# **CLASS ACTION OPT-IN NOTICE TO BANDS**

A class action lawsuit may affect your Band's legal rights. Read this notice carefully to understand your Band's rights and legal options available to it. This notice is approved for dissemination by the Federal Court.

## A. A SUMMARY OF THE PURPOSE AND CONTENT OF THIS NOTICE

- **Purpose** The purpose of this notice is to inform potentially eligible Canadian Indian Bands of the opportunity to opt-into this class action. An initial notice was sent in 2015 permitting eligible Bands to opt-in. The Court has now re-opened the process to provide eligible Bands with an additional opportunity to join the Class.
- **The Claim** The representative plaintiff Bands in the class action are suing the Government of Canada claiming that it is responsible for damages to the Bands arising from Indian Residential Schools, and in particular, the collective harm suffered by Bands due to loss of language and culture. The Court has not decided whether Canada did anything unlawful, and the case is currently planned to go to trial in September 2022.
- Band Eligibility Your Band is eligible to opt-in if:
  - It is a recognized legal entity with Aboriginal constitutional rights, namely: It is either a "band" as defined in s.2(1) of the Indian Act or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and it asserts that it holds rights recognized and affirmed by section 35 of the Constitution Act, 1982; and
  - It has been impacted by Indian Residential Schools, in that it had or has (a) some members who are or were Indian Residential School Survivors; or (b) an Indian Residential School is or was located in the Band's community.
- **Opting-In** To opt-in, a person in a position to make binding decisions for your Band will need to complete the attached form and return it by email or mail to Class counsel.
- The Opt-In Deadline The new deadline to opt-in is May 31, 2022 at 11:59 pm PST.

### B. EFFECT OF OPTING IN OR NOT OPTING IN

Opt-in	JOIN THIS LAWSUIT. AWAIT THE OUTCOME. SHARE IN POSSIBLE MONEY AND BENEFITS. GIVE UP CERTAIN RIGHTS. By opting in, your Band gains the possibility of getting money or other benefits that may come from a trial or settlement, but it gives up any rights to sue about the same legal claims as this lawsuit.	
	a trial of settlement, but it gives up any rights to sue about the same legal claims as this fawsuit.	
Do Nothing	<b>GET NO MONEY OR BENEFITS FROM THE LAWSUIT. KEEP RIGHTS.</b> If you do nothing, your Band will not be included in this lawsuit. This does not affect the rights individual Band members to participate as Survivors or Descendants in the settled part of litigation. If money or benefits are later awarded to Bands in this lawsuit, your Band will not sh in the money or benefits, but your Band keeps any rights to sue on its own about the same le claims as this lawsuit.	

1. Learn More – Read this notice or contact Class counsel at: 1-888-370-1045 to learn more.

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# A. BACKGROUND INFORMATION

### I. Why was this Notice issued?

This notice is provided to inform eligible Bands of their time-sensitive opportunity to join the Class of Bands in this certified class action lawsuit against Canada. If your Band is eligible to join the Class, it has options to consider. Your Band must decide whether to opt-into joining the Class by the opt-in deadline of May 31, 2022 at 11:59 pm PST. The nature of this action, eligibility to join the Class, and the risks and benefits of joining are discussed below.

## 2. What is this class action about?

The case is known *as Gottfriedson v. The Attorney General of Canada*, Court File No.1-1542-12. The people who started this lawsuit are the "plaintiffs", and Canada is the "defendant".

In a class action one or more people called "representative plaintiff(s)" sue on behalf of a group that have similar claims. In this case, the members that make up the "Class" are Canadian Indian Bands who opt-into this action ("Bands").

This action, when originally commenced by the Representative Plaintiffs (described below), sought damages on behalf of both individual Day Scholars (persons who attended Indian Residential Schools ("IRSs") during the day, but did not sleep there overnight) and their descendants, as well as damages for Bands that had students attend IRSs and that suffered, amongst other harms, a loss of the Band's language and culture as a result of Canada's establishment, operation, and management of IRSs.

The claims of individual Day Scholars have settled, leaving the claims of the Representative Plaintiff Bands, and any other eligible Bands who opt-into this action, remaining.

