



Day Scholars Class Action: Federal Court Judge tells Canada to “walk the walk” on reconciliation

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Kamloops, BC – In a remarkable court judgment recently released, a Federal Court Judge has blasted Canada for its approach to the Day Scholars Class Action.

While the Day Scholars were unsuccessful in their attempt to get a rare and difficult to obtain advanced costs order, Justice Harrington was unsparing in his criticism of Canada’s chosen litigation strategy noting that “the Plaintiffs are dying”¹ and asking rhetorically: “Is it [Canada’s] intention to grind [the Plaintiffs] into poverty and bankruptcy before this matter ever proceeds to trial?”²

“Day Scholars” are individuals who attended a federally owned and operated Indian Residential School during the day but returned home at night. Day Scholars suffered the same destruction of language and culture as other students at Residential Schools, but were unjustly and arbitrarily excluded from the 2006 Indian Residential Schools Settlement Agreement. Justice Harrington noted that he was “more than satisfied” that the Day Scholars claim is of “public importance” and “*prima facie* meritorious.”³

Day Scholars are one of the few remaining groups who suffered the evils of Canada’s Residential School policy who have yet to receive proper compensation for harms suffered by them, despite the TRC’s Call to Action urging Canada to do just that. As acknowledged by Justice Harrington, “these Plaintiffs have been left behind.”⁴ The Day Scholars remain committed to seeking fair and equal compensation on the same terms as other Residential School survivors.

Day Scholars are disheartened that Canada continues to bring a “scorched-earth” approach to this litigation. Unlike Canada’s approach to the Indian Residential Schools Settlement Agreement and the Indian Day Schools (McLean) Settlement Agreement, Canada is relying on all manner of legal defences to deny responsibility for the harms suffered by Day Scholars, even continuing to deny that there was ever a “uniform Indian Residential School Policy.”⁵ As noted by Justice Harrington, Canada “has repeated all of the defences set out in the original Statement of

¹ *Gottfriedson v. Canada*, 219 FC 462 [“*Gottfriedson*”] at para 48.

² *Gottfriedson* at para 49.

³ *Gottfriedson* at para 24.

⁴ *Gottfriedson* at para 6.

⁵ *Gottfriedson* at para 46.

Defence, with the exception of time-bar. Significantly, the same potential defences “did not stop Canada from settling with the students who resided at the schools.”⁶ If Canada proceeds with all of its intended defences, Justice Harrington observed that the litigation “would take years,” and would cost the Plaintiffs “millions of dollars.”⁷

Justice Harrington ended his judgment with a stark message for Canada:

[54] On the eve of my retirement, I leave with paragraph 4 of the Crown’s Amended Statement of Defence ringing in my head:

Canada also acknowledges that reconciliation will be furthered by resolving the legacy of such schools. Canada is committed to achieving such reconciliation, including any Day Scholars who may have suffered harm as a result of their attendance at Residential Schools, their descendants, and with any Indigenous communities that suffered losses as a further result of the impacts of Day Scholars...

[55] I hope Canada will not simply continue to talk the talk, but will now walk the walk.

[56] I would also leave with one passing thought: “I shall tell you a great secret, my friend. Do not wait for the last judgment, it takes place every day” (Albert Camus, *La Chute*, “Éditions Gamillard, 1956).

“Day Scholars are tired of nice words from this government about reconciliation. We are tired of talk. Justice Harrington got it exactly right. If reconciliation means anything to this government, they need to walk the walk,” said Tk’emlups te Secwepemc Chief Rosanne Casmir.

“It is hard to see the government’s litigation strategy as anything other than a cynical strategy to drive us into poverty and bankruptcy by spending vast amounts of taxpayer’s money on litigation,” said Dr. Matthew Coon Come, former National Chief of the Assembly of First Nations. “What is Canada waiting for? Is it waiting for all survivors of residential schools to die? Is that Canada’s strategy?”

“It is beyond frustrating,” said shíshálh Nation Chief Warren Paull. “Canada recognizes that a terrible wrong was committed. Canada says it to want to resolve the legacy of residential schools. So what is stopping it? Fair is fair. Day scholars ask only for the same deal that other survivors of the terror of residential schools received.”

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⁶ *Gottfriedson* at para 45.

⁷ *Gottfriedson* at para 48.