

Court File No.: T-1417-18

**FEDERAL COURT**  
**CERTIFIED CLASS PROCEEDING**

e-document	
F I L E D	FEDERAL COURT- COUR FÉDÉRALE
July 24, 2023	
Abbie Abe	
VAN	58

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 REGINALD PERCIVAL**

I, REGINALD PERCIVAL, of the City of Vancouver, in the Province of British Columbia,  
SWEAR THAT:

1. I am a court appointed representative plaintiff in this proceeding. This affidavit is further to my affidavit in this proceeding sworn October 4, 2018 (my "First Affidavit").

**The Mediation**

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 David Klein and his team on behalf of the class. I am happy with the work done by my counsel team in representing the class.

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 class members, who are aging, as soon as practicable.

## **My History of Advocacy**

4. I have been advocating for the rights of survivors of the Boarding Homes Program since 2006. This was when I learned of the Residential Schools settlement, and I thought that Boarding Homes Program survivors were also deserving of compensation and recognition. My advocacy work included organizing a petition of survivors, organizing a support group for survivors, writing to government, and meeting with my local elected representatives.

5. I met with as many survivors as I could, I researched the issues, and I organized a public meeting in my community of Aiyansh. I was surprised by how well attended the meeting was and that it drew participants from neighboring communities, including Terrace and Prince Rupert. Out of that meeting was formed a volunteer committee with representatives from each community. I was asked to be the coordinator for the committee, responsible for organizing public meetings, writing letters, and making phone calls to the government.

6. The volunteer committee organized a petition campaign to determine how many survivors of Boarding Homes were living in our communities, where they had been sent, which schools, and when.

7. I attended the court hearing in Vancouver at which the Residential Schools Settlement Agreement was approved. I met with the lawyers for the class at the hearing and explained my concerns. The judge allowed me to speak, and I presented my petition and letters from Boarding Homes survivors asking to be included in the settlement. Despite being allowed to make submissions, Boarding Homes survivors were not included in the Residential Schools settlement.

8. My submissions made at the approval hearing for the Residential Schools settlement agreement in 2006 were subsequently quoted by the British Columbia court in 2014 when interpreting the meaning of the Residential Schools settlement agreement and confirming that it did not include Boarding Homes claimants. See *Fontaine v. Canada*, 2014 BCSC 941 at para 53 and 58

9. I wrote the government on September 27, 2007, enclosing a petition from 208 former Boarding Homes students. A copy of this letter is attached as **Exhibit A**.

10. The petition resulted in meetings with the local member of Parliament and also the local member of the Legislative Assembly. I also attended an Assembly of First Nations meeting in Vancouver to present our petition.

11. I wrote to my member of Parliament on January 8, 2008, on behalf of the volunteer committee of Boarding Homes survivors. A copy of this letter is attached as **Exhibit B**.

12. I again wrote the government on behalf of Boarding Homes survivors on October 29, 2009. A copy of this letter is attached as **Exhibit C**.

13. I met several times with the Regional Director for Indian Affairs to discuss my concerns about the Residential Schools settlement and that Boarding Homes should also be compensated. The meetings were polite but did not result in any action.

14. I attended a national meeting for the Truth and Reconciliation Commission in Vancouver at which I asked, without success, that they include Boarding Homes in their report.

### **Challenges in Finding Legal Representation**

15. My advocacy work also involved meeting with lawyers to see if they would take up the cause of Boarding Homes Program survivors. Before I finally found Klein Lawyers to take my case, I had made many different attempts over the years to retain counsel without success. As I stated in my First Affidavit, the decision to bring this lawsuit was not an easy one for me personally. There was much I had to weigh with such a decision. That decision was made more difficult by the challenges I faced in finding interested counsel willing to help me, and to walk me through the process of acting as a plaintiff in a class action. Indeed, prior to retaining Klein Lawyers I had almost given up on the idea because I could not find counsel willing to take the case.

16. Specifically, I approached two law firms in Terrace, British Columbia to take my case. I started with Terrace because it is closest to Nisga'a territory. When neither of those firms was willing to take my case, I branched out further, consulting a firm in Prince Rupert, British Columbia, and another in Prince George, British Columbia, both without success. From there, I

decided to consult established class action firms with Indigenous experience. I called Gowlings which handled the Indian Days Schools class action. I also called and met with Peter Grant & Associates who was involved in the Indian Residential Schools class action. Neither firm took my case. Beyond this, I tried calling law firms who had Indigenous clients. I met three times with a law firm in Vancouver that acted for the Gitsan Nation and several times with lawyers acting for the Kamloops Band. I also met with a lawyer in Vancouver who did work for the Nisga'a.

17. In sum, I approached 9 law firms over a period of years trying to get someone to take my case. I had almost lost hope that I would ever find someone to help when I decided to call a 10<sup>th</sup> law firm, Klein Lawyers.

18. The plight of former Boarding Homes students appears to have been known within the private bar for some years. Attached to my affidavit as **Exhibit D** is a copy of a letter from the Chair of the Canadian Bar Association National Aboriginal Law Section to the Minister of Aboriginal Affairs and Northern Development, dated May 20, 2011.

#### **Advocacy Since Starting the Lawsuit**

19. Since starting the lawsuit in 2018, I have continued to be busy as an advocate. The volunteer committee has regular meetings, and I have spoken with many Boarding Homes survivors about this case. I provide regular written updates on the status of the lawsuit for the Nisga'a community newsletter.

20. I enrolled and completed the Trauma Certification Program at the Justice Institute of British Columbia in 2019 so I can be better at helping survivors who contact me, and to help process my own trauma.

21. I have worked diligently with my counsel to prosecute this case, and have had regular calls, emails, and meetings with them.

22. I have been willing to speak publicly to the media about this case so that class members can find out about it. See, for example, "Ottawa, plaintiffs agree to settle 'Indian boarding homes' class action", CBC, January 3, 2023, attached as **Exhibit E**.

