Court File No. T-1621-19

FEDERAL COURT

B E T W E E N:

ATTORNEY GENERAL OF CANADA

APPLICANT

- and -

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA, ASSEMBLY OF FIRST NATIONS, CANADIAN HUMAN RIGHTS COMMISSION, CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL and NISHNAWBE ASKI NATION

RESPONDENTS

Affidavit of Peter R. Grant
(Sworn November 8, 2019)

I, **Peter R. Grant**, of the City of Vancouver, in the Province of British Columbia, **SWEAR THAT**:

1. I am a lawyer at Grant Huberman Barristers & Solicitors in Vancouver, British Columbia and have practiced Aboriginal law since 1976. I was part of the negotiating team representing claimants through Independent Counsel for the Indian Residential School Settlement (IRSSA). Independent Counsel represented plaintiffs from across Canada in individual as opposed to class proceedings and there were lawyers who were part of Independent Counsel group.

2. I confirm that I have had no involvement of any kind in the case that is before the Court. I have been asked to tender evidence of the compensation scheme under the IRSSA.

3. I was also legal counsel for the majority of the plaintiffs (28 out of 31) in the seminal residential school case known as *Blackwater v. Plint and Canada*. This case was heard by Chief Justice Brenner of the British Columbia Supreme Court over 17 days on liability and 81 trial days on damages. Although most of the plaintiffs were successful, he denied a claim for purely physical assault on the basis it was time barred and denied compensation for punishment for speaking an indigenous language and being cut off from home and family.

4. Further, I have been the representative of Independent Counsel on the National Administration Committee (NAC) throughout the existence of the NAC. I was selected in 2011 to be the third Chair of the NAC and have been the Chair ever since. The NAC's role is to oversee the implementation and administration of the IRSSA, subject to the supervision of the Courts. As such, I have knowledge of the matters to which I hereafter depose. Where I have relied on the information of others in making this affidavit, I have identified the source of the information and I verily believe this information to be true.

5. The NAC has prepared and filed a report of our work with the supervising Courts which includes a detailed explanation of the CEP Appeal process. I am appending a copy of the NAC Report to this Affidavit as **Exhibit "A"**. The CEP Appeal process is described in Section II. The rationale to allow a school year is set out at pp. 65-70 of Section II.

INTRODUCTION

6. In the course of negotiations of the IRSSA, I was initially involved in the negotiation of the Agreement in Principle which was approved in November 2005. During those negotiations, the issue of the Common Experience Payment (CEP) was raised by

the parties and, in particular, the Assembly of First Nations to address the fact that every child who attended an Indian Residential School was impacted by that experience of being removed from their family and community; being punished for speaking their own Indigenous language and not being allowed to practice their culture or even wear their hair in a traditional fashion.

7. I was directly involved in the negotiation of the CEP. After the Agreement in Principle was signed, the Parties established the NAC which worked on finalizing the Agreement and preparing for certification. As a member of the NAC, I attended many of the Approval Hearings including the Approval hearings before Justice Winkler of the Ontario Superior Court and the extensive hearings before Chief Justice Brenner of the British Columbia Supreme Court.

8. I also acted for several claimants in the IAP process and am familiar with the IAP process by which compensation was dependent on evidence of abuse and required an oral hearing and extensive document disclosure.

9. The knowledge I have regarding the IRSSA compensation process under both the IAP and the CEP process is tendered to the Court in order to provide this Court with an insight to support the development of an appropriate compensation process in the remedies stage following the Tribunal's decision.

IRSSA'S COMPENSATION SCHEME

10. The IRSSA was signed on May 8, 2006. Attached hereto as **Exhibit "B"** to my Affidavit is a copy of the IRSSA. The IRSSA was intended to be a fair and lasting resolution to the legacy of the Indian Residential School system. It contained five key components, as follows:

    i. the Common Experience Payment whereby each eligible former student who applied received $10,000 for the first school year or portion thereof and $3,000 for each subsequent year;

ii. the Independent Assessment Process (IAP) to compensate former students for abuses suffered while attending an Indian Residential Schools covered under the agreement;

iii. $20 million in funding for commemoration initiatives that address the legacy of Indian Residential Schools;

iv. $125 million in funding to the Aboriginal Healing Foundation, in addition to a further $100 million in cash and services from the Church entities; and

v. the Truth and Reconciliation Commission.

11. The IRSSA was approved by provincial and territorial courts across Canada, including the Ontario Superior Court of Justice in *Baxter v. Attorney General of Canada*, 2006 83 O.R. (3d) 481.

12. Significantly, Chief Justice Brenner of the British Columbia Supreme Court who had heard the evidence of abuse in the *Blackwater* case approved the order in British Columbia and was one of the only justices who had heard extensive evidence of the abuse suffered at the residential schools, including punishment for speaking one's own language. In his ruling on approval of the settlement, regarding the CEP, he held:

> [8] Another factor favouring approval of the agreement is the Common Experience Payment ("CEP"). This may be claimed by any class member solely on the basis of attendance at an Indian Residential School. They do not have to prove that they suffered any injury or harm; they are only required to establish the fact of their attendance.
>
> [9] A repeated theme in these cases is the effect that attendance at Indian Residential Schools had on the language and culture of Indian children. These were largely destroyed. However, no court has yet recognized the loss of language and culture as a recoverable tort. Even if such a loss was actionable, most claims would now be statute barred by the Limitation Act, R.S.B.C. 1996, c. 266. The CEP can therefore be viewed, at least in part, as compensation for a loss not recoverable at law. In my view, this represents an important advantage to the class....
>
> [27] To receive the CEP, class members must prove their attendance at an Indian Residential School. For most members of the class this will not cause any difficulty as attendance records are available. However, for some members of the class particularly the older members, the Churches and/or Canada have either lost or destroyed the attendance records and, hence, it will be difficult for them to prove their CEP claims. At the hearing,

counsel advised me that Canada was working to overcome this difficulty. At the end of the hearing counsel advised that Canada has agreed to convene a meeting of the National Administration Committee to consider solutions. Counsel advised that they expected to be able to report a resolution of this problem to the court by the end of November.

13. In March 2007, orders approving settlement were entered in the Supreme Court of the Yukon Territory, the Supreme Court of the Northwest Territories, the Nunavut Court of Justice, the Supreme Court of British Columbia, the Alberta Court of Queen's Bench, the Manitoba Court of Queen's Bench, the Ontario Superior Court of Justice, and the Quebec Superior Court. The IRSSA came into effect on September 19, 2007.

14. The IRSSA provided two streams of compensation for students who attended an Indian Residential School, which are the CEP and IAP.

Common Experience Payment

15. The CEP was available to all eligible former students who resided at an Indian Residential School. Eligible recipients received $10,000.00 for at least part of a school year, and $3,000.00 for each subsequent year or part thereof. The process involved submitting an application to the Trustee and was assessed under Schedule "L" of the IRSSA, which is attached hereto as **Exhibit "C"** to my Affidavit.

16. This form of compensation was designed to compensate all former students who lived at an Indian Residential School and who were alive on May 30, 2005 or who attended the Mohawk Institute Residential Boarding School between 1922 and 1969, and who were alive on October 5, 1996.

17. The CEP recognized that the experience of living at an Indian Residential School(s) had impacted all students who attended these institutions. The CEP addressed or compensated all former students for the emotional abuse suffered, the loss of family life, and the loss of language, culture and spiritual guidance. The CEP was argued for on the basis that every child suffered from being forcibly removed from their

family and home community, being held in a residential school and being punished for speaking their language and being told their culture was 'heathen' or bad and not being allowed to engage in Indigenous cultural practices. Canada would not agree to calling the CEP compensation for loss of language and culture and the parties compromised by calling it a Common Experience Payment.

CEP Appeals

18. The NAC was involved in appeals of the CEP Decisions where claimants were denied compensation. Many of these appeals were denied on the basis that claimants thought that their school was one of the "Eligible Indian Residential Schools" covered by the Agreement when in fact it was not one of the schools that were in the Agreement. Another problem, raised by Chief Justice Brenner, was that there was no evidence the claimant had attended the school based on the documentary record.

19. The NAC went to great lengths to find any evidence, including descriptions of the school, naming of other students or staff who were at the school, descriptions of particular events (eg. School team trips) to find eligibility for claimants. This is described in more detail in the NAC Report Section II appended as Exhibit A.

20. One of the issues that arose was the fact that some children were only "temporary overnight visitors". The Agreement required that the children be overnight for "educational purposes". If for example, a claimant was there overnight as part of a visiting hockey team, they were not eligible for CEP.

21. However, the NAC considered the underlying reason why the CEP was allowed. If a child was taken from their home to the Residential School and stayed overnight with the belief that they were going to have to stay there, they were eligible CEP claimants, even if they were moved out after one or a few nights because there was no room at the school and were placed in foster homes which were not eligible for the CEP. The critical issue was that the child thought that they were going to be in

residence at the school. This was important as the eligibility for CEP was that the child had to "reside" at an eligible Indian Residential school to be a claimant.

22. I refer to this analysis of the CEP as it may be of assistance to the Court regarding the compensation for children in care. As with the residential school students, every child would have been impacted by the taking from their home and not having the same benefit as a non-Indigenous child. The impact would be felt whether they were gone for a short period or a long period of time and, as with the CEP, it is applicable to every child.

Independent Assessment Process

23. The IAP was incorporated into an Order of the Ontario Superior Court of Justice on December 15, 2006. Attached hereto and marked as **Exhibit "D"** is a copy of the Approval Order. The IAP was an alternative to litigation of claims.

24. The IAP was a remedial process, designed to provide compensation to individuals whom suffered sexual abuse, physical abuse and/or other wrongful acts as children while attending an Indian Residential School covered under the Settlement Agreement. Schedule "D" of the IRSSA set out the framework of the IAP, procedures for making a claim under the IAP, and assessing such claims. Attached hereto to as **Exhibit "E"** to my Affidavit is a copy of Schedule "D" of the IRSSA.

25. Given the large number of IAP Claimants, Canada was the only Party to the IRSSA who had the resources to act as the administrator the IAP, despite being a defendant. The Ontario Superior Court of Justice was concerned about the potential for a conflict for Canada between its proposed role as administrator and its role as continuing litigant in the administration of the IAP. Thus, Canada's function as the administrator of the IAP was completely isolated from the litigation function. The Chief Adjudicator was appointed by the Courts to act as an autonomous supervisor of the IAP and he reports directly to the courts.

26. The Indian Residential Schools Adjudication Secretariat ("Adjudication Secretariat") was established to be an independent body responsible for the administration of the IAP. The Adjudication Secretariat receives claims, assesses such claims to determine if they are eligible for the IAP, and assists former students and their counsel in preparing and submitting the documentation necessary to prepare their claims for a hearing. The Chief Adjudicator oversees the Adjudication Secretariat.

27. The compensation model under the IAP was designed to be non-adversarial. It was developed to be a customized adjudicative proceeding for the resolution of claims of serious physical abuse, sexual abuse or other wrongful acts suffered while attending an Indian Residential School covered under the IRSSA.

28. The IAP was designed as an inquisitorial process but an alternative to court litigation that is altered in order to meet the adjudicative criteria for testing the evidence, while also considering the claimants welfare. Schedule "D" categorizes abuses and determines points which would coincide with a dollar amount. Schedule "D" of the IRSSA limits compensation under the IAP to the amount of $275,000 for abuses suffered and subsequent losses connected to the proven acts of abuse. This limit was in addition to any loss of income incurred as a result of the abuse, up to the maximum amount of $250,000.

29. All IAP Claimants were required to fill out an application to access the IAP. In this application, it required the claimant to list points of claim, provide a narrative, indicate compensation sought by referencing the IAP Compensation Rules, authorizations so that defendants may produce records and any safety mechanisms they may need during the process.

30. During the application process, it was mandatory for claimants to provide documentation to support their claims. Claimants were required to produce mandatory documents to prove any claims for compensation and harm. In fact, Canada would not agree to hearings on any IAP claim until the Claimant provided the mandatory documents which included health, education, employment,

counselling and criminal records.

31. Mandatory document disclosure was also required by the Government of Canada under Schedule D – Appendix VIII:

> The government will search for, collect and provide a report setting out the dates a Claimant attended a residential school. There are several kinds of documents that can confirm attendance at a residential school, and as soon as one or more are found which deal with the entire relevant period, further searches will not be undertaken.
>
> The government will also search for, collect and provide a report about the persons named in the Application Form as having abused the Claimant, including information about those persons' jobs at the residential school and the dates they worked or were there, as well as any allegations of physical or sexual abuse committed by such persons, where such allegations were made while the person was an employee or student.
>
> ...
>
> The government will also gather documents about the residential school the Claimant attended, and will write a report summarizing those documents. The report and, upon request, the documents will be available for the Claimant or their lawyer to review.

32. The IAP was designed to be a streamlined and efficient process, where various reports relating to the schools, persons of interest and other source documents were produced and provided by Canada before the hearings to adjudicators and can be requested by claimants and their counsel.

33. The responsibility of assessing the credibility of each allegation and awarding compensation consistent with the IAP was that of an Adjudicator. The IAP further contemplated a two-pronged approach to the Compensation Rules that bound the adjudicator's assessments. The Compensation Rules required an objective standard in the assessment of an abusive act (acts proven) and a highly subjective assessment of how the proven act affected an individual claimant.

34. Once the act(s) of abuse and consequential harms had been established an Adjudicator had to then determine whether any of the listed aggravating factors have been proven, which forms part of the Compensation Rules. These factors included verbal abuse, racist acts, threats, age of the victim, etc. The IAP takes into account that the presence of aggravating factors can make acts of abuse worse and, thus, a claimant may be entitled to further compensation. Schedule D set out the levels of claim based on the abuse suffered and the levels of harm based on the harms.

35. The final steps in the IAP process were an assessment of a loss of opportunity, actual income loss, future care and a final assessment of compensation. It was accepted in the IAP process that some claimants would require future care to deal with the effects of the abuse they suffered at a residential school. If they required future care, the claimant would need to prepare a future care plan to present at their hearing. The maximum allowed for future care was $10,000.

36. The IAP model has been effective in providing compensation for a majority of IAP Claimants. Based on the data provided by the Adjudication Secretariat the Adjudication Secretariat received 38,262 IAP applications from September 19, 2007 to September 30, 2019. Of these, 38,243 claims have been resolved as of September 30, 2019. There were a total of 26,703 IAP hearings.

Issues in relations to the Administration of the IAP

37. The IAP model was administered on a sliding scale that, under Schedule "D", categorized abuse and determined points which would coincide with a dollar amount.

38. Pursuant to the IAP model, the payment of legal fees were capped. Canada agreed to pay 15% of any award made to a claimant towards his or her legal fees as well as all reasonable disbursements. In addition, Legal Counsel could charge up to 15% of an IAP award for towards legal fees.

39. The Implementation Order provided that all legal fees charged by legal counsel to claimants pursuing claims through the IAP shall not exceed 30% of compensation awarded to the claimant. This 30% cap was inclusive of and not in addition to Canada's 15% contribution to legal fees, but exclusive of GST and any other applicable taxes. The 30% cap was also exclusive of Canada's contribution to disbursements. In fact, Chief Justice Brenner in his Reasons supporting the Approval Order stated that the 30% would be only for the most complex cases.

40. In the implementation of the IAP, a number of issues came to light that required direction from the Supervising Judges overseeing the IRSSA. Due to the nature of this process, IAP Claimants were strongly recommended to retain legal counsel to advance their claims within the IAP. Unfortunately, this led to some instances of questionable practices by legal counsel and agencies used to support the IAP claimants, who were vulnerable in this process. Below are examples where claimants were treated unfairly in the compensation process.

Form Fillers

41. Some lawyers engaged the services of Form Fillers to connect with potential IAP Claimants. These Form Fillers would hold information sessions in First Nation communities or other locations and would complete the IAP Application on behalf of law firms.

42. In 2012, the Chief Adjudicator of the IAP outlined alleged improper conduct in relation to Form Fillers. This conducted included charging duplicative fees, improper strategies to collect fees, manipulating IAP Claimants for payment, and inappropriate strategies by legal counsel to assist Form Fillers in collecting their fees.

43. In June 2014, an Order was issued by the Manitoba Supervising Judge, the Honourable Justice Schulman, that all "service contracts", "assignment agreements", "directions to pay" and other agreements or contracts requiring IAP claimants to pay contingency fees or to pay fees to Form Fillers or Form Filling

Agencies were null and void. Attached hereto to as **Exhibit "F"** to my Affidavit is a copy of the Order of the Honourable Justice P. Schulman, June 4, 2014.

44. Many former students of the residential schools were hiring lawyers for the first time under the IAP model and did not necessarily understand complex legal language in retainer and other agreements, which left the possibility of being taken advantage of through aggressive recruiting techniques. Moreover, the poverty of many former students made them vulnerable to unscrupulous moneylenders and other predators, which is why the IRSSA prohibited assignments of compensation awards from the IAP under s. 18.01 of the IRSSA.

Misapplication of the IAP Compensation Rules

45. As earlier stated, the IAP model was intended to be a streamlined and non-adversarial process, however some IAP Claimants experienced a stringent adversarial process where they were denied compensation as a result of the Adjudicator's misapplication of compensation rules. The IAP model used the civil burden of proof, "balance of probabilities," not the criminal standard of proof required for prosecution in a court of law.

46. The Supreme Court of Canada (SCC) recently issued a decision regarding the legal standards adjudicators in the IAP ought to consider in reviewing claims for abuse in *J.W. v. Canada (Attorney General)*, 2019 SCC 20.

47. In this case, J.W., an IAP claimant, was wrongly denied compensation for abuse suffered at an Indian Residential School due to an Adjudicator's misapplication of criminal law standards. At issue were some Adjudicators require IAP Claimants to prove the motive or sexual intent of a perpetrator in assessing claims under category SL1.4 of the IAP Compensation Rules (lower end of sexual assaults, sexual touching, etc). This is a higher standard than those used under criminal law.

48. The majority of the SCC held the initial Adjudicator's decision constituted an unauthorized modification of the IAP. By inserting the word "sexual" before the compensation model clause ("touching of a student, including touching with an object, by an adult employee") and by adding a requirement that claimants prove the perpetrator's sexual intent were inconsistent with the IAP.

49. These errors were compounded by the Adjudicator's misinterpretation of the criminal case law with respect to sexual assault, which contributed to an unauthorized modification of the IAP. The SCC has clarified criteria to be used by Adjudicators, namely that touching by an employee need not be sexual in nature, and the intent of perpetrator is irrelevant. The Court reinstated an award for compensation for the IAP Claimant.

50. This decision highlights a significant issue that affected a number of IAP Claimants that were denied compensation, as a result of Adjudicator's misapplication of the IAP Compensation Rules.

Document Disclosure

51. The success of the IAP required the full cooperation from all parties of the IRSSA in order for the process to be fair and reasonable for claimants. However, the disclosure of documents to support the IAP process was a problem in facilitating this compensation scheme.

52. As part of the process, Canada agreed to gather information, including documents mentioning sexual abuse, and disclose all such relevant information in the course of an IAP hearing.

53. Moreover, Canada was also tasked with the following, as stated in Section D of the IRSSA:

> The government will also search for, collect and provide a report about the persons named in the Application Form as having abused the Claimant, including information about those persons' jobs at the residential school and the dates they

worked or were there, as well as any allegations of physical or sexual abuse committed by such persons, where such allegations were made while the person was an employee or student.

54. Schedule D, Appendix VIII, required Canada to gather these documents and blackout information about other students or other persons named in the documents (other than the alleged perpetrators of abuse) to protect personal information as required by the *Privacy Act*.

Canada's disclosure obligations were at issue with respect to the St. Anne's Indian Residential School, as it was subject to four Requests for Direction from the Courts from 2013 to 2015. At issue was Canada's failure to disclose and produce highly relevant and prejudicial criminal and civil court records relating to abuse at St. Anne's.

55. The 2008 School Narrative produced by Canada and used in IAP hearings incorrectly stated that only four incidents of physical abuse comprised all known identifiable complaints and/or allegations received by government officials. On January 14, 2014, the Ontario Superior Court of Justice made Order for Canada to produce the abovementioned documents, which is attached hereto as **Exhibit "G"**.

56. In August 2014, the federal government produced about 12,300 additional documents detailing abuse at St. Anne's through police, crown and civil court records that had been in the possession of Department of Justice lawyers and lawyers for the Catholic Church since 2003. These documents were not organized or complied in any useful way. The Eastern Supervising Judge made a further order in June 2015 requiring Canada to provide a more complete school narrative report that accurately summarizes abuses that occurred at St. Anne's. Attached hereto as **Exhibit "H"** is a copy of an Order issued by Justice Perell.

57. The federal government full compliance of proper disclosure for St. Anne's IRS did not occur until November 1, 2015.

Administrative Split

58. The IRSSA included a list of all Indian Residential Schools that would be covered under the Settlement Agreement. This list was negotiated and agreed to by all the Parties to the IRSSA.

59. Beginning in 2010, Department of Justice lawyers began arguing that classrooms were removed from the direct control of those who managed the residence part of an Indian Residential School. They argued that an 'administrative split' between classrooms and the residential area of an institution resulted in these classrooms ceasing to be "residential schools".

60. At issue in the administrative split cases were IAP claimants being denied compensation because certain Indian Residential Schools had been characterized as Day Schools. The administrative split cases may more properly be called "Years of Operation" or "Facets of Operation" cases.

61. Years of Operation cases are cases in which the Adjudicator was called upon to determine whether an institution, listed as an IRS in the IRSSA was or remained part of that listed institution for purposes of the IRSSA.

62. Facets of Operation cases are cases in which part of the facility operated under the direction of the Indian Residential Schools, opposed to those areas that where under the control of a third party.

63. IAP claimants were unable to obtain compensation for abuse they suffered while attending an Indian Residential School. For example, if a former student was abused by a teacher employed by the federal government in the residence building, they could receive compensation. However, if the same student was abused by the same perpetrator in a school classroom a few steps away, they would be denied compensation.

64. In the January 27, 2015 decision of the Alberta Court of Queen's Bench, Justice Nation refused to interfere with an Adjudicator's conclusion that the Grouard Indian Residential School ceased to operate as an Indian Residential School after December 1957. The Court held that IAP Adjudicators had the jurisdiction under the IRSSA to determine whether an institution was operated as an Indian Residential School during the time when a claimant sought compensation.

65. In 2016, Canada initiated a review of all administrative split hearings and the Chief Adjudicator of the IAP issued a direction that all administrative split hearings be adjourned until the review was complete.

66. In February 2017, Canada released their review, "Report on the issue of 'Administrative Split' in the Independent Assessment Process of the Indian Residential Schools Settlement Agreement". a copy of which is attached hereto as **Exhibit "I"** to my Affidavit.

67. I make this affidavit in support of the relief requested herein and to assist the Court the Court regarding the compensation for children in care. As with the residential school students, every child would have been impacted by the taking from their home and not having the same benefit as a non-Indigenous child. The impact would be felt whether they were gone for a short period or a long period of time and, as with the CEP, it is applicable to every child.

SWORN BEFORE ME in the City)
Of Vancouver, in the Province of)
Vancouver, this 8th day of)
November,2019.)
)
)
)
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Peter R. Grant

Commissioner for Taking Affidavits in the
Province of British Columbia

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THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF Peter Grant
SWORN BEFORE ME AT Vancouver
THIS 8 DAY OF November, 2019

A Commissioner for taking Affidavits within
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INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT

CANADA, as represented by the Honourable
Frank Iacobucci

-and-

PLAINTIFFS, as represented by the National Consortium, the
Merchant Law Group and Independent Counsel

-and-

THE ASSEMBLY OF FIRST NATIONS and INUIT REPRESENTATIVES

-and-

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA,
THE PRESBYTERIAN CHURCH IN CANADA,
THE UNITED CHURCH OF CANADA AND
ROMAN CATHOLIC ENTITIES

NATIONAL ADMINISTRATION COMMITTEE

Report to the Supervising Courts Pursuant to the April 18, 2018 Direction and December 21, 2018 Supplemental Direction of Justice Brown and Justice Perell

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Appendix P Administrative Judges Response to Request for Guidance by the National Administration Committee (December 1, 2008)

Schedules

Schedule 1 Perspective of the Assembly of First Nations

Schedule 2 Perspective of the Inuit Representatives

LIST OF ACRONYMS AND NAMES

ADR	Alternative Dispute Resolution process that predated the Settlement Agreement
AFN	Assembly of First Nations, a party to the Agreement and a member of NAC
AFN Report	A document produced by the AFN and the University of Calgary task force prior to the negotiation of the Agreement
AIP	The Agreement in Principle executed on November 20, 2005
CARS	Computer Assisted Research System, developed for and used to assist in eligibility determination of Common Experience Payment
CBA	Canadian Bar Association
CEP	Common Experience Payment
Consortium	National Consortium, a party to the Agreement and a member of the NAC
Court Counsel	Legal counsel appointed by the first administrative judges, initially the late Randy Bennet and subsequently Brian Gover
Crawford	Crawford Class Action Services
DAF	Designated Amount Fund of which Canada is the trustee
DNQ	Files held by Blott law firm which he concluded did not qualify for IAP claims
IAP	Independent Assessment Process, an adjudicative process established by the Agreement under the guidance of the Oversight Committee
IEF	Inuvialuit Education Foundation
Independent Counsel	Independent claimants' counsel, a party to the Agreement and member of NAC
INAC	Indian and Northern Affairs Canada

Inuit Representatives	Means Inuvialuit Regional Corporation, Makivik Corporation and Nunavut Tunngavik Inc., a party to the Agreement and a member of NAC
IRSSA	Indian Residential Schools Settlement Agreement, also referred to as the Agreement and the Settlement Agreement
IRSRC	Indian Residential Schools Resolution Canada, the Department of Canada validating CEP applications
LAC	Library and Archives Canada
MLG	Merchant Law Group, a party to the Agreement and a member of the NAC
NAC	National Administration Committee, comprised of Canada, Churches, AFN, Inuit Representatives, National Consortium, Independent Counsel and Merchant Law Group
NCC	National Certification Committee, which operated prior to the NAC to obtain court approval of the Agreement
NCTR	National Centre for Truth and Reconciliation
NIBTF	National Indian Brotherhood Trust Fund
Oversight Committee	Established by the Agreement to oversee the implementation of the IAP
RACs	Regional Administration Committees
RCAP	Royal Commission on Aboriginal Peoples
Reconsideration	First stage of review for a CEP claim
SADRE	Single Access Dispute Resolution Enterprise, a database for assistance in the determination of CEP claims
SCC	Supreme Court of Canada
Service Canada	Department of Canada responsible for intake and identification of CEP applicants
SOS	Student-on-student abuse claims

INTRODUCTION

1. The National Administration Committee (NAC) of the Indian Residential Schools (IRS) Settlement Agreement (IRSSA or Settlement Agreement) hereby reports to the supervising courts on the Committee's activities to fulfill its role and responsibilities in the implementation of the Agreement in accordance with the Direction dated April 18, 2018 and Supplemental Direction dated December 21, 2018 from the Administrative Judges.

2. This report, which represents the consensus of the NAC members respecting their work, will begin by describing the origins of the Settlement Agreement, and the NAC. It will then turn to a detailed description of the activities of the NAC in carrying out its responsibilities and implementing and advancing the objectives of the Agreement. Schedules 1 and 2 hereto contain the perspective of the Assembly of First Nations (AFN) and Inuit Representatives respectively, regarding the points of view they advanced in the negotiation and implementation of the IRSSA. Schedules 1 and 2 were generated during the creation of the NAC Final Report and reflects only the views of the identified NAC party. They are not necessarily shared by other members of the NAC and, therefore, do not form part of this report. To be clear, these perspectives are not the perspective of the NAC. However, the AFN, Inuit Representatives and some NAC members view these perspectives as important to understand the perspectives that the AFN and Inuit Representative NAC members brought to their task.

3. The NAC is comprised of representatives of the seven major parties to the Settlement Agreement: Canada, the AFN, the Inuit Representatives, the Church Organizations (who were allowed two representatives sharing a single vote), the National Consortium, Merchant Law Group, and Independent Counsel. These stakeholders emerged as the key representatives in the negotiation of the IRSSA, and were designated to constitute the membership of the Committee tasked with administering the Settlement Agreement. The NAC became active upon the implementation of the IRSSA in

September 2007 and has continued its work to the present. Its current membership is as follows:

Independent Counsel:	Peter Grant (Chair)
Canada:	Catherine Coughlan
Assembly of First Nations:	Kathleen Mahoney
Inuit Representatives:	Hugo Prud'homme
Church Organizations:	Alex Pettingill - Protestant organizations
	Michel Thibault - Catholic organizations
Merchant Law Group:	Tony Merchant/Jane Ann Summers
National Consortium:	Jon Faulds

4. Throughout its existence the NAC has been comprised of persons who were directly involved in the negotiation of the IRSSA and has experienced a remarkable consistency of membership. The representatives for AFN, Merchant Law Group, Canada, the Protestant Churches and Independent Counsel remained the same throughout the entire eleven years of the NAC. There was only one change for the Inuit Representatives, the National Consortium, and the Catholic Church and the replacement representatives had also been involved in the negotiation of the IRSSA. Each of the parties determined who would sit on the NAC on behalf of their respective group. The NAC wishes to recognize the work of William Roderick (Rod) Donlevy Q.C. who was critically involved in the work of the NAC as the Catholic Church representative right up to just before his death on December 25, 2014.

5. There have been three chairs of the NAC. From October 2007 until September 2009, Alan Farrer (National Consortium) was the chair of the NAC. From October 2009 until June 2011, Gilles Gagné (Inuit Representatives) was the chair. From August 2011 until present, Peter Grant (Independent Counsel) has served as chair with Jon Faulds as the alternate chair.

6. Although none of the NAC members are residential school survivors, the majority of the NAC members had the honour of representing survivors or Aboriginal organizations that advocate for them, and learned directly from them of the horrific impact of Indian residential schools.

7. The Settlement Agreement, which then AFN National Chief, Phil Fontaine, described as "an agreement for the ages" sought to make amends for the residential school experience and reflected the desire of all parties for a fair, comprehensive, and lasting resolution of the legacy of Indian residential schools. In keeping with the magnitude of the issue it addressed, the Agreement was and remains the largest class action settlement in Canada's history. Reflecting its goal of promoting healing, education, truth and reconciliation, and commemoration, it established a Truth and Reconciliation Commission, endowed the Aboriginal Healing Foundation to support healing programs addressing the residential school legacy and provided funding for commemoration of that legacy.

8. The breadth of the IRSSA reflects the extent of the commitment by Canada and the Church Organizations to the resolution of the residential school legacy. That resolution has been an historic and transformational milestone in the relationship between Canada's Indigenous and non-Indigenous peoples, as the nature and effects of residential schools became better known and understood. All the members of the NAC consider themselves fortunate to have had the opportunity to make some contribution to the national project of reconciliation through their role in the implementation of the Settlement Agreement.

Genesis of the Indian Residential Schools Settlement Agreement

A. Litigation Against the Crown

9. The Settlement Agreement was the culmination of at least two decades of political, social and legal advocacy by and on behalf of Indigenous Canadians[1] whose lives had been impacted by the experience and legacy of the Indian residential school system.

10. In the last two decades of the 20th century, as the last residential schools in Canada closed, Indigenous leaders and survivors began speaking out about the residential school experience. They spoke of the origin of the schools in the desire of churches

[1] Indigenous and Aboriginal are used interchangeably.

and government to convert and assimilate Canada's first peoples by separating children from their family, home, community, and culture. They spoke of the impoverished and regimented life those children experienced at the schools, of the poor quality of education provided, of the sexual, physical and emotional abuse which many children suffered at the hands of those whose duty it was to teach, guide, and care for them, and of the pain and damage which these experiences had caused to the individuals who had attended the schools and to the fabric of their families, communities, and nations.[2] As these voices multiplied, non-Indigenous Canadians began to learn about residential schools, the existence and nature of which had previously been largely unknown. The issue received national attention in October, 1990, when Phil Fontaine, then Grand Chief of the Assembly of Manitoba Chiefs, appeared on national television to speak about the abuse he and fellow students had experienced at the Fort Alexander Indian Residential School and he called for an inquiry.[3] Meanwhile, the first litigation arising from abuse at Indian residential schools had been commenced, in 1988.