Canada denies the claims of the Representative Plaintiffs and is defending the lawsuit. The statement of claim setting out the plaintiffs' claims, and the statement of defence providing Canada's position in response, are both available at <u>www.bandreparations.ca</u>.

The Court has not decided this lawsuit and the Representative Plaintiffs' claims still have to be proven in Court.

### 3. Who are the Representative Plaintiffs and the parties to this action?

The Representative Plaintiffs for the Band Class are Tk'emlúps te Secwépemc Indian Band and the Sechelt Indian Band (shísalh Nation). The Representative Plaintiffs have started this lawsuit on behalf of similarly situated Bands who also allege they suffered a collective loss of language and culture because of IRSs. The Representative Plaintiffs provide instructions to Class counsel regarding how the litigation should be conducted, take an active role in the litigation as witnesses, and participate in settlement discussions. Representative Plaintiffs, and Class counsel, must act in the best interest of the Class as a whole.

The Representative Plaintiff Bands, and any other eligible Bands who choose to opt-into this action, are called the "Class", also referred to as the "Band Class".

The defendant (the party being sued) in this action is Canada.

#### 4. What Court is hearing this class action?

This action is being heard in the Federal Court of Canada and the Honourable Justice McDonald is currently overseeing ("case managing") this case.

### 5. What is a certified class action?

This lawsuit was "certified" as a class action by the Honourable Justice Harington of the Federal Court in 2015. This means that the Federal Court has determined that the lawsuit meets the legal requirements to proceed as a class action. When this action was certified, the Court set out a number of "common issues" to be determined at trial that will affect the rights of Class members. The certification order, which sets out the common issues, may be found at: <u>www.bandreparations.ca</u>.

A trial is scheduled for September 2022 to begin determining common issues.

### 6. Is this action about Day Scholars?

As noted above, in addition to the Band Class claims, this class action originally brought claims on behalf of Day Scholars - individuals who attended IRSs during the day only, but did not sleep there at night (the "Survivor Class"), and their children (the "Descendant Class"). The claim was started because Day Scholars were excluded from the Common Experience Payment of the Indian Residential Schools Settlement Agreement.

The claims of the Day Scholar Survivor and Descendant Classes have been resolved and there is a separate process underway to permit Day Scholars, and their estates, to make claims (for more on this see <u>www.justicefordayscholars.com</u>).

The claims of the Band Class have not been resolved, and this notice, and the continuing litigation, relate only to Band Class claims. So, although this class action began with a focus on Day Scholars, it is now only about the claims of the Band Class who allege they suffered harms because of Canada's role in the IRSs.

<u>Please note that all</u> harms allegedly suffered by the Band Class due to Canada's establishment, operation, and management of IRSs, including those resulting from both Day Scholar <u>and</u> Residential Scholar attendance at an IRS, are part of the Band Class claims in this action. The Band Class claims are <u>not</u> limited only to harms Band Class members suffered due to Day Scholars' attendance at IRSs.

### 7. What are the plaintiffs asking for?

The Representative Plaintiffs are principally asking for monetary relief ("damages") to compensate each individual Band within the Band Class for claims of loss relating to language and culture. In addition, they are asking the Federal Court to make certain "declarations" (legally-binding statements from the Court) about Canada's role in the establishment, operation and management of IRSs.

### 8. Who is eligible to join the Band Class?

The eligibility criteria for the Band Class is designed to ensure that those opting into this action as Band Class members: (i) are identifiable Aboriginal "legal entities" (meaning groups whose collective interests and separate legal status have been recognized by Canada); and (ii) that they have been impacted by IRSs.

Consequently, to be eligible to opt-in, a Band must:

- 1. Be an "Indian Band", which means any entity that:
  - i. Is either a "band" as defined in s.2(1) of the Indian Act or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and
  - ii. Asserts that it holds rights recognized and affirmed by section 35 of the Constitution Act, 1982.
- 2. And that:
  - i. has or had some members who are or were Survivors, <u>or</u> in whose community a Residential School is or was located; and
  - ii. is specifically added to this claim in relation to one or more specifically identified Residential Schools [*This criterion is met by completing the attached "opt-in form" and submitting it to Class counsel before the expiry of the Opt-in Deadline*]

The Band Class eligibility requirements are designed to capture all legally recognized Indigenous groups in Canada that have been directly impacted by IRSs. The list of IRSs (as set out in the original certification order) is found in Appendix "A" to this notice. A Survivor is an Indigenous person who attended at any of the IRSs, whether as a Day Scholar or as a resident.

