

ÎLE-À-LA-CROSSE RESIDENTIAL SCHOOL CLASS ACTION FAQ

How does a class action work?

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

For a lawsuit to become a class action, a judge has to decide if it should properly proceed as an action on behalf of the class. This is called “certification”. At the certification hearing, the judge will decide whether the class members’ legal claims are similar enough to be decided together, and if it is the best process for deciding the claims. The judge does not decide who will win or lose at this hearing – that comes later.

If a lawsuit is certified as a class action, the judge will appoint representative plaintiffs. These are class members who represent the whole group. They are actively involved in the class action, they provide the instructions to the lawyers, and their experiences are used as examples to help the judge understand the case.

Once a lawsuit is certified as a class action, then the two sides exchange documents and conduct examinations, and prepare for trial. At any time, the two sides can also agree to settle the lawsuit.

What is this class action lawsuit about?

This is a proposed class action lawsuit about the Île-à-la-Crosse residential school (the “School”) in Saskatchewan. The School was staffed by the Roman Catholic Mission, so it was sometimes called the “Île-à-la-Crosse Mission school” or the “Île-à-la-Crosse boarding school”. The School closed down in 1972 after it burnt down. After that, the local school board took over education in Île-à-la-Crosse, and out-of-town students were sent to La Loche and elsewhere in the province.

The plaintiffs in this lawsuit are suing the Government of Canada and the Government of Saskatchewan for the roles that they played in operating the Île-à-la-Crosse School, and for breaching their legal duties to the Survivors.

This lawsuit seeks compensation for the harms endured by former School students as a result of attending the School. These harms include, but are not limited to: physical and psychological injuries, loss of ability to work, subsequent development of addiction or other mental health issues, and loss of Aboriginal language, culture, spirituality and identity.

Who is included in this class action lawsuit?

This lawsuit is brought on behalf of all Indigenous persons who attended as students or for educational purposes at the Île-à-la-Crosse residential school at any time (the “Survivor Class Members”).

Survivor Class Members include all day students (individuals who attended at the School during the day and slept somewhere else), and all residential/boarding students. It does not matter whether the Survivor Class Members are Métis or First Nation.

This lawsuit also includes claims on behalf of close family members of Survivor Class Members (any spouse, parent, child, grandchild, or sibling), and surviving spouses of deceased Survivor Class Members (the “Family Class Members”).

Four of the plaintiffs (Louis Gardiner, Margaret Aubichon, Melvina Aubichon and Emile Janvier) are Survivor Class Members. Two of the plaintiffs (Duane Favel and Donna Janvier) are Family Class Members. This lawsuit is called the “Gardiner Action” because Louis Gardiner is the first named plaintiff in the official title of the lawsuit.

Why was this class action lawsuit started? What about the other class action lawsuit (*Aubichon v. Canada*) previously started by the Merchant Law Group?

Back in 2005, the Merchant Law Group started a proposed class action on behalf of Île-à-la-Crosse School Survivors. Over the last 17 years, the Merchant lawsuit hasn’t moved forward. The lawsuit hasn’t even been certified as a class action. Many Survivors have died during this time.

Because of the delay and lack of action from Merchant, and because it is so important to obtain justice for Survivors before more are lost, the Île-à-la-Crosse Boarding School Steering Committee (a Survivor-led group which is dedicated to advocating for Survivors of the Île-à-la-Crosse School) and the Métis Nation of Saskatchewan hired Waddell Phillips P.C. to start the Gardiner Action.

Almost all of the surviving plaintiffs from the Merchant lawsuit have fired Merchant Law Group and hired Waddell Phillips P.C. These former Merchant clients all support the new Gardiner Action and want it to go forward as the only class action for the Île-à-la-Crosse School Survivors. Merchant will not be part of the Gardiner Action, whether the lawsuit is fought in court or there are settlements with Canada and/or Saskatchewan.

The Gardiner plaintiffs will request that the Court “stay” the Merchant lawsuit. A stay means that the Merchant action will be put to a stop, and only the Gardiner Action will proceed.

