**FEDERAL COURT
CERTIFIED CLASS PROCEEDING**

Between:

REGINAL PERCIVAL, ALLAN MEDRICK MCKAY,
IONA TEENA MCKAY AND LORNA WATTS

Plaintiffs

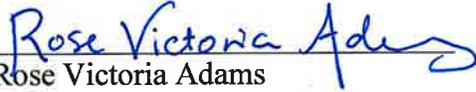
- and -

HIS MAJESTY THE KING

Defendant

EXHIBIT A TO THE AFFIDAVIT OF KENNETH WEISTCHE

This is Exhibit A to the affidavit of
Kenneth Weistche, as solemnly sworn
before me the 21st day of July, 2023


Rose Victoria Adams
Barreau du Québec n°358105-5



particularly the compensation for all class members for the simple fact of having been placed in a boarding home by Canada, as well as the possibility for survivors to obtain further compensation if they suffered abuse.

However, I am writing to raise our concerns about implementation of one key aspect of the agreement-in-principle, section 18, which provides that: “The Parties will agree to culturally sensitive health, information, and other supports to be provided to Claimants for the duration of the claims process as well as funding to deliver support to Claimants who suffer or may suffer trauma, to be paid by Canada.”

Thousands of individuals in our communities will be eligible for compensation once a final settlement agreement is in place. Most of those forced into the federal boarding homes program are in their 60s and 70s and most of them received substandard education in federal day schools and residential schools; many of them are more comfortable speaking the Cree language, iiyuu ayimuun, than English. Most of them will therefore find the application process challenging but in addition, many of them will need to describe traumatic events from their childhood or adolescence in order to receive full compensation. As the agreement-in-principle recognizes, they will need support and assistance.

At the same time, some 580 First Nations and Inuit health authorities and organizations across Canada employ Resolution Health Support Workers (RHSWs) or cultural support providers, currently funded by Indigenous Services Canada (ISC) under the Indian Residential Schools Resolution Health Support Program (IRS RHSP). The RHSWs provide emotional and cultural support services to former Indian Residential School students and their families, which is in addition to mental health counselling services by psychologists and social workers.

We know this network of RHSWs is present in our communities and we know that it is effective: in seven years (2011/12 to 2018/19), they assisted more than 889,394 survivors with 5.8 million client interactions. The issue is that they are only mandated to assist former Indian Residential School students and their families. Under the current rules, boarding-home survivors will not be able to obtain the support of the experienced RHSWs in their own communities.

I am writing to seek your assurance that appropriate emotional and cultural support services, as well as mental health counselling services, will be available



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Grand Council of the Crees (Eeyou Istchee)
Grand Conseil des Cris (Eeyou Istchee)

Δρρ ϋVρϋϋρρ
Cree Nation Government
Gouvernement de la Nation Crie

**to boarding-home survivors under the proposed *Percival* settlement agreement,
including from our existing network of RHSWs.**

Yours,

Mandy Gull-Masty
Grand Chief / Chairperson

cc: Mr. Bryan Rourke
Director of Operations, Crown-
Indigenous Relations and Northern
Affairs Canada
bryan.rourke@rcaanc-cirnac.gc.ca

Mr. Clint Couchie
Director of Regional Affairs, Office of
the Minister of Indigenous Services
Canada
clinton.couchie@sac-isc.gc.ca

FEDERAL COURT
CERTIFIED CLASS PROCEEDING

Between:

REGINAL PERCIVAL, ALLAN MEDRICK MCKAY,
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Plaintiffs

- and -

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EXHIBIT B TO THE AFFIDAVIT OF KENNETH WEISTCHE

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Kenneth Weistche, as solemnly sworn
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Rose Victoria Adams
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Agreement-in-Principle reached to resolve Percival class action lawsuit

From: [Crown-Indigenous Relations and Northern Affairs Canada](#)

News release

Taking care: We recognize this news release may contain information that is difficult for many and that our efforts to honour Survivors and families may act as an unwelcome reminder for those who have suffered hardships through generations of government policies that were harmful to Indigenous Peoples.

The National Indian Residential School Crisis Line offers emotional support and crisis referral services for residential school Survivors and their families. Call the toll-free crisis line at 1-866-925-4419. This service is available 24 hours a day, 7 days a week.