As of today's date, 99 Bands have already opted-into the Class, which together with the Representative Plaintiffs creates a Class of 101 members.

Bands who have already opted into this action do not need to opt-in again. If you do not know if your Band has opted into this action, please see the 2017 Order confirming the current list of Band Class members on www.bandreparations.ca or contact Class counsel to confirm.

# **B.** THE RIGHTS AND OPTIONS OF ELIGIBLE BANDS

### 9. How can my Band opt-in?

If your Band wants to become a member of the Class your Band will need to "opt-in".

To opt-in, a person with authority to bind the Band must complete the Opt-In Form included with this notice and return it to Class counsel by the Opt-In Deadline. The Opt-In Form must identify your Band's name, the name and position of the person opting-in for the Band, and the basis upon which the Band claims entitlement to opt-in. Specifically, the Band must identify either an IRS that was located in the Band's community, or simply identify an individual Band member who attended an IRS.

You do <u>not</u> need to provide the names of all IRS survivors known to your Band, if there are several. The Opt-In Form only requires your Band to provide enough information to establish that your Band meets the eligibility criteria set out above (i.e. that it or its Band members were impacted by an IRS).

The Opt-In Form, once complete, must be returned to Class counsel by no later than <u>May 31, 2022</u> at 11:59 pm PST, by either:

- 1. Emailing it to **bandclass@waddellphillips.ca** with subject "Band Class Opt-In Form"; OR
- 2. <u>Mailing</u> it to: WADDELL PHILLIPS PC, Suite 1120, 36 Toronto Street, Toronto, ON M5C 2C5

You can also get a copy of the Opt-In Form online at <u>www.bandreparations.ca</u>.

## 10. What happens if my Band Opts-In?

If your Band opts-in and therefore becomes a member of the Class, your Band will not be able to separately pursue its own lawsuit against Canada or any other parties for these claims.

In a previous ruling in this action, Justice Harrington determined that the Representative Plaintiffs had made a strategic decision not to seek damages from any third parties, which in this lawsuit are the various churches who ran the IRSs, and as a member of the Class your Band will be bound by that decision. The Representative Plaintiffs elected not to pursue other parties to streamline and simplify this action, pursuing claims against the party (Canada) that they identified as the most likely to be held legally responsible and against whom "limitations periods" (prohibitions on suing after the passage of a certain period of time) were less likely to apply.

At the conclusion of this lawsuit, Band Class members will not be able to sue other parties for their role in the IRSs, even if the Court finds that the churches, or other involved parties, were partially or wholly responsible for any damages suffered by the Band Class.

Class members do not need to play an active role in litigation, and are generally not involved in making day-to-day decisions regarding the lawsuit, including potential settlement. Decisions regarding the litigation are made by the Representative Plaintiffs, acting in the best interests of the Class.

This lawsuit is seeking benefits on behalf of the entire Class. If any benefit is awarded, your Band may need to take action in order to receive these benefits, but it will benefit from the findings of the common issues trial.

Opting-into this lawsuit will not impact any benefits or services your Band may receive from the Government of Canada.

# II. What if my Band does not opt-in?

If your Band decides not to participate in the lawsuit, you do not have to take any action. However, your Band will not receive any money or benefits that may be obtained as a result of this lawsuit. Your Band will not be bound by any Court orders and your Band will keep its right to sue Canada regarding the issues in this case. Your Band would also maintain the right to sue third parties who were involved in establishing, managing, or operating IRSs.

If your Band does not opt in by the opt-in deadline, it will be required to commence separate litigation against Canada in order to obtain any benefits sought in this action through the common issues trial. As it will not be bound by the result of the action, it will need to instruct counsel, pay for counsel legal fees, retain its own experts, and have representatives of the Band participate in all

legal steps (including, in particular, discoveries and trial). If the class action is successful (whether by settlement of claims or a court finding at trial) and your Band has not opted in, there is no guarantee that it will obtain a similar result in its own separate litigation.

