

Phase 2 Notice – Long Form Notice

**NOTICE OF SETTLEMENT APPROVAL IN
MANITOBA DEVELOPMENT CENTRE CLASS ACTION**

To all persons who resided at the Manitoba Developmental Centre during the period between July 1, 1951 and May 29, 2020, and who were alive as of October 31, 2016:

Please read this notice carefully.

**The Manitoba Court of King’s Bench authorized this notice.
This is not a solicitation from a lawyer.**

There was a class action lawsuit regarding the Manitoba Development Centre (“MDC”) in Portage la Prairie, Manitoba. A Settlement in that lawsuit has been approved by the Court. Therefore, the lawsuit is now over and there is money available for Class Members who file a claim and meet the requirements set out in the Settlement.

The Settlement provides a fund of \$17 million for compensating Class Members and other reconciliation initiatives. This notice explains how to make a claim for compensation from the Settlement if you were harmed, and how to participate in the reconciliation initiatives. **If you do not make a claim by the deadline, you will not get any money.**

Please read this document carefully or ask for help from someone you trust.

Do you know someone who lived at MDC? Please share this information with them or their support person.

**To learn more about this settlement, go to:
MDCclassactionsettlement.ca**

**To claim compensation under the settlement, you must submit
a Claim Form before June 27, 2024.**

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BASIC INFORMATION

Why did I get this notice?

You got this notice because you or someone you know may have lived at MDC between July 1, 1951 and May 29, 2020. The Court said you should get this information about the lawsuit and your legal rights.

The Representative Plaintiff and the Government of Manitoba agreed to a Settlement providing financial compensation for eligible Class Members, and other benefits. On May 25, 2023, the Court approved this Settlement. There is now a process for making claims for compensation and participating in the benefits provided by the Settlement.

This notice explains what is happening and what your legal options are now, including the deadline to ask for money, which is June 27, 2024.

What is a class action?

In a class action, one or more people called “**Representative Plaintiffs**” sue on behalf of people who have similar claims. All of the people who have similar claims are called a “**Class**” or “**Class Members**.” The court resolves the issues for everyone affected, except for those who excluded themselves from the lawsuit by opting out.

What is this class action about?

This lawsuit alleged that Manitoba was negligent in the operation of MDC. The lawsuit alleged that some MDC residents were physically, sexually and psychologically harmed by staff and other residents.

Manitoba denied these claims, but has agreed to a settlement that has now been approved by the Court.

Why is there a Settlement?

By agreeing to the Settlement, the Representative Plaintiff, Class Members, and Manitoba have avoided the costs and risks of a trial and delays in obtaining a judgment. In particular, the Settlement provides for financial compensation for eligible Class Members who make a claim for compensation. Proceeding to trial without the Settlement would have left open the risk that the lawsuit would be unsuccessful and no compensation would be available to any Class Member. In this case, the Settlement also means that Class Members will *not* be required to testify in court.

At a hearing on May 5, 2023, the Court considered the Settlement. By order of May 25, 2023, the Court decided that the settlement was fair, reasonable and in the best interests of Class Members, and approved the settlement.

Who is included in the settlement?

Who is included in the settlement?

The Settlement includes all persons who lived at MDC between July 1, 1951 and May 29, 2020, and were alive as of October 31, 2016, and who have not opted out of the class action during the opt out period. These are the Class Members.

All Class Members can apply for compensation under the Settlement, with the exception of those who opted out, and with the exception of those who have previously settled and released claims against Manitoba in relation to matters that are the subject of this class action. All Class Members (except those who opted out) are bound by the Settlement and will be covered by the releases in the Settlement Agreement.

If you opted out of this lawsuit, you are not included in the Settlement. The time to opt out of the class action ended on January 12, 2022. It is no longer possible to opt out of this lawsuit.

What if I'm not sure whether I'm included in the settlement?

If you are not sure whether you are included in the Settlement, you may contact the Claims Administrator by calling the claims office at 1-844-306-0263, or emailing info@mdcclassactionsettlement.ca.

What are the benefits of the Settlement?

What does the Settlement provide?

The Settlement provides financial compensation for eligible Class Members who meet the requirements of the claims process by submitting a completed Claim Form and supporting documentation where required.

The Settlement provides a fixed fund of money of \$17 million (the “**Settlement Fund**”) that Class Members can make a claim against. The amount of compensation you may receive is dependent on the specifics of your claim and the number of claims approved for all Class Members.

The claims process is paper-based, requires a detailed description of assaults to the extent of a claimant’s recollection and ability, and may be subject to an audit process overseen by Irene Hamilton, whom the parties have agreed will act as the Claim Supervisor.