11. The 1996 release of the Report of the Royal Commission on Aboriginal Peoples (RCAP)[4] focused further attention on the residential schools legacy. In a lengthy chapter based largely on government and church records, the report painted a dismal picture of a system conceived in 19th century stereotypes, fueled by the evangelizing agenda of church organizations, administered without adequate resources or properly trained staff, dedicated to the eradication of Indigenous language and culture and the assimilation of Aboriginal people into the dominant European culture, and rife with neglect, mistreatment, and abuse of children[5]. The RCAP report recommended a public inquiry into the residential school system, with the power to recommend remedial action

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[2] See Miller, J.R. (James Roger), Shingwauk's Vision: A History of Native Residential Schools, University of Toronto Press, 1996; and Milloy, John S., A National Crime: The Canadian Government and the Residential School System 1879 to 1986, The University of Manitoba Press, 1999.
[3] CBC Digital Archives, Phil Fontaine's Shocking Testimony of Physical and Sexual Abuse https://www.cbc.ca/archives/entry/phil-fontaines-shocking-testimony-of-sexual-abuse
[4] Report of the Royal Commission on Aboriginal Peoples, *Indigenous and Northern Affairs Canada* https://www.aadnc-aandc.gc.ca/eng/1100100014597/1100100014637
[5] Ibid, Volume 1, Part 2, chapter 10 p. 309.

including apologies, compensation, and funding for healing. The Commission also called for the creation of a national archive of records related to residential schools and the creation of public education programs and school curricula that explain the history and effects of residential schools.[6]

12. As criticisms of the residential school system mounted and public awareness of the residential school legacy grew, several organizations issued apologies or statements of regret for their involvement. These included the Oblate Conference of Canada (1991), the Anglican Church of Canada (1993), the Presbyterian Church in Canada (1994) and the United Church of Canada (1998).[7] In 1998 the Government of Canada issued its Statement of Reconciliation to Canada's Aboriginal peoples.[8] The Statement expressed "profound regret" for Canada's role in the development and administration of residential schools and conveyed to survivors of physical and sexual abuse at the schools that Canada was "deeply sorry" for the tragedy they had experienced. Canada also committed $350 million for community-based healing programs and services "to deal with the legacy of physical and sexual abuse at residential schools." [9]

13. At the same time, survivors began to seek compensation through the legal system for harms they had experienced at residential schools. The first such claims seeking damages for sexual abuse were filed in British Columbia in 1988[10] with claimants in other parts of Canada following suit. The first proposed class proceeding, on behalf of former students of the Mohawk Institute residential school (the *Cloud* case),[11] was filed in 1998. That same year the late Chief Justice Brenner of the B.C. Supreme Court ruled

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[6] Ibid, pages 366-367; Volume 3, chapters 3 and 4.
[7] The apologies are available at: https://guides.library.utoronto.ca/c.php?g=527189&p=3698521
[8] The statement is available at: https://www.aadnc-aandc.gc.ca/eng/1100100015725/1100100015726
[9] Address by the Hon. Jane Stewart on the Unveiling of Gathering Strength, Canada's Aboriginal Action Plan, *Indigenous and Northern Affairs Canada*, available at: https://www.aadnc-aandc.gc.ca/eng/1100100015725/1100100015726
[10] *Aleck v. Clarke*, 1999 CanLII 15172 (BC SC), available at: https://www.canlii.org/en/bc/bcsc/doc/1999/1999canlii15172/1999canlii15172.html?autocompleteStr=aleck%20v%20clarke&autocompletePos=1
[11] *Cloud v. Canada (Attorney General)*, 2004 CanLII 45444 (ON CA), available at: https://www.canlii.org/en/on/onca/doc/2004/2004canlii45444/2004canlii45444.html?autocompleteStr=Cloud&autocompletePos=1

in the landmark *Blackwater* decision[12] that both Canada and the church organizations were jointly and severally vicariously liable for abuse in the schools, with the government 75% responsible and the church organizations 25%. With that decision litigation spread across Canada.

14. As the volume of legal actions increased, the nature of the claims evolved. While earlier claims focused on allegations of sexual abuse, newer claims also alleged that the removal of plaintiffs from their homes to be placed in the schools where they were subjected to the objectives and circumstances of the residential school system was wrongful in itself and was legally compensable. Reflecting this view, in 2000 a class action on behalf of all residential school students across Canada was commenced.[13] As a result, Canada faced the prospect of a claim on behalf of any person who had attended a residential school.

15. As the volume of court actions continued to grow three main groups of claimant's counsel emerged. These were:

- The National Consortium. It comprised more than 20 law firms from across the country advancing both individual and class claims (including the *Cloud* and *Baxter* class actions) and pursued a coordinated approach to both litigation and negotiation. In addition to pursuing litigation claims through the courts, the Consortium engaged in preliminary discussions with Canada and the church organizations respecting the possibility of a comprehensive resolution of claims and worked with the AFN to pursue mutual goals.

- Merchant Law Group (MLG). Based in Saskatchewan, with offices across Canada, MLG represented the largest number of individual claimants of any single law firm in the country. MLG pursued a variety of those claims to trial,

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[12] *Blackwater v Plint* [2005] 3 S.C.R. 3, [2005] SCC 58, available at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2239/index.do

[13] *Baxter v. Canada (Attorney General)*, 2006 CanLII 41673 (ON SC),available at: https://www.canlii.org/en/on/onsc/doc/2006/2006canlii41673/2006canlii41673.html?autocompleteStr=Baxter%20&autocompletePos=2

including the case of *H.L.* which was ultimately determined in the Supreme Court of Canada in April, 2005.[14] In that case the SCC upheld the trial judge's finding that the claimant's alcoholism and its impact on his past earnings were causally related to the sexual abuse he had suffered at residential school.

- Independent Counsel. This group originated in B.C. and included individual counsel who had been involved in the earliest residential school abuse claims, of which the trial in the *Blackwater* case was the most notable. *Blackwater* was also ultimately decided by the Supreme Court of Canada which confirmed the trial decision that both Canada and the church organizations were jointly vicariously liable for abuse committed by school staff. From B.C. the group extended across Canada to include counsel in the prairie provinces, Ontario and Québec, and coalesced into an organized group of 23 law firms in 2005. Unlike the National Consortium and Merchant Law Group, Independent Counsel represented individual claimants only and did not initiate class proceedings.

16. The AFN commenced class proceedings in 2005 in order to set out their claims for the residential school harms as well as to secure legal status to appear before the courts and secure a place at the negotiating table.[15]

17. The Inuit Representatives also initiated class actions in 2005 in the Northwest Territories,[16] Nunavut,[17] and Québec,[18] to protect the interest of Inuit former students and their families.

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[14] *H.L. v Canada*, 2005 SCC 25, online at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2226/index.do

[15] To see the AFN's statement of claim go to *Fontaine et al v Canada (Attorney General)* (5 August 2005), Toronto 05-CV-294716 CP (ONSC) (Statement of Claim), online at: https://kathleenmahoney.files.wordpress.com/2018/04/afn-issued-statement-of-claim_2005.pdf
The AFN made their claim on behalf of 4 classes of people - survivors, deceased survivors, families of survivors and aboriginal peoples generally. For the four classes they claimed compensation for cultural, linguistic and social damage, social and educational programs, healing initiatives, counselling, commemoration and truth and reconciliation hearings as well as compensation for sexual, physical and emotional abuse.

[16] IRC organized the class action titled *Rosemarie Kuptana v. the Attorney General of Canada*, Supreme Court of the Northwest Territories, File # S-0001-2005000243.

[17] *Michelline Ammaq, Blandina Tulugarjuk and Nunavut Tunngavik Incorporated v. Attorney General of Canada*, Nunavut Court of Justice Court, File # 08-05-401 CVC.

[18] Makivik sponsored a legal action filed on behalf of some Nunavik Inuit former students in the Superior Court District of Montréal, File # 500-17-026908-056.

B. Dialogue Process (1998-1999)

18. Canada's response to this tide of litigation focused at first on community-based initiatives to address the aftermath of physical and sexual abuse at residential schools. In 1998 and 1999, with the help of an independent facilitator, Canada convened a series of exploratory dialogues across the country. Survivors, Aboriginal leaders including AFN representatives, healers and other experts, senior government, church representatives, and legal counsel participated in the dialogues to consider alternatives to the court process in addressing abuse claims. Key findings arising from the process were that survivors wanted a holistic approach which would include healing from the injuries caused by residential schools, an opportunity to tell their stories and be believed and respected, an apology, and fair and just compensation. Survivors also expressed the need to address intergenerational harms, to rebuild damaged relationships, to restore lost language and culture, and to commemorate survivors who had died.

19. As a result of those dialogues a dozen community-based "pilot projects" aimed at achieving a collective and holistic resolution of residential school abuse claims were attempted. Some of the projects resulted in settlement but most were unsuccessful for various reasons, including the fact that only a narrow range of abuse claims would be compensated and the absence of any provision for collective remedies such as community healing, intergenerational harms, commemoration, or a truth commission. Ultimately this community-based approach to resolving claims was not pursued on a larger scale. However, the principles underlying the dialogues, including emphasis on story-telling and healing in addition to financial compensation, continued to inform the process of pursuing resolution.

C. Alternative Dispute Resolution (ADR) Process (2002-2006)

20. In 2002, Canada instituted an alternative dispute resolution process for residential school abuse claims. The ADR provided former students the option to pursue their claims individually outside the courts, before an adjudicator authorized to award

compensation in accordance with a predetermined schedule of wrongs and levels of harm. This program resulted in a number of settlements but it was criticized for being too cumbersome, providing compensation that was too limited, discriminating between claimants, and being gender biased.[19] Moreover, the ADR was only a partial alternative to litigation as it was limited to personal abuse claims. It did not address the needs of survivors to heal, intergenerational harms, or commemorate the dead.[20] Actions based on the claim that being placed in a residential school was itself wrongful and for the common experience of all survivors in being separated from their family, home, community, languages and culture remained unaddressed. Based upon its view of the law at the time, Canada was unwilling to consider the negotiation or settlement of such claims, leaving recourse through the courts the only option.

21. Ultimately, the Parliamentary Committee on Aboriginal Affairs conducted hearings to evaluate the ADR in February, 2005.[21] Claimants, legal counsel, including members of the National Consortium and Independent Counsel, survivor groups, and the AFN gave evidence. In addition to hearing survivors speak of horrific experiences at residential schools, the Committee heard how the ADR did not recognize or compensate many of those experiences. In one example, the Committee heard how Canada spent $28,000 appealing an award of $1,500 on the grounds the award fell outside the scope of the ADR. The Committee released its report in April, 2005, finding the ADR to be "an excessively costly and inappropriately applied failure, for which the Minister and her officials are unable to raise a convincing defense."[22]

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[19] These criticisms are set out in detail in Assembly of First Nations, *Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools*, available online at: https://kathleenmahoney.files.wordpress.com/2018/03/afn-report-indian_residential_schools_report.pdf
The AFN Report points out that besides being subject to a cap on awards, compensation varied among provinces, and with the church denomination involved in the claimant's school. Some church denominations contributed to the ADR while others did not, with the result that claimants from schools whose church did not contribute received only 70% of the assessed award. Claimants from BC, Ontario or the Yukon could receive up to $50,000 more for the same injuries than survivors who lived in other provincial jurisdictions because case law in those provinces had determined a higher level of compensation than the other provinces.

[20] Ibid.

[21] House of Commons Standing Committee on Aboriginal Affairs and Northern Development 4th Report http://www.ourcommons.ca/DocumentViewer/en/38-1/AANO/report-4

[22] Ibid.

D. AFN and CBA Reports (2004-2006)

22. In March 2004 the AFN and the University of Calgary[23] convened a national conference including experts in a wide range of relevant fields, survivors, Indigenous leaders, legal counsel and government officials to examine how the residential school legacy could be addressed. Virtually all in attendance agreed that the ADR was inadequate to achieve the goals of reconciliation or a just and fair settlement for residential school survivors. The conference concluded with a proposal by National Chief Phil Fontaine that the AFN and the University of Calgary convene a task force that would bring forward recommendations to improve the ADR as well as address needs of survivors that would meet with their acceptance. Canada agreed and provided the necessary funds for the task force to commence work.

23. As the task force met, the concept of universal compensation for former residential school students received an endorsement from the Canadian Bar Association (CBA). At its annual national meeting the CBA approved a resolution calling on Canada to go beyond its existing settlement programs and provide a base payment to all residential school survivors.[24]

24. The task force issued its report in November 2004[25], known as the AFN Report. The report noted certain positive aspects of the ADR, including its use of an out of court process to settle claims, Canada's contribution to a claimant's legal fees and the provision of a commemoration fund. However, the AFN Report criticized the limited scope of wrongs addressed by the ADR and made detailed recommendations to remedy the discrimination described above, remove the "standards of the day"

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[23] The conference was co-chaired by the National Chief Phil Fontaine and law Professor Kathleen Mahoney from the University of Calgary Faculty of Law. The title of the conference was Residential Schools Legacy: Is Reconciliation Possible? March 12, 13, 14, 2004. To see the conference program go to https://kathleenmahoney.files.wordpress.com/2019/03/2004-residential-school-legacy-conference-agenda.pdf

[24] Certified true copy of a resolution carried by the Council of the Canadian Bar Association at the Annual Meeting held in Winnipeg, MB, August 14-15, 2004, online at: http://www.cba.org/getattachment/Our-Work/Resolutions/Resolutions/2004/Portee-du-mecanisme-de-resolution-des-conflits-rel/04-08-A.pdf

[25] The Assembly of First Nations *Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools*, *supra* note 19.

defenses, allow compensation for loss of income claims, remove limits of time and place for third party abuse and simplify the process.

25. The AFN Report proposed that in addition to an improved process for assessing abuse claims there be a lump sum payment to all residential school survivors for their shared experience of being removed from their families and communities and having their language and culture suppressed. The AFN Report suggested that the lump-sum payment include a base amount of $10,000, with a further sum of $3,000 for each year spent at a residential school. The AFN Report also proposed a truth and reconciliation initiative and other measures to address the principles that had emerged from the exploratory dialogues and task force including health, commemoration, healing and intergenerational harms and special considerations for the elderly.[26]

26. In February 2005, the CBA followed up on its earlier resolution with its own report in support of universal compensation. Citing RCAP and endorsing the AFN Report, the CBA proposed a reconciliation payment that "would not require a person to prove that he or she was a victim, but rather would recognize a person as a survivor of an injurious program for which the government of Canada is responsible."[27]

E. Increased Litigation Pressure

27. Developments in the courts added pressure for a comprehensive resolution.[28] By 2005 the volume of individual claims filed had grown to more than 10,000, threatening to

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[26] AFN Report, *supra* note 19, pages 14-31, 36-38. The AFN conducted a nation-wide process to consult with survivors as to what they wanted and needed in a settlement agreement. The consultations revealed that the priorities of the survivors were a truth commission, healing, commemoration and apologies. Compensation was a lesser priority.

[27] Canadian Bar Association, The Logical Next Step, Reconciliation Payments for All Residential School Survivors, available online at: https://www.cba.org/CMSPages/GetFile.aspx?guid=0ca77877-f121-4109-ae19-3332eecfa42a

[28] The Treasury Board of Canada estimated that it would take 53 years to conclude residential school court cases, estimated to be 18,000 in number. The cost was estimated to be $2.3 billion in 2002 dollars not including the value of the actual settlement costs. See Treasury Board of Canada Secretariat 2003, Indian Residential Schools Resolution Canada, Performance Report for the Period ending March 31, 2003, available online at: http://publications.gc.ca/site/eng/246476/publication.html

swamp the courts.[29] In November 2004 the Ontario Court of Appeal (ONCA) certified the *Cloud* [30]case as a class proceeding, overturning decisions in the lower courts that had found the case unsuitable to go forward as a class action. The ONCA rejected Canada's argument that the ADR was a preferable procedure for dealing with the claims, noting that it had been created unilaterally and could be terminated the same way, that it was limited to abuse claims only, and that it placed a cap on the amount of possible recovery. Canada sought leave to appeal the *Cloud* ruling to the Supreme Court of Canada, but their application was denied.

28. In the wake of the *Cloud* decision, counsel for the *Baxter* national class action moved to schedule a certification application for that claim, raising the specter of a class proceeding on behalf of all residential school students across Canada. In Alberta, a test case on behalf of a representative group of Plaintiffs was set down for trial commencing in September 2005. That test case trial would address the claim that being placed in a residential school was wrongful in itself, providing the first opportunity for a court to pronounce on the legal basis for the universal claim.

F. Political Agreement

29. Throughout the first half of 2005 the AFN engaged in intensive discussions with representatives of Canada, including at the highest levels, to advance its Report.[31] Legal counsel for the claimants also continued to pursue discussions with Canada aimed at achieving a comprehensive resolution to the litigation, while continuing to advance their claims in court.[32] As noted above, in February 2005, the Parliamentary Committee on Aboriginal Affairs took up the issue of Canada's ADR's program and

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[29] McMahon J noted in 2006 there were 10,538 active litigation files and another 5,000 claims being advanced under Canada's ADR program, *Northwest v. Canada (Attorney General)*, 2006 ABQB 902 at paras. 3 and 4.
[30] *Cloud v. Canada (Attorney General)*, 2004 CanLII 45444 (ON CA), http://canlii.ca/t/1jd1b
[31] See Mia Rabson, "Fontaine Recalls When Former PM Martin Agreed to Address Residential Schools Legacy", *Winnipeg Free Press* (2 June 2015), online: https://www.winnipegfreepress.com/special/trc/Fontaine-recalls-when-former-PM-Martin-agreed-to-address-residential-schools-legacy-305901261.html.
[32] For a history of this period see K. Mahoney, The Settlement Process: A Personal Reflection *(2014) 64U LJ 508.* https://www.utpjournals.press/doi/abs/10.3138/utlj.2485

concluded it was a failure. Three months later, the SCC ruled it would not hear Canada's appeal from the certification of the *Cloud* case as a class action.

30. Shortly after the SCC ruling the ongoing discussions between Canada and the AFN bore fruit. On May 30, 2005, it was announced that a Political Agreement had been reached between Canada and the AFN to address the residential school legacy. That Agreement recognized "the need to develop a new approach to achieve reconciliation on the basis of the AFN Report." As a first step Canada committed to appoint former Supreme Court of Canada Justice Frank Iacobucci as its representative:

> to negotiate with Plaintiffs' counsel, and work and consult with the Assembly of First Nations and counsel for the churches, in order to recommend...a settlement package that will address payment for all former students of Indian residential schools, a truth and reconciliation process, community based healing, commemoration, an appropriate ADR process that will address serious abuse, as well as legal fees.[33]

G. Agreement in Principle

31. As a result of the appointment of Justice Iacobucci, most residential school litigation was put on hold. Following preliminary discussions negotiations commenced in July 2005 and continued intensively at various locations across the country over a period of five months. The negotiations led by Justice Iacobucci on behalf of Canada involved the AFN and three Inuit organizations, legal counsel for Plaintiffs, and representatives of the United, Anglican, Presbyterian, and Catholic churches. In short, all parties represented on the NAC participated in those negotiations. They were conducted at two main "tables", one of which addressed compensation for residential school survivors and the other healing, commemoration and a truth and reconciliation process.[34] Working groups were struck to focus on modifications to the ADR process and to address issues relating to legal fees. Canada and the church organizations met

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[33] To see the full Political Agreement between the Assembly of First Nations and Her Majesty the Queen in Right of Canada, represented by the Deputy Prime Minister Anne McLellan, 30 May 2005, see Appendix A of this report. The Political Agreement is also available online at: https://web.archive.org/web/20070319141417/http://www.afn.ca/cmslib/general/IRS-Accord.pdf

[34] The first table included all the parties to the Settlement Agreement. The second table involved only the AFN, Canada and the church representatives.

separately to negotiate the churches' contributions to the overall settlement. Although the Catholic church entities did not initially participate, they joined the negotiations in the late fall of 2005 as negotiations reached a critical juncture.

32. By November 2005 the Liberal minority government that had initiated the settlement negotiations was poised to fall. There was doubt as to the future of the negotiations if no agreement was reached before the government dissolved and an election was called. Spurred by this uncertainty, the parties engaged in a marathon bargaining session which resulted in an Agreement in Principle dated November 20, 2005 (AIP). The main pillars of that Agreement were:

> • a lump sum payment to all residential school survivors, referred to as the Common Experience Payment or CEP, for which the minimum sum of $1.9 billion was committed. The amount of the redress payment for each individual would be based upon the number of years spent in a residential school. Each eligible claimant would receive $10,000 for the first year or part thereof and $3,000 for each subsequent year or part thereof.
>
> • an improved ADR process to be called the Independent Assessment Process (IAP), which Canada agreed to fund to the extent necessary to pay all proven claims of physical and sexual abuse and other wrongful acts causing serious psychological harm;
>
> • funding for healing and commemoration programs and events;
>
> • the creation of a Truth and Reconciliation Commission whose mandate included hearing and preserving the statements of survivors, creating an historical record of the IRS system and its legacy, providing for the preservation of that record and making it available for research, and reporting and making recommendations concerning the IRS system and its ongoing effects and consequences.

33. The Agreement in Principle, at Appendix B of this report, contained detailed provisions regarding its implementation including the creation of a National Administration Committee to play a central role in its administration.

34. The NAC was comprised of a representative of each of the seven key stakeholders who had emerged in the course of negotiations. These were: the Assembly of First Nations and the Inuit Representatives, the National Consortium, Merchant Law Group

and Independent Counsel, being the three groups of legal counsel, the Catholic and Protestant Church organizations and Canada. As contemplated in the AIP, the NAC's mandate would be "to interpret the final settlement judgment and to consult with and provide input to Canada with respect to the Common Experience Payment" and its functions were to include ensuring national consistency with respect to the implementation of the settlement.

35. This Agreement in Principle was the foundation of the final Settlement Agreement.[35]

H. Settlement Agreement

36. The Agreement in Principle provided that its terms be incorporated into a formal Settlement Agreement. Discussions and negotiations on the terms of that agreement began in early 2006 resulting in the formal Settlement Agreement dated May 8, 2006.[36] The substantive elements of the AIP were incorporated in the Settlement Agreement with some changes. The most significant of these concerned the disposition of any surplus in the amount designated for the payment of the CEP. Under the AIP, any surplus above a minimum threshold would have been distributed to claimants, to a maximum of $3,000.00 each, for personal healing activities drawn from an approved list of healing programs. Any remaining surplus would be paid into the Aboriginal Healing Foundation.

37. Under the Settlement Agreement, the use of surplus shifted from healing to education. Any excess funds above the threshold were to be distributed in the form of personal credits redeemable for educational services, which could be assigned to descendants of recipients and used at any educational institution accredited by the parties. Any remaining surplus would be proportionately shared between the AFN's National Indian Brotherhood Trust Fund and the Inuvialuit Education Foundation to establish

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[35] The evolution of the Settlement Agreement was in three steps: the Political Agreement set out the framework, the Agreement in Principle expanded the framework to set out the explicit terms and the formal Settlement Agreement completed all of the provisions.

[36] Indigenous and Northern Affairs Canada, Indian Residential Schools Settlement Agreement, http://www.residentialschoolsettlement.ca/settlement.html [Settlement Agreement].

educational programs for the benefit of class members, including the intergenerational class.

38. With respect to the NAC, the Settlement Agreement confirmed its composition but expanded its mandate. In addition to the matters described in the AIP, the Settlement Agreement designated the NAC to hear appeals from eligible CEP recipients and to determine references to it from the Truth and Reconciliation Commission, as well as to exercise specified powers in relation to the Independent Assessment Process. As will be seen, the addition of an appellate role in relation to the CEP had significant impact on the functioning of the NAC.

39. The Settlement Agreement was intended to effect a binding resolution of all residential school claims and litigation, which could only be accomplished by way of a class action settlement approved by the Courts. Some parties expressed concern about the jurisdiction of any single Canadian court to approve such a settlement as the law then stood. In particular, the Federal Court lacked jurisdiction over the church organizations and the jurisdiction of the provincial superior courts over claimants in other provinces was insufficiently clear. As a result both the Agreement in Principle and the Settlement Agreement provided that the Settlement be approved in nine Canadian jurisdictions; six provinces and the three territories.

I. Approval Orders

40. To obtain court approval across the country a National Certification Committee (NCC) was established whose composition mirrored that of the NAC. It assumed primary responsibility for bringing the applications necessary to obtain the required approvals. A schedule for the nine hearings was established, beginning in Ontario before Regional Senior Judge Winkler (as he then was) at the end of August 2006. The hearings occurred over a span of almost two months with the first decision – that of Winkler RSJ – issuing in mid-December.[37] Winkler RSJ expressed conditional support for the

[37] *Baxter v Canada (Attorney General)* (2006), 83 OR. 481. http://www.classactionservices.ca/irs/phase2/PDFs/Ontario.pdf

settlement but had concerns about its administration, including the court's ability to properly supervise the settlement and the possibility of conflict between Canada's status as a defendant and its proposed role as administrator of the settlement.[38] He found that further administrative measures were required to mitigate this possible conflict and allow proper court supervision, including the appointment of a supervisor or supervisory board to act as the court's eyes and ears and report to the court on the implementation of the settlement. In their subsequent decisions, the other approval judges split between those who would have endorsed the settlement as is and those who echoed the concerns of Justice Winkler.

41. As a result of this divergence of views the approval judges convened a meeting with the parties to discuss how the concerns over settlement supervision and administration might be addressed. A further round of negotiations amongst the parties ensued resulting in agreement on how to resolve the issues identified by the courts. This agreement included provisions for the appointment of a Court Monitor with access to all relevant records and information on the implementation of the CEP and the IAP, who would report to the courts thereon. On the CEP side, Canada was also required to appoint a CEP Administrator who would report to the courts on the implementation and operation of the CEP at least quarterly. With respect to the IAP, courts approval would be required for the selection of the Chief Adjudicator, who in addition to his existing reporting requirements would also report directly to the courts no less than quarterly.

42. The Court Approval Orders also established a process for the review of legal fees charged to IAP claimants and a protocol for bringing issues concerning the settlement before the courts by means of a process called a Request for Directions. Finally, the courts directed the appointment of a court counsel who would assist the court in supervising the implementation of the IRSSA, and would act as the courts' liaison with the NAC. The first court counsel, Randy Bennett, attended virtually all NAC meetings during his tenure to which he brought his experience in the administration of other class

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[38] Ibid., para 8.

settlements. Mr. Bennett was of critical assistance to the NAC in implementing the IRSSA and addressing the early CEP appeals. All NAC members were greatly saddened by his untimely death on January 3, 2013. The Courts appointed Mr. Brian Gover to replace Mr. Bennett.

43. With the agreement of the parties to these additional measures, a joint hearing of the approving judges was held in March 2007 in Calgary, with all of the judges attending either in person or by teleconference. Orders approving the Settlement Agreement (the Approval Orders)[39] and Orders incorporating the additional provisions (the Implementation Orders)[40] were agreed to by all nine courts.

44. These Orders triggered the process for notifying the claimants of the settlement and providing those who wished to pursue their own individual claims as they saw fit the opportunity to opt out. It was a term of the Agreement that if more than 5000 class members opted out, the Settlement Agreement would be void. In fact, the opt-out rate was minimal.[41] There were no appeals from the Courts' orders and as a result, the Settlement Agreement took effect on September 19, 2007.

45. As with most settlement agreements, the IRSSA expressly provides that it should not be considered an admission of legal liability by the Defendants. Many of the plaintiffs' claims were novel in law, and there were a variety of potential defences available to the defendants including those based on limitations, standards of the day, and restrictions on Crown liability. However, Canada and the Church Organizations chose not to raise these defences for the purposes of the settlement negotiations, choosing instead to pursue broadly based resolution and reconciliation thus making the Settlement Agreement possible.

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[39] For a listing of the Court orders, see Court Judgments: http://www.classactionservices.ca/irs/library.htm
[40] Ibid.
[41] The opt out amount was less than 25 persons.

I. MANDATE OF THE NATIONAL ADMINISTRATION COMMITTEE

A. The Philosophical Foundation for the NAC

46. Like the Settlement Agreement itself, the National Administration Committee (NAC) is unique in the annals of Canadian class actions.[42] Typically, the implementation of a class action settlement or award is overseen by a neutral administrator under the supervision of the Court. In large multi-jurisdictional settlements involving government, a committee of plaintiffs' counsel may play a role. However, the creation of an administration committee representing all parties to the settlement, including the defendants and political organizations representing plaintiffs was unprecedented, as was the role of the NAC. It included interpretation of the Settlement Agreement, implementation of some of its key terms, acting as an appellate body on claims under the Agreement, dealing with issues referred to it by other entities created by the Agreement and ensuring the Settlement Agreement was implemented fairly and consistently across the country.

47. The impetus for an all-party NAC arose from the purpose of the settlement negotiations and the resulting Settlement Agreement. The aim of the negotiations was not simply to settle litigation claims but, in the words of the preamble to the Agreement, to achieve "a fair, comprehensive and lasting resolution of legacy of Indian Residential Schools" which would include "the promotion of healing, education, truth and reconciliation and commemoration". Throughout the negotiating process legal counsel for the parties to the litigation worked together with political organizations such as the AFN and Inuit Representatives to achieve that resolution. The resulting Settlement Agreement was complex and would take many years to fully implement. It required a forum where all the parties to the Settlement Agreement were represented to ensure they had a voice in deciding issues that would arise during that implementation process, and that the Agreement was implemented in the spirit of reconciliation. The NAC was established to fulfill that need.

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[42] The mandate of the NAC is set out in Article 4.11 of the Settlement Agreement. See Appendix C.

48. The nature and composition of the NAC reflected a carefully crafted balance of interests. The legal and political representatives of the Plaintiffs, who were the beneficiaries of the Settlement, held five of the seven seats on the NAC. Although the Church Organizations had both Catholic and Protestant representatives on the NAC, they collectively only had one vote.[43] Canada, held a single seat. The Settlement Agreement balanced the majority enjoyed by the Plaintiffs on the NAC by providing Canada a veto over any NAC decision that would increase the costs of the Settlement as approved by the courts. The Agreement required that all members of the NAC be legal counsel, in recognition of the fact that the Settlement Agreement was, ultimately, a legal document. The Agreement called for a NAC decision to be made by consensus, failing which a majority of five was required. These measures together promoted consensual and reasonable decision-making which was faithful to the terms and spirit of the Agreement.

49. The parties first articulated their intention to form the NAC in the November 20, 2005 Agreement in Principle.[44] The Agreement in Principle set the framework for resolution to the Indian residential schools legacy, to be achieved by a court-approved settlement agreement. The Agreement in Principle foreshadowed the contents of the IRSSA, making provisions for the CEP, IAP, the TRC, and funding for healing and commemoration programs.

50. The NAC was framed as playing a central role in the administration of the Settlement Agreement. It was the only entity created under the Agreement that had representation from all the parties.

51. There were significant developments in the evolution of the role of the NAC. They may be described in different ways, but one approach is as follows:

> 1. Initiation of the NAC and its relationship with other IRSSA institutions (2007-2009);

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[43] If the Catholic and Protestant representatives could not agree on a given issue, they would abstain from voting.

[44] See Agreement in Principle in Appendix B, online at: http://www.residentialschoolsettlement.ca/AIP.pdf.

2. Implementation and evolution of rules to govern CEP appeals (2009-2012); and

3. Increased requests for directions to Courts (2012-present).

52. During the early years, the Administrative Judges were Chief Justice Winkler from Ontario and Chief Justice Brenner from British Columbia. Through Randy Bennett, the Court Counsel, and directly, they both provided guidance and assisted the NAC greatly on this unique venture of implementing the largest class action settlement in Canadian history. The first Chair, Allan Farrer stated:

> I do recall appreciating the continued hands on approach of the supervising Courts and particularly, Justice Winkler, with whom I had dealt, being from Ontario. The fact that the late Randy Bennett was able to attend our NAC meetings as a conduit to the Courts and problem solve with us, was most beneficial.

B. Key Roles of the NAC

53. The role of the NAC was set out in the Settlement Agreement and, in particular, in Articles 4.10 and 4.11.[45] These provisions include the following regarding the purpose of the NAC:

> 4.10(1) In order to implement the Approval Orders the Parties agree to the establishment of administrative committees as follows:
>
> a) the National Administration Committee .....
>
> 4.11(12) The mandate of the NAC is to:
>
> (a) interpret the Approval Orders; ...
>
> (c) ensure national consistency with respect to implementation of the Approval Orders to the greatest extent possible;
>
> (d) produce and implement a policy protocol document with respect to the implementation of the Approval Orders;
>
> (o) exercise all the necessary powers to fulfill its functions under the IAP;

54. The purpose of this section is to highlight the key activities of the NAC during the course of its mandate from 2007 until the date of this report (May 6, 2019).

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[45] Articles 4.10 and 4.11 of the Settlement Agreement are set out in full in Appendix C.

C. NAC Involvement in CEP

55. From the time of implementation until approximately December 2013, the bulk of the NAC's time was dedicated to CEP-related work. In early days, that work focused on the development, approval, and modification of policies and protocols designed to make the CEP process run as intended. The focus then shifted to the NAC's role as an appellate body hearing CEP appeals brought forward by CEP applicants. One of the most extensive tasks of the NAC was the appeals to be heard from CEP claimants whose claims were denied. This involved the consideration of over 4675 appeals. The NAC's work in these respects was extensive and is described more fully below.[46]

D. NAC Involvement in IAP[47]

56. From early on in its mandate, the NAC nurtured a constructive working relationship with the Oversight Committee, which was established to specifically implement the IAP process. This constructive relationship allowed for mutual respect for the IAP process and the CEP process. Under the first Chief Adjudicator of the IAP (Dan Ish), the NAC and the Oversight Committee met at least twice a year. This relationship was contemplated under the NAC's mandate, whereby it was required to consider the Oversight Committee's recommended modifications to the IAP before such modifications could take effect.

57. This constructive relationship allowed for some coordination between the CEP and the IAP. The NAC met on several occasions with the Chief Adjudicator of the IAP and the Independent Chair of the Oversight Committee. The NAC also had a meeting with the whole Oversight Committee on two occasions. The Oversight Committee was alive to the overarching role held by the NAC in respect of certain points related to the administration of the IAP.

58. For example, in order for there to be a more expedited option for the growing number of IAP claims, the Oversight Committee and the Chief Adjudicator, with the support of

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[46] See section II. *The Common Experience Payment.*
[47] See section IV. *The Independent Assessment Process.*

the NAC, sought an amendment to the Settlement Agreement to allow for "Short Form Decisions" which could be rendered at the time of the hearing. This issue arose upon the Oversight Committee's recognition of a need for an expedited decision-making option within the IAP as the number of claims grew during the early days of that process.[48] The Oversight Committee and the Chief Adjudicator proposed an amendment to the Agreement which would allow the use of a curtailed decision report (the Short Form Decision) that could be rendered at the time of the hearing. An IAP claimant would have the option to receive such a decision in lieu of detailed reasons. The NAC carefully considered the proposal, sought some amendments, and ultimately consented to a Court Order to make the necessary changes to the Settlement Agreement. This was presented to the Courts in December 2009. This exemplifies the parties' original intention as to the role of the NAC to address issues relating to implementation of the Settlement Agreement with the objective of working with the entities created by the Settlement Agreement (e.g. Chief Adjudicator, Oversight Committee and TRC) to ensure a smooth implementation of the Settlement Agreement.