## **My Support for the Settlement Agreement**

23. I am pleased with the settlement agreement. I think it makes some important improvements over other settlements and that it should really help survivors. Allowing class members to apply quickly for Category 1 compensation and then take more time with Category 2 compensation will make the settlement more accessible for people, and avoids problems seen in the Day Schools settlement. Creating financial incentives for local counsel to assist class members with their individual claims also avoids problems encountered by class members in the Day Schools settlement.

24. The claims process is meant to be user friendly. Survivors do not have to give oral testimony to receive compensation as in the Residential Schools settlement. Compensation is available based on a paper process that is intended to reduce the risk of re-traumatization.

25. The settlement agreement does more than just provide compensation. It obligates the federal government to provide mental health supports to class members and it creates a Foundation that can fund reconciliation projects for the benefit of class members and the broader community. I am hopeful that the Foundation can help bring about lasting change.

26. The lawsuit and the settlement mean a great deal to me. For 17 years I have campaigned for justice for survivors of Boarding Homes. I petitioned government and I met with government, but I didn't feel heard until this lawsuit. It was only with this settlement that the concerns of Boarding Homes survivors are finally being addressed.


## **My Agreement with Klein Lawyers**

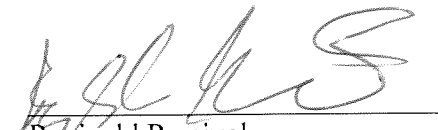
27. When I retained Klein Lawyers, I did so on contingency fee basis. I could not have afforded to hire a lawyer for this case any other way.

28. I understand that Klein Lawyers has reached an agreement with Canada under the Settlement Agreement that their fee will be paid by Canada and that their fee will not be deducted from the recoveries of class members. In other words, I and other class members are relieved of obligations under the contingency fee agreement I signed as representative plaintiff so that more

compensation can go to class members. I support this approach.

29. I understand that Klein Lawyers will be asking the court to fix the sum payable by Canada as counsel fees in the amount of \$50 million. From my perspective, after so many years of disappointment and rejection in advocating for Boarding Homes Survivors, Klein Lawyers achieved results that I was told would be impossible. 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 Vancouver in the )  
Province of British Columbia )  
this 13th day of July, 2023 )  
)  
)  
  
)  
A Commissioner for Taking Affidavits )  
In the Province of British Columbia )

  
Reginald Percival

**ADEN KLEIN**  
*Barrister & Solicitor*  
400 - 1385 West 8th Avenue  
Vancouver, B.C. V6H 3V9

This is Exhibit "A" referred to in the  
Affidavit of Reginald Percival  
sworn before me on this 13<sup>th</sup> day of  
July, 2023



---

A Commissioner of taking Affidavits  
in the Province of British Columbia

*Mr. Reginald Percival, P.O. BOX 195, 4403 Adams Crescent,  
New Aiyansh, B.C. VOJ 1A0  
Phone: (o) 250 633 2652*

September 27<sup>th</sup>, 2007.

Mr. David Russell, Regional Director  
National Research  
Indian Residential Schools, Resolutions Canada  
300-1166 Alberni, Street  
Vancouver, B.C.  
V6E 3ZE

COPY

Dear Mr. Russell,

**Re: Petition of Former Nisga'a Boarding Home Students.**

On behalf of the Nisga'a Students who were placed into a Boarding Program, throughout B.C. and Alberta, for Educational Purposes, I forward you this Petition, and letter's of support.

The Petition, includes signatures from 208, former Boarding Home Students.

These signatures were received from Nisga'a living, in New Aiyansh, Gitwinskiw, Lakalzap, Kincolith, Terrace, and Prince Rupert, B.C.

I have also included letters of support, some of which describe graphically the abuse that was inflicted upon these individuals in the homes they were placed.

The sharing of personal stories of abuse, amongst the former students, is not new, many of these were shared with the, INAC Counselors, that were employed to assist not only the Guardians, but more importantly perhaps the students. It is evident from the letter's that the abuse, physical and sexual, continued, with students, feeling helpless, frustrated, and self-worth, destroyed.

I have heard many stories, since we started this process, of neglect, starvation, ridicule, racism, (personal and institutional), and abuse in many forms, from families of homes, where students were placed, students, teachers, school administrators, Police, systemic racism, which we were too young and vulnerable to address, individually. Collectively families and friends were not placed in the same communities, same homes, in some cases, not in the same province.



Many of the students, also had brothers and sisters in Residential School, in BC and Alberta, myself included. The stories, they shared with us many years later, in our adult years, were identical. It seems we shared stories, as a way of reintroducing ourselves, as brothers and sisters. I personally still feel like I don't know my brothers and sisters, we did not grow up together, because we, were, removed from our homes to attend school outside of our communities. We had no choice but to go. Our parents, had to contend with Indian Agents as they were called, who came into our communities, to ensure children went to school, and had their children removed if they did not comply, I could be wrong, but I believe to this day that parents were charged if they did not comply, the RCMP, were brought to the communities, to make parents, cooperate. It is with this History, that parents allowed their children to be shipped out to, two(2) different provinces, for educational purposes, both Indian Residential School and the Boarding Home Program.

WE are asking the Federal Government to include the Boarding Home into the "Common Experience", Compensation Package, offered to our, Parents, Grandparents, and to our Brothers and Sisters.

On behalf of the Nisga'a Boarding Home Students, we thank for your consideration, and we, extend an "Invitation", to you to come up to the Nass to meet with us, perhaps in October, if your schedule permits.

Thank you,

Yours sincerely,

Reginald Percival.

c. Nelson Leeson, President, NLG.

- Jean Clayton, volunteer, New Aiyansh.
- Richard Benson, volunteer, Kincolith.
- Steve Azak, volunteer, Gitwinskiw.
- Henry Moore, volunteer, Lakalzap.

