

## DAY SCHOLARS SURVIVOR AND DESCENDANT CLASS SETTLEMENT

### NOTICE OF PROPOSED PARTIAL SETTLEMENT AND SETTLEMENT APPROVAL HEARING

Did you attend an Indian Residential School as a student during the day but not sleep there overnight?

OR

Did your parent attend an Indian Residential School as a student during the day but not sleep there overnight?

**If yes, this notice is for you.**

**Please read it carefully because it affects your legal rights.**

- **What is happening:**

- A class action lawsuit called *Gottfriedson v. Canada* is in progress.
- This class action lawsuit is on behalf of Day Scholar Survivors who attended an Indian Residential School as a student during the day only (i.e., they did not sleep there overnight), the Survivors' children (Descendants), and certain Bands. It is happening because of cultural, linguistic and psychological harm that Survivors say they endured while attending Indian Residential Schools during the day.
- **There is now a proposed settlement in this class action of the Survivor and Descendant claims.** This means the Government of Canada has agreed to provide compensation payments to Survivors and provide funding to support Survivors and Descendants, in exchange for the Survivor and Descendant claims ending.

**Please note:**

- This proposed settlement does not include the Bands' claims, which will continue toward trial.
- This class action lawsuit and proposed settlement are not about sexual or serious physical abuse endured by students at Indian Residential Schools. Those claims were covered by the Indian Residential Schools Settlement Agreement.
- This class action lawsuit and proposed settlement do not cover claims by students who attended Indian Day Schools. Those claims are covered by the *McLean* Federal Indian Day Schools Settlement Agreement.

- A list of Indian Residential Schools covered by the proposed settlement can be found at the end of this Notice.
- **What's next:**
  - A Federal Court judge will decide whether to approve the proposed settlement. The judge's job is to determine if the proposed settlement is fair, reasonable, and in the best interests of the Survivor and Descendant classes. The judge will make this decision following a court hearing that will start on September 7, 2021.
  - It will be possible to share your opinion about the proposed settlement before or during the court hearing. It will also be possible to watch this court hearing online.
  - If the judge **approves** the settlement, then it will apply to all Survivors and Descendants. If the judge **does not approve** the settlement, then it will not take effect and the class action lawsuit will continue to trial.
  - At the hearing, the lawyers for the Class Members will also ask the judge to approve their legal fees and disbursements (expenses).
- **What you can do:**
  - You do not have to do anything at this time.
  - You can choose to participate in the settlement approval process. This means sharing your opinion about whether the settlement is fair, reasonable, and in the best interests of the Survivors and Descendants, either before or during the court hearing.

**Your rights and options, details of the settlement, and details about the settlement approval process, are explained in the rest of this notice. If you have questions or opinions you would like to share, please contact the lawyers for the Class Members at 1-888-222-6845 or [dayscholars@waddellphillips.ca](mailto:dayscholars@waddellphillips.ca).**

QUESTIONS? Call 1-888-222-6845 (toll-free) or email [dayscholars@waddellphillips.ca](mailto:dayscholars@waddellphillips.ca)

or visit <http://www.justicefordayscholars.com/>

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## BASIC INFORMATION

### **1. What is a class action?**

A class action is a type of lawsuit that involves a group of people who all have similar legal claims. Instead of each person filing a separate lawsuit, a class action is one lawsuit for the whole group. The group is called a “class” and members of the group are called “class members”.

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Some class members are actively involved in the class action and represent the whole group. Their experiences are used as examples to help the judge understand the case. These class members are called “representative plaintiffs”.

## 2. What is this notice?

There are some special court rules that apply to class actions. One of these rules is that a judge must approve any proposed settlement in a class action as being fair, reasonable, and in the best interests of the class members as a whole. You can read more about this in the “What does it mean that there is a proposed settlement?” section below.

Another rule is that, before the judge makes a decision about whether to approve the settlement, a notice goes out to class members to provide information about: a) the proposed settlement and what it means for them; and b) how class members can participate in the settlement approval process, if they want to share their opinions with the judge. That is this Notice.

## 3. What is this class action about?

This class action lawsuit is called *Gottfriedson v. Canada* and the Federal Court file number is T-1542-12. The Court gave approval for the lawsuit to proceed as a class action in June 2015.

There are three classes in this class action:

- **Survivors** – all Aboriginal persons who attended Indian Residential Schools as students during the day but did not sleep there overnight, any time between 1920 and 1997. The representative plaintiffs for the Survivor Class are Charlotte Gilbert, Diena Jules, Darlene Bulpit, and Daphne Paul.
- **Descendants** – the natural, legally adopted or traditionally adopted children of Survivors. The representative plaintiffs for the Descendant Class are Amanda Big Sorrel Horse and Rita Poulsen.
- **Bands** – 101 bands that had an Indian Residential School on or near their lands or that have/had members who are/were Survivors, and that chose to be part of the class action. The representative plaintiffs for the Band Class are the Tk’emlúps te Secwépemc Indian Band and the Shishalh Indian Band.