The purpose of a plaintiff-side class action is to allow a number of parties to more efficiently sue a common defendant without each party needing to incur significant costs and time to do so. The flip side of this is that parties waive rights over the control of the action.

### 12. What is the opt-in deadline?

To validly opt-in, an eligible Band must complete the Opt-In Forms and return it to Class counsel by no later than May 31, 2022, at 11:59 pm PST.

# C. THE LAWYERS ACTING FOR THE CLASS

### 13. Who represents the class?

The Representative Plaintiffs have retained Class counsel. The Court has approved Class counsel to act for the Class as part of its certification order. Class counsel consists of two firms, Peter R. Grant Law Corporation and Waddell Phillips Professional Corporation.

## 14. Does my Band have to pay for a lawyer?

As a Class member, your Band will not be required to pay Class counsel's legal fees.

The Representative Plaintiffs are responsible for paying legal costs for the common issues trial(s) and all pre-trial steps.

If your Band opts-in and, following the common issues trial(s), there are individual issues involving your Band's particular claims (i.e. claims that are not common to the whole Band Class), your Band will be responsible for the costs of advancing those individual issues, including paying for a lawyer.

If your Band does not opt-in, your Band can pursue an independent lawsuit at its own expense.

# D. THE STATUS OF THIS ACTION

### 15. What is the current status of this litigation?

This action was certified as a class proceeding in 2015, and since then the case has progressed to the point where it will shortly go to a common issues trial. This action originally involved the individual claims of Survivor Class and Descendant Class members arising from Day Scholars' attendance at IRSs. Those claims have settled. The remaining claims relate only to the Band Class. This notice and the Opt-In Form attached are only relevant to eligible Bands and the ongoing litigation.

If the case is not settled, the Representative Plaintiffs will have to prove the claims of the Band Class at a common issues trial (i.e. a trial of those issues relevant to all Band Class members). The common issues trial for liability-related issues is set to proceed in September 2022, in Vancouver, British Columbia. A second trial is anticipated to address damages-related issues, once the first trial is complete, and provided that liability is established.

Over the next few months, the parties will be preparing for trial, including completing additional documentary and oral discoveries and exchanging expert reports. At trial, the Court hears evidence from witnesses so that a decision can be reached about whether the Representative Plaintiffs are right about the claims in this lawsuit.

### 16. Will there be Money or other Benefits for the Class?

There is no guarantee that the Representative Plaintiffs will win any money or other benefits for the Class.

If they do obtain money or benefits as a result of a trial or settlement, Band Class members will be notified about how to ask for a share or what your other options are at that time. Important information about the case will be posted on the website: <u>www.bandreparations.ca</u>.

# E. OTHER INFORMATION

#### 17. How Do I Learn More about this Action?

You can get more information about this case and opting-in: visit <u>www.bandreparations.ca</u>, call 1-888-370-1045, or email <u>bandclass@waddellphillips.ca</u>

Please do not contact the Federal Court or the Federal Government of Canada with questions about this lawsuit. Rather refer all questions to Class counsel or the Representative Plaintiff Bands as listed above.

The Federal Court and the Federal Government of Canada, including the Department of Crown-Indigenous Relations and Northern Affairs Canada, and its employees and lawyers, will not respond to questions about this lawsuit.

### Gottfriedson et al v. Canada Class Action

## **CLASS ACTION OPT-IN FORM FOR BANDS**

This form is the official opt-in form for eligible Indian Bands to join the Class of plaintiff Bands in this class proceeding. To be eligible, your Band must be an "Indian Band" that falls within the "Class" definition:

"Class" means any <u>Indian Band(s)</u> which: (i) has or had some members who are or were Survivors, or in whose community a Residential School is or was located, and (ii) is specifically added to this claim in relation to one or more specifically identified Residential Schools. [note: criterion (ii) is met when an Indian Band opts into this action by filling out and returning this form to Class Counsel]

"Indian Band" means any entity that (i) is either a "band" as defined in s.2(1) of the *Indian Act* or a band, First Nation, Nation or other Indigenous group that is party to a self-government agreement or treaty implemented by an Act of Parliament recognizing or establishing it as a legal entity; and (ii) asserts that it holds rights recognized and affirmed by section 35 of the *Constitution Act*, 1982.

