

## **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 each member of the group is called a “class member”.

For a lawsuit to become a class action, a judge has to decide that the best way to decide all the issues that are the same or similar for the class members is to proceed with one lawsuit for the benefit of all the class members. 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 what issues the trial judge can decide for everyone. 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, and are the people whose names appear on the statement of claim. 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 opposite parties exchange documents that are relevant to the claim, and they conduct examinations. Once those examinations are done, the parties will 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 harms and abuses suffered by students (“Survivors”) at 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 after it burnt down in 1972.

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 care for the Survivors.

This lawsuit seeks compensation for the harms endured by the Survivors caused by 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 Indigenous language, culture, spirituality and identity. The lawsuit also seeks compensation for the Survivors’ close family members, who suffered intergenerational harm from the Survivors’ school experiences.

### **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”). All Student Survivors are included, whether or not they lived at the School or attended the School during the day, and slept somewhere else. The class includes all people who are

considered “aboriginal people of Canada” (including First Nations, non-status, Métis and Inuit people).

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 has not moved forward. The lawsuit has not even been certified as a class action. Many Survivors have died since that action was started.

Because of the delay and lack of action from Merchant, and because it is so important to obtain justice for Survivors before more pass away, Waddell Phillips P.C. was hired to start the Gardiner Action. 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 are working with the named plaintiffs in the Gardiner Action to help with the prosecution of the claim.

Almost all of the surviving plaintiffs from the Merchant lawsuit have fired Merchant Law Group and hired Waddell Phillips. 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.

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 by the court, so that only the Gardiner Action will proceed.

**UPDATE NOVEMBER 9, 2023:** On November 3, 2023, Justice Bardai, the *Gardiner* Action case management judge, decided that the application to stay the Merchant lawsuit needed to be brought before a different judge, Justice Keene, who has been appointed to case manage the Merchant lawsuit. Justice Bardai also said that the *Gardiner* Action is to move forward to certification now, regardless of the status of the other action.

The *Gardiner* plaintiffs are now in the process of completing the court documents for the certification motion, and are also scheduling the new application to stay the Merchant lawsuit before the Justice Keene.

This space will be updated as further steps are taken in the Gardiner action.

**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 was not included in any of those settlements, but that doesn’t mean that the Survivors’ claims aren’t legally valid. Those settlements have no 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, and it was not an “Indian” residential school. That decision isn’t legally binding for this case, and it doesn’t have any legal impact on whether this case will succeed or not. The *Daniels* Supreme Court decision that confirmed that Métis people are aboriginal people to whom the Federal Government owed a fiduciary duty was not decided until a decade after IRSSA was signed, in 2016.

### **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. Anyone who meets the class definition will be automatically included in the class action if it is certified. You do not need to “sign up” for a class action.

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, a notice will be published, explaining what happens next, and how to opt out of the lawsuit for anybody who wants to be excluded from the litigation.

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. Those documents may be needed to help show that you, or members of your family or community are a class member, because the School’s records are incomplete. The documents might be things such as photographs, letters, school records or other school documents, or anything else that would show that you or other people went to 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 are being paid by the Métis Nation of Saskatchewan at a reduced hourly rate, and they will be asking the Defendants to pay the rest of their fees if there is a settlement or a trial judgment. Waddell Phillips will never ask the class members to pay any of the expenses that the firm incurs to run the case, nor will it ask the class members to pay its legal fees or court costs.

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 that case, there would still be no financial impact on the class members, and the lawyers 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 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 intends to move the Gardiner Action forward quickly. This will include requiring the defendants to deliver their statements of defence, and asking the Court to certify the Gardiner Action as a class action. Waddell Phillips and the plaintiffs will also be pursuing settlement negotiations with both Canada and Saskatchewan.

**UPDATE NOVEMBER 9, 2023:** On November 3, 2023, Justice Bardai, the *Gardiner* Action case management judge, ordered that the certification application in the *Gardiner* Action will proceed before him, and ordered the parties to confer to set a schedule for the hearing of the certification application. A timetable for prosecuting the certification application will be set with the defendants as quickly as possible.

### **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". These were preliminary discussions about what might be involved in negotiating a settlement for the Survivors). The Exploratory Discussions never got past the preliminary stages, and no settlement was reached 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.

### **What kind of compensation can be expected?**

Unfortunately, it is impossible to predict what the outcome of the litigation will be, including what kind of compensation might be received in a settlement or a judgment. Both Canada and Saskatchewan could raise defences that affect the ability of the Class Members to gain recovery.

That said, you could look at previous residential schools settlements, including the most recent settlements in Day Schools and Boarding Homes, to help get an idea of outcomes that have been achieved before.

Any settlement that is reached will not take effect unless the Court approves the settlement, including any compensation amounts to the Class Members, as fair, reasonable, and in the best interests of the Survivors and their family members. No settlement will be recommended by Waddell Phillips unless we believe that the Court will find that it is fair, reasonable and in the best interests of the Class Members.