**Schools Identified in Petition, requested to be included in the Common Experience  
Payments  
Nisga'a Boarding Home Students**

1. McPherson Park Jr. Sec. School, Burnaby B.C.
2. Mission Sr. Sec School, Mission B.C.
3. Aldergrove Sr. Sec School, Aldergrove, B.C.
4. Skeena Jr. Sec School, Terrace, B.C.
5. Newton, High School, Surry, B.C.
6. Delta High School, Delta, B.C.
7. Caladonia Sr. High School, Terrace, B.C.
8. Port Alberni, Port Alberni, B.C.
9. Mount Elizabeth, Kitamat, B.C.
10. Britannia Sec School, Van, B.C.
11. Jasper Place Composite, Alberta.
12. William Beagle, Surrey, B.C.
13. Princess Margaret Sr. High, Van, B.C.
14. Duchess Park Sec, Prince George, B.C.
15. Maple Ridge High, Van. B.C.
16. Mary Jane Shannon, Surry, B.C.
17. Kilarney High School, Van, B.C.
18. John Oliver High, Van, B.C.
19. Kitsilano High, Van, B.C.
20. Prince Rupert High, Prince Rupert, B.C.
21. New Westminster Sec, New Westminster, B.C.
22. Coquitlam Sr. Sec School, Coquitlam, B.C.
23. John Barnsby, Nanaimo, B.C.
24. McTavish Bus College, Alberta.
25. D. W. Poppy Jr. Sec, Aldergrove, B.C.
26. A.D. Rundle Sec. Chilliwack, B.C.
27. Richmond High, Richmond, B.C.
28. Langley Sr. High, Langley, B.C.
29. Sutherland High, North Van, B.C.
30. Shannon High, Surry, B.C.
31. Carson Graham Sec School, Van, B.C.
32. Booth Memorial Sec School, Prince Rupert, B.C.
33. Fort Langley Jr. Sec School, Langley, B.C.
34. Delview Jr. Sec School, North Delta, B.C.
35. Victoria High, Victoria, B.C.
36. West Wally High, Surrey, B.C.
37. L. A. Matheson, North Surry, B.C.
38. Queen Elizabeth Sec School, North Surry, B.C.
39. Jasper Place High, Alberta.
40. Cloverdale Jr. Sec, Cloverdale, B.C.
41. Royal Oak Sec School, Burnaby, B.C.

COPY

42. Lord Tweedsmuir Sec School, Van. B.C.
43. King George Sec School, Van. B. C.
44. Newton High School, Surry, B.C.
45. Hatzje Jr. High, Hatzje, B.C.
46. Sir Charles Tupper Sec School, Van. B.C.
47. Templeton Sec School, Van. B.C.
48. Port Edward Elementary School, Port Edward, B.C.
49. Winslow Jr. Sec School, Van, B.C.
50. Port Coquitlam Jr. Sec School, Port Coquitlam, B.C.
51. S J Willis Jr. High School, Victoria, B.C.
52. North Surry Sec School, North Surry, B.C.
53. North Delta Jr. High, North Delta, B.C.
54. Cloverdale Sr. Sec School, Cloverdale, B.C.
55. Johnston Heights, Sec School, Surry, B.C.
56. Templeton Sec School, Van, B.C.
57. Lord Tweedsmuire Sec School, Cloverdale, B.C.
58. Shawanigan Lake, Victoria, B.C.
59. Port Moody Sec School, Port Moody, B.C.
60. White Rock Sec School, White Rock B.C.
61. Pit Meadows Sec School, Pit Meadows B.C.
62. Chilliwack Jr. Sec School, Chilliwack, B.C.
63. Yale Jr. Sec School, Abbotsford, B.C.
64. Abbotsford Sr. Sec School, Abbotsford, B.C.
65. Haney Sec School, Maple Ridge B.C.
66. Pitt Meadows Sec School, Pitt Meadows B.C.
67. David Thompson High, Van B.C.
68. Sardis Jr. Sr. Sec School, Chiliwack, B.C.
69. VVI, Van, B.C.
70. Moscrop Sec School, Van, B.C.
71. AW Nell Sec School, Port Alberni, B.C.
72. Mt Klitza Sec School, Port Alberni, B.C.
73. A D Sr. School, Port Alberni, B.C.
74. Gill Elemantary School, Port Alberni, B.C.
75. Mary Hill Sr. Sec School, Van. B.C.
76. Woodlands High School, Van , B.C.
77. Quamichan High School, Van, B.C.
78. Lord Byng Sec School, Van, B.C.
79. King Edward Sec School, Van, B.C.
80. H D Stafford, Van, B.C.
81. Welliton Jr. High , Van , B.C.
82. Hillside Sec. Van, B.C.
83. West Vancouver Sec. West Van, B.C.
84. R C Palmer Sec School, Van, B.C.
85. United Church Res, Van, B.C.
86. Windsor Sec School, Van. B.C.
87. Hamilton Jr. Sec School, Van. B.C.

88. Mountain Sr. Sec School, Van. B.C.
89. George Bonner Jr. Sec School, Van, B.C.
90. Cowichan Sr. Sec, Nanaimo, B.C.
91. Langley Sr. Sec. , Langley B.C.
92. Pitman Business College, Van, B.C.
93. King George Secondary School, Van, B.C.

1. Ballit used ~~low~~
2. Ben Crowder
3. Need the Stone: Bring up the  
Horse.

This is Exhibit "B" referred to in the  
Affidavit of Reginald Percival  
sworn before me on this 13<sup>th</sup> day of  
July, 2023



---

A Commissioner of taking Affidavits  
in the Province of British Columbia

Reginald Percival, 4403 Adams Crescent Drive, New Aiyansh, B.C.  
VOJ IAO  
Phone: (0) 250 633 2652 (h) 250 633 2736  
E-Mail (0) [reginldp@nisgaa.net](mailto:reginldp@nisgaa.net)

January 8<sup>th</sup>, 2008.

Mr. Nathan Cullen, NDP  
MP Skeena – Bulkley Valley  
#104 – 7410 Lazelle Avenue  
Terrace, B.C. V8G 1T2

**URGENT**

Dear Mr. Cullen:

**RE: Nisga's Boarding Home Students/Indian Residential Schools Agreement.**

We are a volunteer committee representing the four Nisga'a communities of New Aiyansh, Gitwinksihlkw (formerly Canyon City), Laxgaltsap (formerly Greenville), and Gingolx (formerly Kincolith), in the Nass Valley, including our brothers and sister's in the Urban Area's of , Terrace, Prince Rupert and Vancouver, B.C.

