

Federal Court



Cour fédérale

Date: 20200617

Docket: T-2169-16

Citation: 2020 FC 701

Ottawa, Ontario, June 17, 2020

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

and

MARY ROSE NAYTOWHOW

Moving Party

ORDER: PAYMENT PROTOCOL

UPON READING the motion record of the Moving Party, the motion record of the Defendant and the consent of the parties;

FOR THE REASONS ISSUED:

THIS COURT ORDERS that:

1. The Claims Administrator shall communicate with counsel for the Moving Party and make payment in trust to counsel for the Moving Party for any amounts payable to the Moving Party in accordance with the terms of the Payment Protocol for Claimants with Individual Counsel attached hereto as Schedule “A”.
2. The Payment Protocol for Claimants with Individual Counsel, attached hereto as Schedule “A”, may apply to such counsel retained by a Claimant to assist with their Indian Day Schools Class Action Settlement Claim as may elect to be bound by it and they shall be subject to the Court’s jurisdiction over the Settlement and the provisions for payment to counsel.
3. There shall be no costs of this motion.

“Michael L. Phelan”

Judge

SCHEDULE "A"

PAYMENT PROTOCOL FOR CLAIMANTS WITH INDIVIDUAL COUNSEL

1. This Protocol shall be provided by the Claims Administrator to any lawyer retained by a Claimant other than Class Counsel to assist with the Claimant's Indian Day Schools Class Action Settlement Claim ("Individual Counsel") and such Individual Counsel shall be subject to the Court's jurisdiction over this Settlement and the provisions for payment to counsel.
2. Any Individual Counsel not prepared to be bound by the Payment Protocol shall apply to the Court for such other order as they deem necessary otherwise Individual Counsel shall be bound by this Payment Protocol.
3. Individual Counsel shall provide the Claims Administrator the following documents, copied to the Defendant and Class Counsel:
 - a. Retainer Agreement/Contingency Fee Agreement executed by the Claimant and Individual Counsel; and
 - b. Direction to Pay in Trust executed by the Claimant and Individual Counsel.
4. The Retainer Agreement/Contingency Fee Agreement identified in paragraph 3 above must clearly indicate that legal services are available from Class Counsel at no cost to the Claimant, and that by retaining Individual Counsel, the Claimant is releasing Class Counsel of any ongoing responsibilities or obligations Class Counsel owes the Claimant.
5. For Claimants/Individual Counsel who have provided documentation identified in paragraph 3(a) above, the Claims Administrator shall communicate directly with

Individual Counsel with respect to matters concerning the Claimant that would otherwise be communicated directly to a Claimant who has not retained Individual Counsel.

6. For Claimants/Individual Counsel who have provided complete documentation identified in paragraph 3 above and in accordance with paragraph 4 above, upon completion of the Claims Process, the Claims Administrator shall deliver to Individual Counsel, in trust, the full amount of compensation payable to the Claimant under the Claims Process.
7. Payments made in accordance with paragraph 6 above shall be made as part of the regular payment process as determined by the Claims Administrator.
8. Individual Counsel shall make best efforts to transfer funds received in trust in accordance with paragraph 6 above, that are not subject to legal fee determination in accordance with the Retainer Agreement/Contingency Fee Agreement identified in paragraph 3 above, to the Claimant within ten (10) days.
9. Individual Counsel shall file a motion in accordance with Federal Courts Rule 334.4, on notice in writing to the Defendant and Class Counsel, within sixty (60) days of receiving the payment in trust.
10. Individual Counsel shall make best efforts to transfer any monies remaining in trust that are not approved as legal fees to the Claimant within ten (10) days after the right to appeal the Federal Court Order approving fees has expired or all avenues of appeal have been exhausted unless otherwise ordered by the Federal Court.
11. Individual Counsel shall report to the Federal Court, copied to the Defendant and Class Counsel, verifying all funds transferred to the Claimant within thirty (30) days after the

right to appeal the Federal Court Order approving fees has expired or all avenues of appeal have been exhausted or such other date specified. The report shall include confirmation of the amount(s), date(s), and method(s) of transfer.

12. In the event that Individual Counsel is unable to transfer funds to the Claimant in accordance with paragraphs 8 and 10 above, Individual Counsel shall report to the Federal Court advising of the steps taken to transfer the funds and the reason(s) why the transfer could not be completed within thirty (30) days after the right to appeal the Federal Court Order approving fees has expired or all avenues of appeal have been exhausted. In the event that Individual Counsel is subsequently able to transfer funds to the Claimant, Individual Counsel shall report to the Federal Court in accordance with paragraph 10 above.
13. Nothing in this Protocol shall interfere with the Court's ongoing supervision of the Settlement nor in any other way addressing other specific circumstances as they may arise.