As part of the Settlement, Manitoba has also agreed to implement several reconciliation initiatives, including the following:

1. Manitoba will issue an apology in the Legislative Assembly. A copy of the apology will be provided to Class Members who chose to receive one;
2. Manitoba will establish an endowment of \$1,000,000 with the Winnipeg Foundation, that may be drawn upon annually by community organizations to fund things like educational programming, inclusion initiatives, and projects that promote or support community inclusion of Manitobans with intellectual and developmental disabilities;
3. Manitoba will pay up to \$50,000 for the creation of audiovisual productions concerning the stories of Class Members and the history of MDC, to be developed through consultation with Class Members;
4. Manitoba will pay up to \$150,000 to reimburse claimants for counselling, psychological, or psychiatric care arising from any re-traumatization claimants experience as a result of making a claim;
5. Manitoba will erect a memorial on the grounds of the MDC Cemetery;
6. Manitoba will allow reasonable access to Class Members to attend the MDC grounds after the closure of MDC on two dates to be determined;
7. Manitoba will also allow access by one researcher for the purpose of selecting objects of historical significance and having those objects properly archived;
8. Manitoba will preserve the MDC cemetery, including reasonable efforts to designate the cemetery a Site of Historical Significance; and
9. Subject to applicable privacy and other legal requirements, Manitoba will provide all documents produced in this proceeding to Archives of Manitoba, so they may be properly retained and accessed in the future.

More details are in a document called the Settlement Agreement, which is available at MDCclassactionsettlement.ca.

What kind of money can I get?

The amount of money you can get depends on the type of harm you establish in your Claim Form.

There are two types of claims:

- (1) Section A Claims – which only requires an affirmation that a Class Member was harmed; and
- (2) Section B Claims – which requires Class Members to provide details of the harms suffered.

A Class Member can only receive compensation from either a Section A Claim or a Section B Claim, but *not* both.

Compensation for Section A and Section B Claims is as follows:

Section A Claims	\$3,000
Section B Claims	
Sexual Abuse	
Level 1 Sexual Assault <ul style="list-style-type: none"> Any non-consensual sexual touching of a Claimant by staff, or other non-consensual sexual behaviour by staff towards a Claimant that is not a Serious Sexual Assault. 	\$15,000
Level 2 Sexual Assault <ul style="list-style-type: none"> Repeated non-consensual sexual touching of a Claimant or other non-consensual sexual behaviour that is not a Serious Sexual Assault. 	\$20,000
Level 3 Sexual Assault <ul style="list-style-type: none"> One or two incidents of Serious Sexual Assault. 	\$35,000
Level 4 Sexual Assault <ul style="list-style-type: none"> (i) More than two incidents of Serious Sexual Assault; or (ii) Level 3 Sexual Assault resulting in a Major Psychological Injury. Requires medical evidence in addition to the affirmation to support allegation that a Serious Sexual Assault resulted in Major Psychological Injury. 	\$60,000, plus costs of obtaining medical evidence up to a maximum of \$500 per claimant
Physical Abuse	
Level 1 Physical Assault <ul style="list-style-type: none"> Multiple physical assaults not causing a Serious Physical Injury and not resulting in an observable injury. 	\$4,500
Level 2 Physical Assault <ul style="list-style-type: none"> One or more physical assaults not causing a Serious Physical Injury, but resulting in an observable injury such as a black eye, bruise or laceration. 	\$10,000
Level 3 Physical Assault <ul style="list-style-type: none"> One or more physical assaults causing a Serious Physical Injury. 	\$25,000

“Serious Sexual Assault” means non-consensual oral, vaginal or anal penetration or attempted non-consensual oral, vaginal or anal penetration.

“Serious Physical Injury” means physical injury that led or should have led to hospitalization or serious medical treatment by a physician; permanent or demonstrated long-term physical injury, impairment or disfigurement; loss of consciousness; broken bones; or a serious but temporary incapacitation such that bed rest or infirmary care of several days’ duration was required.

“Major Psychological Injury” means prolonged major psychological trauma symptoms resulting in a diagnosis by a psychiatrist or psychologist of a mental illness/disorder recognized by the Diagnostic and Statistical Manual of Mental Disorders. The diagnosis must not be pre-existing and must occur after the incident(s) in question and prior to the commencement of the Action.

Under the Settlement, Claimants would be eligible for compensation under one level for each of the sexual assault or physical assault categories, but can claim in both categories. For example, a claimant cannot receive compensation for Level 2 and 3 sexual assault, but can receive compensation for Level 2 sexual assault and Level 3 physical assault. If an individual suffered more than one level of assault in either category, they are eligible for compensation for the highest level assault that they suffered.

