



## Day Scholar Class Action

**Tk'emlúps te Secwépemc and shíshálh Nations**

# Definition of a Day Scholar

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- ▶ Day Scholars attended Indian Residential Schools, and were prohibited from speaking their language or practicing their culture
- ▶ Many experienced sexual, physical, spiritual, and emotional abuse
- ▶ Many continue to suffer from long-term effects of the Residential School Policy



# Definition of the Descendant Class & Band Class

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- ▶ Descendent Class:
  - ▶ The first generation of persons from survivor class members or who were persons who were legally or traditionally adopted by the Survivor Class or their family
  - ▶ This class member is automatically in the class action & can OPT out.
  - ▶ Band Class:
  - ▶ Ttes & Sechelt and any other Aboriginal Indian Band(s) which has or had band members who are or were members of the Survivor Class, and has or had an Indian Residential School recognized under the IRSSA on or proximate to the Band's lands or property. The Bands must OPT in.
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# Three Day Scholar Class members:

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## ▶ Survivor Class:

- ▶ Any student who attended an approved Indian Residential School between 1920 and 1997
- ▶ Survivors must opt-out or they are considered to be part of the class action

## ▶ Descendant Class:

- ▶ Any child of a Day Scholar
- ▶ Descendants must opt-out or they are considered to be part of the class action

## ▶ Band Class:

- ▶ Any Band with an approved Indian Residential School that taught day scholars on or close to band lands
  - ▶ Bands must opt-in if they want to be involved in the class action
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# Certification Motion

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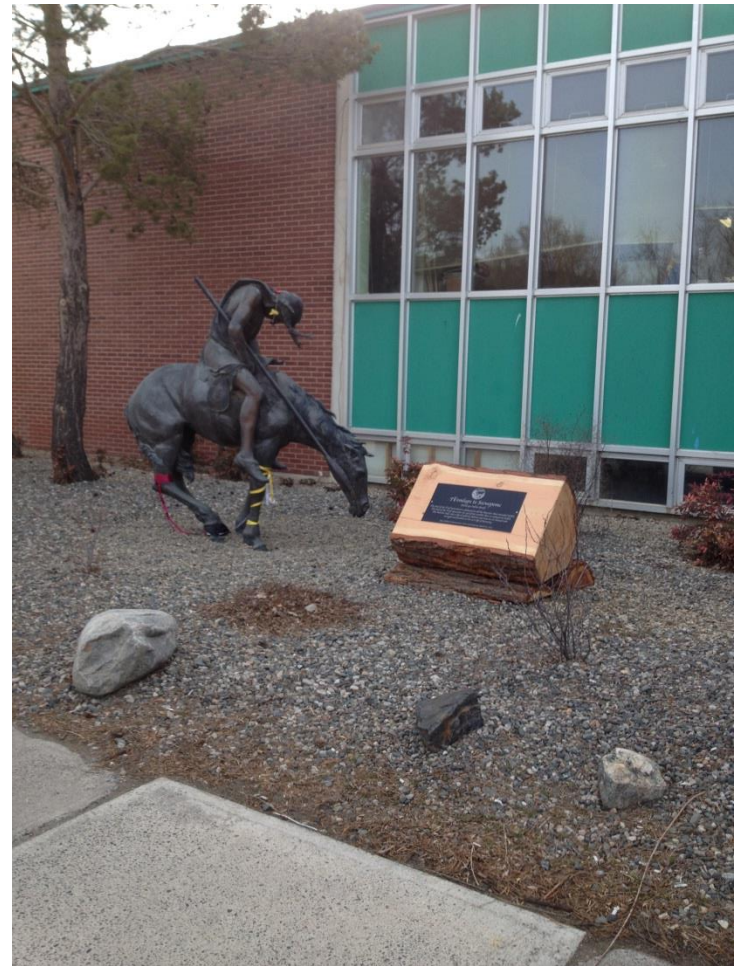
- ▶ For a class action to move forward, the Court must “certify” it
- ▶ Certification Motion heard in Federal Court on April 13-16, 2015
- ▶ Justice Harrington certified the case in June, 2015



# The Indian Residential School Settlement Agreement

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- ▶ Provided the Common Experience Payment (CEP) to students who lived at Indian Residential Schools
- ▶ Created the Independent Assessment Process (IAP) for claims of serious physical or sexual abuse
- ▶ Day Scholars were eligible for the IAP, but not the CEP



# Day Scholars Excluded

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- ▶ Day Scholars did not receive the Common Experience Payment (“CEP”)
- ▶ Day Scholars did not receive any compensation for loss of language and loss of culture
- ▶ Day Scholars were left out of the apology of Prime Minister Harper for the harms inflicted on students by the Residential School Policy



# History of the Case

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- ▶ Court case started by Tk'emlúps te Secwépemc and shíshálh nations
  - ▶ Filed Statement of Claim in Federal Court – August, 2012
  - ▶ Canada brought motions to:
    - ▶ Add religious entities as third parties
    - ▶ Move the court case to British Columbia Supreme Court
    - ▶ Seek further particulars (more information on the nature of the claim)
  - ▶ All of Canada's motions were unsuccessful
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# The Nature of the Claim

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- ▶ Claim focuses on loss of language and loss of culture
- ▶ Goal is to restore wellness to the individuals and communities affected by the Residential School Policy
- ▶ Seeking a declaration that, in creating and implementing the Residential Schools Policy, Canada breached fiduciary, Constitutional, common law, and statutory duties to the Plaintiffs
- ▶ Seeking damages for the cultural, linguistic, and social losses caused by the Government's actions



# Post-Certification: Next Steps



- ▶ The TteS & Sechelt nations are responsible for getting the word out to survivor and descendent class members, and inform them that they are bound by the law suit unless they ‘opt-out’
- ▶ To do that, the nations are creating a “notice plan”
- ▶ The notice plan will also inform bands that they need to “opt-in” to be part of the law suit

# Post-Certification: Next Steps

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- ▶ If Canada does not agree to negotiate, the law suit will go to trial
- ▶ Trial will involve extensive document review, and preparation of expert reports
- ▶ Objective to complete trial within four years
- ▶ Goal of trial or settlement is compensation for the Day Scholars' loss of language and culture, compensation for the Descendant and Band classes, and an increase in community wellness



# Support for the Day Scholar Class Action

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- ▶ The Assembly of First Nations adopted a resolution in July, 2011 to provide moral, legal, and financial support to Tk'emlúps te Secwépemc and shíshálh nations
- ▶ The Union of B.C. Indian Chiefs, the Federation of Saskatchewan Indian Nation, the First Nations Summit, and the Truth and Reconciliation Commission also support the litigation



# Getting Involved

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