What about the other residential school class actions? Didn’t they already say that Île-à-la-Crosse wasn’t included?

You may know about other residential or day school class action settlements, like the Indian Residential Schools Settlement Agreement (the “IRSSA”), Day Schools (*McLean*), or Day Scholars (*Gottfriedson*). The Île-à-la-Crosse School wasn’t included in any of those settlements, but that doesn’t mean that the claims aren’t legally valid. Those settlements don’t have any legal impact on whether this case will succeed or not.

After the IRSSA was signed in 2006, requests could be made to add schools to the school list. The request to add the Île-à-la-Crosse School was denied, because Canada said that the School was run by the Mission and not by the federal government. That decision isn’t legally binding for this case, and it also doesn’t have any legal impact on whether this case will succeed or not.

Do I need to do anything to join the class action lawsuit?

No, you do not have to do anything if you are a Survivor Class Member or Family Class Member who wants to be part of the lawsuit. However, Waddell Phillips would like to hear from you, so that we can add you to our list of known class members.

In Saskatchewan, once a class action is certified, anyone who fits the class definition is automatically part of the class action lawsuit and they are bound by the outcome, unless they choose to exclude themselves by “opting out” of the class action after certification.

If the lawsuit is certified as a class action, or if there is a settlement, a notice will go out explaining what happens next, and how to opt out of the lawsuit for anybody who wants to.

If you have any documents that prove that you or a close family member went to the Île-à-la-Crosse School, then please put them in a safe place, as they may be needed to help show that you are a class member, because the School’s records are incomplete. The documents might be such things as photographs, letters, school documents, or anything else connecting you to attendance at the School.

Do I need to pay money to participate in the class action lawsuit? How are the lawyers being paid?

No class member will ever need to pay any money to be part of the class action lawsuit. The lawyers at Waddell Phillips P.C. are being paid by the Métis Nation of Saskatchewan at a reduced hourly rate.

If there is a settlement in the lawsuit that results in compensation for class members, the lawyers may negotiate an extra amount of money for legal fees (this is called a “contingency fee”), to be paid directly by the governments. This negotiation would happen after the settlement is negotiated, and would not have any impact on how much money class members get.

If the action does not settle, and it is decided after a court trial, and the judgment results in compensation for class members, the lawyers may ask the Court to order that the lawyers’ legal fee be paid by the governments. In this case, there would still be no financial impact on the class members, and would be paid by the governments on top of the money they would be ordered to pay to the class members.

What is the current status of the Gardiner class action lawsuit?

The Statement of Claim for the Gardiner Action was issued on December 27, 2022. This document starts the court process. It explains the case against Canada and Saskatchewan.

Now that the Statement of Claim is issued, Waddell Phillips P.C. will ask the Court to stay the Merchant Action, so that the Gardiner Action will be the only proposed class action about the Île-à-la-Crosse School.

Waddell Phillips P.C. intends to move the Gardiner Action forward quickly. This will include asking the Court to certify the Gardiner Action as a class action, as well as pursuing settlement negotiations with both Canada and Saskatchewan.

What happened to the Memorandum of Understanding with the Government of Canada?

On July 19, 2019, the Île-à-la-Crosse Boarding School Steering Committee, the Métis Nation of Saskatchewan, and the Government of Canada signed a Memorandum of Understanding for Île-à-la-Crosse Exploratory Discussions (the “MOU”).

In the MOU, Canada acknowledged that Île-à-la-Crosse School Survivors were excluded from the IRSSA, and all the groups involved agreed on a framework for “Exploratory Discussions” (preliminary discussions about negotiating a settlement for the Survivors). The Exploratory Discussions were started but didn’t last long or accomplish anything, partially because Merchant Law Group refused to negotiate with Canada.

The MOU is still in place. Now that the Gardiner Action is started, the lawyers will continue to work to try to settle with Canada, and will encourage Saskatchewan to join this settlement effort. However, the lawyers will not delay the court proceedings in the Gardiner Action while negotiations are underway, because it is important not to delay resolution of these claims any further.