The potential amount of money available to each eligible Class Member whose claim is accepted will range from \$3,000 to \$85,000. If the total amount of eligible payments to Class Members exceeds the total maximum available to compensate Class Members, all payments to Class Members will be reduced on a proportionate or *pro rata* basis so that the compensation paid to Class Members does not exceed the amounts available.

The Settlement Agreement describes further details and requirements of the paper-based claims process. You can view those details here: MDCclassactionsettlement.ca.

How does the Claims Administrator decide how much money to give me?

The Claims Administrator will review your Claim Form to ensure you are eligible and to confirm that you meet the requirements of the claims process.

The claims office may contact you if they need additional information. You must respond to the Claims Administrator's questions within the timeframes that they provide you. If you do not respond in time, your claim may be found ineligible for compensation.

Representatives from Manitoba may review your file and submit documents to the Claims Administrator that are relevant to your claim.

Each Class Member should provide as much detail and information as they remember in relation to the incidents of harm they are saying happened to them. It is okay if a Class Member does not remember details, but they should provide as much information as they can.

Once it has all necessary information, the Claims Administrator will then assess which level and type of harm may apply to your claim, and award compensation based on that assessment. There are many kinds of harm. This Settlement only provides compensation for harms relating to certain sexual and physical assaults, as set out in the table above.

The Settlement sets out the levels and types of harm that are eligible for compensation. The Claims Administrator reads your Claim Form and will award compensation based on their assessment of which level and type of harm may apply to your claim.

Some Claims may be subject to an audit process overseen by Irene Hamilton, whom the parties have agreed will act as the Claim Supervisor. If your claim is audited, the Claim Supervisor may ask you for an in-person or virtual interview with you or your Substitute Decision Maker if deemed appropriate. You will have to attend this interview, but it will not be in Court.

How else can I participate?

As part of the settlement, Manitoba has also agreed to implement several reconciliation initiatives outlined above.

If you would like to get a written apology from Manitoba, you must elect to receive one in the Claim Form or otherwise by contacting the Claims Administrator.

If you would like to attend at the MDC grounds and participate in a guided tour of select building after the closure of MDC on one of two dates to be determined, you must tell Class Counsel **as soon as possible**. You can bring one support person with you to the tour. Your costs may be reimbursable from the trust fund provided to Class Counsel.

If you would like to participate in the creation of audiovisual productions concerning the stories of Class Members and the history of MDC, please tell Class Counsel **as soon as possible**.

Further information on the memorial on the grounds of the MDC cemetery will be made available through Class Counsel's website: <https://kmlaw.ca/cases/manitoba-development-centre-class-action/>.

You can reach Class Counsel by email at mdcclassaction@kmlaw.ca. You may also call the toll-free number **1-800-286-2266**.

Filing a Claim Form

How do I ask for money for what happened to me at MDC?

You must fill-in the Claim Form and send it to the Claims Administrator by **June 27, 2024**.

If you have a Substitute Decision-Maker, that person must submit the Claim Form on your behalf.

You can get the Claim Form from MDCclassactionsettlement.ca or by calling the Claims Administrator at 1-844-306-0263, or emailing info@mdcclassactionsettlement.ca.

You must then send your completed Claim Form to the Claims Administrator by email or mail:

By Email: info@MDCclassactionsettlement.ca
or By Mail: MWQ Claims Administrator
P.O. Box 3355
London, ON N6A 4K3

In the Claim Form, it is important that you provide as much information as you remember in relation to the incidents of harm you are saying happened to you, so that the Claims Administrator can assess your claim fairly. It is okay if you do not remember details, just provide as much information as you can about what exactly happened, and how many times.

If you do not file a Claim Form by June 27, 2024, you will forever give up the ability to ask for money for what happened to you at MDC.

What documents do I need to provide?

Please read the Claim Form carefully and provide what it asks.

Only for claims for Level 4 Sexual Assault resulting in Major Psychological Injury—you must provide medical evidence in addition to your Claim Form indicating that a Serious Sexual Assault resulted in that injury. Medical evidence will usually include a letter from your doctor. You may be reimbursed for any fee you have to pay for this evidence up to a maximum of \$500.

For all other claims—you do NOT have to provide additional documents proving what happened to you at MDC (with the exception of claims for Major Psychological Injury). You must only provide the details you remember. The claims office will assume you completed the Claim Form honestly, in the absence of reasons to the contrary.