We work without a budget, staff or resources required to begin any substantial research. Our Story is not unlike the Indian Residential School Survivors, Removed from, Family, Community and Forced Assimilation, in the process, loss of language and culture. As youth we had to endure systemic racism in all aspects of the white homes and communities we were placed in. "We did not do this voluntarily". Our Parents, I believe were still Traumatized, not only from their own, forced removal from our communities and their parents, but also our older brothers and sisters, being removed from them with the assistance of the RCMP in some cases, to attend Indian Residential School. Our parents I believe also would have kept us home if they were not so afraid of the Indian Agents, the Federal Government hired and assigned to our communities.

You are familiar with the Indian Residential Schools issue, and the subsequent Indian Residential Schools Settlement Agreement (Common Experience Payment) which governs compensation to survivors of that era.

Excluded from the Agreement is the Boarding Home School Program also sponsored by Indian and Northern Affairs Canada and was parallel to the Indian Residential School Program and operated in the 1950's, 60's, 70's and possibly 80's.

Article 12 of the Indian Residential Schools Settlement Agreement allows for other institutions to be included provided they meet the criteria. We sincerely believe that the former Boarding Home School Program meets the criteria and must be included for compensation to survivor students. An initial meeting with the Director, National Research and Analysis, Mr. David Russell convened in Vancouver on November 27, 2007. A 60 day period is required by the Agreement, "for a response", however Mr. Russell has requested an additional 60 day period, which was granted. This period expires on Jan. 27, 2008.

We are soliciting your support as our Member of Parliament, and that of the New Democratic Party (Caucus) in lobbying the Federal Government to include, for compensation, the former

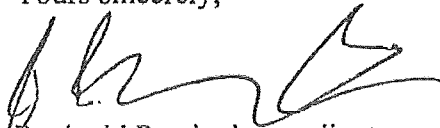
Boarding Home School Program of British Columbia, and specifically that of former Nisga'a students under Article 12 of the Indian Residential Schools Settlement Agreement.

We have attached the list of schools for your review, as identified in our Petition.

Also in this process, a committee member registered on-line on October 25, '07, on behalf of the four Nisga'a communities the four former Indian Day Schools to be included under Article 12 of the Agreement. The initial 60 day period would have been Dec. 25, '07. Although the registration was acknowledge as received, to date there has been no reply. Again we solicit your all inclusive support on these two issues.

We appreciate your setting some time aside to meet with us today. Thank you for your involvement in the urgent and personal issues of some of your constituents.

Yours sincerely,



Reginald Percival, coordinator volunteer committee

c. Henry Moore, volunteer.

Jean Clayton, volunteer.

Richard Benson, volunteer

Nelson Leeson, President, NLG.



This is Exhibit "C" referred to in the  
Affidavit of Reginald Percival  
sworn before me on this 13<sup>th</sup> day of  
July, 2023



---

A Commissioner of taking Affidavits  
in the Province of British Columbia

Reginald Percival, 4403 Adams Crescent, New Aiyansh, B.C.  
P O Box 195  
Phone : ( 0 ) 250 633 2652

Mr. David Russell, Director, Research and Analysis  
Indian and Northern Affairs, Canada  
300 – 1166 Alberni Street  
Vancouver, B.C.  
V6E 3Z3

October 29<sup>th</sup>, 2009.

Dear Mr. Russell:

Re: Nisga'a Boarding Home Students/Indian Day School Students.

In response to your note e-mailed to me regarding section 12 of the Settlement Agreement, Identifying Indian and Northern Affairs, two part test.

1. Children had to be sent to a Residential Institution by or under the Authority of the Government of Canada for Educational Purposes, and
2. That the Government of Canada was jointly or solely responsible for the operation of the Institution and for the care of the Children residing there.

The Nisga'a Boarding Home was the sole responsibility of the Federal Government not the Nisga'a Band Councils, or Nisga'a Parents. This program was a Federal Responsibility under the Indian Act, and It's Regulations and Policies. Our Parents and the Elected Band Councils were not consulted and had no direct involvement with the Federal Government Planning Process and the Implementation of this Federal Educational Program.

It is our understanding that all the funding required for this program was accessed through your internal planning processes, and submitted to Treasury Board. This included the funding required for the School Boards, throughout BC which may have included additional spacing requirements, staffing, equipment, Insurance, Counselors, and Curriculum Development.

For the Students, it included medical coverage, Transportation out of the communities, rent for the Boarding Home. Clothing Allowance, monthly student allowance, plus any special needs required by the student at the boarding home or the school.

Lists, of private homes required by INAC for Indian Students removed from their communities and parents, for Educational Purposes, must have numbered in the thousands, on a National Basis. In Western Society there is a Legal Definition that identifies Boarding Homes as a Type of Institution. With the thousands of homes on INAC's Lists, I think without question it was an Institution that was sponsored by Canada over several decades. I suspect that there was a Standard as with the legal definition required for these Indian Boarding Homes.

I am asking also how did INAC address the issue of Liability for the Schools, the Owners of the Private Homes, and for the Students? Was there a Special Insurance Coverage required in the agreements signed with the School Boards, and the Guardians ?

INAC Adopted us out without our parents informed consent and placed us into Private homes throughout B.C and Canada, for Educational Purposes. If it was not for Educational Purposes, what was the purpose? It certainly was to remove our "Indianess". Our Cultural identity, and our language.

I quote from , "Arlene Vrtar-Huot," BSW, Adoption is a lifelong process, heredity and environmental influences are the foundations of identity in the adoptee and for the adoptive family. Separation from Birth Parents regardless of age is a Trauma-a separation trauma. Grief is never resolved – it is reconciled at each developmental Stage.

Many Boarding Home students suffered Inherent Psychological Abuse, separated from our brothers and sisters, moms and dads, and grandparants for prolonged periods of time, and knowing that if we refused that our parents feared, punishments from INAC staff.