The Hope for Wellness Help Line also offers support to all Indigenous Peoples. Counsellors are available by phone or online chat. This service is available in English and French, and, upon request, in Cree, Ojibway, and Inuktitut. Call the toll-free Help Line at 1-855-242-3310 or connect to the online chat at www.hopeforwellness.ca.

January 3, 2023 — Ottawa, ON — Crown-Indigenous Relations and Northern Affairs Canada

Today, the Honourable Marc Miller, Minister of Crown-Indigenous Relations, along with Reginald Percival and Kenneth Weistche, court-appointed representative plaintiffs, announced that an Agreement-in-Principle has been reached in the Federal Indian Boarding Homes (Percival) class action.

Over the past four years, the Government of Canada and counsel for the plaintiffs have been engaged in discussions to resolve this litigation in a fair, compassionate and respectful manner.

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.

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.

The Parties will continue to work together to reach a final settlement agreement in order to seek approval from the Federal Court of Canada. This process will unfold over the course of 2023, and more information will be forthcoming.

Quotes

"I was taken from my family and community in 1968 when I was 13 years old. 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."

Reginald Percival

Court-appointed representative plaintiff

"I was in a boarding home after I was in Indian residential school. This has always been a missing part of the process. It is like a cut with a bandage, but half the cut is not covered, and that half is the boarding home experience. We never dealt with the whole experience. I am really pleased that we reached this agreement."

Kenneth Weistche

Court-appointed representative plaintiff for the Quebec sub-group

"This Agreement-in-Principle is a milestone for thousands of Indigenous Peoples who suffered abuse while residing in a boarding home placement overseen by the federal government between 1951 and 1992. Canada will continue to work with the plaintiffs towards a final settlement agreement and approval of the Federal Court in 2023."

The Honourable Marc Miller
Minister of Crown-Indigenous Relations

Quick facts

- Beginning in the 1950s, approximately 40,000 Indigenous children were part of a boarding home placement for the purpose of attending school. A significant number of these placements were overseen by the federal government until program delivery slowly devolved to Indigenous control.
- Key elements of the Agreement-in-Principle include:
 - Individual compensation of \$10,000 to recognize 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.

Contacts

For more information, media may contact:

Aïssatou Diop

Press Secretary and Communications Advisor

Office of the Honourable Marc Miller

Minister of Crown-Indigenous Relations

aissatou.diop@rcaanc-cirnac.gc.ca

CIRNAC Media Relations:

Email: RCAANC.Media.CIRNAC@sac-isc.gc.ca

Phone: 819-934-2302

Class Counsel for representative plaintiff Reginald Percival:

Klein Lawyers LLP:

David Klein

Phone: 604-874-7171

Email: info@callkleinlawyers.com

www.callkleinlawyers.com

Quebec Counsel for Quebec representative plaintiff Kenneth Weistche:

Dionne Schulze:

David Schulze

Phone: 514-842-0748

Email: percival@dionneschulze.ca

www.dionneschulze.ca

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Date modified:

2023-01-09

FEDERAL COURT
CERTIFIED CLASS PROCEEDING

Between:

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Plaintiffs

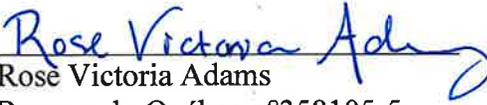
- and -

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EXHIBIT C TO THE AFFIDAVIT OF KENNETH WEISTCHE

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Rose Victoria Adams
Barreau du Québec n°358105-5



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Final agreement reached to resolve Percival class action

From: [Crown-Indigenous Relations and Northern Affairs Canada](#)

News release

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June 29, 2023 — Ottawa, ON — Crown-Indigenous Relations and Northern Affairs Canada

Today, the Honourable Marc Miller, Minister of Crown-Indigenous Relations, and court-appointed representative plaintiffs Reginald Percival and Kenneth Weistche announced that a proposed settlement agreement has been reached in the Federal Indian Boarding Homes (Percival) class action.

Beginning in the 1950s, approximately 40,000 Indigenous children were part of boarding home placements with private families for the purpose of attending school. A significant number of these placements were overseen by the federal government until control of program delivery was slowly devolved to Indigenous governing bodies. This proposed settlement agreement marks a significant advancement for thousands of Indigenous children and youth who suffered cultural loss and abuse while placed in a boarding home between approximately 1951 until at least 1992. The Indian Boarding Home Program was a 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 their education.

