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## NOTICE TO MEMBERS

**Of a class action regarding beneficiaries of Bill S-3 status amendments to the *Indian Act***

**QUEBEC NATIVE WOMEN INC. AND ISABELLE PAILLÉ V. ATTORNEY  
GENERAL OF CANADA**

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**TAKE NOTICE** that the Superior Court of Quebec has authorized a class action to be brought against the Attorney General of Canada on behalf of persons who have allegedly suffered certain discriminatory effects of the registration rules of the *Indian Act*, as they stood until the coming into force of the amendments made to the Act in 2017.

The organisation Quebec Native Women and Ms. Isabelle Paillé have been appointed representative plaintiff and designated member of the class action, respectively. They act as the plaintiffs.

### **OBJECT OF THE CLASS ACTION**

This class action alleges that Canada maintained rules for registration in the Indian register that it knew to be discriminatory on the basis of sex from 1985 on and that it did not correct these rules through the 2010 amendments but corrected them only in 2017 following the judgment in *Descheneaux*. This action aims to compensate the members of the group for the harm suffered due to the rules that discriminated against them and their children, and to obtain punitive damages against Canada.

The class action will be heard in the District of Montreal, but it includes any person in Canada who meets the definition of the group, wherever they may reside.

### **WHO IS INCLUDED?**

Any person who is part of one of the following categories is included in the class action:

- A. **Category A (the grandchildren of an Indian woman who lost her status through marriage, provided that they were born before April 17, 1985 or of a marriage entered into before that date, as well as their direct descendants)**
  1. Any individual in Canada:
    - a) whose grandmother lost her Indian status as a result of her marriage to a non-Indian man before April 17, 1985;

and

- b) whose only Indian parent was eligible for Indian status under s. 6(1)c.1) of the *Indian Act*, as amended in 2010 (*Gender Equity in Indian Registration Act* S.C. 2010, c. 18);

and

- c) who was himself/herself eligible for Indian status under s. 6(1)c.2) of the *Indian Act*, as amended in 2017 (*An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*, S.C. 2017, c. 25);

and

- d) who had a child who was ineligible for Indian status prior to the coming into force of the *Indian Act* as amended in 2017;

2. as well as his or her registered Indian ancestors;
3. as well as his or her direct descendants who are themselves eligible for Indian status as a result of the 2017 amendments to the *Indian Act*.

**B. Category B (women born out of wedlock to an Indian man and a non-Indian woman and their direct descendants)**

1. Any woman in Canada:

- a) who was born out of wedlock to an Indian man and a non-Indian woman before April 17, 1985;

and

- b) who became eligible for Indian status under s. 6(2) of the *Indian Act* as a result of the 1985 amendments to that Act;

and

- c) who was eligible for Indian status under s. 6(1)(c. 3) of the *Indian Act*, as amended in 2017;

2. as well as her registered Indian ancestors;
3. as well as any of her direct descendants who are themselves eligible for Indian status as a result of the 2017 amendments to the *Indian Act*.

**C. Category C (enfranchised minors and their direct descendants)**

**1. Any individual in Canada:**

**a)** whose father is Indian or unstated on the birth certificate and whose mother lost her Indian status as a result of her marriage to a non-Indian before April 17, 1985;

and

**b)** who lost Indian status as a result of his or her mother's marriage to a non-Indian after the individual's birth and before he or she reached the age of majority;

and

**c)** who regained his or her status under s. 6(1)(c) of the *Indian Act*, following the 1985 amendments to that Act;

**2. as well as his or her registered Indian ancestors;**

**3. as well as his or her first-degree direct descendants who are themselves eligible for Indian status under s. 6(1)(c. 01) of the *Indian Act* as amended in 2017, or his or her other direct lineal descendants who are eligible as a result of the amendments to the *Indian Act* adopted in 2017.**

## **WHAT COULD YOU OBTAIN?**

You could obtain monetary compensation for the harm that you have suffered because you or your children could not benefit from Indian status until the coming into force of the amendments to the *Indian Act* passed in 2017. This monetary remedy is sought to compensate class members for moral injuries or economic losses suffered, including costs related to uninsured healthcare and post-secondary education, as the case may be.

## **NEXT STEPS**

**No amount has been awarded at this time.** The class action is at a preliminary stage. The allegations have not yet been proven and the Court has not yet decided if the claim is well founded. The plaintiffs will have to assert their claims before the Court, which will determine whether Canada must be condemned to compensate the members, and, if so, the amount of compensation will be determined later.