When we were placed into the INAC selected Boarding Home, many suffered physical abuse, and sexual abuse, by the Guardians or their families. Incidents that were never reported to our parents. We were also ridiculed and not allowed to participate in Family events of the homes we were placed in.

The aftermath, I quote Charles Bradfield, MD, PhD, FRCPC, much of the discipline was in IRS was physical. That is children were struck, beaten or other wise, physically punished for misbehaving, with razor straps, rulers and yardsticks. When the students were sent home, In most cases they had no training in parenting, minimal training in any employable skill and no support for their disturbed psychological functioning.

Boarding Home Students and Indian Day School Students suffered all these indignities, in many cases the recipient at the Indian Day School of these abuses was done at the hands of some of those students sent home from the IRS.

The Nisga'a Boarding Home Students, and Indian Day School Students, is requesting not only an official apology from Canada, but also inclusion into The Common Experience Payments, as part of our Healing Journey, and so that we can begin to hold the hands of our Brothers, Sisters, and Parents, as we begin to move forward as Individuals, parents, and grandparents. Collectively we must begin our Healing Journey together. There is an anger and that we all feel, sometimes misplaced upon each other, for what Canada, has done to us. For this we are owed an apology.

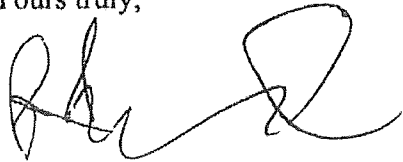
The two step test, that INAC is conducting is not acceptable, and is adding insult to injury.

We ask in all fairness to reopen this process and to look at a collaborative process, with the former Boarding Home Students, that were removed from their parents, and their communities.

The criteria, was and is, Students must have been removed for educational purposes, suffered loss of family and culture, and relocated from community. As Former Indian Boarding Home Students, we fit this criteria.

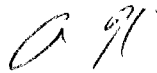
On behalf of our volunteer committee, I look forward to continued dialogue with you on this long outstanding historical issue.

Yours truly,

A handwritten signature in black ink, appearing to read 'Reginald Percival', written in a cursive style.

Reginald Percival, on behalf,  
Former Boarding Home Students.

This is Exhibit "D" referred to in the Affidavit of Reginald Percival sworn before me on this 13<sup>th</sup> day of July, 2023



---

A Commissioner of taking Affidavits  
in the Province of British Columbia



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN

May 20, 2011

Via email: [Minister@ainc-inac.gc.ca](mailto:Minister@ainc-inac.gc.ca)

The Honourable John Duncan, P.C., M.P.  
Minister  
Aboriginal Affairs and Northern Development  
House of Commons  
Ottawa, ON K1A 0A6

Dear Minister,

**Re: Boarding Homes in Residential School Settlement**

I am writing on behalf of the Canadian Bar Association's National Aboriginal Law Section to follow up on previous correspondence (attached for your convenience) concerning the Indian Residential School Settlement. Please let me extend my good wishes for your continued portfolio with Aboriginal Affairs and Northern Development. We look forward to working with you and your officials.

The CBA has called upon Canada to expand the scope of the Indian Residential Schools Settlement to include additional categories of claimants, both for the Common Experience Payment (CEP) and the Independent Assessment Payment (IAP). One of those categories is the students who were placed in boarding homes or alternative residences while attending Indian Residential Schools.

Students were placed elsewhere often simply because the residence at the school was full. This was a less costly way of housing them than physically expanding the residences. Usually, more senior students would be boarded with local families after a number of years at the school's residence.

Residential school survivors are entitled to the Common Experience Payment for the years spent actually living in the dormitory at a residential school, but not for any years they were boarded with families while they continued to attend the same school.

All but one party to the Indian Residential School Settlement is agreeable to amending the Settlement to include individuals residing elsewhere than in the schools themselves, while being compelled to attend the schools. The only party to the Settlement not agreeable is Canada.

This reluctance is difficult to understand, as including this group of individuals would be budget neutral. The amount set aside for the CEP is fixed. If not disbursed to satisfy CEP claims, it will be divided between the Assembly of First Nations and the Inuit representatives for their use. All parties, with the exception of Canada, agree that it would be appropriate to use the CEP money to

compensate survivors for the years they spent away from their families at Indian Residential Schools, though perhaps not residing in the schools themselves. Finally, expanding the CEP to include years spent in boarding homes would avoid the costs, including the cost to Canada and to Canadian taxpayers, of additional litigation to settle those claims.

As the deadline for applications to the CEP portion of the Settlement approaches, we ask that you reconsider Canada's position on this issue at your earliest possible convenience.

Yours truly,

*(original signed by Gaylene Schellenberg for Bradley D. Regehr)*

Bradley D. Regehr  
Chair, National Aboriginal Law Section

Encl. (2)



December 24, 2009

The Honourable Robert Nicholson, P.C., M.P.  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8

Dear Minister Nicholson,

**Re: Expanded Dispute Resolution Process for Aboriginal Students**

I am writing to continue the discussion we began in Dublin at the 2009 Canadian Legal Conference, concerning current omissions from the Indian Residential Schools Dispute Resolution process. Since 2000, the CBA has continually advocated for a just and fair resolution for former students of Indian Residential Schools.<sup>1</sup> We recognize the important steps that the federal government has taken to apologize to, and compensate former students, but we are concerned that some have, to date, been left out.

In light of this, the CBA urges the federal government to expand the scope of the Residential Schools Dispute Resolution Independent Assessment and Common Experience Payment processes to include, or alternatively to establish separate but materially similar dispute resolution processes for, other persons who lost language and culture or suffered physical, sexual or psychological abuse while compelled to attend schools for Aboriginal children. Our concern is that the sad legacy of Indian Residential Schools has been only partially addressed by the court-approved Indian Residential School Settlement Agreement (the Agreement). There are former students who suffered similar harms because of the same government policies as have been recognized, but who have so far been left out of the Agreement.