Some students at Indian Residential Schools were “residents”, meaning that they stayed at the Indian Residential Schools overnight. Those students who attended Indian Residential Schools as students during the day only but did not stay overnight are called “Day Scholars”, and are the Survivor Class in this class action.

The central argument in the class action is that the purpose, operation and management of the Indian Residential Schools destroyed Class Members’ language and culture, violated their cultural and linguistic rights, and caused them psychological harms. The class action seeks compensation for Survivors who say they endured harms as a result of their attendance at Indian Residential Schools as Day Scholars. The class action also seeks compensation for Descendants and Bands who say they too endured harms as a result of the Survivors’ attendance as Day Scholars at Indian Residential Schools.

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This class action is not about Federal Indian Day Schools. Claims relating to harms endured at Federal Indian Day Schools are included in the *McLean* Federal Indian Day Schools Settlement Agreement. To learn more about the *McLean* Federal Indian Day Schools Settlement Agreement, as well as the list of schools it includes, go to: <https://indiandayschools.com/>.

This class action is also not about harms related to sexual or serious physical abuse endured by students at Indian Residential Schools. Those claims were included in the Indian Residential Schools Settlement Agreement.

This class action does not include anyone who **only** attended a Federal Indian Day School or who **only** attended an Indian Residential School as a resident. **However, it does include** anyone who:

- a) for **some** school years, attended a Federal Indian Day School and/or an Indian Residential School as a resident; **but**
- b) for one or more **other** school years, also attended an Indian Residential School **as a Day Scholar**.

Any Survivors or Descendants who chose to opt out (be excluded) from the class action before the deadline on November 30, 2015, are not included in the class action and will not be affected by the proposed settlement. Because the deadline has passed, it is no longer possible to opt out/be excluded from the class action.

## THE PROPOSED SETTLEMENT

#### **4. What does it mean that there is a proposed settlement?**

Canada and the representative plaintiffs have signed an agreement to settle the Survivor and Descendant Class claims. Unless and until the Federal Court approves the Settlement Agreement, it is only a proposed settlement. Class Members cannot submit claims and cannot receive compensation until after the proposed settlement is approved by the Federal Court.

#### **5. Who is included in the proposed settlement?**

All Survivor Class Members who attended a listed Indian Residential School during the day only, for part or all of a school year, are included in the proposed settlement. A listed Indian Residential School is an Indian Residential School where there were, or might have been, Day Scholars.

You can see the full list of Indian Residential Schools that are included in this class action at the end of this Notice and at Schedule E to the Settlement Agreement. The full list is divided into two:

- List 1, which includes Indian Residential Schools confirmed to have had Day Scholars; and
- List 2, which includes Indian Residential Schools where there may have been Day Scholars.

Both List 1 and List 2 Schools are included in the settlement.

Any Survivor Class Members who were alive as of May 30, 2005, but have died since, are included in the proposed settlement. The heirs of these deceased Survivor Class Members may be entitled

to make a claim. More details on how estate claims can be made are in the “How would a Survivor Class Member receive benefits from the proposed settlement?” section below.

All Descendant Class Members are included in the proposed settlement.

The proposed settlement does not include the Band Class. Nothing in the proposed settlement will affect the Band Class claim, which is moving forward regardless of what happens with this proposed settlement.

#### **6. What are the benefits of the proposed settlement?**

Canada has agreed to two types of compensation in the Settlement Agreement:

- Direct compensation to each Survivor Class Member in the form of a \$10,000 Day Scholar Compensation Payment. There is no limit on how many people will receive Day Scholar Compensation Payments. All approved claims will be paid by Canada.
- Canada will also pay \$50 million to the Day Scholars Revitalization Fund to be used to support and benefit Survivor and Descendant Class Members, as described below.

For both Survivor and Descendant Class Members, a settlement means that the costs and uncertainty of a trial are avoided, as well as the delays required to obtain a final judgment, which would likely be years in the future.

#### **Day Scholar Compensation Payments**

A single Day Scholar Compensation Payment of \$10,000 will be made to each Survivor Class Member who makes a claim that is approved. A claim will be approved if:

- it is made before the claims deadline, which will be 21 months after claims start being accepted;
- the Survivor Class Member was alive as of May 30, 2005; and
- the Survivor Class Member was a Day Scholar for at least part of one or more school years for which they did not already receive: (i) a Common Experience Payment from the Indian Residential Schools Settlement Agreement, (ii) any payment from the *McLean* Federal Indian Day Schools Settlement Agreement, or (iii) any compensation from any other settlement relating to a school on the *McLean* Settlement list.