59. The NAC had occasion to consider the potential for overlap of information relevant to the IAP and the CEP. At a joint meeting with the Oversight Committee, the NAC agreed that when an IAP Adjudicator decided the years of a student's residence at a school, the NAC would not contradict that finding to the detriment of the CEP appellant.[49]

E. NAC Decision Not to Create the Regional Administration Committees

60. Under the Settlement Agreement, as Article 4.12 sets out (Appendix C), the parties envisioned the creation of Regional Administration Committees (RACs). The parties agreed to establish three RACs representing different regions of the country.[50]

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[48] IAP claims under the Settlement Agreement are claims for sexual assault or serious physical assaults or other wrongful abuse and were heard by an independent adjudicator. The implementation of protocols for the IAP was decided by the Oversight Committee so long as there was no amendment to the Settlement Agreement.

[49] See para 158.

[50] The first one for British Columbia, Alberta, Northwest Territories and the Yukon, the second for Saskatchewan and Manitoba, and the third for Ontario, Québec and Nunavut.

Independent Counsel had advocated for the RACs in order to ensure that issues that were local to a region could be addressed more effectively at a regional level.

61. The mandate of the RACs and the limitation of that mandate was clearly set out in Article 4.12(11).[51] Membership on the RACs was to consist of three Plaintiff representatives, and the operative mandate was to deal with day-to-day operational issues arising from implementation.

62. In negotiating for the establishment of the RACs, one key objective was to ensure that local issues could be appropriately and consistently addressed. The RACs were never implemented for a number of reasons summarized as follows:

    a. it was assumed that each of the nine Courts would address issues within their geographical jurisdiction whereas the Courts approved a Court Administration Protocol and assigned two judges to administer the Settlement Agreement nationwide;

    b. the first Administrative Judges, Winkler, CJ and Brenner, CJ appointed a Court Counsel, Randy Bennett, who closely worked with the NAC, and any issues relating to the Approval Orders, were addressed through the NAC; and

    c. the RACs had a very limited mandate and the key initiatives in which there could be operational concerns initially were the CEP process which was addressed by the NAC and the IAP Process which was addressed by the Chief Adjudicator.

63. As a consequence, the RACs were never established. After three years, on August 27, 2010, the NAC exercised its authority under 4.10(11)(g) "to review the continuation of RACs as set out in Section 4.13"; and after consultation with the parties, the NAC 'terminated' the RACs.

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[51] The RACs will deal only with the day-to-day operational issues relating to implementation of the Approval Orders arising within their individual regions which do not have national significance. In no circumstance will a RAC have authority to review any decision related to the IAP.

F. NAC Involvement in National Centre for Truth and Reconciliation Privacy Issues

64. From 2014 to 2016, the NAC dealt with an issue related to the privacy of information held by the National Centre for Truth and Reconciliation (NCTR). As a creation of the Settlement Agreement and the ultimate recipient of the TRC's research materials, the NCTR was in possession of materials of an intimate and sensitive nature.

65. On one occasion, the NAC intervened to ensure that privacy of former residents would be protected. The incident arose when the NAC became aware that the NCTR had posted an unredacted school narrative on its website. The school narrative contained sufficient information to identify several student victims of sexual abuse by an employee. The NAC informed the NCTR of the issue, following which the NCTR removed the information from its website. In a subsequent decision, the Court found that the disclosure was a "mistake".[52]

66. As a result of the disclosure, the NAC attended as a group at the NCTR and observed a presentation regarding the privacy regime under which the NCTR operates. Thereafter, the NAC did not collectively pursue any further issues, although a majority of the NAC members were concerned with the conduct of the NCTR regarding privacy of IAP claimants and actively participated in limiting the disclosure of IAP Records.[53]

G. NAC Development of Interpretation Rules for CEP Appeals

67. During its mandate, the NAC decided 4675 CEP appeals.[54] The NAC started reviewing appeals in December 2008. At the beginning of the appeal process, there were intense internal debates within the NAC on how to apply the CEP validation principles and protocols.[55] However, notwithstanding the very different perspectives of the NAC members, the NAC worked through these issues and came to agreement on some

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[52] *Fontaine v. Canada (Attorney General)*, 2014 ONSC 4585.
[53] *Canada (Attorney General) v. Fontaine*, 2017 SCC 47(SCC Decision). AFN, Independent Counsel, Inuit Representatives, and Catholic parties and entities.
[54] See section II.B. *Some CEP Statistics.*
[55] See section II E. *NAC and the CEP Validation Principles and Protocols.*

common interpretation and decision rules. At all times in setting these rules, the NAC was guided by the objective of the Settlement Agreement to compensate those placed in residence at the schools. By looking at cases through this lens, it was easier to conclude if a claimant was entitled to the CEP.[56]

H. NAC Public Outreach

68. Initially, the NAC engaged in several forms of public outreach. Those included the publication of a blog and NAC meeting minutes. However, the NAC ceased those activities when it became apparent that the high level of confidentiality required by various aspects of the Settlement Agreement strongly militated against the publication of detailed information about the NAC's activities. Instead, general notifications and updates were posted to the public by way of the official court administrator website maintained by Crawford Class Action Services Canada (Crawford).[57]

69. The NAC was instrumental in the early publication of IAP counsel lists, the aim of which was to connect individual claimants to legal counsel who might be willing to handle their claims. The NAC developed the list based on those practitioners' who had signed the Settlement Agreement and had experience in the IAP and the precursor ADR.

I. Distributing Requests for Direction

70. The NAC served as a vehicle through which parties to the Settlement Agreement received notice of upcoming and ongoing litigation. Under the Request for Direction Service Protocol, the Chair and Secretary of the NAC received copies of all Requests for Direction prior to filing.[58] As a matter of practice, the Chair distributed Requests for Direction to all NAC members. Other litigation documents such as facta, notices of appeal, and judicial decisions were circulated in the same way.

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[56] The detailed work of the NAC and the process relating to the CEP is described more fully in section II below.
[57] *Residential Schools Settlement Official Court Notice*, online: http://www.residentialschoolsettlement.ca/english_index.html.
[58] Request for Direction Service Protocol at para 3, online: http://www.classactionservices.ca/irs/documents/REQUESTFORDIRECTIONSERVICEPROTOCOL.pdf.

J. The NAC's Rescindment of Class Opt-Outs

71. While the provisions of the Settlement Agreement clearly allowed class members to opt out of the settlement,[59] the parties had not contemplated how to address situations where an individual who had opted out of the Settlement Agreement wished to re-enter the Settlement Agreement. On occasion, individuals who had previously opted out made requests to opt back in.

72. The NAC addressed this issue by voting on whether to rescind opt-outs on a case-by-case basis. From 2008 to 2012, the NAC issued ten Records of Decision (ROD) that allowed opted-out class members to take the benefits of settlement, including by making CEP and IAP applications.[60] The opt-out rescindments approved by the NAC were subsequently confirmed by court order.[61]

K. Records of Decision

73. The NAC held formal votes with respect to decisions to be made. The Records of Decision of the NAC are appended as Appendix D to this report. The mover of the decision is shown in the reference number of each of ROD by the use of initials ("C" for Canada, "IC" for Independent Counsel, and "NC" for National Consortium).

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[59] Settlement Agreement at Preamble at para F, p 7, and Article 4.14, p 42.

[60] NAC Record of Decision No. 017/C approved on January 28, 2011; NAC Record of Decision No. 019/C approved on September 15, 2011; NAC Record of Decision No. 020/C approved on January 12, 2012; NAC Record of Decision No. 021/C approved on September 11, 2012; NAC Record of Decision No. 002/IC approved on October 23, 2009; NAC Record of Decision No. 003/IC approved on August 27, 2010; NAC Record of Decision No. 004/IC approved on September 10, 2010; NAC Record of Decision No. 005/IC approved on January 4, 2011; NAC Record of Decision No. 006/IC approved on December 15, 2010; and NAC Record of Decision No. 007/IC approved on October 29, 2010.

[61] See for example, *Fontaine v Canada (Attorney General)* (10 February 2011), Toronto, Ont. S.C.J. 00-CV-192059CP (order); *Fontaine v Canada (Attorney General)* (20 October 2011), Toronto, Ont. S.C.J. 00-CV-192059CP (order); *Fontaine v Canada (Attorney General)* (21 August 2012), Vancouver, BC. B.C.S.C. L051875 (order); *Fontaine v Canada (Attorney General)* (10 October 2012), Toronto, Ont. S.C.J. 00-CV-192059CP (order).

II. THE COMMON EXPERIENCE PAYMENT

A. Introduction

74. This section of this report is dedicated to the CEP. The goal of the CEP was to provide individual financial compensation to every former student who resided at an Indian residential school and who was alive as of May 30, 2005. Compensation was based on the number of school years of residence at an Indian residential school ($10,000 for the first school year or part thereof, $3,000 for each subsequent school year or part thereof).

75. Canada, as Trustee of the Designated Amount Fund (DAF) created to pay the CEP, played a prominent role in the administration of the CEP. Section 10.01 of the Settlement Agreement set out some of Canada's duties and responsibilities. In particular, Canada was responsible for developing and implementing the system and procedures for processing, evaluating and making decisions on CEP applications and CEP payments in a way that reflected the "need for simplicity in form, expedition of payments and appropriate form of audit verification."[62] Under section 10.01, Canada was also responsible for providing sufficient personnel for the administration of the CEP, responding to all CEP inquiries from applicants, communicating its decisions to applicants, and reporting to the NAC and the Courts on CEP matters.

76. With respect to the CEP, the NAC was to "consult with and provide input to the Trustee with respect to the Common Experience Payment" and hear appeals from CEP applicants.[63] In the first year of implementation, the NAC dedicated most of its time to identifying and finding solutions to emerging CEP issues. From 2009 to 2013, the NAC focused mainly on reviewing and deciding appeals from CEP applicants.[64] Through these roles, the NAC developed a core expertise in all CEP matters.

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[62] Settlement Agreement, section 10.01 (a).
[63] Ibid., section 4.11 (12) (b) and (k).
[64] After 2013, the NAC decided 82 appeals (57 in 2014, 19 in 2015, and 6 in 2016).

77. This part of the report explores in detail the CEP application and appeal processes including key CEP statistics; the cornerstones of CEP eligibility; emergent CEP issues; principles and protocols used for assessment of CEP; the NAC appeal processes; and the challenges in meeting the objectives of the CEP.

B. Some CEP Statistics

78. The following CEP statistics[65] provide an idea of the volume of work and challenges encountered in the CEP process. A total of 103,236 decisions were made regarding CEP applications. Of these decisions, 79,309 (or 77%) of applicants were issued compensation, with 23,927 (or 23%) of applications deemed ineligible. A total of $1,622,422,106 was paid to successful CEP applicants, with an average individual payment of $20,457.

79. Each applicant was required to submit a CEP application form. If one (or more) of the school year(s) claimed in the application was denied by Canada, the CEP applicant was entitled to apply for a reconsideration of the decision. The right to appeal to the NAC and subsequently to the supervising Court gave applicants two opportunities to have their applications reviewed independently of Canada. Many CEP applicants requested a reconsideration of their CEP decision and appealed to the NAC and the supervising Court, with the following outcome:

Stage	Decisions	Eligible[66]	Denied[67]
Reconsideration	27,793 (27%)	9,771 (35%)	18,022 (65%)
NAC Appeal	4,675 (4.5%)	1,164 (25%)	3,511 (75%)
Court Appeal	736 (0.7%)	13 (2%)	723 (98%)

80. As reflected in the above, 75,443 (or 73%) of the applicants did not seek reconsideration of their CEP decision. For those who did, most requests for reconsideration or appeal were denied, with the highest rate of eligibility determinations

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[65] *Statistics on the Implementation of the Indian Residential Schools Settlement Agreement, Information Update on the Common Experience Payment (From September 19, 2007 to March 31, 2016)*, available at CEP Statistics [CEP Statistics].

[66] "Eligible" means at least one of the school years claimed was allowed.

[67] "Denied" means that none of the school years claimed was allowed

being made at the reconsideration stage (35%) followed by the NAC (25%) and the Court (2%).

C. The CEP in the Settlement Agreement

81. While the above-mentioned statistics are useful, they do not explain how CEP applications were assessed and why some applicants were successful and why others were not. One important explanation for why some applicants were denied the CEP is that they did not meet some of the eligibility requirements agreed upon in the Settlement Agreement for the CEP.

82. The main eligibility requirements included:

a. **Residence:** The CEP was only available to a student who resided at an indian residential school. Some IRS had both resident students and day students. Students who attended an IRS as a day student only (without sleeping at the IRS) were not eligible for the CEP.

b. **Alive on May 30, 2005:** Former students who passed away before May 30, 2005 were not eligible for the CEP. The requirement to be alive on May 30, 2005 was a compromise reached by the parties to the Settlement Agreement and represented the date that the Political Agreement was signed between the Assembly of First Nations and Canada to resolve the legacy of IRS.

c. **Recognized Indian Residential Schools:** Only former residents at one of the IRS listed on Schedule "E" and "F" of the Settlement Agreement were eligible for the CEP. The institutions listed in Schedule "E" were previously recognized by Canada as IRS in the Alternative Dispute Resolution process, while the schools listed in Schedule "F" were added during the negotiations leading up to the Settlement Agreement. Following the conclusion of the Settlement Agreement, it was possible for anyone to request additional institutions to be recognized as an IRS.[68]

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[68] See section VII. *Article 12 and other Applications Regarding Eligible Institutions.*

d. **Payment for each School Year "or Part Thereof".** In order to be eligible for the CEP, applicants had to reside at the IRS for the purpose of education or the IRS had to be their primary residence. Many applicants claimed the CEP for a temporary overnight stay at an IRS for reasons unrelated to education including, sporting activities, summer camp, or preparing for a religious ritual and were denied payment because they were not at the IRS for the purposes of education. When children were taken to an IRS for the purpose of education and believed that the IRS would be their primary residence during the school year, they would be eligible for CEP, even if they resided at the IRS for a short duration. The difference between a "temporary overnight stay" and a "residency of short duration" is explained further.[69]

e. **Deadline to Apply.** All CEP applicants were required to submit a CEP application between September 19, 2007 and September 19, 2011.[70] CEP applications were accepted until September 19, 2012 where "undue hardship" or some other exceptional circumstances prevented a CEP applicant from submitting an application prior to the deadline.[71]

83. Each CEP application needed to "be validated in accordance with the provisions of this Agreement"[72] and processed in accordance with Schedule "L" of the Settlement Agreement. The Settlement Agreement did not provide detail on how the CEP applications would be validated but the CEP Process Flow Chart under Schedule "L" of the Settlement Agreement identified some of the key players and their roles in the CEP:

Entity	Role(s)
Service Canada	Receipt of application and verification of identity & issuance of cheques
IRSRC*	Applications identified for further analysis and research
NAC	First level of appeal
Court	Second level of appeal

*Indian Residential Schools Resolution Canada

[69] See paras. 152 and 184 to 186 *infra*.
[70] Section 5.04(1)(2) of the Settlement Agreement.
[71] *Ibid.* at section 5.04(3).
[72] *Ibid.* at section 5.01(3).

84. Service Canada and Indian Residential Schools Resolution Canada (IRSRC) had critical roles to fulfil in the implementation of the CEP. Confirming the identity (Service Canada) of over 100,000 applicants and validating their presence (IRSRC) at IRS decades earlier could be complicated. The employees of Service Canada and IRSRC worked hard to implement the CEP and demonstrated a high level of professionalism. Many applications were difficult to validate and required significant additional research. Many others could not be validated without additional information or documents from applicants. In the next section, some of the early CEP difficulties that emerged are discussed along with the measures that were taken to resolve them.

D. NAC and Emergent CEP Issues

85. A number of early challenges emerged following the implementation of the Settlement Agreement, which resulted in delays in the processing and approval of CEP applications. Both Canada and the NAC responded quickly to these challenges and their consequences.

86. Service Canada and IRSRC both experienced unforeseen challenges in the validation and payment of CEP applications.

i. Service Canada

87. Due to the CEP notice program and the early efforts by Service Canada to sign up CEP applicants, including via mobile processing units, the CEP program saw a dramatic uptake in early months.[73] Within the first month of implementation, Service Canada received almost 60,000 CEP applications. By December 31, 2007, it had received over 83,000 CEP applications. At its peak, in November 2007, Service Canada received over 100,000 phone call enquiries.[74] The high number of CEP applications "was much

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[73] Service Canada began to receive CEP applications on September 19, 2007.

[74] *Evaluation of the Delivery of the Common Experience Payment*, Employment and Social Development Canada, July 12, 2013, page vi, online at: Evaluation of the CEP [Evaluation of the CEP].

greater than expected"[75] and led to processing delays. Service Canada adapted quickly to the challenge, and in a period of two months (October and November 2007), "increased its capacity to process applications over tenfold."[76]

88. One factor contributing to the delays was that many applicants did not have the required identity documents. CEP claimants were required to provide an original birth certificate or two official identity documents, including one with a photograph. When applicants were able to produce these documents, the name as written in the identity documents had, in many cases, changed since their issuance for several reasons including custom adoption, marriage, divorce, or the applicant now using an Indigenous name. To curb further processing delays, on Service Canada's request, the NAC relaxed the identification requirements by approving a Record of Decision that would allow a guarantor's declaration to suffice as proof of identification.[77]

ii. Indian Residential Schools Resolution Canada

89. Once Service Canada completed its identification work, it transferred the complete CEP application to IRSRC,[78] whose main role was to validate whether and for what period of time an applicant qualified as a resident at IRS.

90. IRSRC's first step in validating information about residency was completed by a computer system known as CARS (Computer Assisted Research System). It assessed CEP applications by looking up the name of the applicant in a database of over one million residential school records.[79] However, the CARS system was executed late,

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[75] Ibid. at p.vi.
[76] Ibid. at p.vi.
[77] NAC Record of Decision No. 002/C dated October 12, 2007 see Appendix D.
[78] On June 1, 2008, IRSRC merged with Indian and Northern Affairs Canada, which changed its name to Aboriginal Affairs and Northern Development Canada in 2011 and to Indigenous and Northern Affairs Canada (INAC) in 2015. For simplicity, when the acronym "INAC" is used, it will refer to INAC and its predecessors, including IRSRC.
[79] *Lessons Learned Study of the Common Experience Payment Process*, Aboriginal Affairs and Northern Development Canada, February 2015, Updated June 2017, p. 23, online at: Lessons Learned [Lessons Learned].

ineffectively or not at all in the initial stages.[80] It also encountered a number of technical issues and other limitations.[81] Specifically, CARS was only able to make automatic eligibility decisions in about 44% of all the CEP applications received, meaning that the remaining 56%[82] had to be reviewed and processed by a team of INAC researchers who would conduct manual research in school documents, a time consuming process.

91. Like Service Canada, IRSRC also "did not have the organizational capacity (...) to respond to the high number of applications"[83] at the outset of the program, which contributed to further delays in the assessment process. By mid-November 2007, IRSRC had only validated approximately 15,000 CEP applications. Notwithstanding IRSRC's initial capacity challenges, IRSRC rapidly increased its staff, worked overtime, and corrected a number of technical issues with the CARS system. As result, the number of applications processed increased markedly. Over a span of five weeks, approximately 53,000 additional applications were processed between mid-November to December 22, 2007.[84]

92. By early 2008, approximately four months after implementation, some 85,000 applications had been received with 55,000 applicants having received compensation.[85] Although the process worked well for many, internal statistics provided by Canada revealed that approximately 46% of all CEP applicants were not receiving all the years claimed on their applications and over 10,000 claimants were deemed ineligible.[86] The impetus for creating the reconsideration process arose from these statistics. Through the efforts of INAC and the NAC, a reconsideration stage was therefore instituted.[87]

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[80] Ibid. at p.38.
[81] Ibid. at p.38.
[82] Ibid. at p.23.
[83] Ibid. at p.17.
[84] Ibid. at p.29.
[85] Minutes of the NAC meeting held on January 7, 2008.
[86] Minutes of the NAC meeting held on January 17, 2008.
[87] The reconsideration process is explained below in paragraphs 110 to 120.

iii. Elderly CEP Applicants

93. Concerned with the impact that the delays could have on elderly CEP applicants, the NAC adopted early measures to expedite their applications. On October 30, 2007, the NAC approved Record of Decision No. 005/C and instructed INAC to prioritize applications from claimants aged 65 years or older, regardless of the order in which CEP applications were received.

94. Additionally, on November 29, 2007, the NAC approved Record of Decision No. 006/C to benefit elderly applicants who had received the CEP advance payment.[88] That ROD provided that CEP applications from advance payment recipients would be approved without further validation to facilitate the processing of their applications. Prior to the implementation of the Settlement Agreement, advance payment recipients had already been verified for residence at an IRS. For such individuals, it was more likely that school records relating to the duration of their residence would be incomplete and that INAC would be more likely to find an applicant eligible for all the school years claimed.

95. As a result of these measures, elderly CEP applicants who were also advance payment recipients typically received all the years they claimed in their CEP applications without having to apply for reconsideration or appeal to the NAC or the supervising Court, and without having to go through the complete CEP validation process, which we discuss next.

E. NAC and the CEP Validation Principles and Protocols

96. The parties to the Settlement Agreement intended for the CEP application and appeal processes to be efficient, fair, accurate and user-friendly. The following section reviews the criteria used to validate a CEP application. A key document was the CEP Validation

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[88]The CEP advance payment program was made available between May 10 and December 31, 2006 to all former students 65 years of age or older on May 30, 2005. The program issued an immediate payment of $8,000 to 10,300 elderly former students. The $8,000 was subsequently deducted from any future CEP payment. Applications for the advance payment were verified against IRS school records and paid without further research if an applicant could be confirmed as an IRS resident in one school year. *Audit of the Advance Payment Program*, Indian and Northern Affairs Canada, December 4, 2008, p. i. Online: https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/app_1100100011682_eng.pdf

Principles. All the CEP applications were assessed, and school years paid or denied, based on the application of the CEP Validation Principles.

i. The CEP Validation Principles and Some Key Validation Tools

97. After the conclusion of the Settlement Agreement in May 2006, the parties through the NCC, agreed on the CEP Validation Principles, which were approved by the supervising Court in March 2007.

CEP Validation Principles

1. Validation is intended to confirm eligibility, not refute it;
2. Validation must accommodate the reality that in some cases records may be incomplete;
3. Validation must be based on the totality of the information available concerning the application;
4. Inferences to the benefit of the applicant may be made based on the totality of the information available concerning the application;
5. If information is ambiguous, interpretation should favour the applicant;
6. This principle (6) shall apply to applicants who identify themselves as having been status Indian at the time of residency in a residential school. The absence of such an applicant's name from the lists comprising all status Indian residential students in a given year at the school in question shall be interpreted as confirmation of non-residence that year. An applicant whose application is rejected on this basis may seek reconsideration based on the provision of further information;
7. Where an application is not accepted in whole or in part, the applicant will be advised of the reasons and may seek reconsideration based on the provision of additional information that relates to the rejection, including evidence that may be provided by the applicant personally which may include:
   - photographs;
   - other documentary evidence of a connection with the school;
   - affidavit evidence, including but not limited to, the affidavits of other students;
   - school or residence employees, Aboriginal leaders or others with personal knowledge relating to the applicant's residence at the school;
   - an affidavit from the applicant confirming residence by reference to corroborating documents and/or objective events;

8. An application will not be validated based on the applicant's bare declaration of residence alone.

98. An important feature of validating claims derived from the CEP Validation Principles was the right of CEP applicants to provide additional information at every phase of the assessment and appeal processes (reconsideration, NAC appeal, and appeal to the supervising Court). Applicants were encouraged to provide all the information they could remember and any documentation they had to validate residency. The information could be provided orally (calls were transcribed) or in writing via mail, e-mail or fax. In almost all the appeals allowed by the supervising Court,[89] the additional years were granted on the basis of new information provided to the supervising Court.

99. Arising from Principle 4, the concepts of "Inference" and "Interpolation" were interpretive instruments beneficial to CEP applicants:

Inference. An inference could be made to validate a claim where school documents confirmed only the start or end date of residency, but where lists of students were not available for the duration of the claimed period. For example, if no student lists were available from 1960-61 to 1963-64 and an applicant requests those four years in residence, that applicant's entire claim may be validated if he or she appears on an admission form as entering in September 1960 (subject to other available information, such as a discharge form).

Interpolation. An interpolation could apply to validate a claim where non-consecutive years are confirmed eligible, but where a gap in school records exists for the interceding year(s). For example, if school documents confirm an applicant's residence in the first year (1960-61) and the third year (1962-63), but a list of residential students was not available for the second year (1961-62), the applicant would receive the CEP for all three years (subject to other available information, such as an attendance report at a provincial school in 1961-62).

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[89] 14 appeals were allowed by the supervising Court.

100. Principle 6 applied to applicants with Indian status, or Indigenous persons registered as an Indian under the *Indian Act* (**Indian Status**). An applicant with Indian Status who did not appear in complete lists of residential students in a given year was deemed to be a non-resident at the IRS in that year. These lists of residential students were prepared by the administrators of the IRS who were required to do so. Given that these lists were provided to the federal government in order to obtain per capita grants paid to IRS, these lists were deemed complete and accurate unless there was contrary evidence.

101. These lists of residential school students were known as "**Quarterly Returns**" (prior to September 1971) and "**Enrolment Returns**" thereafter. They are referred to as "**Primary Documents.**" Quarterly Returns were filed for the periods ending on September 30, December 31, March 31 and June 30 of each school year. Enrolment Returns were prepared twice a year, in September and in March. IRS students were usually listed with their registration number, their band name, date of birth and typically their date of admission at the IRS.

102. Primary Documents that were incomplete in a given school year were considered to be a "**Document Gap.**" In the case of Quarterly Returns, a document gap could be partial (some but not four Quarterly Returns available for the school year) or complete (no Quarterly Returns available). In the case of Enrolment Returns, a partial gap occurred when only one of the two Enrolment Returns was available for a school year. When an applicant with Indian Status claimed residency at an IRS with a Document Gap and residency could not be confirmed with the Primary Documents available, that school year was researched manually by INAC.

103. INAC's researchers would conduct their manual review in INAC's database of school documentation. It included both Primary Documents and "**Ancillary Documents**," which include all the school records other than Primary Documents that identify students by name and can help validate an applicant's residency and its duration.

Primary Documents and Ancillary Documents were referred to as the "**Student Records**." In September 2007, INAC's searchable database contained over one million scanned and coded school documents collected since 1996. INAC was responsible for collecting school documents, undertaking research in its own document collection, identifying and addressing gaps in the Student Records. After the Court Approval of the Settlement Agreement, INAC cooperated with churches, provincial and territorial archives, and various Indigenous organizations to expand its collection of school documents. Therefore, there were more records for assessment of eligibility later in the process than earlier in the process.

104. The CEP Validation Principles guided the development of three key protocols to assess CEP applications: the CEP Process and Assessment Protocol (CEP Protocol),[90] the CEP Reconsideration Process Protocol (Reconsideration Protocol),[91] and the CEP Appeal Protocol (Appeal Protocol).[92]

105. The CEP Protocol and the CEP Appeal Protocol were prepared by INAC and approved in August 2007 by the NCC a few weeks before the launch of the CEP program on September 19, 2007. The NAC was responsible for approving protocols related to the implementation of the CEP.[93] However, because the Settlement Agreement did not authorize the NAC to conduct any business prior to the "Implementation Date"[94] (September 19, 2007) and because a CEP protocol was required to be in place prior to that date, the NCC first approved the CEP Protocol. These protocols were subsequently modified and approved by the NAC. The main features of these three protocols, and the changes required by NAC, are discussed below.

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[90] The CEP Protocol is attached under Appendix E [CEP Protocol].
[91] The Reconsideration Protocol is attached under Appendix F [Reconsideration Protocol].
[92] The Appeal Protocol is attached under Appendix G [Appeal Protocol].
[93] Settlement Agreement, Section 4.11(12)(d).
[94] Ibid., section 4.10 (2).

ii. The CEP Protocol

106. The CEP Protocol stated the objectives of the assessment process, namely, that assessment must "ensure that every eligible applicant receives the correct amount of compensation" and be "fair, objective, timely, and practical, minimize the onus placed on the Applicants, be efficient, and executed with a minimum of errors."[95] The extent to which these objectives were attained is discussed below.[96] For now, the main features of the CEP Protocol will be reviewed.

107. INAC implemented an "escalating assessment"[97] to validate applications. The CEP Protocol mandated the following stages for the assessment process:

Stage 1: CARS. The initial processing of all applications was done by the computer system CARS, based largely on the presence or absence of an applicant's name in Primary Documents. CARS would:

- search Primary Documents for the years claimed by the applicants (and 10 years before and after the period claimed) using the name(s), date of birth, age, and/or gender of the applicant;

- assess an applicant with Indian Status as eligible for a school year when the name of the applicants appeared on a Primary Document in that school year;

- assess an applicant with Indian Status as ineligible for a school year when in such school year, the applicant was:
    - not found on complete Primary Documents;
    - not found in the Student Records when the Document Gap was small;
    - identified as a day student in Primary Documents; or
    - identified on a Primary Document as absent for the whole year;

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[95] CEP Protocol, *supra* at note 90, Executive Summary, p.4.
[96] See paragraphs 192 to 212.
[97] CEP Protocol, *supra* at note 90, Executive Summary, p.4.

- assess Inuit, Métis and non-Indigenous as eligible when these groups were listed in Primary Documents;
- apply Inference and Interpolation[98] when there was a Document Gap; and
- flag applications for manual review when there were matching issues (e.g. multiple dates of birth, inconsistent student numbers, two or more potential name matches, etc.).

108. Applications were also flagged by CARS and moved to Stage 2a (Manual Review) when there was a Document Gap in Primary Documents or when the applicant was not a Status Indian (Métis, Inuit and non-Indigenous). When the name of an applicant was not found in the Student Records, CARS would escalate the applicants to Stage 2b (Request for Additional Information).

Stage 2a: Manual Review. At this stage, an INAC[99] researcher would review the Student Records and try to confirm residence by assessing the content and context of school documents in which the name of the applicants appeared. Any other information available to INAC on the IRS (e.g. if both day students and residents attended the IRS) was considered by INAC. For instance, if the applicant's name was found in a student newsletter of the IRS, the IRS had both resident and day students, and the home community of the applicant was located at such a distance that he or she could not have commuted to the IRS daily, a reasoned assumption would be made to confirm residency that year. Inference and Interpolation were also applied at Stage 2a.

When no school year could be confirmed through a manual review, the applicant was contacted to request additional information (Stage 2b). If some school years claimed by an applicant were approved and others denied, the applicant received

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[98] See paragraph 99 above for examples of Inference and Interpolation.
[99] Supra, at note 78.

compensation for the school years assessed as eligible, and was advised of the right to seek reconsideration (Stage 3).

Stage 2b: Request for Additional Information. Applicants whose applications could not be validated in the previous stages were contacted and given the opportunity to provide information in writing and/or to answer questions in a telephone call regarding their memories from their time at IRS.

109. The focus of INAC was to identify information that could be corroborated by the information in the Student Record. When the applicant provided two pieces of information verified against time specific information known about the IRS, residency was validated. The information was not expected to be perfect, and the "*benefit of the doubt would be given to the Applicants.*"[100] Once residence was validated, Inference, Interpolation and reasoned assumptions were applied to determine the duration of residency. When applications were filed by personal representatives or estates, these representatives were contacted, and any information provided would be assessed. When applicants were denied one or more school year(s) after Stage 2b, they were informed about the reconsideration process.

iii. The Reconsideration Process Protocol

110. Unlike the right to appeal to the NAC or to the supervising Court, the reconsideration process was not created by the Settlement Agreement and was instead developed by INAC and the NAC in response to issues that emerged in the initial months of implementation of the CEP process.[101] Nevertheless, it became a very important step in the assessment process by INAC,[102] with approximately 27%[103] of all CEP applications completed going through reconsideration. With the formalization of the reconsideration process, NAC instructed INAC to send a letter to CEP applicants

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[100] CEP Protocol, supra at note 90, p.8.
[101] As discussed above in paragraphs 85 to 92.
[102] INAC developed an informal protocol and began to process reconsideration in the spring of 2008. The Reconsideration Protocol was formally approved by the NAC in August 2008.
[103] CEP Statistics, supra at note 65.

denied school years to advise them that they could seek reconsideration of the decision.

111. The NAC went on to modify the CEP reconsideration process. In Record of Decision No. 004/NC, the NAC decided that the provision of one piece of information by the applicant when verified against time specific information known about the IRS would be sufficient to validate a school year that had a Document Gap. In the absence of Primary Documents and notwithstanding contrary information in Ancillary Documents, residence could still be validated by a provision of a single piece of information. For example, if the claimant provided a name of a dorm supervisor whose presence at the school was corroborated by school records, residence at the school in that year could be confirmed.

112. To further assist CEP applicants in the process, the NAC approved Records of Decisions No. 012/C and No. 014/C. First, it directed INAC to research all the names of former students or employees provided by applicants for the first time at reconsideration. Second, when applicants provided the names of individuals who could assist in the validation of residency (usually former students or employees at the IRS), the NAC directed INAC to advise each applicant to contact the individuals and obtain supporting statements.[104]

113. These modifications (one piece of information only, researching the names of students and staff, advising to obtain supporting statements) proposed by NAC had two consequences: first, they helped to validate residency; and, second, many files at the reconsideration stage were sent back for additional INAC research to validate their claim.

114. Applicants were required to apply for reconsideration within six months from the date that they received a decision letter advising them they were not eligible for one or more school year(s). Reconsideration was typically initiated by filing out a

[104] NAC Records of Decision No. 012/C and No. 014/C approved on September 12, 2008. See Appendix D.

reconsideration form and sending it by mail, fax, or e-mail to the CEP Response Centre. Reconsideration could also be requested orally by calling the CEP Response Centre.

115. Although the provision of new information was not required for reconsideration, applicants were encouraged to provide information to help validate their residency. New information was assessed in the same manner as the information assessed at Stage 2b with one exception: only one piece of information (as opposed to two) corroborated by the Students Records was sufficient to approve a school year, assuming no contradictory information was found in the Student Records.