#### Your Band only needs to complete this form if it has NOT previously opted into this action.

#### **OPT-IN CONFIRMATION**

#### This form must be completed by a person in a position to make binding decisions for your Band

I have read the Court-Approved Legal Notice and I confirm that my band is eligible to opt-in to the Class.

By completing and submitting this form to Class Counsel, I confirm that my band (the "Band") wishes to opt-in (be included) in the Class, and that the Band realizes that by doing so:

- (i) It will be eligible to receive any possible benefits which members of the Class may obtain as a result of this Class Action, financial or otherwise;
- (ii) It will bound by the outcome of this case; and
- (iii) Class Counsel will represent the Class, and that the Band waives any right to pursue a separate legal claim on its own.

Band Name (full legal title)	
Your Name / Position with the Band	
Phone and (if available)	
Email contact for the Band	
Basis for the Band's Opt-In Eligibility	A. An Indian Residential School was located in the Band's community
You may complete both A and B if both apply to you, however you are not required to do so. You only need to identify a single school in the band's community <u>or</u> identify a single individual Band member who attended an Indian Residential School to be eligible. Please ensure that the school listed in A or B is in the list of eligible schools provided at: <u>bandreparations.ca</u> .	Name of School:

This form, once complete, must be returned to Class Counsel by no later than May 31, 2022 by either:

- (1) <u>Emailing</u> it to <u>bandclass@waddellphillips.ca</u> with subject "Band Class Opt In Form"; <u>OR</u>
- (2) Mailing it to: WADDELL PHILLIPS PC, Suite 1120, 36 Toronto Street, Toronto, ON M5C 2C5

#### SCHEDULE "A" to the Order of Justice Harrington

#### LIST OF RESIDENTIAL SCHOOLS

#### **British Columbia Residential Schools**

Ahousaht

Alberni

Cariboo (St. Joseph's, William's Lake)

Christie (Clayoquot, Kakawis)

Coqualeetza from 1924 to 1940

Cranbrook (St. Eugene's, Kootenay)

Kamloops

Kuper Island

Lejac (Fraser Lake)

Lower Post

St George's (Lytton)

St. Mary's (Mission)

St. Michael's (Alert Bay Girls' Home, Alert Bay Boys' Home)

Sechelt

St. Paul's (Squamish, North Vancouver)

Port Simpson (Crosby Home for Girls)

Kitimaat

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Anahim Lake Dormitory (September 1968 to June 1977)

#### **Alberta Residential Schools**

Assumption (Hay Lake) Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart) Crowfoot (Blackfoot, St. Joseph's, Ste. Trinité) Desmarais (Wabiscaw Lake, St. Martin's, Wabisca Roman Catholic) Edmonton (Poundmaker, replaced Red Deer Industrial) Ermineskin (Hobbema) Holy Angels (Fort Chipewyan, École des Saint-Anges) Fort Vermilion (St. Henry's) Joussard (St. Bruno's) Lac La Biche (Notre Dame des Victoires) Lesser Slave Lake (St. Peter's) Morley (Stony/Stoney, replaced McDougall Orphanage) Old Sun (Blackfoot) Sacred Heart (Peigan, Brocket) St. Albert (Youville) St. Augustine (Smokey-River) St. Cyprian (Queen Victoria's Jubilee Home, Peigan) St. Joseph's (High River, Dunbow) St. Mary's (Blood, Immaculate Conception) St. Paul's (Blood) Sturgeon Lake (Calais, St. Francis Xavier) Wabasca (St. John's) Whitefish Lake (St. Andrew's) Grouard to December 1957 Sarcee (St. Barnabas)

#### Saskatchewan Residential Schools

Beauval (Lac la Plonge)

File Hills

Gordon's

Lac La Ronge (see Prince Albert)

Lebret (Qu'Appelle, Whitecalf, St. Paul's High School)

Marieval (Cowesess, Crooked Lake)