**Who is left out?**

**1. Arbitrary time limits as to when schools listed are considered Indian Residential Schools**

The Agreement designates several schools as Indian Residential Schools, without any particular time restrictions. The federal government has determined that some of those

---

<sup>1</sup> See, 00-04-A, Guidelines for Lawyers Acting for Survivors of Aboriginal Residential Schools; 02-02-A Residential School Claims; 04-08-A, Scope of Residential Schools Dispute Resolution Process; 07-09-M, Guidance for Lawyers Acting for Survivors of Indian Residential Schools.



schools were only Indian Residential Schools during a particular period, although the schools may have operated for decades beyond the designated period. In other cases, the Agreement itself contains specific time frames during which a school is considered an Indian Residential Schools. These various restrictions can arbitrarily exclude some former students who should be awarded compensation. Examples include:

*Lac la Biche (Alberta)* – The Agreement contains no time limit for this school, but the federal government has argued that as it stopped funding the school in 1898, students attending after that period are not covered by the Agreement. However, the school continued to operate for many years under the same name, and Aboriginal students continued to be sent to that school. Hundreds of claimants who attended this school have been refused a Common Experience Payment.

*St. Augustine's (Alberta)* – As above, the federal government's position is that because it stopped funding the school at a certain point, students attending after that point are ineligible, although the school continued to operate.

*Coqualeetza (British Columbia)* – This school was converted to a federal tuberculosis hospital, and several students from other Indian Residential Schools were sent to it for treatment, and then educated there. The claims of students who attended following the change have been denied.

Some former students have spent significant time and money trying to prove their attendance at a school, without knowing that the school is not considered an Indian Residential School during the relevant period, although listed in the Agreement. This has caused significant anger and frustration within Aboriginal communities.

## 2. Boarding Homes

In some cases, children were shipped from remote communities to an Indian Residential School, but the school's residence was full. They were then housed in boarding homes while still attending the school. Under the Agreement, the Common Experience Payment is available only to those who fall within a narrow technical definition requiring that they resided in the Indian Residential School itself. Students housed in boarding homes and similar situations have been denied the payment.

## 3. Tuberculosis Hospitals and Day Schools

No compensation has been made available for former students assimilated through compelled attendance at Day Schools. Often those students experienced similar experiences as former students of Indian Residential Schools. To truly resolve past injustice because of federal government policies to assimilate Aboriginal people, the experience of these students should also be recognized, either in the existing Agreement (by consent) or through the creation of a new Agreement specifically for Day School students.<sup>2</sup>

### Independent Assessment Process for Sexual or Serious Physical Abuse

In addition to the categories of students excluded from the Common Experience Payment discussed above, consideration should be given to extending the Independent Assessment Process to Day School students with claims of sexual abuse or serious physical abuse. This

<sup>2</sup> We note that a class action has begun to argue for adding Day Schools for the purpose of the Common Experience Payment.

change should be independent of Day School students becoming eligible for the Common Experience Payment.

### **Conclusion**

Apart from a separate new Agreement for Common Experience Payments for Day School students, we believe that our suggestions could be implemented within the present Agreement at minimal cost. Of the \$1.9 billion that the federal government set aside for the costs of the Common Experience Payments, funds remaining may well be sufficient to compensate all students of schools listed in the Agreement, as well as those placed in boarding homes or hospitals when there was no room at Indian Residential Schools. These funds have already been agreed by the federal government and approved by the courts.

Further, using the Independent Assessment Process for Day School students' claims of sexual abuse or serious physical abuse would be cost-effective for the federal government by avoiding costs associated with traditional litigation. In addition to being less expensive for both parties than litigation, it would be less traumatic for former students. The same legal principles are involved as for other former students housed in actual Indian Residential Schools.<sup>3</sup>

There has been understandable frustration within Aboriginal communities because of the current federal government policy of denying these claims. At the CBA's 2009 CLC, we were heartened to hear you say that you were committed to exploring these issues further. We believe that Canada's reputation with Aboriginal communities would be enhanced by offering Common Experience Payments to a broader category of former students and creating an expeditious process for victims of sexual abuse or serious physical abuse while attending Day Schools. It would show the federal government's genuine desire to achieve reconciliation by addressing serious wrongs done to Aboriginal children during this period of history. Many of these children were subjected to the same policies of abuse and assimilation as those attending Indian Residential Schools.

I thank you for your consideration and urge you to expedite the matter for the benefit of those who have been wronged.

Sincerely yours,

*(Original signed by D. Kevin Carroll)*

D. Kevin Carroll, Q.C., L.S.M.  
President

cc: The Honourable Chuck Strahl, Minister of Indian and Northern Affairs

---

<sup>3</sup> We note that some of the religious institutions involved are prepared to utilize the IAP model to resolve such claims in Day Schools operated by that institution. The federal government could incorporate this process as well. It will ultimately save costs for both the government and former students.

## **Dispute Resolution Process for Aboriginal Students**

**WHEREAS** comprehensive studies, including the Royal Commission on Aboriginal Peoples and the Law Commission of Canada's *Restoring Dignity: Responding to Child Abuse in Canadian Institutions*, have documented the immediate individual harm and the long term collective harm caused by Canadian government efforts to eradicate aboriginal language and culture by placing aboriginal children in Indian Residential Schools;

**WHEREAS** the Canadian Bar Association has recognized the extreme vulnerability of survivors of Indian Residential Schools, and the potential for further harm in seeking to resolve their claims through litigation;

**WHEREAS**, under related government policies, other aboriginal children lost language and culture and were abused physically, sexually and psychologically while compelled to attend school in other settings, such as Indian Day Schools or hospitals and sanatoriums, or in boarding and foster homes associated with Indian Residential or Day Schools;

## **Processus de règlement de conflits pour les étudiants autochtones**

**ATTENDU QUE** des études approfondies, dont celle menée par la Commission royale sur les peuples autochtones et l'étude de la Commission du droit du Canada intitulée « La dignité retrouvée : la réparation des sévices infligés aux enfants dans des établissements canadiens », ont apporté la preuve du préjudice personnel direct ainsi que du préjudice collectif à long terme qui ont été causés par les efforts du gouvernement canadien visant à éliminer la langue et la culture autochtones en plaçant les enfants autochtones dans des pensionnats indiens;