116. Reconsideration requests from elderly former students were prioritized. The amount of time required to process a reconsideration file depended on its complexity and the information available in the Student Records. INAC expected that most reconsideration files would be processed within 90 days with more complex files expected to take up to 160 days. When a decision was not rendered on a reconsideration file within 90 days, the applicant was notified by mail that INAC required more time to process the file.

117. Whenever practical, reconsideration files were reviewed by a different researcher than the one who undertook the initial assessment. The researcher would review the original findings made by CARS and/or manual review. All findings were recorded in a database known as SADRE (Single Access Dispute Resolution Enterprise). Researchers were instructed to pay particular attention to locating and reviewing school documentation added to INAC's collection after the original CEP decision under reconsideration. This new documentation included records received through INAC's ongoing documentation collection efforts as well as records provided by applicants to support their own claims which mentioned other students and could assist in assessing the residency of other applicants. Documentation provided by any applicant was only incorporated in INAC's collection with the consent of the applicant.

118. When additional information was required to validate a reconsideration claim, applicants were contacted and asked more specific questions. These questions included the following:

- What was the community you lived in prior to residing at the IRS?
- How did you get to school and who took you there?
- How old were you when you started to reside at the IRS and what grade were you in?
- What were the circumstances/reasons of your stay at the IRS?
- Were you known by a different name at the IRS?
- Can you describe the IRS? What was the colour of the building? How many floors did it have? Where was the dining room located? Where were the dormitories? Where were the bathrooms? Was there any other building on the property?
- What did you wear at the IRS (regular clothes, school uniform)?
- Where did you sleep at the IRS?
- Did you have regular chores?
- Can you describe your schedule for a typical day?
- Can you describe any school clubs or activities?
- Were there any renovations during your stay?
- Were there any unusual occurrences (e.g. school accidents, epidemics, fire, disaster)?
- Did you have any visitors?
- Did you have any brothers or sisters that also attended the IRS?
- Can you name any fellow students?
- Can you remember the names of your teachers or supervisors?
- Did you have to attend church?
- Were there any school trips or outing?
- When and why did you leave the IRS?
- Where did you live after the IRS?
- What else can you tell me about the IRS that may help confirm that you resided there?

119. At the reconsideration stage, applicants often provided additional documentation which could include police records on truancy, social services records, medical reports, IRS newsletters, journals and yearbooks, articles from newspapers, IRS photographs, permanent school record, report cards, letters from schools, government, students and parents, affidavits and letters from students, employees and others etc. This documentation was analysed by INAC researchers to determine if it was useful and reliable to validate residence. Key questions included:

- Does the document speak specifically to residence at the IRS?
- What is the source of the document (government, church, local archives)?
- Does it name the applicant and the IRS?

- Is the document dated? When was the document created and for what purposes?

120. When a reconsideration file was completed by INAC, Service Canada sent a decision letter to the applicant to advise him or her of the right to appeal any ineligible school year to the NAC.

iv. The CEP Appeal Protocol

121. During the life of the Settlement Agreement, the NAC made several modifications to the appeal processes it oversaw.

122. The NAC identified one issue with the CEP Appeal Protocol and the CEP Protocol approved by the NCC. First, the CEP Protocol prepared by the NCC required applicants to submit new information as a condition of applying for reconsideration.[105] Second, the CEP Appeal Protocol required an applicant to go through reconsideration as a precondition for appealing to the NAC. Together, these two requirements meant that any applicant who did not provide new information could not apply for reconsideration, and therefore could not appeal to the NAC. This was inconsistent with the Settlement Agreement, which provided a right to appeal to the NAC to any applicant who did not receive compensation for the years submitted in their application.[106] NAC resolved the problem by deciding that an applicant could seek reconsideration without providing new information.

123. With respect to timelines for appeal, for the first part of CEP implementation, applicants could appeal to the NAC as of right within 12 months of their receipt of INAC's decision denying in whole or in part their reconsideration request. Thereafter, an appeal would require the permission of a supervising Court. However, on April 15, 2011, the NAC issued a Record of Decision No. 018/C through which it instructed the CEP Appeal

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[105] Reconsideration was not yet a stand-alone process, see paragraphs 92 and 110.
[106] Settlement Agreement, section 5.09(1).

Administrator to continue to accept all appeals filed up and until September 19, 2012.[107] This measure effectively dispensed with the 12-month timeline.

124. Appeals were initiated by filing an appeal form with the CEP Appeal Administrator. NAC instructed INAC and the CEP Appeal Administrator to prioritize appeals from elderly applicants or those suffering from health conditions.[108] Otherwise, appeals were processed in the order received.

125. In the appeal form, applicants were to explain the reasons why they disagreed with INAC's decision to deny their claim. They were also invited to provide any information that could assist in validating their claim. Applicants were not required to use the appeal form developed by INAC and could also initiate appeals to the NAC by providing verbal authorization (via phone call) for the CEP Appeal Administrator to use as the appeal form any document previously filed by the applicant to request missing years. The CEP Appeal Administrator was required to confirm the school years appealed and to make a note on the document authorized as the appeal form.

126. New information provided by applicants in connection with their NAC Appeal was researched by INAC.[109] Applicants who had provided names of supporting individuals (usually students and staff) for the first time at the NAC appeal stage were contacted by the CEP Appeal Administrator and advised to provide statements from the supporting individuals in writing.[110]

127. To expedite the appeal process, when an applicant provided new information in connection with a NAC appeal and INAC concluded that, based on the new information, the appeal should be allowed in full, the NAC directed INAC to send a letter to the

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[107] CEP applications were accepted between September 19, 2007 and September 19, 2011, and thereafter, in cases of undue hardship or exceptional circumstances, until September 19, 2012.
[108] NAC Record of Decision No. 002/NC approved on August 21, 2008. See Appendix D.
[109] NAC Record of Decision No. 013/C dated September 12, 2008. See Appendix D.
[110] NAC Record of Decision No. 014/C dated September 12, 2008. See Appendix D.

applicant advising that all the years claimed in the appeal were allowed and their NAC appeal was deemed withdrawn.[111]

128. INAC and the CEP Appeal Administrator prepared the appeal files. The Appeal Protocol mandated appeals files to contain specific information and documentation. Appeal files included:

- all correspondence exchanged with the applicants;
- notes of any discussions with the applicant;
- copies of any Student Records that referred to the applicant; and
- documents submitted by the applicant.[112]

129. The Appeal Protocol required appeal files to contain the following information:

- the reason why the claim was denied by INAC;
- if there were gaps in Primary Documents;
- information that the school records disclosed relevant to the information provided by the applicant;
- additional records that were reviewed; and
- telephone conversations held with the applicant and what they revealed.[113]

130. NAC was mandated to review INAC's decision on a CEP application to ascertain if a material error had been made with respect to the following:

- the interpretation of the Settlement Agreement;
- the interpretation and application of the CEP verification principles;
- the evaluation of evidence or information presented; and
- any other material grounds raised by the applicant.[114]

131. Section 4.11 (9) of the Settlement Agreement required NAC to attempt to reach decisions by consensus. When consensus could not be reached by NAC, a majority of five out of the seven members was required to make a decision. This requirement applied to NAC appeals.

132. Three decisions were possible on an appeal:

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[111] NAC Record of Decision No. 015/C approved on July 16, 2009. See Appendix D.
[112] Appeal Protocol, supra at note 92, section 4(b).
[113] Ibid., section 4(c).
[114] Ibid., section 16.

- allow one or more school year(s);
- remit the files to INAC for reconsideration with directions including specific questions to be asked to the applicant; or
- deny one or more of the school year(s).[115]

133. Decisions were recorded in a document entitled "Reasons for Decision," a copy of which was provided to each applicant. Applicants denied one or more years by NAC were also informed of their right to appeal to the supervising Court in this document. All NAC members agreed that the Reasons for Decision should clearly explain why the appeal was allowed or denied.

F. Deciding CEP Appeal Files

i. Introduction

134. This section of the report explains how the NAC processed and reached decisions on thousands of appeal files. The NAC decision process was closed to the public. Applicants did not testify, and decisions were based solely on the document review of the appeal files. The NAC appeal process was designed to review as efficiently as possible a considerable number of appeals from applicants residing all across Canada and elsewhere.

135. The review of appeal files by NAC was the first review activity undertaken by an entity independent of INAC in connection with the CEP process. Before reaching this stage in the CEP process, all applications were previously assessed at least twice by INAC (the initial assessment of CEP applications and the reconsideration). Many files were assessed three times. Approximately 56% of all the school years claimed could not be assessed by CARS and required a manual review.[116]

136. When the Settlement Agreement was concluded, some believed that the NAC appeal process would be highly favorable to applicants because the five members of the NAC appointed by groups who represented former students in the negotiations leading up

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[115] Ibid., section 17.
[116] Lessons Learned, supra at note 79, p.23.

to the Settlement Agreement would vote to allow appeals. Similarly, some believed that the two NAC members who represented the churches and Canada would be more likely to deny appeals. This was not the case, because each NAC member was required to apply the CEP Principles and protocols in accordance with the rules of natural justice and procedural fairness. Interpretation of how the CEP Principles and protocols applied to a particular situation varied from one member to the next, giving rise to discussions and divided votes. However, such divisions are common features of many adjudicative bodies. The reality was that the majority of the NAC appeals were decided by consensus.

137. The NAC decided 4,675 appeals, allowing 1,164 (25%) and denying 3,511 (75%). In 20% of appeals allowed, the applicant received all the school years claimed. In 80% of the appeals allowed, the applicant received some but not all of the years claimed.

138. It is important to note that these statistics do not provide a full picture of the context, most notably because they do not explain the reasons for which individual applicants included certain years in their NAC appeal. Many applicants included additional years when they were uncertain about how much time they spent in residence; others erroneously appealed for school years that had already been approved while others claimed compensation at two or more IRS in the same school year when they were unsure about where and when they resided at each one.

ii. Content of NAC Appeal Packages

139. The CEP Appeal Administrator and INAC worked cooperatively to prepare NAC appeal files. A NAC Appeal Package contained between 80 and 250 pages (and occasionally more) with the majority of NAC Appeal Packages between 100 and 150 pages. They included all the documentation and information assessed by INAC in the previous phases of the assessment, as well as new information provided for the first time in the NAC appeal. A list and description of the documents typically included in a NAC Appeal Package can be found in Appendix H.

iii. Review of Appeal Files by NAC

140. The NAC held monthly in-person meetings to process appeal files and discuss matters related to the Settlement Agreement. The meeting locations reflect the geographic and diversity of the NAC members. In 2013, when the number of appeals decreased, the NAC met every few months once a sufficient number of appeals were ready to be heard.

141. The first 500 NAC appeal files were ready in August 2008. Although the NAC members were well acquainted with the CEP Principles, the assessment protocols (CEP, reconsideration and appeal) and the processes followed by INAC to validate residency, it was the first time NAC members were able to assess how the principles and protocols had been applied by INAC. Although some NAC members visited INAC's CEP processing facility in the spring of 2008, held discussions with INAC researchers and shared their findings with the other members, the NAC members did not see an actual appeal file until August 2008. As such, the NAC needed to establish processes for accurate, efficient and consistent reviews of potentially thousands of voluminous appeal files.

142. The NAC members attended a training session with INAC on August 20, 2008 to familiarize themselves with the content of the appeal files. Between August and September 2008, the NAC members reviewed appeal files and concluded that improvements were needed to the NAC Appeal Package. Specifically, additional information was required to be included in the NAC Appeal Package and summarized in the executive summary.

143. The decision-making process for appeal files was developed in incremental steps during the first few months after the first appeals were reviewed. All the appeals files to be reviewed by the NAC were posted on a secure website maintained by the CEP Appeal Administrator at least two weeks prior to the monthly NAC meeting.

144. Although all NAC members were responsible for reviewing all appeal files, each NAC member was assigned an equal number of appeal files and was responsible for presenting the key elements of each appeal file assigned to him or her and recommend a decision (allow, deny, return to trustee) for each of the school year(s) under appeal. All NAC members would then discuss the various elements of the files, how the CEP principles and protocols should be applied in the particular appeal, and how the appeal should be decided. Some files were decided relatively quickly while others gave rise to long debate. All members then voted for or against allowing the appeal for each school year.

145. The NAC member who presented the appeal file was also responsible for writing the decision. The reasons for the decision were reviewed by one NAC counterpart member and posted on the secure website in the folder "Decisions for Comment." Other members then had 10 days to review the decision and provide comments. After 10 days, the decision was updated (if required) and posted in the folder "Final Decisions." The CEP Appeal Administrator then sent a letter including the NAC decision to the applicant.

iv. NAC Appeal Decisions

146. The NAC's reasons for decisions were generally one or two pages in length and provided sufficient information for the applicant to understand why the school years claimed were denied or allowed.[117]

147. The NAC agreed that some information would not be disclosed to the applicant in the reasons for decision, specifically:

- **The vote.** The NAC could mention when a decision was unanimous but would not provide the specific result of the vote. Once the vote was completed, it became a collective decision of the NAC.

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[117] A sample decision can be found in Appendix I

- **Author of Decision.** As the decision, once made, was a NAC decision, the identity of the author drafting the decision was not disclosed.

- **The names of students and staff provided by the applicant.** They could only be identified by their initials for confidentiality reasons.

- **Specific Document Gaps in Primary Documents.** Gaps in Primary Documents (Quarterly Returns and Enrolment Returns) had been known since 2007 when an audit was performed on INAC's document collection.[118] To preserve the integrity of the process, gaps were not revealed to claimants. A generic reference to "incomplete documents available" was used in a decision rather than disclosing information such as "Primary Document Gap from September 1957 to June 1958."

- **Students boarded in private homes.** When applicants were denied compensation because they were placed in a private residence (and not at the IRS) for various reasons (e.g. overcrowding, school policies for older students), their applications were put in a special folder pending the decision of the supervising Court as to whether or not the applicants qualified for the CEP under the Settlement Agreement. It was deemed unnecessary to advise these applicants that their CEP decision could be re-assessed depending on the outcome of a court decision, when there was no certainty on how the court would decide this case of private boarders. The supervising Court eventually decided that these students did not qualify for the CEP.[119]

- **The character of the information.** Usually no reference was made to the subjective character of the information provided by the applicants. For instance, it would be acceptable to write that an applicant provided a "detailed" description of the IRS, but words such as "compelling" or "vivid" were avoided.

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[118] Lessons Learned, *supra* at note 79, p.24.
[119] *Fontaine v. Canada (Attorney General)*, 2014 BCSC 941.

148. The NAC agreed to use a number of standard statements in their decisions in certain situations. Examples of standard statements used for certain IRS (St. Augustine Mission School and Coqualeetza), or when a representative (or estate) had applied for the CEP, or when CEP Validation Principle #6 was applied to deny an appeal, can be found in Appendix J.

v. Application of CEP Validation Principle 6 by NAC

149. CEP Validation Principle 6[120] was the most frequent reason for a denial of a year of residence. Principle 6 was in practice applied in a very similar manner by all NAC members in the following circumstances:

- The applicant was a "Status Indian";
- The name of the Status Indian did not appear in complete Primary Documents (Quarterly Returns or Enrollment returns) in the school year claimed;
- There was no reason or information in the file to explain the absence of the name of the applicant from the complete Primary Documents in the school year claimed; and
- No explanation or further information was available in the file to doubt the accuracy of the Primary Documents in the school year(s) claimed.

150. CEP Principle 6 did not apply to Métis and Inuit, because IRS administrators were not required to list students who did not have Indian Status in Primary Documents and they were not consistently listed in Primary Documents. Some IRS predominantly attended by Inuit students used Quarterly Returns or similar documents to record residency. When Métis and Inuit students were listed in the Primary Documents for an IRS, and the name of the Métis or Inuit applicant did not appear in them, the situation was considered to be an indication of non-residency and was assessed in balance with any information in the file that could indicate residency.

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[120] CEP Validation Principle 6 stated: "This principle (6) shall apply to applicants who identify themselves as having been status Indian at the time of residency in a residential school. The absence of such an applicant's name from the lists comprising all status Indian residential students in a given year at the school in question shall be interpreted as confirmation of non-residence that year. An applicant whose application is rejected on this basis may seek reconsideration based on the provision of further information."

151. CEP Principle 6 provided for reconsideration based on the provision of further information if the application was rejected. When information was provided by the applicant that could explain why their name did not appear on complete Primary Documents, the NAC carefully considered the information. In situations where the information was convincing, the "presumption of non-residency" could be refuted. CEP Principle 6 could also be refuted when the information in the NAC appeal file indicated that one (or more) of the following circumstances applied:

- The applicant claimed the CEP for a residency of short duration in the school year;
- The applicant was underage in the school year (usually less than 6 years old);
- The applicant was overage in the school year (usually older than 16 years old);
- The applicant was in care of a welfare agency; or
- The "Indian Status" of the applicant was uncertain in the school years claimed.

152. A residency of short duration sometimes explained why an applicant did not appear in Primary Documents. Many applicants claimed the CEP for various stays of short duration at one or more IRS. Some applicants attended multiple IRS in a school year. Some applicants were in and out of the IRS during the school year for several reasons (stays at hospitals, moved to a private home, parents sick, parents deceased, temporary family crisis, etc.). Some applicants were sent to the IRS late in the fall and did not return after the Christmas. Some applicants started in the middle of the school years and stayed for a few weeks. Some applicants started near the end of the school year.

153. When the four Quarterly Returns were available, it was more difficult to establish residency on the basis of a shorter or sporadic stay in residence. When two or more Quarterly Returns were missing, especially successive ones (March and June), or when only one of the two Enrolment Returns were available (September or June), the NAC more readily found a stay of short duration could explain why the applicant's name did not appear in Primary Documents - provided that other information was available

to indicate residency. In all circumstances, the NAC looked for information that could explain why the applicant's residency was of short duration.[121]

154. The age of the students could also explain the absence of an applicant's name in complete Primary Documents. Residents less than 6 years old or older than 16 years were sometimes not listed in Primary Documents, because the IRS did not usually receive funding for them. However, residents as young as one year were sometimes found in Primary Documents. When an underage applicant claimed the CEP for a school year and their name did not appear in complete Primary Documents, but other underage students younger than the applicant appeared in Primary Documents, CEP Principle 6 usually applied and the applicant was denied. The same applied to overage students: when other residents of the same age or older appeared in Primary Documents but the applicant did not, the CEP was usually denied for that school year.

155. INAC-Research usually indicated the status of every applicant (Indian Status, Inuit, Métis, non-Aboriginal). When an applicant had gained or lost status as a child because of a circumstance related to a parent (marriage), this information was considered by the NAC. When the Indian Status of the applicant was uncertain in a school year under appeal, the NAC considered the applicant to be non-status and did not apply CEP Principle 6. Similarly, when the applicant had been in care of a child welfare agency, the NAC did not always apply Principle 6. The funding for these students was sometimes provided by a provincial or territorial government and they were not always listed on the Primary Documents.

156. In rare circumstances, the NAC granted the CEP when an applicant with Indian Status did not appear in complete Primary Documents and none of the reasons listed above applied.[122] For example, when the quality and the accuracy of the information provided by the applicant was compelling or time-specific information was confirmed by INAC,

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[121] See paras. 168 and 186.
[122] See paras 151 to 155.

the NAC concluded that the Primary Documents were inaccurate. The CEP was granted when more than one of the following circumstances applied:

- The applicant lived far away from the IRS, there were no day students at the IRS, and the type of the information provided by the applicant could not have been known to a temporary visitor;
- The applicant provided names of both residents and staff who were only located in the school years under appeal;
- The applicant provided letter(s) of support from other confirmed resident(s) in the school years claimed, and the letters were specific to the applicant and the school year(s) claimed;
- The applicant provided letter(s) of support that confirmed the residency from other knowledgeable person(s) at the IRS who were confirmed as being at the IRS during the school years in question (teacher, school administrator); and/or
- Other time-specific information provided by the applicant was confirmed by INAC (e.g. if the applicant indicated that upon arrival, her hair was cut short by Sister X and it was confirmed that Sister X was in charge of that task for new students).

157. The NAC also granted CEP to applicants with Indian Status not listed in complete Primary Documents when other documents in INAC's collection or provided by applicant indicated residency. For example, a report card, photograph or school newsletter from an IRS for residents only was considered sufficient.

vi. IAP Decisions and the CEP

158. Many CEP applicants also claimed in the Individual Assessment Process to obtain compensation for abuses they suffered at the IRS. These claims were heard by adjudicators and decisions were rendered in writing. Adjudicators usually reviewed the school records to confirm the presence of the applicant at the IRS. They also listened

to testimony from the applicant and could ask questions when the school record was incomplete or inconsistent with the testimony. In their decisions, adjudicators often referred to the school records and to the testimony of the applicant to make findings respecting residency. The NAC reviewed these IAP decisions and respected the findings of the adjudicators on residency in situations when the applicant did not appear in complete Primary Documents in the year(s) in question, but an adjudicator found an applicant to be a resident. The following scenarios occurred respecting the decisions of adjudicators:

- If the adjudicator made a finding on the duration of the residency and indicated a start and an end date (such as the applicant was a resident from September 1969 to June 1973), the NAC would accept these finding for the CEP for all these school years;

- If the adjudicator made a finding of fact only on the duration of the residency without specifying the years (such as the applicant was a resident for a period of three years and the abuse occurred in the second year), the NAC would grant a minimum of three years;

- Whenever an adjudicator made a finding of fact that the abuse occurred in a specific school year, the NAC would grant the school year;

- If the school record or the information in an appeal file reviewed by NAC indicated a longer residency than the one determined by the adjudicator, the NAC would allow the years confirmed by the adjudicator and the additional years confirmed by the appeal file;

- When an adjudicator determined that an applicant was a resident for a specific number of years and the school records in the appeal file indicated a shorter residency, the NAC would defer to the decision of the adjudicator and allow the longer period; and

- When the adjudicator concluded that the applicant was a day student at an IRS, the NAC would usually deny the school year(s) claimed unless the NAC had other evidence indicating residency.

vii. Appeal Files Remitted to INAC

159. When a majority of five NAC members agreed that some key information was missing from an appeal file to accurately make a decision to allow or deny each school year under appeal, the NAC could remit the file to INAC with specific instructions. This occurred for a small percentage of the files in circumstances, such as:

- The applicant mentioned in a document or a call that he or she resided at an IRS that had not been researched by INAC;

- The applicants provided the names of former students and staff that had not been researched by INAC, the presence or absence of whom could impact NAC's decision;

- The applicant had provided the name of an individual who could provide a statement of support that could be influential in NAC's decision, but the applicant was not advised to contact the supporting individual;

- The applicant used a name variant at the IRS that was not researched;

- Unsuccessful attempts had been made to contact the applicants to obtain additional information, but the NAC believed additional attempts should be made to seek specific information;

- The applicant provided time-specific information that could validate residency if confirmed by INAC; and

- INAC referred to school documents that were not included in the appeal file.

viii. Reasons to Deny a School Year

160. It is potentially misleading to establish a list of the common reasons why the NAC would deny an appeal for a school year, because each appeal file was unique. Decisions were made based on an analysis of all the information available in a file, and often a combination of elements in a particular file led to the particular decision. It is possible to generally identify some of the most common reasons for denying a school year while keeping in mind that any information in a file indicative of residency was carefully assessed and considered in light of the applicable CEP Principles and protocols. Although the object of these principles was to validate eligibility and any ambiguities were to be resolved to favour the applicants, the NAC would not grant a school year when documentation clearly established that an applicant was not a resident in a school year and there was no contrary evidence.

161. The most frequent reason why the NAC denied school years was where the applicant's name of an applicant was absent from complete Primary Documents or other complete lists. For example, when the administrator of an IRS for Inuit students in the Arctic used Primary Documents to confirm the residents the absence of the name of an Inuit applicant from those documents was considered evidence that the applicant was not a resident at the IRS in that year.

162. Many Ancillary Documents commonly used by IRS provided information on the duration of the residency. One such document was the "Application for Admission" at an IRS which indicated if the child had never attended school before or was attending a local school in the previous year. Some files contained a "Discharge Form" which usually indicated the date the applicant entered and left the IRS, the grades completed, and the reasons for leaving the IRS.

163. Some Quarterly Returns specifically identified new residents at the IRS in a section separated by a solid line. Quarterly Returns also identified residents who left the IRS

in the previous quarter and why (e.g. going to school from home, did not come back, left school, did not come back after holiday, quit to be married, attending day-school, discharge applied for). The September Quarterly Return generally indicated that a student who was present at the end of the previous school year did not return. It also indicated whether the applicant was in residence for "62 days." This "62 days" represented the operating grant claimed by the IRS for the summer months of July and August for students who had been in residence the previous June and who did not return to residence in September. Students who returned to the IRS in September appeared on the Quarterly Returns with more than 62 days in residence to account for the days in September the students were present at the school. All these documents indicated whether an applicant was a resident in a school year claimed and were balanced with other information in the appeal file indicative of residency.

164. Some IRS administrators also kept detailed lists of residents and students for internal administrative purposes. Some of the organizations (both religious and secular) kept a detailed ledger or lists of all the residents at the IRS. These documents would identify the name and date of birth of the student, their level of education, their home community, the date they entered the IRS, the date they left the IRS, the grades completed, and how many years they resided at the IRS. In the first years of the residential school system, these documents were often prepared manually by religious organizations. In the later years, information on residents was usually gathered by secular organizations, sometimes in a computerized database. When the name of an applicant did not appear in these ledgers, documents or databases, applicants could be denied in the absence of information indicative of residence.

165. Many applicants were identified in historical documents as day students at an IRS. Day students were not eligible for the CEP. These documents could originate from the IRS or from elsewhere. Examples of IRS generated documents include the lists of day students receiving lunch at the IRS every quarter, a letter from the administrator of the IRS listing all day students, a school principal's monthly report identifying residents and day students, or a list of students being bused to the IRS every day.

166. Documents unrelated to the IRS sometimes identified applicants as attending school elsewhere or being at a different institution in a school year. Letters and lists prepared by the provincial government, local school districts or a religious organization sometimes located an applicant at a different institution in a school year. When an applicant was so identified the NAC denied the appeal in the absence of information to the contrary. Many applicants were unable to accurately remember when they were residents and when they were day students because they had attended residential school many decades ago.

167. Frequently, applicants were denied the CEP because they self-identified as day students. Others misunderstood that only residents were eligible for the CEP. Some said they had applied for the CEP because other day students they knew had claimed to have received it. In fact, while some day students may have received a CEP, an audit of the CEP revealed relatively few such cases.[123]

168. Many applicants were either day students or going to school elsewhere claimed the CEP for temporary overnight stays. A temporary overnight stay in a school year did not qualify for the CEP. They were distinguished from residencies of short duration, which did qualify an applicant for the CEP.[124] NAC usually considered a temporary overnight stay to be any length of stay when the applicant's primary place of residence was elsewhere. Examples of temporary stays that usually resulted in a denial of the school year claimed include the following situations:

- Stays at the residence because of an injury;

- Stays at the residence to prepare for and/or participate in religious activities (first communion, confirmation, etc.);

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[123] Lessons Learned, supra at note 79, p.41.
[124] The distinction between a temporary stay and a residency of short duration is explained further in paragraphs 184 to 186.

- Stays at the residence on weekends to participate in sports activities;
- Stays at the residence for a few nights to allow students to help decide if they want to go to the IRS the following year (in the later years of the IRS system);
- Stays at the residence for a few nights before being transferred to a private home when the student knew that the stay was temporary;
- Stays overnight at the IRS because of bad weather;
- Stays at the IRS because of a flood or a fire in the community; and
- Stays at the IRS during the summer months to participate in a summer camp.

169. Some applicants who claimed the CEP lived with their family on the premises usually because a family member was employed by the IRS. These applicants were not eligible unless they slept in the dormitory with the other students.

170. Some employees who lived at the IRS claimed the CEP. When applicants worked at an IRS as adults and received a salary, they did not qualify for the CEP. They were residing at the IRS voluntarily for the purpose of work and not for the purpose of education. On the other hand, it was common for elderly applicants to explain that they had spent many years at an IRS in their youth where they mostly worked as farm laborers or janitors and received little formal education. These applicants would qualify for the CEP. Some situations were more ambiguous, for example, when an applicant had been a student at an IRS and had transitioned into casual employment at the IRS when they were older (16, 17 etc.) but continued to attend class at the IRS, the CEP could be granted.

171. CEP appeals were denied by NAC for the following reasons:

- The IRS was closed in the school year(s) claimed;

- The applicant already received compensation for all the years claimed in the appeal, and all attempts by the CEP Administrator to contact the applicant to clarify the school years under appeal failed;

- The applicant applied for more school years, because he or she could not remember the exact school years he or she lived at the IRS. This was often the case when the communications in the file revealed that the applicant was clearly looking for one additional school year but had applied for four because he or she was unsure about the exact school years;

- The IRS only taught grade 9 to 12 and the applicant was too young to have been in those grades in the school years claimed;

- The applicant was younger than 6 years old in the school year claimed and the IRS school policy clearly indicated that the IRS did not admit students younger than 6 in that school year;

- The applicant was older than 16 in the school year claim and a school policy indicated that students 16 and older would not be admitted in residence and would instead be placed in private homes;

- The applicant was Métis and the IRS policy was to only accept students with Indian Status;

- The applicant resided at two residential schools in the same school year. He or she had received the CEP for residing at the IRS in that school year, but believed he or she was entitled to two years of CEP because he or she had attended two IRS. The CEP was paid on a school year basis and attending more than one IRS in the school

year had no impact on the amount paid. As soon as residency at one IRS in a school year was validated, the CEP was paid for that school year; or

- The personal representative or estate could not provide any additional information, none of the information in the file could validate residency, and the name of the applicants did not appear in Primary Documents and Ancillary Documents at any IRS during the period when the applicant was between 4 and 18 years old.

172. Finally, applicants were denied the CEP as a result of the application of CEP Principle 8 which stated that residency could not be validated based on the applicant's declaration of residence alone. To explain what was considered a "bare declaration of residence," it is first necessary to review the reasons why school years were allowed by NAC.

ix. Reasons to Allow a School Year

173. Many of the appeals when NAC allowed one or more school years were complicated files. The documents and information in the file could often not validate with certainty that the applicant was a resident in a school year but the application of the CEP Principles as interpreted by the NAC produced a favorable outcome for the applicant. Whenever a situation was ambiguous, the benefit of the doubt was given to the applicant. Whenever the school documents were inconclusive, such as a gap, or a reasonable explanation why the name of an applicant was absent, the NAC would carefully review the situation.

174. When partial or complete gaps existed in the Primary Documents for a school year, the CEP Principles would allow the NAC to approve a school year provided that information in the file could validate residency. When no school document could refute that an applicant was a resident in a school year and the applicant provided time specific information about the IRS, this information was sufficient to validate residency and allow the appeal for the school year.

175. When no such time specific information could be provided, the situation was considered a "bare declaration of residence" and was considered insufficient under the CEP Validation Principles to grant the appeal. What constituted a "bare declaration of residence" or "time specific information" was debated at length among NAC members, and a consensus was never fully achieved. Therefore, the NAC would debate its applicability to specific appeals.

176. However, the CEP Validation Principles required NAC members to reject bare declarations. "I was a resident for 7 years at the IRS" constituted a "bare declaration of residence". On its own, the declaration could not validate residency without the presence of additional information. The threshold to validate residence was not high in the absence of Primary Documents.

177. More weight was given to the names of former students and staff provided and confirmed at an IRS when there were also no day students attending the IRS at that time. When the applicant provided names of students located at the IRS during the school years in question but the applicant was recorded as a day student, less weight was given to the names of other students and staff, because the applicant would have known these individuals through his or her regular attendance as a day student. Similarly, when a former student had evidently copied the names of all the students in a yearbook or used an extensive list which was identical for many claimants from one school and was obviously prepared by someone else, it was given less weight. Names of former students and staff were useful to validate residence in the following circumstances:

- The name of a student was only identified as a resident in one or more of the years under appeal;

- The name of a staff member was only identified as an employee in one or more of the years under appeal;

- The name of the student was provided in a specific context that was confirmed (e.g. the student shared a room with students X and Y in the school year 1975-76 and students X and Y were both confirmed as residents in the school year during that year); and

- The name of the staff was provided in a specific context that was confirmed (the dorm supervisor was Mr. X during the first year and Mr. Y during the second year and both were confirmed by INAC).

178. Similar principles were used by the NAC to assess letters and affidavits of support. INAC researched the author of the letter to confirm their presence at the IRS. It was the quality and not the quantity of letters or affidavits that mattered. Letters and affidavits of support were most helpful when:

- They were specific to residency at the IRS. The statement "X slept at the IRS" was more helpful then the statement "X was at the IRS" in situations where both day students and residents attended the IRS. Whereas the first statement supported residence, the second statement could also refer to attendance as a day student at the IRS;

- They refer to specific school years. The statement "I know that X was a resident at the IRS in the school year 1979/80" was better than "X slept at the IRS";

- They contained specific details. The statement "X and I were friends. The Indian Agent brought us to the IRS. We took a plane to Edmonton, it was the first time we were in a plane. In Edmonton, we took a bus to get to the IRS. X and I were in the same dormitory the first year. We were 6 years old."

179. Most of the letters and affidavits of support were provided by other former students, school administrators, teachers, staff, and social workers. These letters helped validate residence when the author was confirmed at the IRS and their content provided specific information about the applicant.

180. Some applicants provided documents to support their residency, such as a yearbook or a report card confirming that the applicant was at the school. When no day students attended the school, the NAC would allow the appeal based on that information. When a school document was not in INAC's school collection or INAC could not independently confirm the authenticity of the school document, the NAC would assess the document. An example would be a document found by an applicant in the archives of a school board, such as a class register with the name of the applicant and the mention "Indian Residential School" next to their name. When there was an ambiguity, it was resolved in favour of the applicant.

181. At some IRS, the INAC documents were limited. The NAC always considered the number and quality of INAC documents when assessing an appeal. When Primary Documents were unavailable and few of the other school documents could confirm time specific information, the NAC followed the ambiguity principle.