No reductions will be made to Day Scholar Compensation Payments. All approved claimants will receive a single payment of \$10,000, regardless of how long the Survivor Class Member was a Day Scholar.

#### **Day Scholars Revitalization Fund**

The Day Scholars Revitalization Fund is a \$50 million fund set up for the benefit of the Survivor Class and the Descendant Class. The funds will be used to support healing, wellness, education, language, culture, heritage and commemoration, and will be managed by a not-for-profit Society that is independent of Canada.

**7. What are the Survivor and Descendant Class Members giving up in the proposed settlement?**

In exchange for the benefits discussed above, the Survivor and Descendant Class claims will be dismissed in the class action and Canada will receive a “release” of its liability from all Survivor and Descendant Class Members. This means that:

- No Survivor Class Members can sue Canada for any harm or damage due to their attendance as a Day Scholar at any Indian Residential Schools.
- No Descendant Class Member can sue Canada for any harm or damage due to their parents’ attendance as a Day Scholar at any Indian Residential Schools.

The full release terms can be found at sections 42.01 and 43.01 of the Settlement Agreement. Please contact Class Counsel if you have any questions about the release terms and what they mean.

**8. How would a Survivor Class Member receive benefits from the proposed settlement?**

To receive a Day Scholar Compensation Payment, a Survivor Class Member will be required to submit a brief Claim Form to a Claims Administrator. For claims relating to any Indian Residential Schools in List 1, no supporting documentation is required. For claims relating to any Indian Residential Schools in List 2, claimants will be required to provide a formal sworn statement confirming that they were a Day Scholar and explaining where they were living when they attended the Indian Residential School as a Day Scholar. Guidance will be provided about how to complete the formal sworn statement.

In cases where the Survivor Class Member has died since May 30, 2005, their heirs can make a claim. In cases where the estate has an executor, administrator, trustee or liquidator (either from a will, or appointed by a court), that person may make a claim on behalf of the estate. If there is no estate executor administrator, trustee or liquidator, the heirs can pick one heir to make a claim on behalf of all heirs of the deceased Survivor Class Member. That claimant must submit information showing their relationship to the deceased Survivor Class Member. The process to make a claim on behalf of a Day Scholar who died on or after May 30, 2005, is explained in the Estate Claims Process at Schedule D to the Settlement Agreement.

Claimants whose claims are dismissed because the Claims Administrator is not satisfied that the claimant was a Day Scholar at a listed Indian Residential School have the right to seek reconsideration. Claimants seeking reconsideration can choose to be represented by the lawyers for the Class Members at no cost, or to hire and pay for other lawyers of their choice.

The complete Claims Process document can be found at Schedule C of the Settlement Agreement, and the Estate Claims Process document can be found at Schedule D of the Settlement Agreement.

**THE SETTLEMENT APPROVAL HEARING**

QUESTIONS? Call 1-888-222-6845 (toll-free) or email [dayscholars@waddellphillips.ca](mailto:dayscholars@waddellphillips.ca)

or visit <http://www.justicefordayscholars.com/>

## 9. What is a settlement approval hearing?

The settlement approval hearing is the court hearing where the judge will consider whether to approve the proposed settlement. The test that the judge will apply is whether the settlement is fair, reasonable, and in the best interests of the Class Members. The judge will consider the entire settlement agreement all together as a complete package. The judge is not able to pick and choose parts of the settlement to approve or not approve.

Before the settlement approval hearing, the lawyers will make arguments in writing about why the judge should approve the settlement. During the hearing, the lawyers will present their arguments about why the judge should approve the settlement.

Class Members have the opportunity to provide their opinions to the Federal Court about the proposed settlement. Class Members can write out their views before the settlement approval hearing, or they can tell the judge what they think at the settlement hearing itself.

After the hearing is over, the judge will make a decision. The judge will probably take some time after the hearing to review the evidence and arguments before deciding whether to approve the settlement.

Because of COVID-19, it is not clear at this point whether the settlement approval hearing for this class action will take place in a courtroom or online. Either way, it will be possible for anyone who wants to watch the hearing online to do so. The link for the hearing will be posted on the <http://www.justicefordayscholars.com/> website several days beforehand.