With this settlement agreement, Canada agrees to provide individual compensation for having been placed in a boarding home and compensation for incidents of physical and sexual or other abuse, with an investment of \$50 million to support commemoration, healing, language and culture.

From now until August 25, 2023, class members will have an opportunity to review the proposed settlement agreement and provide their comments to the Federal Court.

The parties will seek approval of the proposed settlement from the Federal Court from September 12 to 14, 2023. The Court will consider whether the settlement is fair, reasonable, and in the best interest of the class. Once approved by the Court, compensation and other benefits will be available to eligible class members.

The Government of Canada will continue to work with Survivors to address past harms, as it is at the heart of reconciliation, and essential to renewing and building relationships with Indigenous Peoples, governments, and all Canadians.

Quotes

"I was taken from my family and community in 1968 when I was 13 years old. 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."

Reginald Percival

Court-appointed representative plaintiff

"I was in a boarding home after I was in Indian residential school. This has always been a missing part of the process. It is like a cut with a bandage, but half the cut is not covered, and that half is the boarding home experience. We never dealt with the whole experience. I am really pleased that we reached this agreement."

Kenneth Weistche

Court-appointed representative plaintiff for the Quebec sub-class

"We are determined to heed the words of Survivors who suffered abuse while residing in boarding homes for which the Government of Canada was responsible. To truly advance reconciliation, we must work, as we have in this case, to address the cultural loss and abuse experienced in these institutions."

The Honourable Marc Miller
Minister of Crown-Indigenous Relations

Quick facts

- Key elements of the settlement agreement include:
 - Individual compensation of \$10,000 to recognize the losses caused by placement in a boarding home by Canada for the purpose of attending school. Placements from September 1, 1951, to June 30, 1992, will automatically be included, with provisions made for those placed by the federal government after that date.
 - Additional individual 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 to 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.

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lawsuit

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Contacts

For more information, media may contact:

Aissatou Diop

Press Secretary

Office of the Honourable Marc Miller

Minister of Crown-Indigenous Relations

aissatou.diop@rcaanc-cirnac.gc.ca

CIRNAC Media Relations:

RCAANC.Media.CIRNAC@sac-isc.gc.ca

819-934-2302

Class Counsel:

Klein Lawyers LLP

David Klein

604-874-7171

ibhclassaction@callkleinlawyers.com

www.boardinghomesclassaction.com

Quebec Counsel for the Quebec Sub Class:

Dionne Schulze

David Schulze

514-842-0748

percival@dionneschulze.ca

www.boardinghomesclassaction.com

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Date modified:

2023-06-29

FEDERAL COURT
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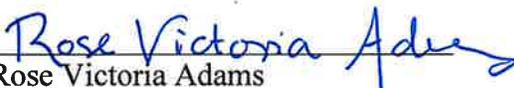
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EXHIBIT D TO THE AFFIDAVIT OF KENNETH WEISTCHE

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Kenneth Weistche, as solemnly sworn
before me the 21st day of July, 2023


Rose Victoria Adams
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Kenneth Weistche

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Report

Ottawa, plaintiffs agree to settle 'Indian boarding homes' class action. Lawyer estimates deal could be worth \$2.2 billion
Kenneth Weistche will talk about the Boarding Home Settlement, where many from our communities were sent to southern schools to finish high school. Some encountered abuse and were damaged.

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FEDERAL COURT
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Between:

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Plaintiffs

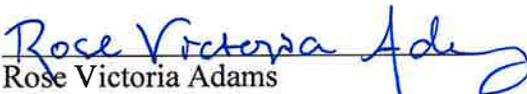
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Rose Victoria Adams
Barreau du Québec n°358105-5

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A 'Living Hell'

Agreement in principle signed to compensate victims of **boarding school abuses**

by Ben Powless, *Local Journalism Initiative Reporter*

Kenneth Weistche was five or six when he was removed from Waskaganish and sent to Bishop Horden Hall residential school in Moose Factory. Eventually he was transferred to the Fort George Catholic residential school and later the St. Philip's School at Fort George.