182. An applicant who provided a detailed description of the IRS and specific details about activities undertaken while at the IRS (totem poles at the entrance, presence of a graveyard, two double-beds per room made of metal, learned to carve at the IRS, etc.) and INAC had no contrary information, this information could establish eligibility for the CEP on the sole basis of the accurate description.

183. Sometimes a description of the IRS was sufficient to validate residency. An applicant who provided information that only a resident could know (e.g. the applicant described sleeping in the old dormitory until the dormitory was moved to a new building) and INAC confirmed the information, such information was relied on to allow the appeal.

184. Many applicants claimed the CEP for a short period of residency. The CEP Protocol defined the terms "Eligible Year" and "Residence" as follows:

Eligible Year — *A School Year, or part thereof for which an Applicant's Residence is confirmed.*

Residence — *The Applicant resided overnight at an IRS for one or more nights in a School Year and may have attended classes at the IRS, a public school or a federal day school.*

185. As indicated by the underlined text, residence in part of a school year, even for one night, was sufficient to qualify for the CEP. The key element was the term "resided overnight." Residence is usually defined as "the place where someone lives." In the context of the Settlement Agreement, applicants who slept overnight at the IRS for a temporary period of time when they usually lived elsewhere did not qualify for the CEP. It was possible to be deemed a resident for sleeping at the IRS for a very short period of time. Generally, when the applicant knew that the stay at the IRS would be for a temporary period of time for a specific reason, the CEP was denied. When the applicants did not know (or could not have known) that the stay at the residency would be temporary, the applicant was considered to be a resident and the CEP was allowed for the school year.

186. Some examples when applicants would be considered residents (keeping in mind that time specific information was also required to validate residency) include:

- The applicant stayed for a few nights at the IRS and was sent to a sanatorium when a medical exam revealed he or she was suffering from tuberculosis;
- The applicant stayed one month at the IRS and ran away;
- The applicant was brought to the IRS by the mother without the knowledge of the father and the next day, the father drove to the IRS and returned home with the child;
- The applicant was brought to the IRS following the death of the mother and stayed in residence for a few weeks until a grandparent decided to raise them;

- The applicant slept at the IRS for a couple of weeks and then learned for the first time that he or she would be moved in a private home;

- The applicant slept at the IRS for a few weeks and was moved out of the IRS because of overcrowding, with no prior knowledge of the situation when he or she first arrived at the IRS; or

- The applicant was returned home for any reason.

187. The NAC considered whether the Inference and Interpolation principles had been properly applied. When the NAC concluded that additional years should have been granted via Inference or Interpolation, the NAC allowed the appeal for those years.

x. Missing Records

188. After its review of thousands of CEP files, the NAC reached three conclusions on the issue of missing records.

189. First, INAC's collection of over 1,000,000 school records[125] covered all the IRS and most of the school years claimed. It is true that these documents were not evenly distributed between the IRS: some IRS had thousands of documents and complete lists of residential students, while others had substantially less documentation available. Nevertheless, for all IRS, at least some school documents were available to help validate residency.

190. Second, when lists of residential students were missing and the name of the applicant did not appear in other school records, INAC undertook significant effort to contact the applicant to obtain additional information. The additional information obtained often resulted in CEP eligibility.

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[125] Lessons Learned, supra at note 79, p.23.

191. Third, the unavailability of complete lists of residential school students in a school year supported eligibility for that year because reasoned assumptions based on the totality of the information available (CEP Principle 3), Interpolation and Inferences (CEP Principle 4) could be made to the benefit of the applicant and any ambiguity was resolved in favour of the applicant (CEP Principle 5).

G. Meeting the Objectives of the CEP

i. The Objectives of the CEP

192. The following section assesses the extent that the objectives set forth in the executive summary of the CEP Validation Protocol[126] respecting the delivery of the CEP have been met. These objectives include: 1) ensuring that the applicant receives the correct amount of compensation; 2) a fair and objective assessment; 3) a timely assessment; 4) minimizing the onus placed on applicants; 5) a practical and efficient assessment, and 6) a minimum of errors. Based on the NAC's experience, most of these objectives were met, as discussed below.

ii. The Correct Amount of Compensation

193. Did each CEP applicant receive the "correct amount of compensation"? Many former students believed that they did not receive compensation under the CEP for all school years that they resided at an IRS. Appeal files reviewed by the NAC revealed that in many cases applicants were mistaken regarding the number of years in residence. Primary Documents and Ancillary Documents often clearly indicated a period of residency (start date, end date, interruption, return etc.), and the period of residency was often confirmed by multiple independent historical documents from different sources.

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[126] CEP Protocol, supra at note 90, Executive Summary, p.4.

194. When Primary Documents and Ancillary Documents were inconclusive, applicants who were able to provide accurate and detailed information about their life at residential school were most likely to be successful on appeal.

iii. Fair and Objective Assessment

195. The CEP Validation Principles and related assessment protocols were applied fairly and consistently by the NAC at every level of the appeal process. Nevertheless, some applicants who provided statements, letters, affidavits and/or other documents to help validate their claims at the reconsideration and appeal stages stated that the validation process treated them unfairly, especially when their efforts did not result in the recognition of all the school years they were claiming.

iv. Timely Assessment

196. Most CEP applicants who had resided at an IRS expected to receive their CEP payment relatively quickly after submitting their application form. The amount of time required could vary greatly from case to case. To a large extent, validation was dependent on the availability and completeness of Primary and Ancillary Documents for each IRS, the ability of applicants to provide information on a timely basis, and the ease or difficulty of INAC to research and confirm the information received.

197. As discussed above the CEP program encountered many challenges[127] in the first months of its existence. These were eventually remedied, but the problems contributed to delays at the outset of the program. Such delays frustrated many CEP applicants.[128]

198. Once initial technical challenges were resolved, a more fundamental issue became apparent: the computer system CARS only made automatic findings of eligibility in 44% of the claims, meaning that the remaining 56%[129] required further research in school

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[127] See section D. *NAC and Emergent CEP Issues* at paras 85 to 95.
[128] Lessons Learned, supra at note 79, p.38.
[129] Ibid., at p.23.

documentation by INAC. At the time of the Settlement Agreement, Canada had estimated that only 20% of the CEP applications would require further research.[130] The necessity of conducting research for a substantive number of CEP applications contributed to additional delays.

199. For the 44% of the claims for which CARS was able to make a finding of eligibility, applicants received payment on a timely basis. Elderly applicants who had received an advance payment were also paid all the years claimed in their CEP applications on a timely basis. For these two groups, the CEP fulfilled the objective of timely CEP compensation.

200. For the 56% of the claims that required further research, the process was not always timely, particularly for those who subsequently applied for reconsideration (27,798), the NAC (5,259), or the Court (741).[131] It sometimes took years between the initial CEP claim and the time when a final decision was made. This usually occurred when few Primary Documents or Ancillary Documents were available, or applicants were unable to provide information to the CEP Administrator on a timely basis.

201. These delays in the processing of some CEP claims were not the result of major implementation failures. INAC implemented a robust validation system in accordance with the CEP Validation Principles and related protocols. When CARS could not make automatic findings of eligibility, validating residency based on further information and supporting documents provided by applicants and researched by INAC was often a time-consuming process.

v. Onus Placed on Applicants

202. Another objective of the CEP Principles was to minimize the onus on CEP applicants. This was achieved when CARS made automatic findings of eligibility and paid all the school years claimed. However, when applicants were required to apply for

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[130] See Schedule L of the Settlement Agreement (Flow Chart)
[131] CEP Statistics, supra at note 65.

reconsideration and/or appeal in order to receive compensation, the onus placed on applicant was greater.

203. In the reconsideration process, applicants were invited to provide additional information and/or supportive documents to help validate their claims. Although the threshold was low to establish residency in the absence of contrary evidence in the historical documentation, applicants had the onus to provide information about their life at residential school. Many applicants provided personal written statements, some quite long and detailed. For some applicants, describing their residential school experience was difficult.[132]

204. Many applicants provided historical school documents obtained from various archives or from the federal, provincial and/or territorial governments through access to information requests. Some applicants also swore personal affidavits to support their residence and/or obtained statements from their elderly parents or other relatives. Preparing and/or obtaining these documents was often difficult.

205. A study of the CEP conducted by the Aboriginal Healing Foundation in 2010 found that 40% of the 281 CEP applicants interviewed confirmed that the CEP process was difficult or challenging.[133]

vi. Practical and Efficient Assessment

206. When the name of an applicant appeared on complete Primary Documents, the validation process was practical and efficient. When the Primary Documents were incomplete for an institution, but an applicant's name appeared as a resident on Ancillary Documents in the school years requested, the claim would take longer to

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[132] Although this may not have been apparent from the written statements or phone interviews, all NAC members who participated in IAP hearings saw this repeatedly in those hearings.

[133] *The Indian Residential Schools Settlement Agreement's Common Experience Payment and Healing: A Qualitative Study Exploring Impacts on Recipients*, The Aboriginal Healing Foundation Research Series, 2010, p xiii, online at: http://www.ahf.ca/downloads/cep-2010-healing.pdf.

process but could usually be decided solely on the basis of the information provided in the application form.

207. A high percentage of the CEP applicants (approximately 73%) never applied for reconsideration. However, for the approximately 27% of applicants who did apply for reconsideration, some of whom subsequently appealed to the NAC and the Court, the processes did not always appear to be practical and efficient.

vii. Executed with a Minimum of Errors

208. Was the CEP executed with a minimum of errors? Based on the thousands of CEP files reviewed by NAC, it is possible to answer that question in the affirmative. However, errors were made. For the purposes of this report, errors could include overcompensating, undercompensating, or a wrongful denial of the CEP. In the context of the Settlement Agreement, the NAC was aware that undercompensating or denying the CEP to an otherwise eligible applicant would be tremendously unfair and would significantly undermine the "spirit of reconciliation and healing that is the ultimate aim of the SA [Settlement Agreement]."[134] For that reason, the NAC was extremely careful in consideration of every appeal.

209. The NAC is aware that overcompensating sometimes occurred as a result of the application of the CEP Validation Principles of Interpolation and Inference or from the application of NAC's Record of Decision No. 006/C to pay all the school years claimed by elderly advance payment recipients in their CEP applications. In both cases, overcompensation could occur when residency could be validated but its duration remained uncertain, because it was deemed preferable to overcompensate rather than undercompensate when Primary Documents were nonexistent or incomplete. Overcompensation was the exception and usually resulted from a combination of factors, such as a gap in Primary Documents and applicants applying for a longer

[134] Preamble of the Settlement Agreement.

period of residency when uncertain about the exact school years they spent in residence.

210. With respect to the possibility that some applicants may not have received the CEP for all the school years they resided at an IRS, the NAC believes such cases to be very rare. However, they could have occurred when Applicants did not follow through with the reconsideration and appeal processes sometimes for the following reasons:

- Applicants were legally incapacitated or died after submitting their CEP applications and their personal representative or estate administrator could not provide any information to corroborate the applicants' CEP claim;

- Applicants died without a will and the legal process to appoint an estate administrator was not completed in time to apply for reconsideration or appeal to the NAC; or

- Applicants were incapable of providing any information, because they could not remember details related to their residential school experience as a result of trauma, addictions, diseases, accidents or old age.

211. It is also possible that an applicant was denied compensation in the rare cases when Primary Documents may have been inaccurate and mistakenly omitted to list an applicant as a residential school student. The NAC was very alive to this possibility and, on appeal, carefully reviewed and weighed all the information in every file when an applicant did not appear on complete Primary Documents to confirm that no other information existed that would contradict the Primary Documents. In cases where such other information was sufficient, it was relied upon to allow appeals. Similarly, if there were other sufficient reasons to explain the absence of an applicant's name from complete Primary Documents, the CEP Appeal was allowed.

212. In summary, the objectives to pay the correct amount of CEP compensation in a fair, objective, practical and efficient manner with a minimum of errors were achieved.

However, the process was not always timely and for some applicants, the onus placed on them was, at times, greater.

H. Conclusion on the CEP

213. Under the Settlement Agreement, Canada agreed to pay eligible CEP applicants a Common Experience Payment based on the number of years they resided at an IRS. The parties to the Settlement Agreement representing the plaintiffs were concerned that decisions on CEP eligibility would be made by Canada as the administrator of the Settlement Agreement. To address this concern, the Settlement Agreement provided for a multilevel decision and mutually-accepted validation principles and protocols to ensure that claims would be dealt objectively, impartially and accurately.

214. The CEP Validation Principles and the three assessment protocols derived therefrom were the result of a compromise. Although one option could have been to pay every applicant based on the school years claimed with little to no verification, this would have resulted in payments to non-eligible applicants or overpayments.[135] Another option could have been a payment based on confirmation of the name of the applicant on residential school records in every school year claimed which would have resulted in a denial of compensation to considerable numbers of eligible CEP applicants due to incomplete historical school records as well as the exclusion of Métis and Inuit students from Primary Documents. The CEP Validation Principles represented a balance between these two possible options. Although historical documentation played a key role in the validation process, claims could also be validated by applicants providing oral or written information on the IRS and/or other supporting evidence.

215. This report is not intended to review the appropriateness of the CEP Validation Principles and related protocols. Any change to the criteria or process would likely have had both desirable and undesirable results. With the benefit of hindsight, the NAC recognized that the following process changes could have been beneficial:

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[135] CEP Statistics, supra at note 65. 23,927 (23%) of the CEP applications were deemed ineligible.

- Advise claimants from the outset that the validation process could in some cases take time and be complicated and explain the reasons why. The notice program and other community outreach activities created expectations that CEP applications would be processed and paid promptly on the sole basis of the application form, and applicants were often frustrated when their claims were not approved on a timely basis and they had to provide additional information, statements, and documents;

- The original letters to CEP claimants did not include sufficient detail as to the reasons for the CEP decision. Once this became apparent, in 2007 and early 2008, the NAC was involved in redrafting the letters to provide more information to the claimants after the initial CEP decision.

I. CEP Appeals Advancing to Court

216. The parties to the Settlement Agreement agreed that NAC decisions to deny the CEP in whole or in part could be appealed to a supervising Court.[136] The formal process envisioned by the parties and set out in the CEP Appeal Protocol was not ultimately approved by the Courts. Instead, the appeal process was simplified, and appeals were determined solely in writing.[137]

217. In addition to providing for CEP appeals to the NAC, Article 5.09 authorized a further appeal to the supervising courts for CEP applicants dissatisfied with the outcome of their appeal to the NAC.

218. The preconditions to an appeal were twofold: a prior unsuccessful appeal to the NAC, in whole or in part; and the appeal related to an eligible IRS school. The latter

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[136] Settlement Agreement, section 5.09(2).
[137] Appeal Protocol, sections 27 and 28. The process to appeal to the supervising Court was simplified by eliminating the requirements to appeal by way of notice of motion and dispensing with service of documents on the Trustees. Applicants were also not required to pay filing fees.

precondition respected the separate process under Article 12[138] for additions of schools to the lists of eligible institutions.[139]

219. As with NAC appeals, appeals to the supervising courts were designed to be streamlined, efficient and easy to complete. The applicant was required to complete a preprinted form that was available in hardcopy or electronically from the CEP Administrator. The CEP NAC Appeal Form and the CEP Court Appeal Form were virtually identical. [140]

220. On receipt of the Court Appeal Form, the CEP Administrator conveyed the entire NAC appeal package, described above, to the court for consideration. All CEP appeals were determined on the record before the court. Appellants were entitled to forward additional information to the court although oral submissions to the court were not permitted.

221. The Western Administrative Judge, Brown J., heard and determined all CEP appeals. Ultimately, that Court determined 750 CEP appeals. Of those decided, 14 were allowed on the basis of new information not before the NAC. This result is unsurprising given the rigorous research and assessment processes of the lower levels at reconsideration and the NAC appeal process.

III. CEP SURPLUS

A. Distribution of Excess Funds from the Designated Amount Fund

222. The Settlement Agreement provides that after the payment of the CEP to all eligible applicants, any excess funds from the $1.9 billion set aside for the CEP (the Designated Amount Fund (DAF)) would be distributed to CEP recipients in the form of personal credits for education to a maximum of $3,000 per person. After the payment of the

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[138] See section VII. *Article 12 and other Applications Regarding Eligible Institutions.*
[139].See Schedules E and F of the Settlement Agreement.
[140] See Appendix K for the CEP Court Appeal Form.

personal credits, the remaining balance in the DAF (if any) would be payable to the National Indian Brotherhood Trust Fund (NIBTF)[141] and Inuvialuit Education Foundation (IEF).[142] [143]

223. The Settlement Agreement provided key dates and conditions for the distribution of personal credits and the transfer of the remainder in the DAF to the NIBTF and IEF. The personal credits could only be distributed after an audit of the DAF determined that more than 40 million dollars remained in the DAF after the CEP application deadline.[144] A 2013 audit of the CEP determined that $328,879,724 remained in the DAF as of October 1, 2012,[145] an amount sufficient to distribute personal credits of $3,000 to each CEP recipient and leave a surplus for NIBTF and IEF.

B. Distribution of Personal Credits

224. The Settlement Agreement described the main features of the personal credits.[146] First, they would have no cash value and would only be redeemable for "either personal or group education services" provided by "education entities or groups" jointly approved by Canada, the AFN and the Inuit Representatives. Second, the personal credits would be transferable by a CEP recipient to family members. Third, Canada, the AFN and the Inuit Representatives would develop further terms and conditions for the distribution of the personal credits. Finally, all the internal administrative costs relating to the personal credits would be paid from the DAF.[147]

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[141] The NIBTF was developed in 1975 and has funded over 170 group projects ranging from language and cultural revitalization programs, such as cultural healing and teaching circles and camps, to student support, training and scholarship programs. In addition, it has approved funding for over 1,800 First Nation and Métis individuals engaged in post-secondary, cultural learning, or training and certification. See http://nibtrust.ca/about/

[142] The Inuvialuit Education Foundation is a registered charity established in 1990 that provides financial assistance and scholarships to Inuvialuit post-secondary students. See https://www.irc.inuvialuit.com/program/inuvialuit-education-foundation

[143] Settlement Agreement, section 5.07.

[144] Ibid., section 5.05(2).

[145] Employment and Social Development Canada, Schedule of the Common Experience Payment Designated Amount Fund, available at 2015 CEP Audit.

[146] Settlement Agreement, definition of "Personal Credits."

[147] Settlement Agreement, section 5.08(2).

225. In an October 31, 2013, order, Brown J.[148] approved the terms and conditions for the distribution of the personal credits, including a notice program, an administration plan, and a budget. The NAC consented to the terms as negotiated by Canada, the AFN and the Inuit. The principal elements approved are set out in Appendix M.

226. The Notice Program and the mail-out of personalized Acknowledgement Forms to CEP Recipients took place in January 2014. By June 2014, it became obvious that the uptake was low as few redemption forms had been submitted. In the summer 2014, INAC undertook a series of additional measures to raise awareness of the October 31, 2014 deadline to submit the Acknowledgement Form. These measures included another direct mail-out to CEP recipients, a social media campaign, and targeted radio spots. In the fall of 2014, INAC organized a "workout" with Crawford, the AFN and the Inuit Representatives to ensure all the parties involved had a common understanding and to discuss how to best assist CEP recipients and their families with the personal credits.

227. In November 2014, Canada, the AFN and the Inuit Representatives obtained an interim order from the Court for Crawford to continue to accept Acknowledgement Forms and Redemption Forms after the initial deadlines (respectively October 31 and December 1, 2014). On January 7, 2015, the Supreme Court of British Columbia issued an Order again, setting extended deadlines: March 9, 2015 for Acknowledgement Forms; June 8, 2015 for Redemption Forms, and August 31, 2015 to complete the educational activities. Additional outreach activities were conducted by INAC, AFN and the Inuit Representatives to inform CEP recipients and their families.

228. Notwithstanding the best efforts of INAC, Crawford, the AFN and the Inuit Representatives, and increases in the uptake following the extension and additional outreach activities, at the end of the process, only 23,774 of the 79,309 CEP recipients,

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[148] Order of Madam Justice Brown dated October 31, 2013.

or approximately 30 percent, used a total of $57,194,000 in personal credits. [149] INAC identified some of the reasons for the low uptake,[150] including:

- A short timeframe to identify and complete educational activities and go through a multistep acknowledgement and redemption process;

- The administration process was complex and included forms that were lengthy and not easily understood by CEP recipients (7 pages for the Acknowledgement Form with a total of 22 options);

- The average age of CEP recipients in 2014 was 60 years old, an age where one is less likely to pursue educational activities. Transferring credits to family members required consultation and communications with transferees and education providers with application deadlines sometimes required months in advance for mainstream institutions;[151] and

- Few applicants began the process until September 2014. The process had fixed deadlines and a large number of forms were received immediately prior to the deadlines. This resulted in delays for Crawford in processing forms. Crawford was unable to meet its services standards, leaving insufficient time to address incomplete or deficient forms.

229. Approximately 50 percent of the personal credits were used by First Nations and Metis for "Group Educational Entity," i.e. by pooling credits to participate in education programs aimed at the preservation, reclamation, development or understanding of

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[149] These numbers (23,774 CEP recipients and $57,194,000) were provided by Canada on February 28, 2019.

[150] INAC, *Final Report, Lessons Learned,* supra at note 79.

[151] Approximately 35 percent of the funds were transferred and used by family members of First Nations and Métis CEP recipients and approximately 24 percent were transferred and used by family members of Inuit CEP recipients. These numbers were compiled from two statistical reports prepared by Canada as of April 28, 2016.

native identities, histories, or languages. For the Inuit, approximately 62 percent[152] pooled their personal credits to participate in programs aimed at the preservation, reclamation, development, or understanding of Inuit identities, histories, cultures, or languages. The AFN and the Inuit Representatives, through their personal credits liaisons, played a key role in working with Indigenous communities to coordinate the development and delivery of these programs. This utilization of the personal credits was one of the successes of the credit program as it benefitted several persons and the communities.

230. The distribution of personal credits to CEP recipients for education purposes was a very challenging and complex undertaking. From the outset, it had little appeal to a majority of CEP recipients. Only 38.8 percent of the CEP recipients (30,770 out of 79,309) submitted an acknowledgement form and 10.6 percent (3,240 out of 30,770) of those who submitted an acknowledgement form were denied because their form was incomplete (80 percent of those denied) or filed after the March 9, 2015 extended deadline (18 percent of those denied).

231. With the benefit of hindsight, the parties to the Settlement Agreement would have likely agreed on a different approach to interest more class members, make the benefit easier to claim, simpler and less costly to administer.

C. Transfer to National Indian Brotherhood Trust Fund and Inuvialuit Education Foundation

232. Section 5.07 of the Settlement Agreement directed the trustee to transfer to the NIBTF and IEF all excess funds remaining in the DAF following the distribution of the personal credits with "all amounts remaining in the DAF on January 1, 2015"[153] payable to the NIBTF and IEF "as soon as practicable."[154]

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[152] These percentages were calculated based on two statistical reports prepared by Canada as of April 28, 2016.
[153] Settlement Agreement, section 5.07(4).
[154] Schedule I to the Settlement Agreement, Trust Agreement, section 7.1.

233. The funds transferred were divided between the NIBTF and IEF based on the proportion of CEP recipients identified as First Nations and Métis for NIBTF and as Inuit for the IEF. The funds received were to be distributed to First Nations, Métis and Inuit for educational programs in accordance with terms and conditions agreed upon between Canada, NIBTF and IEF.

234. On July 27, 2015, the British Columbia Supreme Court (the July 27, 2015 Order) approved by consent the *Terms and Conditions Regarding the Transfer of the Designated Amount Fund to the National Indian Brotherhood Trust Fund and Inuvialuit Education Foundation* agreed upon by Canada, the NIBTF and IEF. The other parties to the Settlement Agreement were consulted on the terms and conditions through the NAC. The main features of the terms and conditions are set out in Appendix N.

235. In the July 27, 2015 Order, the Court ordered Canada as trustee of the DAF to pay to the NIBTF and IEF the remainder in the DAF in percentage instalments subject to retaining temporarily some of the funds that could be required to pay some contingent liabilities related to current litigation seeking to add additional residential schools and some outstanding liabilities including the ongoing administration and payout of personal credits applications.

236. A total of $230,400,629[155] was transferred to the NIBTF and IEF between August 2015 and May 2018. NIBTF received $217,267,788 and IEF $13,132,841. As of January 31, 2019, a sum of approximately 18.4 million dollars remained in the DAF for contingent and ongoing liabilities. Once resolved, any residue in the DAF will be transferred to the NIBTF and IEF. NIBTF and IEF are charities registered with the Canada Revenue Agency and distribute funds to individuals and groups for educational purposes in accordance with administration plans approved by the Supreme Court of British Columbia.[156]

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[155] The numbers in the paragraph were provided by Canada on January 31, 2019.
[156] NIBTF's administration plan was approved on July 27, 2015 and IEF's administration plan was approved on January 7, 2016.

IV. INDEPENDENT ASSSESSMENT PROCESS

A. NAC Interaction with the Oversight Committee and the Chief Adjudicator

237. In the early days of the Settlement Agreement both the NAC and the Oversight Committees were developing practical and effective strategies for implementation of the Settlement Agreement. As a result, the NAC and the Oversight Committee as well as the Chief Adjudicator met on several occasions in the first few years of implementation. The key measures resulting from those meetings are described more fully below.

B. Use of IAP Decisions in CEP Appeals

238. A strategic principle adopted by the NAC was in respect to findings of fact made by an adjudicator regarding the residency of IAP claimants. The NAC agreed to adopt an adjudicator's findings for use on CEP appeals to confirm residence where it was to the benefit of the CEP claimant.[157] This principle was only applied by the NAC and the courts in CEP appeals. It did not apply at initial CEP application or reconsideration stages. Although 'residence' was not a requirement to prove an IAP claim, it was a pre-requisite to establish a CEP claim. Therefore, where an IAP adjudicator made a factual finding of 'residence', the NAC would accept that finding for the purposes of a CEP appeal.[158]

C. Short Form Decisions

239. The NAC supported an amendment to the Settlement Agreement to allow for the use of "Short Form Decisions" in lieu of the fully detailed written decision specified in the IAP model. The amendment was approved by the Court on January 4, 2010 and thereafter, 9,156 Short Form Decisions (24.1% of all completed claims) were issued.[159]

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[157] See para.153.
[158] See paras 56 and 153.
[159] See para 55.

240. Short Form Decisions eliminated a full written decision which required a detailed narrative of evidence and rationale supporting the decision and effectively reduced the amount of time between the hearing and the ultimate payment of compensation. Short Form Decisions could be used only with the consent of the parties where the requirements set out below were met.

241. In order to opt for a Short Form Decision, each of the following were required:

- The claim was a standard track claim;[160]
- Legal counsel represented the claimant at the hearing;
- All testimony, research, mandatory document production and future care plans were completed before the hearing;
- Submissions took place immediately after the oral hearing was concluded rather than a later date;
- The claimant, having received independent legal advice, provided written consent to the use of a short form decision; and
- The representatives of the parties that attended the hearing provided written consent to a Short Form Decision [161]

242. In those cases where a Short Form Decision was rendered:

- The decision had to be signed by the adjudicator, and the parties attending the hearing, and
- The parties retained their right to have the decision reviewed.

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[160] Standard track claims refers to claims where consequential harms and consequential loss of opportunity must be proven on a balance of probabilities and then proven to be plausibly linked to one or more acts proven. A finding of a plausible link does not require the negation of other potential causes of harms, but it must be based on or reasonably inferred from the evidence led in the case rather than assumptions or speculation as to possible links.

[161] When a Church party did not send a representative to the hearing, Canada was able to consent to a Short Form Decision on behalf of the Church.

243. A Short Form Decision was not available for self-represented claimants or where there were issues of credibility, liability or compensation.

D. Negotiated Settlement Process

244. The Negotiated Settlement Process (NSP) arose as an alternative to full IAP adjudication early on and was derived from the ADR process. This process did not require an adjudicator but involved an interview of the claimant conducted by a Justice Canada lawyer followed by negotiations. If the claimant accepted an offer, the claim was concluded with the payment of the negotiated amount. If the NSP did not result in a settlement, the claimant would re-enter the IAP stream. Similar to the Short Form Decision, it was suitable for cases in which all disclosure had been made and there were no outstanding questions about years of attendance, or parties involved.

245. The parties to an NSP could not deviate from the compensation rules under the IAP but the claimant had more opportunity to interact with the Justice Canada lawyer and receive an earlier settlement than in the regular IAP process. In total, some 4163 claims were settled through the NSP.

E. IAP Fee Reviews

246. At the first approval hearing in Ontario, Winkler RSJ ruled that legal fees on IAP decision could not exceed 30%, with 15% being paid by Canada and 15% by the IAP claimant from their awards.[162] BC Supreme Court Chief Justice Brenner in his Approval Reasons stated that the 30% maximum should be reserved for those cases that were exceptionally difficult.[163] This limitation on legal fees and the simplified fee review process was welcomed by the AFN and the Inuit Representatives and was supported by the National Consortium, Independent Counsel and Merchant Law Group as protection for claimants from unreasonable legal fees. Canada and the Churches had no role and, therefore, took no position in the fee review process.

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[162] *Baxter v. Canada (Attorney General)*, [2006] O.J. No. 4968.
[163] *Quatell v Attorney General of Canada*, 2006 BCSC 1840.

247. Subsequently, the Chief Adjudicator issued Fee Review Guidelines[164] and adjudicators addressed fee reviews in almost all cases whether requested by an IAP claimant or not.

248. Once the Chief Adjudicator issued his guidelines on fees, the majority of plaintiff's counsel acquiesced to the guidelines. They indicated their willingness to do so both at the hearing and in writing to the adjudicator. The normal fee approved was in the range of 22.6%.[165] As Canada committed in the Settlement Agreement to pay 15% of legal fees in addition to the award, the claimants would pay 7.6% of the fees on average, deducted from their awards.

249. However, the enormous publicity in both the Indigenous and mainstream media surrounding the conduct of a few lawyers who attempted to charge the maximum fees allowed coupled with misconduct of some counsel handling IAP claims,[166] led the Chief Adjudicator to require a written fee review decision in virtually every IAP claim, including Short Form Decisions and NSP claims.

250. The effect of the requirement for fee reviews in every case arguably intruded into the solicitor - client relationship. Moreover, in some instances it did not respect the right of IAP claimants to refuse a fee review. The fee review was conducted at the conclusion of the hearing when the IAP claimant had disclosed highly personal and sensitive details about their abuse at residential schools and its impact on their lives. The adjudicator might excuse legal counsel from the hearing room and question the claimant alone about the legal representation they received.

251. This process appeared at odds with the non-adversarial nature of IAP hearings. Some adjudicators interpreted their instructions from the Chief Adjudicator in such a manner that they would openly challenge the claimant's counsel on legal fees. The claimant's

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[164] See Appendix L Chief Adjudicator's Fee Review Guidelines; See http://www.iap-pei.ca/media/information/publication/pdf/pub/pub-lfr-guide-20101004-eng.pdf
[165] Ibid., page 2.
[166] See section VIII A. *Counsel Conduct.*

counsel would have to counter with extensive submissions on the fee review including providing extensive details about their history as counsel as well as their work with IAP claimants.

252. What was intended as a means to provide IAP Claimants with an efficient and simplified fee review process, was, in some cases, carried out in a manner that created its own challenges. Some counsel reported that they felt the process damaged their integrity in the eyes of their own clients.

F. Finalization of the IAP

253. One of the unexpected benefits of the enormous uptake of the IAP in earlier years was that the Oversight Committee and the IAP Secretariat quickly recognized and addressed the scope and the possible challenges.

254. This enabled the Chief Adjudicator to prepare in 2013 the IAP Completion Strategy entitled *Bringing Closure, enabling reconciliation: plan for resolving the remaining IAP caseload.*[167] The Chief Adjudicator shared the report with the Oversight Committee and the NAC and then submitted it to the Supervising Courts in January of 2014.

255. The Adjudication Secretariat in its document entitled *Independent Assessment process (IAP) 2018 Update to the IAP Completion Strategy*[168] provided a comprehensive analysis of the initiatives needed to resolve the remaining caseload. As of June 4, 2018, 99% of the 38,098 claims received had been resolved. This was accomplished through the use of innovative strategies.[169] The 2018 update envisioned closure of the Adjudication Secretariat on March 21, 2021.

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[167] Available at: http://www.iap-pei.ca/media/information/publication/pdf/pub/com-2013-12-10-eng.pdf.
[168] Available at http://www.iap-pei.ca/media/information/publication/pdf/pub/iapmisc-comp-2018-eng.pdf.
[169] Available at http://www.iap-pei.ca/media/information/publication/pdf/pub/lcp-eng.pdf.

V. SUPPLEMENTARY RESOLUTION INITIATIVES

A. Administrative Split

256. In or about the 1960s, some residential schools underwent a re-organization in which the educational component of the school was administratively separated from the residence, and established as an independent entity operated by Canada typically as a federal day school. To IAP claimants this "administrative split" resulted in no change to where they lived and went to school.

257. Until 2010, this re-organization was not a factor in the implementation of the Settlement Agreement. IAP claims arising from abuse in such schools were handled without distinction from those in the residence. However, in 2010, Canada's representatives began to make the submission that such schools were not covered by the Settlement Agreement. They were separate institutions not named in the Settlement Agreement and claims arising from them were outside the jurisdiction of the IAP unless the claim could be connected back to the residence. Adjudicators generally agreed that the terms of the Settlement Agreement supported this argument, leading to such claims not receiving IAP compensation.

