

## **CAF/DND/SNPF SEXUAL MISCONDUCT CLASS ACTION** **GUIDE TO PREPARING LATE CLAIMS**

This Guide has been prepared by Class Counsel to provide guidance for class members submitting late claims for individual compensation under the settlement of the class action regarding sexual misconduct in the Canadian Armed Forces (CAF), Department of National Defence (DND), and Staff of Non-Public Funds, Canadian Forces (SNPF).

The claims deadline was November 24, 2021, and the initial deadline to submit a late claim was January 23, 2022. The Federal Court recently decided that late claims under the settlement may be accepted in certain circumstances, if they are filed with the Administrator no later than **February 6, 2023**.

**NOTE:** This deadline applies both to entirely new claims and to class members who wish to add new categories to their existing claims.

This Guide is intended to help class members prepare late claims to submit to the Administrator and also to help class members prepare a submission in support of a late claim they previously submitted.

### **LEGAL TEST FOR ACCEPTING LATE CLAIMS**

The Federal Court provided important directions on the test that the Administrator will apply when deciding whether to accept a late claim. The Administrator must consider if the claimant has established:

- (1) a continuing intention to pursue the matter;
- (2) the claim has some merit;
- (3) no prejudice arises from the delay; and
- (4) there is a reasonable explanation for the delay.

Ultimately, the key question is whether it is in the interests of justice to accept the late claim. As a result, a failure to establish all four of these criteria does not necessarily mean the claim will be rejected.

The Federal Court also explained that, ordinarily, a claimant must explain the entire period of the delay, up to and including the date on which the claim was ultimately submitted.

### **IF YOU HAVE ALREADY SUBMITTED A LATE CLAIM TO THE ADMINISTRATOR**

If you have already submitted a late claim to the Administrator, we recommend that you prepare a submission explaining why the late claim should be accepted

based on the test set out by the Federal Court. We have prepared the attached template to help class members prepare this submission, which you can complete using the guidance below.

## **IF YOU HAVE NOT YET SUBMITTED A LATE CLAIM TO THE ADMINISTRATOR**

If you have not yet submitted a late claim but wish to do so:

1. Complete the [claim form](https://www.caf-dndsexualmisconductclassaction.ca/), which can be found at <https://www.caf-dndsexualmisconductclassaction.ca/>
2. Prepare a submission in support of why the claim should be accepted late. You may use the attached template and follow the guidance set out below.

The late claim and submission must be sent to the Administrator no later than **February 6, 2023**.

## **GUIDANCE FOR PREPARING A LATE CLAIM SUBMISSION**

When completing the attached template and preparing a submission in support of your late claim, consider the following information regarding the four criteria:

### **(1) A continuing intention to pursue the matter**

Generally, this requirement means that you always intended to pursue your claim and did not abandon your claim at any time. If you did not know about the settlement during the claims period, you may wish to explain that you always intended to pursue your claim from the time you first learned about the settlement.

Some class members may not be able to meet this criterion – for example, you may have decided not to pursue a claim during the claims period but changed your mind later. A late claim can be accepted even if all four criteria are not met – the key question is whether it is in the interests of justice to allow the late claim. If you cannot prove a continuing intention to pursue your claim, you may wish to emphasize the other reasons it would be unjust not to allow your late claim.

### **(2) The claim has some merit**

Class members are presumed to be truthful in their claims, and therefore the merit of those claims should be presumed. We have prepared a template submission that states that the Administrator should presume that all claims have some merit.

Also, the Administrator can consider the merit of your claim based on the information in your claims form. As a result, you do not need to provide more information about your claim in your submission, but instead you can refer the Administrator to your claims form. You do not need to add any further information to this section of the submission.

### **(3) No prejudice arises from the delay**

The Federal Court held that Canada had not proven any prejudice if late claims are allowed up to the deadline of February 6, 2023. Therefore, the Administrator should presume that no prejudice arises from the delay. We have prepared a template submission that states that the Administrator should presume no prejudice arises from the delay. You do not need to add any further information to this section of the submission.

### **(4) There is a reasonable explanation for the delay**

This is the most important part of the test to allow a late claim. Many different reasons could possibly provide a reasonable explanation for a delay in filing a late claim, including:

- Technical difficulties submitting a claim;
- A misunderstanding about the claims process or eligibility to file a claim;
- Fear or threat of reprisal for filing a claim;
- Failure to receive notice about the class action and the settlement; or,
- Inability to file a claim due to disability, trauma, or any other life circumstances that may have prevented you from seeing, acknowledging, or fully acting on the notice of the class action by completing a claim before the deadline. Please indicate if you have any diagnoses and provide details of your circumstances.

Provide as much detail as possible about the reasons for the delay. It is important to provide an explanation that covers the entire period of the delay between the claims period and the time you submitted your late claim, including any explanation as to why you could not submit a claim before the November 24, 2021 deadline. Some class members may have multiple explanations that cover different parts of the period of delay.

### **Interests of justice to accept the late claim**

The key question is whether it is in the interests of justice to allow the late claim. As a result, a class member does not need to establish all four criteria to have their late claim accepted.

In your submission, emphasize any injustice that would result if your late claim were not accepted, particularly if you do not meet all four of the criteria.

### **Other tips for preparing your submission:**

- Write your answers clearly and legibly. If you can, type your answers out.
- If you require additional space for your submission, add more pages and include your name and Claim ID, if applicable, on each page.
- If writing is difficult for you, consider asking a loved one or support person to help you write your answers.

- After preparing the submission, go back and re-read what you have written. You may think of additional details to add or clarify some of what you have written.

## **FURTHER ASSISTANCE**

If you require legal advice or further assistance from Class Counsel, contact the firm in your region, as set out below, or visit <https://www.caf-dndsexualmisconductclassaction.ca/>

Ontario: Koskie Minsky LLP – [militaryassaultclassaction@kmlaw.ca](mailto:militaryassaultclassaction@kmlaw.ca)  
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