While the abuses suffered in those experiences were recognized by previous government and church settlements related to residential schools and day schools, Weistche's later time spent in boarding homes in Rouyn-Noranda, Timmins and Val-d'Or were excluded – until now.

Weistche ended up becoming something of a social worker in recent years, working for wellness programs and helping community members fill out applications for residential school claims and working as a translator for them in Cree.

"I started with just my community. By the time I was done, I knew people from all nine Cree communities," he said. The federal government hired him to assist with the process and help with translation in about 100 cases.

That experience only infuriated him more. "When we went through the process, the federal lawyers and federal government didn't want to pay everyone," he shared. "There were ways they could avoid payment to certain people. That got me really mad."

During this process, Weistche saw government lawyers claim that if children were sexually abused just outside of school grounds, then the federal government wasn't responsible. "So, who is liable? The children didn't go there by themselves. The government forced them to go but said they're not responsible. That got me really angry and that's why we filed" a class-action lawsuit.

The lawsuit began in 2017 when Weistche approached David Schulze, a Montreal lawyer with the firm Dionne Schulze. "We started talking and recognized some of these things that were happening – how the feds were not responsive to certain cases I just described – lots



of sexual abuse cases, lots of physical abuse cases," he added.

After filing the suit, Weistche discovered that another group of plaintiffs, led by Reginald Percival, Nisga'a, had already filed a lawsuit. The cases ended up being combined, with Percival listed as the representative plaintiff and Weistche listed as representative plaintiff for the Quebec sub-group.

The federal government operated the Boarding Home Program for Indian Students from the 1950s through the 1980s, where an estimated 40,000 students were placed into boarding homes across Quebec, Ontario, Alberta and British Columbia.

On January 3, Minister of Crown-Indigenous Relations Marc Miller, Percival and Weistche announced an agreement in principle. The lawsuit covers students placed in boarding homes overseen by the federal government between September 1, 1951, to June 30, 1992.

"I was taken from my family and community in 1968 when I was 13 years old. 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," Percival said in a statement.

"This agreement-in-principle is a milestone for thousands of Indigenous

Peoples who suffered abuse while residing in a boarding home placement overseen by the federal government between 1951 and 1992. Canada will continue to work with the plaintiffs towards a final settlement agreement and approval of the Federal Court in 2023," Miller stated.

The settlement would include compensation of \$10,000 for everyone who attended boarding homes, and between \$10,000 and \$200,000 for those who suffered sexual or physical abuse. An additional \$50 million would go towards healing and commemoration measures.

"I encourage all Cree children to make a claim," Weistche added, saying that the compensation would also include episodes of racism and verbal abuse. "There was lots of racism in these towns. We faced a lot of physical abuse, lots of sexual abuse. Not only the girls, but it includes the boys... I also had sexual abuse happen to me.

"I went in at five years old. I didn't understand what was going on. All I knew is I was in a residential school and went to school every day. When you get to 11, 12, 13, 14, you start to understand what's going on. You start realizing what racism is, you see lots of racism, see lots of physical abuses, because you're Native in a non-Native town. I got out when I was 18. It was 12 years in the system of Indian Affairs. It was living hell."

In another incident, Weistche said he saw his own cousin, George Weistche, drown after getting a cramp in Lake Miranda. "He was about 14 or 15 and was sent home in a box, a coffin, by the

federal government. I don't know if the government ever apologized, but he still has brothers and sisters in the community today."

Weistche said he learned to blame himself. After he got out, he married and had three children with a woman who was also an alcoholic. He ended up in a treatment centre to stop doing drugs and alcohol.

"It was really good. But halfway through the program, the psychologist who was living there and working with us, pulled me and my wife aside and said you're doing really well, but there's a problem: you both are raising your children with the only childhood you know, in residential schools," Weistche recounted.

"We were raising our own children as if they were in residential school. That really hurt. It still hurts today."

Now, Weistche hopes that negotiations can wrap up and be implemented by this upcoming fall. "Finally, we can sign the agreement and have healing for everyone. A lot of Cree people are carrying that pain and sorrow."

After that, claimants will have three years to file for compensation. Weistche then hopes to hire a social worker in Eeyou Istchee.

"There's still lots of work we have to do for ourselves and our communities. There's lots of anger. We need healing programs, healing centres where people can go and let go of the pain and anger. Let's do something, let's make life good for our children."