258. This resulted in anomalous situations. Otherwise identical claims could be decided differently - some compensated and others not - depending on whether their case was decided before or after 2010. Some of the parties were concerned that this approach was not in keeping with the spirit of the Settlement Agreement.[170]

259. The administrative split issue received public attention and was raised in Parliament. The Minister of Indigenous Affairs committed to addressing the issue. The AFN raised this issue with Canada and also brought it before the NAC, which made a formal

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[170] The Chief Adjudicator reported to the courts and the NAC that there were 53 schools subject to challenges on the grounds that they were not, or had ceased to be, "residential schools" recognized by the Settlement Agreement. These challenges were based on the administrative split as well as other grounds. The Chief Adjudicator estimated they could result in between 500 and 1000 claims being dismissed, the majority of which fell within the administrative split category. The Chief Adjudicator placed these claims on hold until a decision of the Court (see section VIII. *NAC Involvement in Requests for Directions*).

request to the Minister of Indigenous Affairs that Canada address the issue. The NAC wrote to the Minister offering assistance to the Department in ensuring that these claims were resolved on their individual merits.

260. Consistent with the Minister's commitment, Canada ceased challenging IAP claims arising in such schools and pursued settlements with individuals whose IAP claims had been impacted by the administrative split argument. Survivors whose claims had been dismissed on a preliminary basis were granted settlement interviews and, where their claim otherwise met the requirements of the IAP, awarded compensation consistent with the IAP. Claims that had been dismissed after hearing were settled on the basis of the evidence at the hearing.

261. This approach subsequently provided the model for addressing a second category of dismissed claims.

B. Student-on-Student Claims

262. The IAP allowed compensation for student-on-student abuse subject to a test that considered such factors as the severity of the abuse, the location of the abuse, the relative characteristics of the alleged student perpetrator, staff knowledge and supervision, and the presence or absence of reasonable steps to prevent the abuse.[171] IAP claimants could have been relieved of the burden to establish certain circumstances where Canada made an admission that applies to the facts of their claim.

263. Specifically, the IAP provided compensation for claims of sexual or physical assault committed by one student against another (SOS claims) at an IRS where it was proven that those responsible for the operation of the school (1) had or should reasonably have had knowledge that the abuse of the kind alleged was occurring at the school during

[171] Schedule "D" of the Settlement Agreement, at Appendix IV, para B, at pages 32-33.

the time in question; and (2) did not take reasonable steps to prevent it; or (3) failed to provide reasonable supervision to prevent the abuse.[172]

264. One way of proving these requirements was an admission by Canada. The Settlement Agreement provided that Canada would work with the other parties to develop such admissions from a variety of sources including previously decided IAP cases. Where these elements were established, at a given school at a given time, they could provide the basis of an admission on which subsequent claimants could rely.

265. Canada's admissions list grew throughout the life of the IAP. As of March, 2013, there were 1,103 total admissions. By April, 2017, there were 4,482 SOS admissions. This arose as a logical consequence of the fact that Canada actively looked to IAP decisions to generate its admissions. As a result, IAP claims determined at an earlier date were less likely to benefit from Canada's admissions, resulting in some claims being dismissed which would benefit from a subsequent, dispositive admission. Essentially, the order in which claims were determined affected the compensability of some student-on-student claims.

266. In 2013, the Adjudication Secretariat and INAC, with consent of all parties, sought to address this situation by implementing a process which identified pending claims likely to require an admission in order to receive compensation, and placed those files on hold. The Supervising Court subsequently determined that adjudicators could not 're-open' affected claims.[173] Separately, members of the NAC applied to the Court, seeking guidance on whether Canada had complied with its obligation to work with the parties respecting admissions and whether SOS claimants were entitled to have their claims determined on the complete record of SOS admissions by Canada.[174] This application was rejected on the basis that that the NAC lacked standing.[175]

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[172] Ibid., at page 32.
[173] The NAC appealed this decision and the appeal is pending.
[174] The NAC pursued its application on basis of 5-1-1 vote with Canada opposed and the churches abstaining.
[175] The NAC appealed this decision and the appeal is pending.

267. On March 13, 2018, following this judicial guidance and consistent with overtures by the AFN to the Minister of Crown-Indigenous Relations and Northern Affairs, Canada announced it would negotiate settlements with IAP claimants whose student-on-student abuse claims were dismissed but who would now benefit from a subsequent, dispositive admission.[176] Canada continues to negotiate settlements with affected individuals.

VI. TRUTH AND RECONCILIATION COMMISSION

A. History of the TRC

268. The AFN, with the support of the other parties on the claimants' side and the Church Organizations, took the lead in negotiating the terms of a Truth and Reconciliation Commission (TRC) with Canada. Respecting the wishes of survivors and in keeping with the overall goal of the Settlement Agreement, the AFN advocated that the TRC be a non-adversarial, co-operative, transformative process led and informed by Indigenous legal traditions. The introductory mandate statement for the TRC reads as follows:

> *There is an emerging and compelling desire to put the events of the past behind us so that we can work towards a stronger and healthier future. The truth telling and reconciliation process as part of an overall holistic response to the Indian Residential school legacy is a sincere indication and acknowledgment of the injustices and harms experienced by the Aboriginal people and the need for continued healing. This is a profound commitment to establishing new relationships embedded in mutual recognition and respect that will forge a brighter future. The truth of our common experiences will help set our spirits free and pave the way to reconciliation.*[177]

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[176] Indigenous and Northern Affairs Canada, "Statement regarding Canada's pursuance of negotiated settlements with former Indian Residential School students who suffered student-on-student abuse" (13 March 2018), online at: https://www.canada.ca/en/indigenous-northern-affairs/news/2018/03/statement-regarding-canadas-pursuance-of-negotiated-settlements-with-former-indian-residential-school-students-who-suffered-student-on-student.html.

[177] Settlement Agreement, Schedule N http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf

269. The TRC had a six-year mandate and was comprised of three commissioners and a secretariat. Two of the commissioners including the Chair were Indigenous with one being a residential school survivor. The third commissioner was the spouse of a survivor.

270. In June 2008, The Honourable Harry Laforme was appointed as Chair of the TRC. Jane Brewin and Claudette Dumont-Smith were appointed as commissioners to the TRC. In October 2008, Justice Laforme resigned from the commission, followed in January 2009 by Brewin and Dumont-Smith. In June 2009, the Honourable Murray Sinclair was appointed as Chair together with commissioners Wilton Littlechild Q.C. and Marie Wilson.

271. The TRC received a fund of $60 million to hold seven major national events as well as smaller events in First Nations, Métis and Inuit communities where survivors and other stakeholders were heard, their stories witnessed and recorded. The TRC was also required to recommend commemoration activities for funding from the federal government. Another part of their mandate was to set up a research center to permanently house the TRC's records and documents.

272. More than 155,000 people attended the national events,[178] both Indigenous and non-Indigenous. The TRC heard testimony or received statements from over 6,750 survivors, members of their families and other individuals.[179]

273. The TRC issued an interim and a final report which was received by the Prime Minister of Canada in October, 2015. The Final Report detailed findings gathered over six years of hearings, and included 94 Calls to Action.

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[178] Summary of the *Final Report of the Truth and Reconciliation Commission of Canada*, page 25, online at: http://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf

[179] Ibid. at p. 25.

274. The Calls to Action were designed to address systemic discrimination by reforming policies and programs at all levels of government – federal, provincial, municipal and Aboriginal – to work together to change policies and programs in a concerted effort to repair the harm caused by residential schools. Forty-two calls to action addressed institutions of child welfare, education, language and culture, health, and justice for systemic change recognizing that reconciliation required structural change in Canadian society, including specific recommendations for law societies and law schools to incorporate cultural knowledge, Indigenous law and skills based training into their educational programs.[180]

275. The AFN, the Inuit Representatives and claimants' counsel felt that, notwithstanding the large amounts of financial compensation available under the Settlement Agreement, the lasting transformative legacy of the Settlement Agreement would be the TRC. Canada has committed to passing Indigenous language legislation,[181] incorporating the United Nations Declaration on the Rights of Indigenous Peoples into domestic law[182] and provincial governments are making significant strides in changing the curricula of educational institutions across Canada.[183] The Canadian Bar Association has made commitments to fulfill the Calls to Action relevant to the bar[184]

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[180] The Calls to Action state: "We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

[181] Betty Harnum, CBC News, found at: http://www.cbc.ca/news/canada/north/betty-harnum-Indigenous-languages-act-1.3897121

[182] John Paul Tasker, CBC Liberal Government backs bill that demands full implementation of UN Indigenous Rights Declaration, found at: http://www.cbc.ca/news/politics/wilson-raybould-backs-undrip-bill-1.4412037

[183] See Kairos Canada, *Winds of Change: Read the Report Card: Provincial and Territorial Curriculum on Indigenous Peoples*, found at: https://www.kairoscanada.org/what-we-do/Indigenous-rights/windsofchange-report-cards See also, Saskatchewan School Board Association for their cross Canada survey on *Compliance with the 94 TRC Calls to Action*, found at: https://saskschoolboards.ca/wp-content/uploads/SSBA-Position-Paper-Mandatory-Curriculum-FNM.pdf

[184] Canadian Bar Association, *Responding to the Truth and Reconciliation Commission's Calls to Action*, found at: https://www.cba.org/CMSPages/GetFile.aspx?guid=73c612c4-41d6-4a39-b2a6-db9e72b7100d

and many universities are changing their admission and hiring practices as well as curriculum changes to adhere to the Calls to Action.[185]

B. Research Center

276. The Settlement Agreement required the TRC to establish a National Research Centre that will ensure the preservation of the TRC's archives. The Centre is required to "be accessible to former students, their families and communities, the general public, researchers and educators who wish to include this historic material in curricula."[186] Anyone affected by the IRS legacy may file a personal statement in the research center with no time limitation.[187]

277. The objective in negotiating the Research Center was to ensure that it would carry on the work and spirit of the TRC long after the TRC closed its doors in 2014. The National Research Centre now houses the thousands of video and audio-recorded statements that the TRC gathered from survivors and others affected by the schools and their legacy; millions of digitized archival documents and photographs from the Government of Canada and Canadian church entities; works of art, artifacts and "expressions of reconciliation" presented at TRC events; all of the research and records collected and prepared by the TRC over the life of its mandate; and any additional material that the Centre will collect in future years.[188]

C. Apologies and Statements of Regret

278. As criticisms of the residential school system mounted and public awareness of the residential school legacy grew, several organizations issued apologies or statements

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[185] Sheila Cote-Meek, University Affairs, *Supporting the TRC's calls to action*, found at: https://www.universityaffairs.ca/opinion/from-the-admin-chair/supporting-trcs-calls-action/, Federation for the Humanities and Social Sciences, *Building Reconciliation: Universities Answering the TRC's Calls to Action*, found at: http://www.ideas-idees.ca/media/events/building-reconciliation-universities-answering-trcs-calls-action

[186] Schedule "N", section 12.

[187] Ibid., section 10(C), p. 10.

[188] National Centre for Truth and Reconciliation at: http://nctr.ca/about.php

of regret for their involvement.[189] The Settlement Agreement, which then AFN National Chief, Phil Fontaine, described as "an agreement for the ages" sought to make amends for the residential school experience and reflected the desire of all parties for a fair, comprehensive, and lasting resolution of the legacy of Indian residential schools.

279. On June 11, 2008, the Prime Minister of Canada, Stephen Harper, made a statement of apology in the House of Commons on behalf of the Government of Canada,[190] followed by apologies by all of the opposition parties in Parliament. On April 29, 2009, Pope Benedict XVI issued an expression of sorrow for the Catholic Church's role in abuse at residential schools.[191]

D. Chief Commissioner and the NAC

280. The Settlement Agreement established the unique relationship between the NAC and the TRC in section 4.11(12)(j) which states:

> (12) The mandate of the NAC is to:
> ...
> (j) review and determine references from the Truth and Reconciliation Commission made pursuant to Section 7.01(2) of this Agreement or may, without deciding the reference, refer it to any one of the Courts for a determination of the matter;

281. Section 7.01 (2) and (3) of the Settlement Agreement state:

> (2) The Truth and Reconciliation Commission may refer to the NAC for determination of disputes involving document production, document disposal and archiving, contents of the Commission's Report and Recommendations and Commission decisions regarding the scope of its research and issues to be examined. The Commission shall make best efforts to resolve the matter itself before referring it to the NAC.
>
> (3) Where the NAC makes a decision in respect of a dispute or disagreement that arises in respect of the Truth and Reconciliation Commission as contemplated in Section 7.01(2), either or both the

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[189] The apologies are available at https://guides.library.utoronto.ca/c.php?g=527189&p=3698521
[190] The statement is available at: https://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649
[191] The Pope's expression of sorrow is available at: https://www.cbc.ca/news/world/pope-expresses-sorrow-for-abuse-at-residential-schools-1.778019

> Church Organization and Canada may apply to any one of the Courts for a *hearing de novo*.

282. On June 22, 2010, the NAC held a teleconference with the Chief Commissioner of the TRC, Justice Murray Sinclair, and Commissioner Marie Wilson and the Executive Director of the TRC, Tom McMahon.[192] Following this meeting, and consistent with the views of the TRC, the NAC determined that it would continue to respect the Commission's important role and had no further substantive engagement with the Commission or its Commissioners. This remained the arrangement for the entirety of the term of the TRC's mandate.

283. The one notable exception was the critical role played by the NAC in extending the term of the TRC's mandate referred to below.

E. Extensions of the TRC Mandate

284. Although Schedule "N" of the Settlement Agreement[193] required the TRC to complete its work within five years of its creation, in January 2014, the TRC acknowledged that it would be unable to meet the deadline and sought a one-year extension to its mandate.

285. On Application to the British Columbia Supreme Court by the Attorney General of Canada and with the consent of the NAC, Brown J. granted the TRC a one-year extension to its mandate.[194]

286. Although the January 2014 Order contemplated no further extensions to the TRC's mandate, in June 2015, on the request of the Chair of the TRC, a further extension was sought and consented to by the NAC. Once again, the Court granted a further 6-month extension to the operating period of the TRC.

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[192] June 20, 2008 Meeting Minutes, see Appendix O.
[193] Schedule "N".
[194] *Fontaine v Canada (AG)*, 2014 (BCSC) L051875.

287. The June 2015 Order explicitly provided that no further extensions would occur, nor could the TRC move before the court to seek additional funding. The Order restricted the activities of the TRC during the period of extension including a prohibition on the commencement of any new litigation.[195] The Order permitted the TRC to continue its participation in any outstanding litigation until the expiration of its mandate on December 31, 2015. The TRC completed its mandate on December 15, 2015 in compliance with the Order.

VII. ARTICLE 12 AND OTHER APPLICATIONS REGARDING ELIGIBLE INSTITUTIONS

A. The Meaning of "Institution"

288. While the NAC did not bring forward any Article 12 applications, in 2008, prior to the first Article 12 application, the NAC sought administrative guidance from the then administrative judges, Chief Justice Winkler (ONCA) and Chief Justice Brenner (BCSC) on the discrete question of whether the class definition included persons who had attended institutions listed on Schedules "E" and "F" but resided elsewhere.

289. Specifically, the NAC sought guidance as to whether billeted students were included in the class definition. The ensuing *Administrative Judges Response to Request for Guidance by the National Administration Committee* concluded that because of implications to the class size, a formal process would have to be undertaken in order to determine the issue.[196] Given the rights of residual beneficiaries under the DAF, the judges directed that any formal process must be on notice to those residual beneficiaries. The administrative judges also directed the process and manner in which the matter could be heard.

290. Following the issuance of that guidance, the National Consortium's representative on the NAC volunteered to take the matter forward on a formal record as specified in the

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[195] *Fontaine v Canada (AG)*, 2015 (BCSC) L051875.
[196] The *Administrative Judges Response to Request for Guidance by the National Administration Committee* dated December 1, 2008 is appended as Appendix P.

guidance direction. In the ensuing years before the matter was ultimately heard and determined by Brown J., the NAC established a file for all billeted student CEP claims which might be implicated by a later decision.

291. In 2014 the "Beardy" matter came on for hearing before Brown J. who was called upon to determine whether eligible institutions could include ancillary facilities, like boarding and group homes affiliated with an Indian residential school.[197] Brown J. determined that residence at an actual Indian residential school was the *sine qua non* of CEP eligibility and, therefore, class membership. She rejected the notion that the word "institution" as used in the Settlement Agreement included boarding homes and other residences associated with an educational endeavor.

292. In the course of the Settlement Agreement's administration, hundreds of requests were brought to recognize new institutions as eligible Indian residential schools. Those requests proceeded under Article 12, resulting in nine discrete requests for direction before the courts. Article 12 proceedings were brought by individual requestors (including at least one NAC member).

B. Background

293. The Settlement Agreement specified the institutions recognized by the parties at the time of settlement as Indian residential schools. This was essential for the proper definition of the class. The recognized institutions were listed at Schedules "E" and "F" to the Settlement Agreement.[198]

294. The settling parties recognized that they had incomplete knowledge about eligible institutions and included Article 12 to permit individual requestors to seek the recognition of new institutions. The test under Article 12 required proof that Canada

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[197] *Fontaine v Canada (Attorney General)*, 2014 BCSC 941.

[198] Settlement Agreement, Schedules "E" and "F" http://www.residentialschoolsettlement.ca/Schedule_E-ResidentialSchools.PDF and http://www.residentialschoolsettlement.ca/Schedule_F-AdditionalResidentialSchools.PDF

placed students in the institution, exercised operational responsibility, and cared for children resident there.[199] In effect, Article 12 permitted the expansion of class membership.

295. Any individual or entity could serve as a requestor for the purposes of Article 12, and during the eligible timeframe, a total of 9,469 requestors sought the addition of 1,530 distinct institutions under the Settlement Agreement.[200] Ten of those requests proceeded before the courts.

296. The Settlement Agreement did not specify a deadline by which to bring or conclude an Article 12 application. However, the Settlement Agreement did contain timelines for CEP and IAP applications, as well as for the transfer of the DAF to the designated beneficiaries. As a result, upon an application by Canada in July 2015, Brown J. imposed a deadline for new Article 12 applications.

C. Institutions Added by Canada

297. By agreement, Canada added seven institutions under Article 12. Each institution was added with a specific period of operations. [201]

D. Institutions Added by the Courts

298. A total of four institutions were added by the courts under Article 12 bringing the total number of recognized institutions to 142.

i. Cristal Lake and Stirland Lake

299. In August 2011, the Eastern Administrative Judge, the Honourable Chief Justice of Ontario, W. Winkler, as he then was, issued a decision adding two institutions under

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[199] Settlement Agreement at Article 12.
[200] Indigenous and Northern Affairs Canada, Title "Eligible Indian Residential Schools" (22 April 2013), online: <https://www.aadnc-aandc.gc.ca/eng/1100100015594/1100100015595#sct1_4>.
[201] Ibid.

Schedule "F" of the Settlement Agreement.[202] Chief Justice Winkler accepted that all the Article 12 factors were met in the cases of Stirland Lake High School (or Wahbon Bay Academy) and Cristal Lake High School, both in northwestern Ontario. A public notice was circulated under court direction, informing eligible CEP and IAP recipients of their rights to apply before September 19, 2012.[203] Canada did not pursue an appeal.

ii. Kivalliq Hall

300. In December 2016, the Nunavut Supervisory Judge, the Honourable Madam Justice B. Tulloch, issued a decision adding Kivalliq Hall under Schedule "F". Tulloch J accepted that the Article 12 factors were sufficiently established in relation to the institution, located in Rankin Inlet, Nunavut.[204] Canada brought an unsuccessful appeal, which was dismissed in July 2018.[205] Canada did not seek leave to appeal this decision. On April 25, 2019, Brown, J. issued an order[206] specifying the terms for former Kivalliq Hall residents making CEP and IAP claims.

iii. Mistassini

301. In 2012, the Québec Supervisory Judge, the Honourable Chief Justice Rolland of the Québec Superior Court of Justice, issued an order adding the Mistassini Hostels under Schedule "F". Rolland CJ limited the eligible timeframe for residence at the Québec institution as falling between September 1, 1971 and June 30, 1978. A public notice was circulated under court direction, informing eligible CEP and IAP recipients of their rights to apply before September 2, 2013.[207] It further clarifies its scope as: "extend[ing] only to applications relating to residence at the Mistassini Hostels."

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[202] *Fontaine v Canada*, 2011 ONSC 4938.
[203] Ontario Superior Court of Justice, Schedule "A" Notice - Stirland Lake High School and Cristal Lake High School have been added to Schedule F of the IRSSA", online at: http://residentialschoolsettlement.ca/English_Main%20Page.pdf.
[204] *Fontaine v Canada (Attorney General)*, 2016 NUCJ 31.
[205] *Fontaine v Canada (Attorney General)*, 2018 NUCA 4.
[206] Order of Brown, J. dated April 25, 2019 re: Kivalliq CEP and IAP claims.
[207] Québec Superior Court of Justice, "Notice – The Mistassini Hostels have been added to Schedule F of the IRSSA" online: <http://residentialschoolsettlement.ca/Mistassini%20Poster%20-%20English.pdf >.

E. Institutions Not Added by the Courts

302. In September 2013, the Saskatchewan Supervisory Judge, the Honourable Mr. Justice Gabrielson, determined that the Timber Bay Children's Home did not meet the Article 12 criteria.[208] The decision was upheld by the Saskatchewan Court of Appeal in August 2017,[209] and leave to appeal was denied by the Supreme Court of Canada in August 2018.[210]

303. In January 2014, the Alberta Supervisory Judge, the Honourable Madam Justice R.E. Nation, determined that two institutions did not meet the Article 12 criteria.[211] Justice R.E. Nation concluded that neither the Grouard Vocational School/Moosehorn Lodge nor the Drumheller Vocational High School satisfied the applicable test. The decision was upheld by the Alberta Court of Appeal in April 2015.[212]

304. In October 2014, the Manitoba Supervisory Judge, the Honourable Mr. Justice P. Schulman, determined that the Teulon Residences did not meet the Article 12 criteria.[213] Justice Schulman accepted that Canada was involved in the welfare of students at Teulon, but did not find that that the Article 12 criteria were met. The decision was upheld by the Manitoba Court of Appeal in January 2017,[214] and leave to appeal was denied by the Supreme Court of Canada in August 2017. [215]

305. In 2014, Brown J., considered two applications involving Article 12 requests. The first sought to add approximately two dozen northern small-scale residences to the Settlement Agreement. In light of procedural deficiencies and delay, the request was

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[208] *Fontaine v Canada (AG)*, 2013 SKQB 323.
[209] *Lac La Ronge (Indian Band) v Canada (AG)*, 2017 SKCA 64.
[210] *Lac La Ronge (Indian Band) v Attorney General of Canada*, 2017 SKCA 64, leave to appeal to SCC dismissed, 37815 (09 August 2018).
[211] *Fontaine v Canada (Attorney General)*, 2014 ABQB 7.
[212] *Canada (Attorney General) v Alexis*, 2015 ABCA 132.
[213] *Fontaine v Canada (Attorney General)*, 2014 MBQB 209.
[214] *Assembly of Manitoba Chiefs v Canada (Attorney General) et al*, 2017 MBCA 2.
[215] *Assembly of Manitoba Chiefs v Attorney General of Canada*, 2017 MBCA 2, leave to appeal SCC dismissed, 37466 (17 August 2017).

dismissed.[216] The second sought to add a Belcher Islands tent hostel under Article 12. The request failed due to lack of evidence. [217]

306. In January 2018, the Eastern Administrative Judge, Justice P. Perell, determined that the Fort William Sanatorium did not meet the Article 12 criteria.[218] Perell J found that none of the Article 12 factors were met: Canada placed children there primarily for the purpose of medical treatment rather than education, and Canada's involvement in the institution was generally insufficient. No appeal was taken.

i. Coqualeetza, Lac La Biche and St. Augustine

307. One interpretive issue faced on CEP claims involved the dates of operation for institutions listed on Schedules "E" and "F" of the Settlement Agreement. In respect of Coqualeetza IRS, St. Augustine IRS and Lac La Biche IRS, Canada denied CEP claims on the basis that their operations as IRS institutions ceased at a particular time. The matter was judicially considered in 2013.

308. In the case of Coqualeetza IRS, Canada argued that it became an Indian Hospital after 1941. The applicant argued that there was no time limitation prescribed in Schedule "E" and that in any case, Canada remained in control once the institution became an Indian hospital. Brown J.[219] concluded that Coqualeetza was, in fact, two institutions. Prior to 1941, it was an Indian residential school but after that date it was no longer an Indian residential school. This finding confirmed that claimants were ineligible for CEP at Coqualeetza after 1941.

309. For Lac La Biche IRS, Brown J. determined that "Lac La Biche (Notre Dame des Victoires)" as listed on Schedule "E" was an Indian residential school up until 1898. When it re-opened in 1905 it was then a boarding home and not an eligible IRS.

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[216] *Fontaine v Canada (Attorney General)*, 2014 BCSC 1221.
[217] *Fontaine v Canada (Attorney General)*, 2014 BCSC 1939.
[218] *Fontaine v Canada (Attorney General)*, 2018 ONSC 24.
[219] *Fontaine v. The Attorney General of Canada*, 2013 BCSC 356.

310. In the same decision, Brown J. determined that St. Augustine IRS operated between 1900 and 1907 as a residential school and from 1907 until 1951 it was then a "Mission School" and not an eligible Indian residential school.

VIII. NAC INVOLVEMENT IN REQUESTS FOR DIRECTION

A. Counsel Conduct

311. In the course of administering the Settlement Agreement, the courts encountered and addressed various counsel conduct issues. The NAC's mandate did not specify any role *vis-à-vis* counsel conduct issues. However, as some of these issues were raised by the Chief Adjudicator or the AFN representative on the NAC, the NAC discussed and, through its members, participated in these matters. However, the NAC received notice of all related legal proceedings brought under the Settlement Agreement and its individual members have participated in those proceedings.

312. In dealing with counsel conduct issues, the supervising courts relied on their inherent jurisdiction and the following components of the Settlement Agreement:

    a. The rule against assignments at Article 18.01 of the Settlement Agreement; and,

    b. The powers flowing from the appointment of the court monitor, as set out in the Implementation Orders.

313. In addition to the above, in June 2014, Brown J. appointed an Independent Special Advisor to consider complaints about IAP claimants' counsel and, where appropriate, to refer those complaints to the Court Monitor.[220] In November 2014, the two Administrative Judges of the Settlement Agreement jointly endorsed a protocol regarding the processing of complaints about IAP claimants' counsel.[221]

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[220] *Fontaine v Canada (Attorney General)* (23 June 2014), Vancouver L051875 (BCSC) (order).

[221] *Fontaine v Canada* (25 November 2014), BCSC & Ont Sup Ct (joint direction, Brown, J and Perell, J).

B. *Levesque* and the rules against assignments

314. One of the first matters to move forward on a Request for Direction under the Court Administration Protocol resulted in the December 2007 *Levesque* decision of the Supreme Court of British Columbia.[222] The case involved a lawyer who was engaged in securing loans for 45 clients using their anticipated CEP compensation awards as collateral. The lawyer, Ms. Levesque, was a signatory to the IRSSA who prepared a variety of documentation (Directions to Pay, Assignments of Proceeds of Claim, and Irrevocable Assignments of Proceeds) that purported to direct Canada to pay all or part of a CEP award to a third-party lender.

315. In *Levesque*, Chief Justice Brenner declared the lawyer's directions to be null and void, given their contradiction of Article 18.01 of the Settlement Agreement (the rule against assignments). Canada could not pay CEP awards to third parties, nor could CEP claimants assign their interests in such awards to third parties. The rule against assignments was in place to cure the potential mischief of having eligible recipients "fleeced of their funds." Chief Justice Brenner's decision was subsequently upheld on appeal.[223]

316. The *Levesque* decisions were early landmarks in the jurisprudence relating to the Settlement Agreement. The interpretive principles established in *Levesque* were influential in a number of future decisions, including *Daniels* (MBQB)[224] and *MLG/J.W. Fees* (BCSC, BCCA, SCC leave denied).[225]

C. *Blott:* Court protection from "unscrupulous conduct"

317. In 2011, circumstances involving claimant counsel David Blott became a watershed of conduct issues under the Settlement Agreement. Mr. Blott propounded a practice

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[222] *Fontaine v Canada (Attorney General)*, 2007 BCSC 1841.
[223] *Fontaine v Canada (Attorney General)*, 2008 BCCA 329.
[224] *Daniels v Daniels et al.*, 2010 MBQB 46.
[225] *Fontaine v Canada (Attorney General)*, 2016 BCSC 1306; *Canada (Attorney General) v Merchant Law Group LLP*, 2017 BCCA 198.

model where counsel could charge fees without demonstrating any of the hallmarks of a solicitor-client relationship.

318. In the fall of 2011, concerns about Mr. Blott's conduct first emerged as a result of communications between the Blood Band Council and Kathleen Mahoney, the AFN representative on the NAC. Following discussions with NAC, the former Court Counsel, Mr. Randy Bennett and the Court Monitor were apprised of the concerns.

319. In October 2011, the Court Monitor[226] sought court authorization to proceed with an investigation into Mr. Blott.[227] The Court Monitor then delivered the results of the investigation via a Final Report to the court in February 2012, followed by certain recommendations, including that Mr. Blott be barred from further participation in the IAP.

320. Parties to the settlement, including Canada, the AFN, the National Consortium, Merchant Law Group and Independent Counsel participated in the hearing to make submissions on the appropriate disposition of the matter.

321. On June 5, 2012, following six days of hearing, Brown J. released Reasons for Judgment prohibiting Mr. Blott's further involvement in the IAP.[228] Supplemental reasons dealing with costs, liability, and the creation of practice guidelines were issued in November 2012.[229]

322. The Court found that Mr. Blott maintained a close association with the private lender Honour Walk Ltd., on whose behalf he facilitated high interest loans to IAP clients.[230]

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[226] As the delegated authority under the Implementation Orders, the Court Monitor was best placed to make this application and to seek authorization to pursue an investigation. However, it should be noted that the Chief Adjudicator of the IAP had begun an investigation of his own in February 2011, following complaints and observations made by IAP adjudicators. Moreover, the Law Society of Alberta had been engaged since 2009.
[227] *Fontaine v Canada (AG)*, 2012 BCSC 839 ("*Blott #1*") at para 12.
[228] *Ibid* at para 27.
[229] *Fontaine v Canada (Attorney General)*, 2012 BCSC 1671.
[230] *Blott #1*, *supra* note 8.

Upon receipt of IAP compensation awards in trust for his client-borrowers, Mr. Blott would then purport to honour "directions to pay", forwarding portions of the compensation monies to Honour Walk Ltd. for recovery of the principle, fees, and interest on the underlying loans. The court also found that in many instances, legal counsel had not interviewed clients, filed or validated IAP applications, or overseen document collection, and instead relied heavily on form-fillers to fulfill these tasks.[231]

323. Significant remedial steps were adopted by the court, including the appointment of the former Justice Ian Pitfield as Transition Coordinator tasked with transferring over 2500 active IAP files to new counsel. The costs of the investigation of the conduct and the ultimate transition cost over $3 million dollars which was funded by Blott and successor counsel. In the case of successor counsel, the funding derived from a levy on the fees to which they would have been entitled on successful claims in the amount of 1.5% of the 15% guaranteed fee.

324. As the Transition Coordinator was winding up his work, there were about 147 DNQ files that Mr. Blott had characterized as "Do Not Qualify". The NAC, initially before the Court and ultimately by agreement with the Transition Coordinator took steps to ensure that those DNQ files were reviewed by Independent Counsel. As a result, 47 DNQ claimants were entered into the IAP process, some of which have succeeded.

325. In 2014, Mr. Blott was permitted to resign from the Law Society of Alberta in the face of disciplinary charges which might well have resulted in disbarment.[232]

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231 *Ibid* at paras 41-42.

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D. *Bronstein*: Limited Court Intervention

326. Following the Blott experience, the court was asked to consider issues arising from the conduct of claimant counsel Stephen Bronstein. Allegations about Mr. Bronstein's conduct followed in much the same manner as those regarding Mr. Blott: (i) that he relied excessively on form-fillers, (ii) that his practice model was unable to provide clients with adequate service, and (iii) that he was engaged in securing loans for clients in consideration of forthcoming IAP awards.[233] The Bronstein case was also characterized by Mr. Bronstein's reliance on an individual who "had been convicted and incarcerated for murder" as his form filler.[234] The individual, himself a former client of Mr. Bronstein, was alleged to have harassed IAP claimants who lived in the same area as the convicted murderer and to have demanded payment from them.[235]

327. Various court hearings were convened throughout the course of the Bronstein matter. A hearing on the merits was convened in March 2015 before the Brown J. who issued Reasons in May 2015, in which she declined to remove Mr. Bronstein from practicing in the IAP. She noted the deficiencies of his conduct, and required him to continue to submit to the supervision of a Practice Advisor.[236] Noting that her judgment should be "no exoneration" of Mr. Bronstein or his conduct, the court went on to require Mr. Bronstein to pay the reasonable costs of investigation.[237]

328. In June 2017, Mr. Bronstein was the subject of citation by the Law Society of British Columbia relating to his representation of his IAP clients. As of this date the Law Society of British Columbia indicates that a discipline hearing has not been concluded on the citation.

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[233] *Fontaine v Canada (Attorney General of Canada)*, 2015 BCSC 717 at para 90.
[234] *Ibid* at para 21.
[235] *Ibid* at paras 21-22.
[236] *Ibid* at para 4.
[237] *Ibid* at para 5.

E. Manitoba Form-Fillers

329. The Manitoba Court of Queen's Bench dealt with a separate issue of form-fillers in 2014, on request of the Chief Adjudicator of the IAP. That matter involved a wide scale practice throughout Manitoba where non-lawyers would provide IAP form-filling services for eligible claimants. The services were rendered in consideration of a contingency of the claimant's eventual IAP award, occasionally by way of a Direction to Pay the proceeds to the form-filler.

330. The Honourable Mr. Justice Schulman ruled that the various arrangements between IAP claimants and form-fillers *void ab initio* for public policy reasons. In particular, the form-fillers had stepped into a role properly held by legal counsel without a professional license to do so:

> [71] Prohibitions against the unauthorized practice of law are for the protection of the public, and are even more important in the context of the Settlement Agreement, where claimants are recovering from traumatic experiences and are more likely to be in a vulnerable position as a result.[238]

331. The Court also relied upon the rule against assignments, as expounded in *Levesque*, as reason to invalidate the underlying transaction.