If you are submitting a Claim Form as a representative of the estate of a deceased Class Member, you may have to submit additional documents. This requirement is set out at page 8 of this booklet.

Can I get my MDC records to help me with my claim?

You do not need to provide parts of your resident file to make a claim.

However, if you wish to obtain a copy of your MDC resident file, you must ask for your file by August 27, 2023. To ask for your file, you must complete the MDC File Request Form found at MDCclassactionsettlement.ca and send it to the Claims Administrator at this address:

MWQ Claims Administrator
P.O. Box 3355
London, ON N6A 4K3
info@MDCclassactionsettlement.ca

Can I get help with my Claim Form?

Yes. Anyone can help you fill in the form. If you have a Substitute Decision Maker, they must make a claim on your behalf.

You can also call the Claims Administrator for help at 1-844-306-0263, or email info@mdcclassactionsettlement.ca.

You can also contact Class Counsel by email at mdcclassaction@kmlaw.ca or by phone at 1-800-286-2266.

When do I get the money?

The Claims Administrator needs time to make a decision on all the claims before any compensation is provided. This is why the deadlines are important as everyone waits for all claims to be processed. This can take many months. Please be patient.

What if I do not agree with the Claims Administrator's decision?

If your claim is denied in its entirety, you may request for reconsideration within fourteen (14) days of the decision. There is no reconsideration of any other decisions made by the Claims Administrator.

You cannot argue about the amount of money given for each level of harm. It is a good idea to write as much information as you are aware of in your claim.

Will I lose social assistance if I get the money?

No. The Government of Manitoba has stated that it would not affect your social assistance from Manitoba and they will write a letter to other provinces indicating that the funds you might receive under the Settlement are not a form of income replacement or compensation for loss of income that would affect social assistance benefits.

Is the money I get taxable?

There should be no tax on money for pain and suffering. The money you get from this settlement will be money for pain and suffering, and you can write that on your taxes.

For individual tax questions, you will need to speak to your own tax consultant or tax lawyer.

Can I get out of this settlement and start my own lawsuit on the same subject?

No. The deadline to opt out of the lawsuit passed on January 12, 2022. It is now too late to get out of the Settlement if you meet the Class definition. That means if you have not opted out of the class action, the release under the settlement prevents you from starting a lawsuit about the same things covered by this class action.

Who are the lawyers representing me?

Who are the lawyers for the Representative Plaintiff and Class Members?

The lawyers for the Representative Plaintiff are Koskie Minsky LLP of Toronto, Ontario, and Wolseley Law of Winnipeg, Manitoba.

The lawyers for all Class Members, appointed as Class Counsel, are Koskie Minsky LLP of Toronto, Ontario.

You are welcome to contact these lawyers to ask questions about the settlement. You can send your questions to Koskie Minsky by email at mdcclassaction@kmlaw.ca. You may also call the toll-free number **1-800-286-2266**.

If you want to be represented by or receive advice or representation from another lawyer, you may hire one at your own expense.

How will the lawyers be paid?

The lawyers who are representing the Representative Plaintiff took on this lawsuit on a contingency basis, meaning that no fees were charged at any stage of the lawsuit until success was achieved. The lawyers' fees from the settlement were approved by the Court on May 25, 2023.

You do not have to pay these lawyers individually.

What if I am submitting a Claim Form as a Substitute Decision Maker or the representative of an Estate?

Substitute Decision Makers

Substitute Decision Makers ("SDMs") may submit a Claim Form on behalf of a Class Member. In order to verify that an SDM has the authority to submit a Claim Form, the SDM must provide the Claims Administrator with the following documents:

1. The Notice of Decision Letter and Appointment Document, and;
2. Renewal of Substitute Decision Maker.

Estates

If you are a representative of an estate, you must include the following documents with this Claim Form:

1. Letters of Administration;
2. Letters of Administration with Will Annexed; Grant of Probate; or
3. an Order for Summary Administration under section 47 of The Court of King's Bench Surrogate Practice Act.

If you are submitting a Section B Claim on behalf of someone who lived at MDC and died after October 31, 2016, you must submit medical or other documents in support of the claim of sexual or physical assault.

GETTING MORE INFORMATION

How do I get more information?

This notice summarizes the settlement. More details are in the settlement agreement. You can get a copy of the agreement at MDCclassactionsettlement.ca. You can call 1-844-306-0263, or email info@MDCclassactionsettlement.ca.

You may also seek legal advice from Class Counsel concerning the settlement and your claim at no cost to you. You can send your questions to Class Counsel, Koskie Minsky LLP, by email at mdcclassaction@kmlaw.ca. You may also call the toll-free number **1-800-286-2266**.