Muscowequan (Lestock, Touchwood)

Onion Lake Anglican (see Prince Albert)

Prince Albert (Onion Lake, St. Alban's, All Saints, St. Barnabas, Lac La Ronge)

Regina

Round Lake

St. Anthony's (Onion Lake, Sacred Heart)

St. Michael's (Duck Lake)

St. Philip's

Sturgeon Landing (replaced by Guy Hill, MB)

Thunderchild (Delmas, St. Henri)

Crowstand

Fort Pelly

Cote Improved Federal Day School (September 1928 to June 1940)

#### **Manitoba Residential Schools**

Assiniboia(Winnipeg) Birtle Brandon Churchill Vocational Centre Cross Lake (St. Joseph's, Norway House) Dauphin (replaced McKay) Elkhorn (Washakada) Fort Alexander (Pine Falls) Guy Hill (Clearwater, the Pas, formerly Sturgeon Landing, SK) McKay (The Pas, replaced by Dauphin) Norway House Pine Creek (Campeville) Portage la Prairie Sandy Bay

Notre Dame Hostel (Norway House Catholic, Jack River Hostel, replaced Jack River Annex at Cross Lake)

#### **Ontario Residential Schools**

Bishop Horden Hall (Moose Fort, Moose Factory) Cecilia Jeffrey (Kenora, Shoal Lake) Chapleau (St. Joseph's) Fort Frances (St. Margaret's) McIntosh (Kenora) Mohawk Institute Mount Elgin (Muncey, St. Thomas) Pelican Lake (Pelican Falls) Poplar Hill St. Anne's (Fort Albany) St. Mary's (Kenora, St. Anthony's) Shingwauk Spanish Boys' School (Charles Garnier, St. Joseph's) Spanish Girls' School (St. Joseph's, St. Peter's, St. Anne's) St. Joseph's/Fort William Stirland Lake High School (Wahbon Bay Academy) from September 1, 1971 to June 30, 1991 Cristal Lake High School (September 1, 1976 to June 30, 1986)

#### **Quebec Residential Schools**

Amos Fort George (Anglican) Fort George (Roman Catholic) La Tuque Point Bleue Sept-Îles Federal Hostels at Great Whale River Federal Hostels at Great Whale River Federal Hostels at Port Harrison Federal Hostels at George River Federal Hostel at Payne Bay (Bellin) Fort George Hostels (September 1, 1975 to June 30, 1978) Mistassini Hostels (September 1, 1971 to June 30, 1978)

#### Nova Scotia Residential Schools

Shubenacadie

#### **Nunavut Residential Schools**

Chesterfield Inlet (Joseph Bernier, Turquetil Hall) Federal Hostels at Panniqtuug/Pangnirtang Federal Hostels at Broughton Island/Qikiqtarjuaq Federal Hostels at Cape Dorset Kinngait Federal Hostels at Eskimo Point/Arviat Federal Hostels at Igloolik/Iglulik Federal Hostels at Baker Lake/Qamani'tuaq Federal Hostels at Pond Inlet/Mittimatalik Federal Hostels at Cambridge Bay Federal Hostels at Lake Harbour Federal Hostels at Belcher Islands Federal Hostels at Frobisher Bay/Ukkivik Federal Tent Hostel at Coppermine

#### Northwest Territories Residential Schools

Aklavik (Immaculate Conception) Aklavik (All Saints) Fort McPherson (Fleming Hall) Ford Providence (Sacred Heart) Fort Resolution (St. Joseph's) Fort Simpson (Bompas Hall) Fort Simpson (Lapointe Hall) Fort Smith (Breynat Hall) HayRiver-(St. Peter's) Inuvik (Grollier Hall) Inuvik (Grollier Hall) Yellowknife (Akaitcho Hall) Fort Smith -Grandin College Federal Hostel at Fort Franklin

#### Yukon Residential Schools

Carcross (Chooulta) Yukon Hall (Whitehorse/Protestant Hostel) Coudert Hall (Whitehorse Hostel/Student Residence -replaced by Yukon Hall) Whitehorse Baptist Mission

Shingle Point Eskimo Residential School

St. Paul's Hostel from September 1920 to June 1943