The authorization judgment identified the following common issues to be decided by the class action:

- a. Regarding the amendments to s. 6 of the *Indian Act* made by the passage of the *2010 Act*:
  - i. are they unconstitutional, in that they violate s. 15 of the *Canadian Charter of Rights and Freedoms* in a way that is not justified by s. 1?
  - ii. do they constitute a fault?
  - iii. do they violate the Crown's fiduciary duty to Aboriginal peoples?
- b. In the affirmative, does Crown immunity or s. 10 of the *2017 Act* apply such that the Action must fail?
- c. If Crown immunity or s. 10 do not apply, are the class members entitled to damages or an indemnity pursuant to:
  - i. paragraph 24(1) of the *Canadian Charter of Rights and Freedoms*?
  - ii. the general rules of civil liability (articles 1376, 1457 of the *Civil Code of Quebec*)?
  - iii. the principles of unjust enrichment (article 1493 of the *Civil Code of Quebec*)?
  - iv. the federal Crown's fiduciary duty to Aboriginal peoples?

## RELIEF SOUGHT

The plaintiffs seek the following relief:

**GRANT** the Plaintiffs' action on behalf of all the class members;

**DECLARE** that the 2010 amendments to the *Indian Act* maintained discrimination contrary to s. 15 of the *Canadian Charter of Rights and Freedoms* and that this discrimination was only corrected with the passage of the *2017 Act*;

**DECLARE** that neither the doctrine of Crown immunity nor s. 10 of the 2017 amendments bar condemnation of the State to remedy the damages suffered as a result of these discriminatory provisions;

**CONDEMN** the Defendant to pay the class members an amount to be established at trial:

1. for the amounts they would have received, but for the discriminatory provisions, including but not limited to:
  - a. payments under the Non-Insured Health Benefits Program of Health Canada;

- b. funding under the Department of Indian and Northern Affairs' Post-Secondary Education Program;
  - c. annuities under historic treaties;
  - d. under the Indian Moneys Program;
2. as compensatory damages, with interest and the additional indemnity;
  3. as moral damages, with interest and the additional indemnity;
  4. as punitive damages, with interest and the additional indemnity;

**THE WHOLE** subject to the individual recovery of claims to be ordered pursuant to articles 599 to 601 C.C.P.

## **THE LAWYERS FOR THE CLASS MEMBERS**

The law firm Dionne Schulze represents the members of this class action, in collaboration with the Law Office of Mary Eberts.

Class members will not have to pay the costs of the class action. **Being a member of the class will not cost you anything.**

The lawyers' fees are paid only if a favourable judgment is rendered. These fees will be based on the compensation awarded to the members and will be approved by the Court.

## **REMAINING A MEMBER OR OPTING OUT OF THE CLASS ACTION**

You are automatically a member of the class if you correspond to one of the categories defined above (A, B or C). Any judgment rendered in this action will bind you. If you wish to continue to be a part of this class action, you do not need to do anything.

However, **if you wish to opt out of the class**, you must fill the attached form and send it by mail to the Registry of the Superior Court of Quebec **before September 13, 2023**. It is highly recommended that you also send copy of the form to the class's lawyers. Please refer to the following addresses:

**Registry of the Superior Court of Quebec**  
1, rue Notre-Dame Est  
Montréal (Québec) H2Y 1B6

**DIONNE SCHULZE**  
507 Place d'Armes, #502  
Montréal (Québec) H2Y 2W8  
Email: [paille@dionneschulze.ca](mailto:paille@dionneschulze.ca)

## **YOU MAY APPLY TO INTERVENE**

Members may make an application to the Court to intervene in the class action. The Court will authorize the intervention if it is of the opinion that the intervention is useful to the class. If you hire your own lawyer, you are responsible for paying any fees or cost that may be set by the lawyer.

## **FOR MORE INFORMATION**

You can subscribe to Dionne Schulze's mailing list to receive updates on the progress of this case. To do so, fill the form found on the Dionne Schulze website, [here](#).

**ATTENTION:** By filling the form, you are merely subscribing to the mailing list. **You are not making a claim.**

You may consult the Registry of the class actions, where all proceedings are published: <https://www.registredesactionscollectives.quebec/en>.

You may also contact the plaintiffs' lawyers:

**DIONNE SCHULZE, s.e.n.c.**  
507 Place d'Armes, #502  
Montréal (Québec) H2Y 2W8  
**Toll-free line:** 1-833-333-0748  
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