F. Other matters

332. The Court Monitor and the Independent Special Advisor also considered and investigated other complaints arising from the administration of the Settlement Agreement. Some complaints led to disbarments or other sanctions imposed by law societies.[239]

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[238] *Fontaine v. Canada (Attorney General)*, 2014 MBQB 113 at para 71.
[239] For example, http://www.lawsociety.mb.ca/lawyer-regulation/discipline-case-digests/documents/2011/case_digest_11_09.pdf

G. Production of IRS Documents at Library and Archives Canada (LAC)

333. In the later years of the TRC, disputes arose regarding Canada's document disclosure obligations. In the LAC document dispute, Justice Goudge[240] interpreted Schedule "N" of the Settlement Agreement to determine the extent of Canada's documentary obligations to the TRC. Goudge, JA. concluded that Canada was obliged to search and produce documents housed at LAC to the TRC. He concluded that Canada was not required to produce documents which spoke to Canada's response to the legacy of Indian residential schools.[241]

334. Gouge JA. was asked to deny the TRC standing in the litigation on the basis that the TRC was not a party to the Agreement and should have brought the dispute relating to documents to the NAC pursuant to Section 7.01(2) of the Settlement Agreement. The Court held that the preliminary objection was moot as both the AFN and the Inuit Representatives were also demanding production of the documents and, as parties to the Settlement Agreement, had the right to do so.[242]

H. TRC Access to IAP Records and IAP Records Disposition

335. The TRC sought access to records generated in the IAP, including IAP applications, transcripts of testimony at IAP hearings and IAP decisions (IAP Documents). This raised the issue of the confidentiality attaching to IAP Documents and the ultimate disposition of such documents.

336. All parties to the Settlement Agreement and the Chief Adjudicator recognized the necessity for confidentiality in the IAP given the sensitive and personal nature of the information provided by participants in that process. The Chief Adjudicator unsuccessfully attempted to negotiate a plan with the Chief Commissioner of the TRC

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[240] While a Justice of the Ontario Court of Appeal, Justice Goudge sat *ad hoc* as a Justice of the Ontario Superior Court.
[241] *Fontaine v. Canada* 2013 ONSC 684, paras. 84-100. Justice Goudge said: "...Canada says that the TRC's mandate does not include examinations of responses Canada has made to address the IRS experience. In my view, Canada's position is correct."(paras.93-94)
[242] *Fontaine v. Canada,* 2013 ONSC 684 at paras. 50-52.

whereby the claimant would be asked if they consented to release IAP Documents to the TRC. The Chief Adjudicator, the TRC and Canada then sought court direction as to what was to be done with respect to the IAP Documents.

337. The only provision regarding the transfer of IAP Documents to the TRC was in s. 11 of Schedule "N" (the TRC Schedule) which stated:

> Insofar as agreed to by the individuals affected and as permitted by process requirements, information from the Independent Assessment Process (IAP), existing litigation and Dispute Resolution processes may be transferred to the Commission for research and archiving purposes.

338. In its Request for Directions, the TRC claimed entitlement to all IAP Documents. Five Parties to the Settlement Agreement; the AFN, the Inuit Representatives, Independent Counsel, the Catholic Church Entities and the Merchant Law Group responded to support non-disclosure of the documents, and their ultimate destruction, based on the promise of confidentiality set out in the Settlement Agreement.[243] Canada took the position that those records were Canada's documents and their disposition would be governed by Federal legislation, and Canada supported non-disclosure based on that legislation. The Chief Adjudicator advocated for the protection of the IAP Documents and their non-disclosure unless the individual claimant consented to their release to the TRC and, later, to the NCTR.

339. The matter proceeded before Perell J. who held that the documents could only be released to the TRC with the consent of the claimants and that it was necessary to establish a Notice Plan, to be implemented by the TRC, to determine whether claimants wished to give such consent. After a 15-year retention period, the IAP Documents to which no consent was given were to be destroyed.

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[243] The National Consortium and the Protestant Churches supported this position but did not appear in Court proceedings.

340. The Ontario Court of Appeal upheld Perell J.'s decision but amended his Order to include ADR records from the predecessor ADR process and to have the notice program conducted by the Chief Adjudicator rather than by the TRC.

341. The decision was then appealed to the Supreme Court of Canada. Five of seven NAC parties fully participated in the appeals, Canada on the one side and the AFN, Inuit Representatives, Independent Counsel and the Catholic Church Entities on the other side.

342. The Supreme Court of Canada[244] unanimously upheld the Perell J. Order, as modified by the Court of Appeal. It also held that the records of claimants who had died would be destroyed consistent with the promises of confidentiality made to them at the time of their IAP hearing.

I. Enhanced Notice Program Regarding IAP Records

343. The Supreme Court of Canada[245] accepted that a notice plan would be an appropriate process by which to determine the wishes of IAP claimants vis-à-vis the disposition of their IAP records. The SCC directed the Chief Adjudicator to "conduct the notice program without delay and with full cooperation from the parties, in order to give effect to the express wishes of the greatest number of IAP claimants possible".

344. Even before the SCC decision, the Chief Adjudicator held preliminary meetings with stakeholders to establish the framework for the notice plan. The NAC did not formally participate in the notice plan meetings, although some of its members did.[246]

345. In January 2018, the Chief Adjudicator brought Requests for Direction to seek court approval for his proposed notice plan. Participants in the ensuing litigation included Canada, the AFN, the Inuit Representatives, Independent Counsel, and the NCTR.

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[244] *Fontaine v Canada (Attorney General)*, 2017 SCC 47.
[245] Ibid. at paras 62-63.
[246] AFN, the Inuit Representatives, Independent Counsel and Canada.

The structure of the notice plan was largely settled during two counsel meetings and two court hearings, including:

- The content of the Records Disposition Notice Program (including notice products, the distribution phases, the integration of the Resolution Health Support Program, and Resource Line Liaisons for the AFN and Inuit Representatives);
- The Notice Program's cost estimate;
- The consent form to be sent to IAP and ADR claimants;
- Canada's responsibility to fund the Program;
- The disposition process for IAP Documents;
- The appointment of a records agent; and,
- The reporting and accounting requirements incumbent on the Indian Residential Schools Adjudication Secretariat vis-à-vis the Notice Program.[247]

346. On July 4, 2018, Perell J. released a decision approving the Notice Program consistent with counsels' agreement. Perell J. went on to reserve limited roles in the Notice Program for the AFN, the Inuit Representatives, and the NCTR, each of whom would participate in training sessions and staff information lines.[248] He reserved the rights of the AFN and the Inuit Representatives to return to seek more funding at the conclusion of the first year of the Notice Program.[249]Subsequent to his decision, one of the three Inuit Representatives withdrew from their reserved role in the Notice Program because the funding authorized by the Court was insufficient.

J. Procedural Fairness

347. Commencing in 2010 and continuing until 2017, the Chief Adjudicator and some of his designates began relying upon a construction of the legal concept of "procedural fairness" to re-open or reconsider decided IAP claims or to grant remedies which Canada considered were not provided for under the IAP model. On September 8, 2017, Canada brought an RFD challenging that pattern of decision-making as a misapplication of the IAP's terms. Several parties represented on the NAC, including Independent Counsel and the AFN participated in that proceeding opposing the relief sought by Canada.

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[247] *Fontaine v. Canada*, 2018 ONSC 4179 at paras 19 and 20.
[248] *Ibid.*, para 39.
[249] *Ibid.*, para 58.

348. On January 17, 2018, Brown J. allowed Canada's RFD and issued a prospective direction to the Chief Adjudicator and his designates, to adhere to the terms of the IAP model. The Court found that the concept of "IAP Model fairness" rather than 'procedural fairness' on which some adjudicators had been relying should inform considerations of fairness in IAP decision-making.

349. The AFN and Independent Counsel each appealed, alleging various errors of fact, law, and mixed fact and law. An appeal hearing proceeded before the British Columbia Court of Appeal in December 2018. A decision has yet to be rendered.

K. NAC Standing

350. The orders approving the IRSSA authorized the NAC, amongst other bodies, to apply to the Courts for directions concerning the implementation, administration and amendment of the Settlement Agreement.

351. An issue concerning limits on this authority arose in early 2018. A five-member majority of the NAC voted to bring forward an RFD seeking an interpretation of a provision in the Settlement Agreement. That provision concerned Canada's obligations to work with the other parties respecting admissions by Canada that might be relied on by persons advancing student-on-student abuse claims.[250] The RFD also sought a determination whether Canada had complied with those obligations, and, if not, a remedy that would allow affected claimants whose claims had been dismissed to have their claim re-opened by the Court.

352. Canada voted against bringing the RFD, and subsequently brought a preliminary motion to have it struck pursuant to s. 4.11(10) of the Settlement Agreement. That section requires that any NAC vote that would increase the costs of the settlement must have Canada's support. Canada's preliminary application alleged that the RFD would increase the costs of the settlement because it sought to re-open claims that had been

[250] See Section V.B – *Student-on-Student Claims*.

dismissed, and that Canada had not supported it. The NAC submitted that the re-opening of claims was sought as a remedy from an alleged breach of Canada's obligations and that s. 4.11(10) did not apply.

353. Brown J. allowed Canada's preliminary objection and declined to hear the RFD. She held that the remedy sought amounted to a change to the Settlement Agreement that would increase its cost and therefore could not be pursued without Canada's support. The NAC[251] appealed this decision to the British Columbia Court of Appeal, which was heard in December 2018. To date no decision has been released.

354. Shortly after this appeal was filed the issue of standing was raised again, this time by the Court itself. The Monitor had applied to have a group of Blott files dismissed without review or hearing.[252] The files were claims that the Blott office had decided did not qualify for the IAP, and for which no IAP application had ever been filed, referred to as the DNQ files. A majority of the NAC, with Canada abstaining, voted to participate in this application to oppose the dismissal of the claims without further action. The majority considered that some of the files likely qualified for the IAP, and should be reviewed by other counsel for that purpose.

355. When the RFD came before the supervising court, Brown J. questioned the NAC's standing to appear given Canada did not vote in favour of its participation. Brown J. ruled against the NAC's participation. She subsequently issued reasons holding that because the NAC's participation in the RFD would involve legal costs for counsel, and had not been supported by Canada, it therefore was barred by 4.11(10).

356. Following this decision, some members of the NAC participated individually in the RFD to advance the position advocated by the majority of the NAC, that the DNQ files in question should be reviewed. Ultimately all parties agreed to this, and a consent order was entered requiring that the DNQ files be reviewed by other counsel to determine

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[251] Based upon the vote of a majority of five members which did not include Canada.
[252] See Section VIII A. *Counsel Conduct.*

whether they qualified for the IAP. Given this outcome, the NAC did not appeal the decision on standing. However, that decision was referred to in written and oral argument on the existing appeal.

L. Judicial Recourse

357. Another litigation issue that has emerged post-settlement is the question of judicial intervention on individual IAP claims. In the later years of the IRSSA's administration, many IAP claimants have brought Requests for Direction seeking judicial intervention of that nature. In light of the resulting jurisprudence, such requests are commonly referred to as "judicial recourse".

358. The threshold for judicial recourse was established in the 2012 *Schachter* decision of the Court of Appeal for Ontario.[253] That decision confirmed that appeals and judicial reviews do not lie from IAP decisions. Instead, the supervising courts would only consider IAP decisions in exceptional circumstances, where there is a failure by the Chief Adjudicator or his designate to comply with the IRSSA.[254] Known as the *Schachter* threshold, this bright line legal test balanced the contractual goals of the IRSSA.[255]

359. Litigation in 2016 represented a watershed in judicial recourse applications. In November 2016, Brown J. jointly heard five Requests for Direction brought by claimants seeking judicial recourse. Many individual NAC members participated in the hearing. Later that month, Brown J. issued her Reasons for Decision dismissing all five Requests for Direction, affirming the *Schachter* threshold in the context of IAP

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[253] *Fontaine v Duboff Edwards Haight & Schachter* 2012 ONCA 471 [*Schachter ONCA*].
[254] *Ibid* at para 53.
[255] Settlement Agreement, at Preamble at para B.

compensation decisions and declining to find exceptional circumstances.[256] Brown J. also implemented timelines for future judicial recourse applications.[257]

360. In January 2017, the Court of Appeal for Ontario issued a decision again affirming the application of the *Schachter* threshold to IAP compensation decisions.[258] The Court accepted that the IAP Model was a "complete code" which envisioned a three-tiered decision-making process for IAP claims to be overseen by independent adjudicators with relative expertise.[259]

361. In October 2018, the SCC heard the *JW and Reo Law* case, which squarely raises the issue of judicial recourse, including the operative *Schachter* threshold.[260]

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[256] **Bundled RFDs #1** in *Fontaine v Canada (Attorney General)*, 2016 BCSC 2218 at paras 184, 230 (per Brown J). See also **N.N. and N.R. Appeal** in *N.N. v Canada (Attorney General)*, 2018 BCCA 105 (allowed in part by Groberman & MacKenzie JJA, with Hunter JA dissenting in part).

[257] **Bundled RFDs #1**, *ibid* at para 231.

[258] **Spanish Appeal** in *Fontaine v Canada (Attorney General)* 2017 ONCA 26 at paras 49-55 (allowed by Sharpe JA, Strathy CJO, and Hoy ACJO). See also **Spanish RFD** in *Fontaine v Canada (Attorney General)*, 2016 ONSC 4326 (per Perell J).

[259] **Spanish Appeal**, *ibid* at para 53.

[260] See, for example:

a) **REO Fees RFD** in *Fontaine v Canada (Attorney General)*, 2015 MBQB 158 at para 23 (per Schulman J).
b) **Bundled RFDs #2** in *Fontaine v Canada (Attorney General)*, 2017 BCSC 946 at paras 65-70 (per Brown J). See also **Tourville Appeal** in 2017 BCCA 325 at para 10 (per Savage JA dismissing a motion to extend time).
c) **REO/JW RFD** in *Fontaine v Canada (Attorney General)*, 2016 MBQB 159 (per Edmond J). See also **REO/JW Appeal** in *The Attorney General of Canada v JW and Reo Law Corporation et al*, 2017 MBCA 54 (per Beard, Monnin, and leMaistre JJA). Leave to appeal to Supreme Court of Canada was granted, and that appeal remains extant before the Supreme Court of Canada and is discussed below.
d) **H/M/K RFD** in *Fontaine v Canada (Attorney General)*, 2017 ONSC 2487 (per Perell J). See also **H/M/K Appeal** in *Fontaine v Canada (Attorney General)*, 2018 ONCA 421 (dismissed by Hoy ACJO and Juriansz and Miller JJA).
e) **Fairness RFD** in *Fontaine v. Canada (Attorney General)*, 2018 BCSC 63 at paras 76-77 (per Brown J). Note an appeal has been heard in relation to this matter, but a decision from the British Columbia Court of Appeal has yet to issue.
f) **Shisheesh and C-14114 RFD** in *Fontaine v Canada (Attorney General)*, 2018 ONSC 103 at paras 154, 159-160, 173 (per Perell J).
g) **A-16800 and H-12159 RFDs** in *Fontaine v Canada (Attorney General)*, 2018 BCSC 471 at paras 60-62 (per Brown J).
h) **K-14238 / Hess** in *Fontaine v Canada (Attorney General)*, 2018 BCSC 174 (per Brown J).
i) *Fontaine c Procureur général du Canada*, 2018 QCCS 998 and *Fontaine c Procureur général du Canada*, 2018 QCCS 997 (per Couriveau J).
j) **SSJSSM RFD** in *Fontaine v Canada (AG)* (September 26, 2011) (ONSC) 00-CV-192059CP (Direction per Winkler RSJ).
k) **J.C. RFD** in *Fontaine c Canada (Procureur général)*, 2013 QCCS 553 (per Rolland J).

362. In its decision released April 12, 2019,[261] the SCC by a 5-2 decision, allowed the claim for judicial recourse although the Judges in the majority gave differing rationales for their decision.

363. Three of the majority found that the adjudicators at all levels had imposed an evidentiary burden on the claimant that was not found in the IAP. This amounted to an unauthorized amendment of the Settlement Agreement, warranting judicial intervention under the *Schachter* principle to enforce the implementation of the Settlement Agreement.

364. The other two Justices, concurring in the result, supported intervention on the basis of the Chief Adjudicator's concession that the adjudicators' decisions were wrong but that he had no power to correct the error. The two justices held that this concession exposed a gap in the Settlement Agreement that justified the court stepping in to achieve a result consistent with the Settlement Agreement's objective of "promoting a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools."

365. In contrast, the dissenting Justices were of the view that the Settlement Agreement allowed Adjudicators the final word on the interpretation of the IAP provisions and that there was no "gap" requiring the Court's intervention.

IX. CONCLUSION

366. The foregoing constitutes the report of the NAC to the supervising Courts with respect to the fulfillment of its mandate under the IRSSA. In accordance with the joint directions of the Administrative Judges, the NAC will bring a Request for Directions before them

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l) In October 2018, the SCC heard the *JW and Reo Law* case, which squarely raises the issue of judicial recourse, including the operative *Schachter* threshold.
m) Grouard RFD in *Fontaine v Canada (Attorney General)*, 2015 ABQB 225 (per Nation J).
[261] *J.W. v. Canada (Attorney General)*, 2019 SCC 20, 2019 SCC 20, available at: https://www.canlii.org/en/ca/scc/doc/2019/2019scc20/2019scc20.html

respecting the conclusion of the NAC's duties and its discharge at such time and place as may please the Courts.

All of which is respectfully submitted this 6th day of May, 2019.

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Schedule 1

Perspective of The Assembly of First Nations

The Role of the AFN

1. The Assembly of First Nations[1] (AFN) brought a unique perspective to its participation in resolving the historic Indian Residential Schools Settlement Agreement. This is because the AFN's approach to the negotiations was primarily informed by indigenous legal principles, theories, and traditions rather than Western legal theory and principles. Where there was overlap, the AFN sought to harmonize the legal principles to achieve a broad range of reparations[2] to further its goals of reconciliation and healing.

2. When Phil Fontaine was elected National Chief of the AFN in 1997, it was after a long personal and political history of connection with the residential school legacy. For generations, he and members of his family and extended family were survivors of the residential school system. In 1990, as Grand Chief of the Assembly of Manitoba Chiefs, he was the first indigenous political leader to bring national

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[1] The **Assembly of First Nations** (AFN) is a political organization representing approximately 900,000 **First Nations** citizens in Canada. The AFN advocates on behalf of **First Nations** on issues such as treaties, Indigenous rights, and land and resources.

[2] The AFN uses the term "reparations" as defined in the *United Nations Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Gross Violations of International Human Rights Law* applicable to Canada. The UN Principles and Guidelines are, to a considerable degree, consistent with indigenous principles in that they recognize that victims of human rights violations can be individuals or a collective group of individuals, the immediate family or dependants of the direct victim. As such, they have the right to prompt, sufficient and effective reparations for gross violations of their human rights by the state. The Guidelines also recognize a broad range of reparations including damages, restitution, rehabilitation, satisfaction and guarantees of non-repetition. See the UN Guidelines at https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx See also, Lisa Maragell, Reparations in Theory and Practice, *International Center for Transitional Justice* (2007) at https://www.google.com/search?q=lisa+maragell+international+center+for+transitional+justice&rlz=1C5CHFA_enCA729CA730&oq=lisa+maragell+international+center+for+transitional+justice&aqs=chrome..69i57.10775j0j7&sourceid=chrome&ie=UTF-8 (accessed April 20, 2019).

attention to the dark history of residential schools issue by relating his and his community's experience of systemic and personal abuse in the Fort Alexander Indian Residential School.[3]

3. His revelations contributed to a flood of litigation such that by the time he was elected National Chief in 1997, the courts were clogged with an unmanageable number of IRS claims. The Treasury Board of Canada estimated that it would take 53 years to conclude court proceedings of residential school cases, at great cost.[4]

4. The National Chief realized that not only did the crisis of litigation create leverage for settlement negotiations, it presented an opportunity to chart a different course in the relationship between indigenous peoples and the rest of the Canadian population.[5] While recognizing the major contributions made by class action law firms and independent counsel through their litigation on behalf of survivors, the National Chief knew that unless the AFN and other indigenous groups were an integral part of the solution, the historic opportunity to properly and authentically deal with the residential school tragedy, in the indigenous way, would not occur.

5. The problem, as the AFN perceived it, was that leaving the settlement in the control of non-indigenous lawyers, government officials and church representatives would restrict the range of reparations and reinforce colonial dominance over indigenous

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[3] Phil Fontaine's Shocking Testimony of Physical and Sexual Abuse https://www.cbc.ca/archives/entry/phil-fontaines-shocking-testimony-of-sexual-abuse

[4] The cost was estimated to be $2.3 billion in 2002 dollars not including the value of the actual settlement costs. See Treasury Board of Canada Secretariat 2003 Indian Residential Schools Resolution Canada Performance Report for the Period ending March 31, 2003. *Ottawa Supply and Services Canada.* http://publications.gc.ca/site/eng/246476/publication.html

[5] For a full discussion of the AFN's approach, see K. Mahoney, "The Untold Story: How Indigenous Legal Principles Informed the Largest Settlement in Canadian Legal History**,** [2018] UNB LJ 198. https://www.questia.com/library/journal/1G1-565512076/the-untold-story-how-indigenous-legal-principles (accessed April 24, 2019)

peoples – a prospect that would be an anathema to survivors who suffered through the most egregious forms of colonial subjugation in the residential schools.[6]

6. Moreover, to have any chance of reconciliation for the enormity of the harms caused, the parties would have to start from the recognition that the Indian residential school violations were motivated by a policy of cultural genocide[7] that not only affected every aspect of life for the survivors of Indian residential schools, but that of all indigenous peoples. Unless the Settlement Agreement recognized the motives that caused the harms and dignified the collective as well as the individual experiences of the survivors, their families and communities, healing and reconciliation would be a dream, not a reality.

7. When the Government issued their Alternative Dispute Resolution plan (ADR) as the solution for the residential school tragedy, it was obvious from the AFN's perspective that their worst fears were realized and that their intervention in the process was essential.[8]

The AFN Political and Legal Strategy

8. To seek support for their position and to raise public awareness, the AFN took a number of strategic steps. First, it jointly convened an international, interdisciplinary conference[9] with the University of Calgary Faculty of Law that called for survivor

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[6] Many scholars have written on the impacts of colonization and the rights of indigenous peoples to take control of their lives through employing indigenous laws, principles and customs. One of the best sources is John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010).

[7] Even though some of the defendants did not accept that residential school policy was a form of cultural genocide, the conclusion that it was, is now well accepted. The Truth and Reconciliation Commission, the former Chief Justice of Canada as well as the former Prime Minister of Canada, Paul Martin all described the residential school policy as one of cultural genocide or attempted cultural genocide. The comments of the former Chief Justice and the former Prime Minister Paul Martin can be found at https://www.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/; and https://www.cbc.ca/news/politics/paul-martin-accuses-residential-schools-of-cultural-genocide-1.1335199. For a summary of opinions and analysis see Ruth Amir, Cultural Genocide in Canada? It did Happen Here, *Aboriginal Policy Studies*, Vol 7 No. 1 (2018). Also see http://dx.doi.org/10.5663/aps.v7i1.28804

[8] See paras 20 and 21 of the NAC Report*, infra.*

[9] See discussion at para 22 of the NAC Report and corresponding footnotes.

inspired reparations rather than the government's ADR solution;[10] second, it sent a letter to the Deputy Minister of Indian Residential Schools Resolution Canada setting out the AFN's position in detail;[11] third, it published the AFN Report,[12] critiquing the ADR and making extensive recommendations consistent with indigenous principles; fourth, it negotiated a Political Agreement with the federal government and commitment letter from the Deputy Prime Minister.[13] Finally the AFN filed a Statement of Claim in the courts[14] ensuring it would have a place at the negotiating table.[15]

9. The breakthrough for the AFN occurred on May 30, 2005. This was the date that it entered into a Political Agreement[16] with Canada accepting the AFN Report as the framework for the Settlement Agreement.

10. The Political Agreement spoke to a relationship between Canada and the AFN of cooperation and reconciliation ensuring the AFN would play a "key and central" role in achieving a lasting resolution to the Indian Residential Schools legacy.

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[10] The conference agenda is at https://kathleenmahoney.files.wordpress.com/2019/03/2004-residential-school-legacy-conference-agenda.pdf

[11] See "Letter to Mario Dion on line: https://kathleenmahoney.files.wordpress.com/2015/11/adr-critique-2nd-dion-leter-irs.pdf

[12]Assembly of First Nations Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools, https://kathleenmahoney.files.wordpress.com/2018/03/afn-report-indian_residential_schools_report.pdf.

[13] https://kathleenmahoney.files.wordpress.com/2019/01/a-mclellan_letter.pdf

[14] AFN Statement of Claim, *infra*, note 59.

[15] A position at the negotiating table was crucial for the AFN because in the event that the settlement negotiations failed, it was the only party to claim collective remedies including the truth and reconciliation commission, the archive and research center, healing and commemoration funds, the early payment for seniors, and the compensation for loss of language and culture and loss of family life based on the formula of $10,000 for the first year and $3,000 dollars per year or portion of a year thereafter. The *Baxter* class action called for a lump sum payment for all resident students.

[16] Political Agreement between the Assembly of First Nations and Her Majesty the Queen in Right of Canada (represented by Deputy Prime Minister Anne McLellan) dated May 30, 2005. Online: https://web.archive.org/web/20070319141417/http://www.afn.ca/cmslib/general/IRS-Accord.pdf (accessed March 8, 2019). See Appendix A

11. It also addressed the context and content of a future Settlement Agreement, identifying the reparations the AFN deemed essential, and the appointment, with the agreement of the AFN, of the Hon. Frank Iacobucci as Canada's representative.

The Political Agreement reads as follows:

> Whereas Canada and First Nations are committed to reconciling the residential schools tragedy in a manner that respects the principles of human dignity and promotes transformative change;
>
> Whereas Canada has developed an Alternative Dispute Resolution (ADR) process aimed at achieving that objective;
>
> Whereas the Assembly of First Nations prepared "The Assembly of First Nations Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools" (the AFN Report) identifying the problems with the ADR process and suggesting practical and economical changes that would better achieve reconciliation with former students;
>
> Whereas the Assembly of First Nations participated in several months of discussion with Canada, the churches and the consortium of lawyers with respect to the AFN Report, moving the towards settlement and providing education and leadership for all the people in the residential schools legacy;
>
> Whereas Canada and the Assembly of First Nations recognize that the current ADR process does not fully achieve reconciliation between Canada and the former students of residential schools;
>
> Whereas Canada and the Assembly of First Nations recognize the need to develop a new approach to achieve reconciliation on the basis of the AFN Report;
>
> Whereas Canada announced today that the first step in implementing this new approach is the appointment of the Honourable Frank Iacobucci as its representative to negotiate with plaintiffs' counsel, and work and consult with the Assembly of First Nations and counsel for the churches, in order to recommend, as soon as feasible, but no later than March 31, 2006, to the Cabinet through the Minister Responsible for Indian Residential Schools Resolution Canada, a settlement package that will address a redress payment for all former students of Indian residential schools, a truth and reconciliation process, community based healing, commemoration, an appropriate ADR process that will address serious abuse, as well as legal fees;
>
> Whereas the Government of Canada is committed to a comprehensive approach that will bring together the interested parties and achieve a fair and just resolution of the Indian Residential Schools legacy, it also recognizes that there is a need for an

apology that will provide a broader recognition of the Indian Residential Schools legacy and its effect upon First Nation communities; and

Whereas the Assembly of First Nations wishes to achieve certainty and comfort that the understandings reached in this Accord will be upheld by Canada:

The Parties agree as follows:

1) Canada recognizes the need to continue to involve the Assembly of First Nations in a key and central way for the purpose of achieving a lasting resolution of the IRS legacy, and commits to do so. The Government of Canada and the Assembly of First Nations firmly believe that reconciliation will only be achieved if they continue to work together;

2) That they are committed to achieving a just and fair resolution of the Indian Residential school legacy;

3) That the main element of a broad reconciliation package will be a payment to former students along the lines referred to in the AFN Report;

4) That the proportion of any settlement allocated for legal fees will be restricted;

5) That the Federal Representative will have the flexibility to explore collective and programmatic elements to a broad reconciliation package as recommended by the AFN;

6) That the Federal Representative will ensure that the sick and elderly receive their payment as soon as possible; and

7) That the Federal Representative will work and consult with the AFN to ensure the acceptability of the comprehensive resolution, to develop truth and reconciliation processes, commemoration and healing elements and to look at improvements to the Alternative Dispute Resolution process.

12. The Deputy Prime Minister explained the new policy in a letter to the National Chief saying:

> "The Government has adopted a new comprehensive approach to achieving broad resolution of the legacy of Indian residential schools. The primary element of this approach is the appointment of a Federal Representative who has been given a flexible mandate to meet with all interested parties and develop a broad reconciliation package. As many of the former students have chosen to be represented by legal counsel in class actions against the Government, it will be an important objective of the Representative to work with these groups to obtain a

> legal settlement. However, the Government has also recognized that ***broad resolution will require more than just a legal settlement*****,** (emphasis added) and it is with that in mind that the Representative has also been mandated to work and consult with the AFN on the acceptability of all parts of a comprehensive resolution package and what improvements should be made to the ongoing Alternate Dispute Resolution process. The Assembly of First Nation's Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools will be an important foundation for these discussions."[17]

13. The confirmation that the government's policy had shifted from litigation to reconciliation and that it recognized the need for a comprehensive resolution was a very positive development as it ultimately led to the comprehensive, holistic reparations the AFN sought - reparations that had never been achieved before by victims of mass human rights abuses in the Western world.

14. However, the Deputy Prime Minister categorized the AFN's position on reparations as requiring something other than "*a legal settlement*." From the AFN's perspective, the refusal to recognize the legal nature of the AFN's claims was wrong in law. It was also an ironic recapitulation of colonial attitudes to deny indigenous law's existence. Since the 1979 Supreme Court of Canada decision in *Delgamuukw,* indigenous ways of addressing the resolution of issues of rights, including ways of making appropriate compensation, are now part of Canadian law. The Court emphasized that if the path to resolving claims is governed by legal principles, those principles include, when dealing with indigenous nations, principles governing the legal systems of those nations.[18]

15. The AFN's position was that indigenous laws have existed for thousands of years and the common law as it now exists in Canada must take into account how its principles can be reconciled and coexist with the principles of the legal systems of indigenous nations.

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[17] To see the entire letter go to https://kathleenmahoney.files.wordpress.com/2019/01/a-mclellan_letter.pdf (accessed March 8, 2019).

[18] *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010, 1997 CanLII 302 (SCC).

[19] The AFN's view is that the Settlement Agreement is an excellent example of how co-existence can be achieved.

How the AFN Applied Indigenous Principles and Traditions

16. The AFN's position on procedure was that negotiations had to respect indigenous values of consultation, consensus, inclusiveness, collaboration, transparency, trust, hope and healing with the understanding that defendants would take responsibility for their behavior and apologize[20] for the wrongs committed.

17. Throughout the period of negotiations the AFN reached out to thousands of survivors, elders, community members and intergenerational survivors from coast to coast to ascertain what they wanted from the settlement and under what terms. Other consultations were conducted with the AFN executive, Chiefs, and survivor's groups to seek their input and participation in the decision-making process.

18. The consultative approach is one shared by many indigenous tribes. In Mi'kmaq legal traditions, for example, while a certain degree of concentrated authority is important to their legal order, they also aspire to give everyone an opportunity to participate in decision-making.[21] Ojibway tradition also requires people to talk to one another, using persuasion, deliberation, council, and discussion.[22] In Cree legal traditions, consultation and deliberation are used to create and maintain good relationships in order to maintain peace between different people with different perspectives.[23]

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[19] For an in depth discussion, see Paul Williams, *The Right to Compensation for Cultural Damage* http://www.tobiquefirstnation.ca/treaties/PaulWilliamsCultureLoss.pdf

[20] The AFN negotiated the apologies from the federal government and the Vatican separately from the Settlement Agreement negotiations.

[21] James Sakej Youngblood Henderson, *"First Nations Legal Inheritances: The Mikmaq Model"* (1995) 23 Man LJ 1.

[22] *Ibid*. See also Hadley Friedland, *The Wetiko Legal Principles: Cree and Anishinabek Responses to Violence and Victimization* (Toronto: University of Toronto Press, 2018).

[23] Harold Cardinal and Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2013) cited in Borrows, NAC Report, note 6 at 85.

19. During the consultations the AFN was able to determine the priorities, objectives and goals of survivors. What they discovered was that survivor's most important priorities were for reparations other than compensation. What survivors wanted most were healing, respect, the ability to tell their stories, and receiving apologies from the government and the churches that administered the schools.[24] Some of the typical comments made by survivors are as follows:

- Not everyone wants courts and litigation – some just want to heal. […] Survivors need validation – have their experience accepted as real; […] Money never equals healing. Need accountability, redress, closure, resolution and rebuilding relationships.[25]
- Experience of victims has to be central – have to understand what actually happened to them to be able to react – need to understand scope and extent of trauma. Need to respect those with the courage to speak – don't just listen – believe them.[26]

- Give victims choices, lawsuit, settlement, healing, nothing. Government needs to give up some power and believe in power of aboriginal people to do it in their own way.[27]

- Need to work to develop a culture of resolution […] Must deal with culture and intergenerational impacts.[28]

- Need apology, including individual apology, extended to family if victim wants. Need televised apologies from Prime Minister and Department of Indian Affairs and Northern Development minister.[29]

- Apologies are at the heart of reconciliation. It must go beyond words to action.[30]

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[24] For a record of the outreach dialogues, see Glenn Sigurdson, *Reconciliation and Healing: Alternative Resolution Strategies for Dealing with Residential School Claims* (Ottawa, Minister of Indian Affairs and Northern Development, 2000), online: http://www.glennsigurdson.com/wp-content/uploads/2016/06/Reconciliation_healing2.pdf

[25] *Ibid* at p. 7.