## 10. How do Class Members participate in settlement approval?

Survivor or Descendant Class Members can share their opinions of the proposed settlement with the judge who will be deciding whether to approve it. There are two ways to participate:

- **Submit a written statement**
  - This written statement must include the Class Member's name, contact information, a statement that the writer is a Class Member, and a statement that the writer supports or objects to the proposed settlement.
  - The writer can include additional information about why they support or object to the proposed settlement.
  - Written statements can be sent by email, mail or fax, and must be received by August 20, 2021 at 11:59 PDT to:
    - [dayscholars@waddellphillips.ca](mailto:dayscholars@waddellphillips.ca)
    - Waddell Phillips Professional Corporation
    - Att'n: Day Scholars Class Action
    - 36 Toronto Street, Suite 1120
    - Toronto, ON M5C 2C5
    - Fax: 416-477-1657

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or visit <http://www.justicefordayscholars.com/>

- **Speak at the settlement approval hearing**
  - Any Survivor or Descendant Class Member can sign up to speak at the settlement approval hearing by emailing [dayscholars@waddellphillips.ca](mailto:dayscholars@waddellphillips.ca) by August 20, 2021, at 11:59 PDT.
  - Reliable internet connection and a web camera and microphone will be required to speak at the settlement approval hearing. If a Class Member does not have access to reliable internet but still wants to speak, the lawyers and the court staff will try their best to find some way to accommodate the request.
  - Further details, including technical information about the online hearing, will be sent to everyone who signs up to speak.

#### **11. What if a Class Member does not participate in the settlement approval hearing?**

Participation in the settlement approval hearing is completely optional. Participating in the hearing will not change whether a Class Member receives benefits or compensation from the settlement or the amount of the benefits or compensation. For example, if a Survivor Class Member objects to the settlement, and the judge still approves the settlement, the Survivor will still be entitled to receive a payment of \$10,000.

#### **12. What happens if the Court approves/does not approve the proposed settlement?**

If the judge decides to approve the settlement, then it will automatically apply to all Survivor and Descendant Class Members – even if they do not agree. That means that all Survivor and Descendant Class Members will be eligible for benefits under the settlement. It also means that all Survivor and Descendant Class Members will no longer have the right to sue Canada for the harms they experienced as a result of Survivor Class Members attending Indian Residential Schools as Day Scholars. A new notice will go out to Class Members to let them know that the settlement was approved, and give details about how and when to make a claim for compensation.

On the other hand, if the judge does not approve the settlement, then it will not take effect. It will be like the settlement never happened, and the Survivor and Descendant Class claims will go forward to trial along with the Band Class claim.

### **THE LAWYERS IN THE CASE**

#### **13. Who are the lawyers for the Class Members?**

The lawyers for the Class Members are called Class Counsel. You may contact Class Counsel at:

**Tel: 1-888-222-6845 (toll-free)**

**Email: [dayscholars@waddellphillips.ca](mailto:dayscholars@waddellphillips.ca)**

Class Counsel in this case are:

John Kingman Phillips

Tel: (647) 261-4486

[john@waddellphillips.ca](mailto:john@waddellphillips.ca)

Peter R. Grant

Tel: (604) 886-4846

[pgrant@grantnativelaw.com](mailto:pgrant@grantnativelaw.com)

QUESTIONS? Call 1-888-222-6845 (toll-free) or email [dayscholars@waddellphillips.ca](mailto:dayscholars@waddellphillips.ca)

or visit <http://www.justicefordayscholars.com/>

Diane Soroka  
Tel: (514) 939-3384  
[dhs@dsoroka.com](mailto:dhs@dsoroka.com)

W. Cory Wanless  
Tel: (647) 261-4486  
[cory@waddellphillips.ca](mailto:cory@waddellphillips.ca)

Tina Q. Yang  
Tel: (647) 261-4486  
[tina@waddellphillips.ca](mailto:tina@waddellphillips.ca)

There is no charge to speak to Class Counsel about the class action or the proposed settlement.

**14. How will the lawyers be paid?**

Canada will pay Class Counsel's legal fees and expenses directly. **These fees and expenses are separate from the settlement benefits and will not lower or affect the dollar amount that Survivors receive, or that the Day Scholars Revitalization Fund receives, in any way.**

**GETTING MORE INFORMATION**

**15. How do I get more information about the class action or proposed settlement?**

This notice summarizes the class action and proposed settlement. The full settlement agreement, as well as more details and documents, is on the <http://www.justicefordayscholars.com/> website.

If you want to speak to Class Counsel about the class action or proposed settlement, you can do so by mail, fax, phone, or email:

Waddell Phillips Professional Corporation  
Att'n: Day Scholars Class Action  
36 Toronto Street, Suite 1120  
Toronto, ON M5C 2C5  
Fax: 416-477-1657  
Tel: 1-888-222-6845 (toll-free)  
[dayscholars@waddellphillips.ca](mailto:dayscholars@waddellphillips.ca)

*This notice was approved by the Federal Court. It is a summary of the proposed settlement agreement. If there is a conflict between what it says in this notice and what it says in the settlement agreement, the settlement agreement will be followed.*

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or visit <http://www.justicefordayscholars.com/>