**ATTENDU QUE** l'Association du Barreau canadien reconnaît la vulnérabilité extrême des survivants de pensionnats indiens, et la possibilité qu'ils subissent davantage de souffrances en tentant de faire redresser par voie de poursuite judiciaire les torts qu'ils ont subis;

**ATTENDU QUE**, en vertu de politiques gouvernementales connexes, d'autres enfants autochtones ont été privés de leur langue et de leur culture et ont subi des sévices physiques, sexuels et psychologiques alors qu'ils étaient contraints à fréquenter l'école dans d'autres contextes, tels que des externats indiens, hôpitaux ou sanatoriums, ou dans des pensions ou familles d'accueil associées aux pensionnats ou externats indiens;

**WHEREAS** the Government of Canada has established dispute resolution processes to give Residential School survivors an alternative to the litigation process, but those who experienced the same harms in other settings have been barred from resolving their claims in this manner;

**BE IT RESOLVED THAT** the Canadian Bar Association urge the Government of Canada to expand the scope of the Residential Schools Dispute Resolution Independent Assessment and Common Experience Payment processes to include, or alternatively to establish separate but materially similar dispute resolution processes for, other persons who lost language and culture or suffered physical, sexual or psychological abuse while compelled to attend schools for Aboriginal children.

**Certified true copy of a resolution carried as amended by the Council of the Canadian Bar Association at the Annual Meeting held in Dublin, Ireland, August 15-16, 2009**

**ATTENDU QUE** le gouvernement du Canada a mis en œuvre un processus de règlement de conflits afin de donner aux survivants des pensionnats indiens une option autre que les procédures judiciaires, mais que ceux qui ont subi les mêmes types de sévices dans d'autres contextes n'ont pas le droit de se prévaloir de cette option;

**QU'IL SOIT RÉSOLU QUE** l'Association du Barreau canadien exhorte le gouvernement du Canada à augmenter la portée du Processus d'évaluation indépendant de règlement des conflits impliquant les pensionnats indiens et du Processus de paiement d'expérience commune, ou bien à mettre en œuvre un processus de règlement de conflits distinct mais en substance semblable pour les personnes qui ont été privées de leur langue et leur culture ou qui ont subi des sévices physiques, sexuels ou psychologiques alors qu'elles étaient contraintes à fréquenter des écoles pour enfants autochtones.

**Copie certifiée d'une résolution adoptée, tel que modifiée, par le Conseil de l'Association du Barreau canadien, lors de son Assemblée annuelle, à Dublin, Irlande les 15 et 16 août 2009.**

**John D.V. Hoyles  
Chief Executive Officer/Chef de la direction**

This is Exhibit "E" referred to in the  
Affidavit of Reginald Percival  
sworn before me on this 13<sup>th</sup> day of  
July, 2023



---

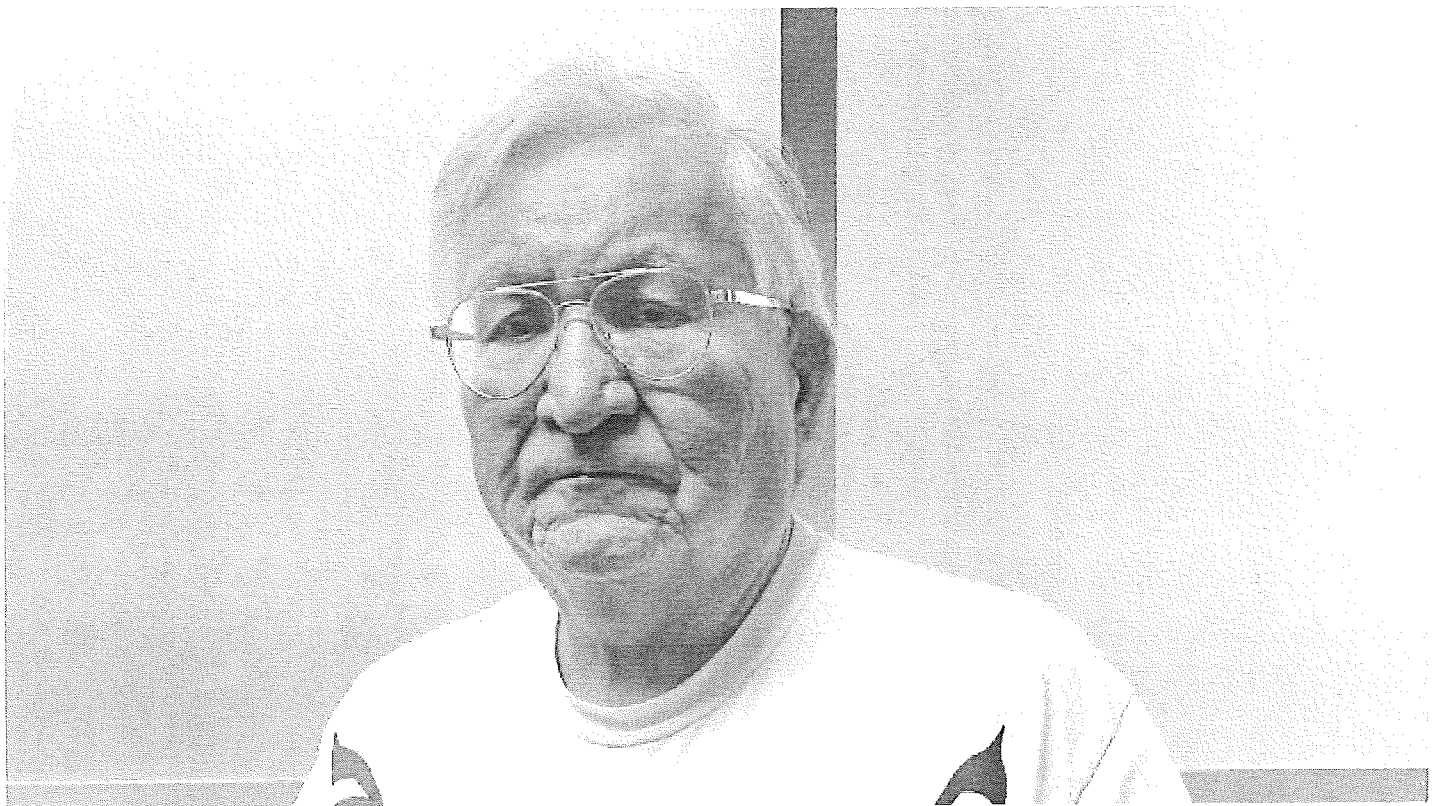
A Commissioner of taking Affidavits  
in the Province of British Columbia

Indigenous

## Ottawa, plaintiffs agree to settle 'Indian boarding homes' class action

Lawyer estimates deal could be worth \$2.2 billion

Brett Forester · CBC News · Posted: Jan 03, 2023 2:24 PM PST | Last Updated: January 3



Reginald Percival, a 67-year-old Nisga'a man, was forcibly removed from his home and community in British Columbia and placed in the boarding homes program when he was 13 years old. (Submitted by Reginald Percival)

The Canadian government and lawyers for survivors have reached an agreement-in-principle to settle a class-action lawsuit over the operation of boarding homes for Indigenous students attending public schools between 1951 and 1992.

The federally run program saw an estimated 40,000 Indigenous youth placed in non-Indigenous boarding homes where they suffered cultural destruction and abuse, the parties said in a Tuesday news release.

The seven-page agreement was signed last month and lays the groundwork for the parties to reach a comprehensive final deal, which will have no cap on compensation and could see more than \$2 billion paid out.

It also presents Ottawa with an opportunity to deliver justice to survivors of Canada's assimilationist residential school-era policies who were left out of prior settlements, said lead plaintiff Reginald "Reg" Percival.

Percival, 67, a member of the Nisga'a Nation and an addictions support worker in Vancouver, said extreme racism and violence at boarding homes in British Columbia and Alberta left him with trauma he continues to grapple with. He was forcibly removed from his family and community when he was 13 years old.



Reginald Percival, 13, in 1968 during Christmas. (Submitted by Reginald Percival)

"Probably almost all of us lived under the same kind of conditions that they had in the residential schools, which was a lot of abuse," said Percival in an interview.

"The abuse was not only physical. It was sexual. It was mental. We had to deal with a lot of systemic racism. We were not allowed to contact family. We weren't allowed to write letters or make phone calls."

Percival said watching the Harper government's 2008 apology for Canada's residential schools brought back memories of boarding homes and encouraged him to seek justice.

Survivors banded together and filed their statement of claim in 2018. Percival said these last four years have been difficult and retraumatizing for many.



"Our healing journey I don't think is going to start officially for many of us until that apology is there, and the compensation package is rolling," he said.

"It's been a tough journey for us. It's not going to stop. The healing journey continues until our journey of life is over."

## 'A voice in the wilderness'

Percival was a "voice in the wilderness" until now, raising awareness about a program whose existence is not well known, said David Klein, managing partner of Klein Lawyers, the Toronto-based class counsel in the boarding homes and Sixties Scoop cases.

"The Sixties Scoop was a more pernicious program than boarding homes, but it's only a matter of degree along the same continuum related to cultural genocide. It was a widespread program that is important for Canadians to know existed," said Klein in an interview.

Klein said the negotiations were difficult and faced several challenges, number one being the question of class size. Lawyers now must hash out a final deal they hope to complete by the end of this year, he said.

The lawyers also must hire a claims administrator, inform potential claimants, explain the settlement to them, and file a motion in court seeking approval from a federal judge.



David Klein, a managing partner with Klein Lawyers, which also acts as class counsel in the Sixties Scoop class action. ([callkleinlawyers.com](http://callkleinlawyers.com))

Unlike the Sixties Scoop settlement, which allocated a fixed pot of cash for compensation, the boarding homes deal will be uncapped, meaning everyone who is eligible will receive the compensation they're due, the agreement says.

Claimants will receive a baseline payment of \$10,000 if they were placed in a boarding home. They will then be eligible for anywhere between \$10,000 and \$200,000 in additional payments depending on the severity of abuse.

The deal will also create a foundation for healing, commemoration, language and culture to which Ottawa will pay \$50 million.

"Based on the class size, the compensation grid, and our best guess as to where class members will fall within the grid, our estimated total value of the settlement in terms of compensation to class members is about \$2.2 billion," Klein said.

## Push to settle remaining cases

In a written statement, Crown-Indigenous Relations Minister Marc Miller called the agreement-in-principle "a milestone" for thousands of Indigenous people who suffered abuse while living in a boarding home placement overseen by the federal government.

The boarding homes lawsuit is one of the few major remaining cases dealing with residential school era policy that Prime Minister Justin Trudeau's Liberals have been trying to settle.

In January 2022, Ottawa announced a settlement with day scholars who attended residential schools during the day but returned home at night.

They often suffered similar abuses as their fellow pupils but were excluded from the 2006 residential school settlement agreement.

- **Next federal government will face unresolved class action lawsuits from residential school era**
- **Trial put on hold in residential school reparations class action after parties agree to negotiate**

A scheduled trial in a related class-action lawsuit by more than 300 First Nations was abruptly adjourned in September after the plaintiffs and Canada agreed to negotiate an out-of-court settlement.

The case, dubbed the band reparations class action, seeks collective compensation for the communal harms First Nations suffered due to residential schools.


Those talks are ongoing.

Miller was not available for an interview on Tuesday

***A national Indian Residential School Crisis Line is available to provide support for survivors and those affected. People can access emotional and crisis referral services by calling the 24-hour service at 1-866-925-4419.***

***Mental health counselling and crisis support is also available 24 hours a day, seven days a week through the Hope for Wellness hotline at 1-855-242-3310 or by online chat.***

[CBC's Journalistic Standards and Practices](#) | [About CBC News](#)

[Corrections and clarifications](#) | [Submit a news tip](#) | [Report error](#) 

©2023 CBC/Radio-Canada. All rights reserved.

[Visitez Radio-Canada.ca](#)