[26] *Ibid* at 16.
[27] *Ibid* at 17.
[28] *Ibid* at 19.
[29] *Ibid*.
[30] *Ibid* at 21.

- Compensation must be accessible, fair and just and supported by financial and vocational counselling.[31]

- Need to tell the story and have it memorialized in a public way […] including the means to commemorate those who have died.[32]

- We want to learn how to be Indians again – to get back language […] Must restore culture and dignity […] must address loss of culture and language and parenting skills […][33]

20. As well as taking the specific suggestions from the consultations, the AFN was guided by general indigenous principles that emerged:

    a) To be inclusive, fair, accessible and transparent;
    b) To offer a holistic and comprehensive response recognizing and addressing all the harms committed in and resulting from residential schools;
    c) To respect human dignity and racial and gender equality;
    d) To contribute towards reconciliation and healing;
    e) To do no harm to survivors and their families.[34]

21. The AFN also incorporated Indigenous ceremony into the negotiation process. The then National Chief (who is Ojibway) organized a special ceremony to consecrate the negotiations so they would start, according to tradition, in a good way.

22. In Ojibway tradition, ceremonies are performed to communicate to the Creator, and to acknowledge before others how one's duties and responsibilities have or are being performed.[35] Dancing, singing, and feasting sometimes accompany these rituals as a way to ratify legal relationships.[36]

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[31] *Ibid* at 22.
[32] *Ibid.*
[33] *Ibid* at 34.
[34] *Ibid*. This was a summary of many ideas that were recorded in the dialogues.
[35] See generally Basil Johnston, *Ojibway Heritage* (Toronto: McClelland & Stewart, 1976). See also stories and histories that shaped the Omushkego Crees in Louis Bird, *The Spirit Lives in the Mind: Omushkego Stories, Lives and Dreams,* (Montreal & Kingston: McGill-Queen's University Press, 2007) which stories describe similar ceremonies and traditions.
[36] Edward Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (Hayward: Indian Country Communications, 1988).

23. On this occasion, the government representative, the Honorable Frank Iacobucci, along with other government officials, church representatives, and members of the AFN negotiating team, were invited to the traditional round house on Pow Wow Island located on the Onigaming First Nation. The ceremony was performed by Ojibway elder Fred Kelly. During the ceremony, Frank Iacobucci was carried through the round house on the shoulders of women. An ancient, ceremonial pipe from the Treaty 3 area[37] was shared first by the government representative and the National Chief, then by men and women elders from the Treaty 3 territory. This was followed by singing, dancing, and praying for a successful outcome.

24. After the event, the group travelled to the Sagkeeng First Nation, the National Chief's birthplace, where a community meeting was held to hear testimony from residential school survivors, answer their questions and hear their suggestions about the negotiating process.

25. The consecration ceremony was an important step because Anishinabek law focuses on the process and principles that guide actions rather than on the specific outcomes. Accountability is closely connected to those to whom duties are owed, how those duties should be exercised, and the consequences that flow from such exercise.[38]

26. By holding the ceremony in the Roundhouse in the presence of government and church representatives, elders and community members and by hosting the public meeting of the community at the Sakeeng First Nation, the National Chief presaged to all parties that he and his team would follow Anishinabek legal principles throughout the negotiations.

27. With respect to substance, the AFN's position was that the settlement had to not only include fair and just reparations for individual survivors, but also reparations for

[37] The ceremonial pipe was smoked at peacemaking and treaty negotiations and special events such as the consecration ceremony.
[38] Borrows, *supra* note 23 at 333.

all residential students for the destruction of family life, languages, cultures and dignity, intergenerational devastation, and commemoration for those who had died.[39] Most importantly, survivors had to have the opportunity to safely tell their stories about residential schools, to be believed, and to have a permanent record be established in an archive and research center.[40]

28. The design of the Truth and Reconciliation Commission (TRC) and its mandate[41] reflected the AFN's objectives and goals.[42] The preamble of the mandate states:

> "…..The truth telling and reconciliation process as part of an overall holistic and comprehensive response to the Indian Residential School legacy is a sincere indication and acknowledgement of the injustices and harms experienced by Aboriginal people and the need for continual healing. This is a profound commitment to establishing new relationships embedded in mutual recognition and respect that will forge a brighter future. The truth of our common experiences will help set our spirits free and pave the way to reconciliation."[43]

29. The AFN's demands for a research center and archive, healing resources, health supports and commemoration activities were designed to assure survivors that their ancestors would be honored, that they would be respected, safe, receive healing resources, and be protected in the future from any prospect that residential schools could be imposed on them again.

30. The composition of the AFN negotiating team further reflected its view that the settlement had to be survivor-centered and represent their diverse and unique interests. The majority of the team was made up of residential school survivors, including an elder

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[39] Other than the *Baxte*r class action which claimed a lump sum for every survivor, no party other than the AFN claimed for the remedies listed.

[40] These demands were set out in the AFN's statement of claim filed against Canada and the churches, See *Fontaine et al v Canada (Attorney General)* (5 August 2005), Toronto 05-CV-294716 CP (ONSC) (Statement of Claim), online: https://kathleenmahoney.files.wordpress.com/2018/04/afn-issued-statement-of-claim_2005.pdf

[41] http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf
The structure of the TRC was designed to achieve this goal by having small community hearings and reconciliation events as well as the larger national events designed to bring in non-Aboriginal participants.

[42] The AFN was the only plaintiff's representative at the table negotiating the TRC and other collective remedies.

[43] *Ibid.*

advisor and the National Chief. A human rights professor and lawyer, a mathematician with a law degree and family ties to holocaust survivors, a class action expert with a Jesuit background and a small group of other experts completed the team.

Indigenous Legal Theory

31. As indicated above, Indigenous legal principles, theory and traditions were at the core of the AFN's perspective. When the ADR was examined through the lens of indigenous legal theory, including indigenous feminist theory, it was clear that its content was informed solely by Western legal principles and that its assumptions of objectivity, equality, and neutrality did not consider the often different values of the survivors.

32. Indigenous legal theory required that appropriate, fair and just reparations had to directly confront the historic, individual and collective effects of colonialism on indigenous peoples.[44]Questions that needed to be asked included, how can we move from Western criteria for reconciliation to an Indigenous understanding of reconciliation? How can the relationship be rebalanced? How did the residential school strategy affect indigenous identity, relationships, family and citizenship? How did the schools affect the economic, cultural, and linguistic knowledge of indigenous peoples? How can we make space for Indigenous law, conflict resolution, and peacemaking traditions?

33. Similarly, insights of Indigenous feminist theory[45] guided the AFN team to consider political and social conditions from the perspective of indigenous women victims[46] at the intersection of racial, colonial and gendered acts of violence. Questions such as: how did the gender dynamics in the residential schools shape the ways in which women and

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[44] See Gordon Christie, "Indigenous Legal Theory: Some Initial Considerations" in Benjamin Richardson et al (eds.) *Indigenous Peoples and the Law: Cooperative and Critical Perspectives*. Hart Publishing, 2009.

[45] Some indigenous feminist theorists writings that were consulted include Patricia Montour-Angus, "Standing Against Canadian Law: Naming Omissions of Race, Culture and Gender," in Elizabeth Comack, et al, eds., *Locating Law: Race/Class/Gender Connections* (Halifax: Fernwood Publishing, 1999); Joyce Green's chapter "Taking Account of Aboriginal Feminism*"* in Joyce Green, ed, *Making Space Indigenous Feminism*, 2d ed (Blackpoint: Fernwood Publishing, 2017); Emily Snyder*, "Gender and Indigenous Law: A Report prepared for the University of Victoria Indigenous Law Unit, The Indigenous Bar Association and the Truth and Reconciliation Commission*" (2013), online: http://indigenousbar.ca/indigenouslaw/wp-c.ontent/uploads/2013/04/Gender-and-Indigenous-Law-report-March-31-2013-ESnyder1.pdf

[46] For a fuller discussion, see Joyce Green, *ibid,* at p.30.

girls were treated? How are those dynamics reflected in the reparations strategy? Do the responses and proposals for reparations include indigenous women's experiences and knowledge?[47] Was the violence against girls in the residential schools perpetuated by social norms in which the degradation of Indigenous women and girls was treated as normal? Did the abusive acts and their resulting harms impact Indigenous women and men differently? How did the violence in the residential schools affect indigenous women's experience of domestic violence in their adult lives? In their participation in the work force? In their child bearing and child rearing experiences?

34. The AFN bought the answers to these questions into the AFN Report[48] recommendations on individual abuse claims, psychological injuries, claims for loss of culture and loss of family life, the mandate and structure of the Truth and Reconciliation, healing funds, memorialization, consideration for the elderly, and intergenerational harms and health supports.

35. Engagement with indigenous legal theory also illuminated the AFN Report's identification of culturally inappropriate and gender biased aspects of the ADR plan.[49] An example was the ADR's failure to recognize gender specific harms experienced by girls and women in the residential schools. If women could fit their harms into the harms males suffered they could be compensated. Otherwise they could not. Consequently, the ADR did not compensate girls or women for pregnancy, abortion or forced adoption of a child. An example of culturally inappropriate provisions was the ADR's requirement that abusive disciplinary measures would be measured by "standards of the day" of the dominant society, not by indigenous standards of child discipline.

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[47] For a theoretical analysis see Emily Snyder, Indigenous Feminist Legal Theory, [2014] *CJWL Vol. 25 no. 2.* https://utpjournals.press/doi/abs/10.3138/cjwl.26.2.07 (accessed March 9, 2019)
Also see Snyder, An Indigenous Feminist Legal Theoretical Analysis https://era.library.ualberta.ca/items/15997cd2-0909-4b8c-ad37-c6e1e9f513a0 (accessed March 9. 2019).

[48] These criticisms are set out in detail in Assembly of First Nations, *Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools*, available online at: https://kathleenmahoney.files.wordpress.com/2018/03/afn-report-indian_residential_schools_report.pdf

[49] For a full discussion of the inappropriateness of the ADR solution imposed by Canada, see the NAC Report, at paras. 21-26.

The Problems with Mainstream Legal Theory

36. The legal theory that dominates mainstream tort law is corrective justice. The corrective justice theory goes back to the time of Aristotle[50]who posited that when one party has committed a wrong towards another and realizes a gain while the other party a corresponding loss, justice requires that the party who is deprived must be restored to his original position by the party who gained.

37. Corrective justice says a loss need not be one for which the wrongdoer is morally to blame, it need only be a loss incident to the violation of the victim's right – a right correlative to the wrongdoer's duty not to inflict the loss on the victim. The injury of the victim is repaired by putting the victim back in the position he or she was in prior to the injury taking place.[51] Remedies based in corrective justice almost always take the form of monetary compensation.

38. The main problem with the corrective justice theory is that it is often not possible for a wrongdoer to repair the injury with a money payment. When harms based on racist ideologies are multiple and diverse over extended periods of time, such as generations of residential school students were forced to endure, corrective justice is an unsuitable theory for appropriate redress. For example, a sexual abuser of a child cannot not repair the loss suffered by the victim, regardless of the amount of compensation paid.

39. When the sexual abuse occurs to thousands of racialized children as it did in residential schools, corrective justice theory is incapable of comprehending the collective dignitary losses or broken relationships between racial groups. This is especially true where there has been relentless enforcement of a degraded moral status of the group, and where systemic, discriminatory conditions persist.[52]

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[50] Aristotle, *The Nicomachean Ethics* (Kitchener: Batoche Books, 1999) at 73–81.
[51] Ernest J Weinrib, "Corrective Justice in a Nutshell" (2002) 52:4 UTLJ at 349.
[52] *Ibid* at 378–379.

40. The ADR plan was based on a corrective justice model. Within its restrictive parameters and emphasis on individual as opposed to group harms, the AFN Report correctly pointed out that the ADR was incapable of addressing the full range and complexity of the residential school claims.

Conclusion

41. In order to achieve a just and fair outcome for survivors, their families and communities, the AFN team followed indigenous legal principles throughout the negotiation process.

42. The ultimate goal of the AFN strategy was for the Indian Residential Schools Settlement Agreement to be transformative and create a path for reconciliation. Without reparations informed by indigenous legal theory and principles the AFN knew that the goal of reconciliation would fail.

43. The Indian Residential Schools Settlement Agreement demonstrates that when mass tort and human rights violations occur, fairness and justice require more than what Western legal theories are able to provide. Even though most lawyers and judges educated in the Western legal tradition unquestioningly adopt corrective justice as the appropriate theory to apply to tort based injuries,[53] it is clear that in civil proceedings, successful outcomes are rare, especially for historic wrongs such as the residential school claims.[54] Indigenous legal theory is able to fill in the gaps of corrective justice and achieve justice that would otherwise have been denied.

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[53] *Blackwater v. Plint,* [2005] 3 S.C.R. 3, 2005 SCC 58. is a good example where the Crown's "crumbling skull" argument successfully escaped liability by arguing that the residential school students who were sexually and physically abused in the school would have suffered the harms anyway because their education was inferior and the parenting they received (from former residential school students) was so poor. For a thorough analysis see Kent Roach, "*Blaming the Victim: Canadian Law, Causation and Residential Schools"* (2014) 64:4 UTLJ 566. https://www.utpjournals.press/doi/abs/10.3138/utlj.2486 (accessed March 8, 2019)

[54] To see a discussion about the duty of lawyers to learn and understand indigenous legal principles, see Lance Finch CJ, "The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice" (2012) *CLE BC Materials*; T. Farrow, Residential Schools Litigation and the Legal Profession (2014) *64:4 UTLJ* p. 596; https://www.utpjournals.press/doi/abs/10.3138/utlj.2486 (accessed March 9, 2019);

44. The relaxed proof requirements and non-adversarial hearings of the Individual Assessment process, healing funds, health supports, the Truth and Reconciliation Commission, a payment for loss of language and culture and loss of family life, an advance payment for the elderly, commemoration for deceased survivors, intergenerational reparations for education and community development, a research center and archive and public apologies from Canada and the churches - all are reparations that the AFN demanded and indigenous legal theory and principles supported.

45. Indigenous legal principles also required the AFN to create a process that allowed for direct engagement and consultation with survivors, empowering them to express their feelings and influence the outcome of the negotiations. The incorporation of ceremonial practices into the negotiating process honored the connection of survivors to the Creator and underscored the importance of accountability of the negotiators and the interconnectedness of culture to indigenous law.

46. Coming to terms with the limitations of the traditional forms of law and legal remedies is important for reconciliation.[55] Indigenous legal traditions are evolving out of colonialism, but the journey is far from over. The AFN's impact on the creation of the historic Indian Residential Schools Settlement Agreement through the use of indigenous legal principles demonstrates that legal pluralism has the potential to build trust, restore dignity and provide a measure of justice directly to victims that can add to the sum of justice available for indigenous peoples and contribute to transformative change.[56]

Carrie Menkle-Meadow, Unsettling the Lawyers: Other Forms of Justice in Indigenous Claims of Expropriation, Abuse and Injustice (2014) *64:4 UTLJ* p. 620. https://www.utpjournals.press/doi/abs/10.3138/utlj.2486 (accessed March 9 2019)

[55] See, for example, Lisa Chartrand, "Accommodating Indigenous Legal Traditions" (2005) Indigenous Bar Association 1, online: <http://www.indigenousbar.ca/pdf/Indigenous%20Legal%20Traditions.pdf>.

[56] Para 275 of the NAC Report and corresponding footnotes set out some of the transformative changes in Canada as a result of the TRC Calls to Action.

Schedule 2

Perspective of the Inuit Representatives

1. The Inuit Representatives include the Inuvialuit Regional Corporation (IRC), Makivik Corporation (Makivik) and Nunavut Tunngavik Incorporated (NTI). IRC represents the Inuvialuit, a group of Inuit from the Western Arctic (Northwest Territories). Makivik represents the Inuit of Nunavik (northern Québec) and NTI represents the Inuit of Nunavut. IRC is based in Inuvik (Northwest Territories), Makivik in Kuujjuak (Québec), and NTI in Iqaluit (Nunavut). In general, the work of the Inuit Representatives is to promote and protect the collective interests and rights of the Inuit they represent.

2. The role of the Inuit Representatives in the negotiation, conclusion and implementation of the November 2005 Agreement in Principle and the May 2006 Settlement Agreement is unique in many ways. Inuit were not included in the discussions between Canada and the Assembly of First Nations (AFN) that lead to the political agreement of May 30, 2005 (AFN Political Agreement). In fact, the Inuit Representatives needed to invite themselves to subsequent negotiations between The Honourable Frank Iacobucci (Federal Representative), the AFN, the church representatives and various lawyers representing former students. Additionally, the history of residential schools in the Arctic differed from the history of Indian Residential Schools (IRS) in some aspects, discussed below in further detail.

3. Despite such differences, however, former Inuit students went through similar traumatic experiences of being removed from their land, family and culture and sent to schools and hostels that were financed, built and operated by the federal government and the churches where they were forcefully introduced to a foreign language, strange food, a different religion and a civilization that regarded their culture as inferior, primitive and savage. This occurred at a time when their way of life was traditional and nomadic. Inuit students were subjected to harsh discipline, many were sexually abused, and the living conditions in the hostels contributed to the spread of infectious diseases such as influenza, measles and tuberculosis. However, prior to the

involvement of the Inuit Representatives, many Inuit residential schools had been largely ignored.

4. Following the public announcement of the Political Agreement, many Inuit former students begin to wonder if they would also be offered compensation. However, this was not the first time that the experience of Inuit at residential schools was discussed. For example, in 1991, Marius Tungilik spoke of the sexual abuse he suffered at Turquetil Hall (Chesterfiel Inlet, Nunavut) at a hearing of the Royal Commission on Aboriginal Peoples. In parallel to that hearing, in the summer of 1993, Marius Tungilik and two other former students, Piita Irniq and Jack Anawak, organized a reunion of 150 former students of Turquetil Hall to discuss their experience at the school. The reunion led to a request by former students of Turquetil Hall to conduct an inquiry. The independent investigation[1] that followed revealed that serious incidents of physical and sexual abuses had occurred at Turquetil Hall.[2]

5. Additionally, in 1997 in the Western Arctic, a number of Inuit and First Nations former students that were abused at Grollier Hall (Inuvik, NWT) formed a support group. As a result of this initiative, several perpetrators of sexual abuse on Grollier Hall's students were criminally convicted in the late 1990s and early 2000s.[3] In addition to criminal convictions, an alternative dispute resolution pilot project implemented between 1999 and 2002 with the participation of Canada and the churches resulted in many out of-court settlements for many former students of Grollier Hall. Beyond initiatives related to Grollier Hall, at the time of the Settlement Agreement, a number of other individual cases about abuses experienced at various schools were also being litigated by Inuit in courts in the NWT, Nunavut and Québec.[4] Moreover, since 1998, several community-based initiatives financed by the Aboriginal Healing Foundation were

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[1] The investigation was conducted by lawyer Katherine Peterson. She was appointed by the Government of the Northwest Territories.
[2] *Canada's Residential schools: The History, Part 2, 1939 to 2000, The Final Report of the Truth and Reconciliation Commission of Canada*, Volume 1, at pages 439 – 440.
[3] *Ibid.,* at pages 431 to 438.
[4] *Fontaine et al. v. Canada et al.*, 2006 YKSC 63, at par. 2.

organized in Inuit communities across the Arctic to address the legacy, and inter-generational impact, of the abuses suffered at residential schools.[5]

6. In the AFN Political Agreement, the Inuit Representatives noted Canada's commitment for a "broad reconciliation package" for all former students with flexibility to explore "collective and programmatic elements," including "reconciliation processes, commemoration and healing elements."[6] The references indicated a marked shift in the residential school file from an individual to a collective approach. In noting this shift, the Inuit Representatives expected that Inuit would be involved, or at least consulted, in upcoming negotiations with the Federal Representative, who had been appointed on May 31, 2005.

7. However, the Inuit Representatives were not invited to participate in the negotiations led by the Federal Representative. A lawyer representing Inuit from Nunavik[7] in abuse claims was invited to participate in the negotiations with the Federal Representative. He was acting in concert with Makivik in support of individual claimants. In approximately July 2005, he contacted the legal counsel of the IRC and NTI, informing them that the negotiations were taking place. The Inuit Representatives started to get organized, determined to gain a seat at the negotiation table. During a conference call held on August 15, 2005, the leaders of the IRC, Makivik, NTI and the Labrador Inuit Association, representing all Inuit communities from coast to coast, decided to coordinate efforts in order to raise the issue of their exclusion from the negotiations with the federal government. This marked the beginning of an intense period of political and legal action by the Inuit Representatives to gain a seat at the negotiation table and ensure the full inclusion of Inuit former students and their residential schools in any global settlement, including in reconciliation and healing initiatives.

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[5] See the website of the Aboriginal Healing Foundation at AHF Website.
[6] For the text of the AFN Political Agreement, please see Appendix "A" attached to this report.
[7] Gilles Gagné, who was a NAC Member until 2011, and the NAC Chairperson from October 2009 to June 2011.

8. On August 10, 2005, IRC sent a letter to the Federal Representative to seek participation in the negotiation. On August 19, 2005, Inuit Tapiriit Kanatami (ITK), the national voice of Canada's 60,000 Inuit, sent letters to the Deputy Prime Minister and the Minister of Indian Affairs and Northern Development. These letters requested direct and meaningful participation in the process underway and the inclusion of all Inuit former students and the residential schools they attended. In addition to their letters, ITK also attempted to organize meetings between Inuit leaders and the federal government. On the legal front, the Inuit Representatives began preparations to file class actions in their respective jurisdiction on behalf of Inuit former students should the federal government refuse to include them. However, the Labrador Inuit Association did not pursue the process further, given that they were in the process of concluding a land claim agreement and that their beneficiaries had attended mission schools in Labrador in which Canada had no involvement prior to the entry of Newfoundland in the Confederation in 1949.[8]

9. On September 1, 2005, a conference call took place between the Federal Representative and the Inuit leaders. The Inuit leaders explained particular features of residential schools in the Arctic, which included federal day schools constructed by the federal government and separate hostels to lodge Inuit students. The Federal Representative indicated that day schools and hostels were not included in his current mandate, which was to negotiate with lawyers representing former IRS students who had filed legal actions against Canada. However, after being informed that NTI had filed a class action the previous day (August 31, 2005)[9] on behalf of Nunavut former students and that IRC would do the same on September 7, 2005 on behalf of the Inuvialuit,[10] the Federal Representative confirmed that NTI and IRC lawyers would be

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[8] After 1949, Canada provided funding to Newfoundland for the educational needs of indigenous students in Labrador. Class actions filed in 2007 and 2008 on behalf of former students of Labrador residential schools resulted in a settlement on September 28, 2016. Canada paid $50 million as compensation for attendance at residential schools and for serious abuse claims together with funding for healing and commemoration initiatives. On November 24, 2017, Prime Minister Trudeau apologized to former students of Newfoundland and Labrador. More at Government of Canada.

[9] *Michelline Ammaq, Blandina Tulugarjuk and Nunavut Tunngavik Incorporated v. Attorney General of Canada,* Nunavut Court of Justice Court, File # 08-05-401 CVC.

[10] *Rosemarie Kuptana v. the Attorney General of Canada*, Supreme Court of the Northwest Territories, File # S-0001-2005000243.

invited to the next negotiation meeting and that he would advise Canada of the new development. NTI and IRC had followed in the footsteps of Makivik, which filed a legal action in the Superior Court District of Montréal on August 1, 2005[11] to formally gain a seat at the table. The Inuit leaders indicated they would prepare a briefing note on the Inuit federal day schools and related hostels, as well as on the IRS that were generally also attended by Inuit.

10. Having achieved their first objective of participating in the negotiation, the Inuit Representatives accelerated various consultation and research initiatives on Inuit residential schools commenced in the previous months. Consultation with Inuit former students was essential to identify with accuracy the residential schools that Inuit had attended throughout the years. Historical research was necessary to determine the involvement of the federal government in Inuit residential schools. Makivik, IRC, and NTI mailed detailed questionnaires to their beneficiaries to gather specific information about their residential school attendance.

11. Since September 1, 2005, the Inuit Representatives participated in all of the negotiation meetings that lead to the Agreement in Principle on November 20, 2005. When the Inuit Representatives entered the negotiations, they knew that the list of residential schools used by Canada did not include many residential institutions where Inuit had lived and studied. The Federal Representative formed a committee comprised of Canada and the Inuit Representatives to determine the eligibility of the additional institutions to be proposed by the Inuit Representatives. Based on the results of their internal consultation with former students and their historical research in various government and church archives across the country, the Inuit Representatives were able to provide lists of residential schools and detailed research memorandums on the involvement of the federal government in Inuit education.

[11] File # 500-17-026908-056.

12. These efforts resulted in the addition of 16 additional residential schools in the Agreement in Principle (four in Nunavik,[12] ten in Nunavut,[13] and one in each of the NWT and the Yukon). The school added in the NTW was Grandin College (Fort Smith), a residential school predominantly for First Nations and Métis but where some Inuvialuit also attended, based on the results of the survey conducted by IRC among its former students. The school added in the Yukon was the Shingle Point Eskimo Residential School, which officially operated from 1929 to 1936, and some Inuvialuit and Inuit former residents were still alive in 2005. After the Agreement in Principle was signed, an additional Inuit residential institution (the Federal Hostels at Frobisher Bay, Nunavut) was added to the final schedule of additional schools attached to the Settlement Agreement (Schedule "F"), for a total of 17 additional residential schools.

13. Due to time limitations in conducting research prior to the conclusion of the Agreement in Principle and the Settlement Agreement and the fact that the historical record was both incomplete and distributed across various archives,[14] there remained a possibility that other Inuit residential schools might be identified. With that in mind, the Inuit Representatives insisted that a mechanism be included in the Settlement Agreement for any person or organization to request Canada to research and include other residential schools to the Settlement Agreement together with a right to appeal to the Court if Canada should refuse to include a particular institution.[15]

14. During the negotiation process, the Inuit Representatives made representations on all the components of the Settlement Agreement. They knew from experience with their land claim agreements that the real challenges of the Settlement Agreement would be its implementation. With that in mind, the Inuit Representatives obtained representation on the National Certification Committee, the National Administration

[12] Federal hostels at Great Whale River, Port Harrison, George River, and Payne Bay.
[13]Federal hostels at Panniqtuug/Pangnirtang, Broughton Island/Qikiqtarjuaq, Cape Dorset/Kinngait, Eskimo Point/Arviat, Igloolik/Igglulik, Baker Lake/Qamani'tuaq, Pond inlet/Mittimatalik, Cambridge Bay, Lake Harbour, and Belcher Island.
[14] Library and Archives Canada, NWT Archives, the General Synod Archives of the Anglican Church of Canada, and the Hudson's Bay Company Archives.
[15] Section 12 of the Settlement Agreement.

Committee, the Independent Assessment Process (IAP) Working Group, and the IAP Oversight Committee. The Inuit Representatives also ensured that the mandate of the Truth and Reconciliation Commission (TRC) would be inclusive of Inuit and that there would be Inuit representation on the TRC Indian Residential Schools Survivor Committee. In June 2011, the TRC's second national event was held in Inuvik, NWT. The northern national event was preceded by a three-month tour of a TRC Inuit Sub-commission of 18 Inuit communities across the north and it was followed by TRC hearings held in 12 Inuit communities, as well as one in Ottawa for Inuit and other former students.[16]

15. In 2012, the Inuit Representatives intervened in the Request for Direction with respect to the scope of Canada's obligation with respect to historical residential school documents stored at Library and Archives Canada (LAC). Canada's position was that it was only obligated to give access to LAC to the TRC to conduct its own research. The TRC's position, supported by the Inuit Representatives and the AFN, was that Canada was required by the terms of the Settlement Agreement to provide to the TRC all the IRS documents archived at LAC. On January 30, 2013, The Honourable J.A. Goudge of the Ontario Superior Court of Justice decided that Canada had to produce to the TRC in an organized manner the relevant residential school documents stored at LAC.[17] The Inuit Representatives' intervention in the case was motivated by Canada's narrow interpretation of its obligation under the Settlement Agreement respecting the IRS documents archived at LAC, as well as by the difficulty they encountered in having Inuit residential schools recognized by Canada related to challenges in locating relevant historical documents.

16. Following the conclusion of the Settlement Agreement, the Inuit Representatives focused on assisting Inuit former students to claim and receive the compensation promised by the Settlement Agreement. They toured their communities to provide information on the Settlement Agreement. They assisted Inuit former students to claim

[16] See the website of the TRC at TRC Website.
[17] *Fontaine v. Canada (Attorney General)*, 2013 ONSC 684 (CanLII), at paragraph 77.

the advance payment and the common experience payment. They facilitated access to IAP lawyers in their communities. They ensured that former students received access to counseling and other mental health services through the implementation of Health Canada's Resolution Health Program. They assisted the TRC with community events and statement-taking in their communities. They provided access to estate and financial planning services to Inuit former students through activities funded by Canada. They used their best efforts to help Inuit former students use their personal education credits.

17. Between the conclusion of the Agreement in Principle and the Settlement Agreement, a new federal government was elected that prioritized education. The Agreement in Principle contemplated that any surplus in the Designated Amount Fund (DAF) should be distributed in the form of personal credit for "personal healing," and that any excess in the DAF after this funding was distributed should be transferred to the Aboriginal Healing Foundation. In the Settlement Agreement, these provisions were changed to reflect the educational focus of the new government. The Inuit Representatives and the AFN proposed that any remainder in the DAF be transferred and divided between the Inuvialuit Education Foundation (IEF) and the National Indian Brotherhood Trust Fund to be used for education purposes, to which Canada agreed. Given that a surplus remained in the DAF at the conclusion of the CEP and the distribution of personal credits, the IEF was entitled to receive 5.7% of the excess in the DAF, representing the percentage of Inuit that were CEP recipients. To date, the IEF has received $13,132,841. These funds are distributed for educational purposes to Nunavut Inuit (60.5%), Inuvialuit (30.4%), Nunavik Inuit (8.1%) and Labrador Inuit (1%), percentages that were determined on the basis of how Inuit CEP recipients self-identified on their CEP application forms.[18] [19]

[18] There was no specific category on the CEP application form for Labrador Inuit. To calculate these percentages, all the Inuit CEP recipients who resided in Newfoundland and Labrador were considered to be Labrador Inuit. These percentages are explained in the *IEF Administration Plan for the Funds Received under the Residential Schools Settlement Agreement* attached to an order of The Honourable Madam Justice B.J. Brown of the Supreme Court of British Columbia dated January 7, 2016.

[19] For more information, see section III C. of this report - *Transfer to National Indian Brotherhood Trust Fund and Inuvialuit Education Foundation*.

18. At the time of the Agreement in Principle, the Inuit Representatives estimated that there would be between 4,000 and 5,000 Inuit former students qualifying for the CEP assuming that all of the Inuit residential institutions would be recognized by the Settlement Agreement. A total of 4,510 Inuit received the CEP (2,745 Nunavut Inuit, 1,387 Inuvialuit, and 378 Nunavik Inuit).[20] However, many Inuit who attended residential schools in Nunavik and Nunavut did not receive a CEP at all or did not receive the CEP for all the school years they have claimed.[21] The following section discusses both the reasons for the denials and some of the measures taken to assist these former students. However, it is first necessary to provide a brief summary of the unique history of Inuit residential schools in order to understand the challenges encountered with the CEP.

19. In the Western Arctic and what is now the Northwest Territories (NWT),[22] Inuvialuit often lived in proximity to First Nations communities. Consequently, Inuvialuit were educated in mixed residential schools with First Nations and Métis starting at the beginning of the 20th century. Inuvialuit were first educated in mission schools[23] built and operated by religious orders with construction and operating grants provided by Canada. In the late 1950s, Canada financed and built new residential institutions in the NWT knowns as “hostels” or “halls” usually located near federal day schools that were operated under contract with the Catholic and Anglican churches. The churches were gradually replaced by secular administrations and some of the residential institutions remained in operations until the 1990s.[24] Many Inuvialuit and Inuit from Nunavut, as well as some Inuit from Nunavik, were forced to travel long distances to attend these residential schools in the NWT, sometimes thousands of kilometres, first by boat and

[20] These numbers were provided by Canada in 2015 and can be found in the *IEF Administration Plan* referred in note 18.
[21] 24% of the CEP applications from Nunavut Inuit were denied (3,625 claimed the CEP and 880 were assessed as ineligible). 30% of the CEP applications from Nunavik Inuit were denied (541 claimed the CEP and 163 were assessed as ineligible) For the Inuvialuit, approximately 9% were assessed as ineligible (1,519 Inuvialuit claimed the CEP and 132 were assessed as ineligible). These percentages are calculated based on numbers provided by Canada to the Inuit Representatives on February 28, 2019 and the numbers referred to in note 20.
[22] The Inuit residential school system operated prior to the creation of Nunavut in 1999.
[23] For instance, at Shingle Point in the Yukon until 1936 and in Aklavik in the NWT until 1959.
[24] Grollier Hall in Inuvik operated from 1959 to 1997. Atkaicho Hall in Yellowknife operated until 1994.

then by planes. In the first decades of the system, residents often lived at these institutions for years without any opportunity to visit their families. Generally, Inuit who attended institutions in the NWT (as it is now) received the CEP for all the school years claimed with the exception of those who were placed with private families when home boarding programs were established in the late 1980s and 1990s when the hostels were overcrowded.

20. The history of residential schools located in Nunavut and Nunavik essentially begins in the 1950s, with some exceptions,[25]following the implementation of Canada's "Eskimo Education Policy". Before, Inuit in these regions had been mostly left alone by Canada and they still lived a semi-nomadic existence in migratory groups. The establishment by Canada of "day schools" and hostels[26] in Nunavut and Nunavik contributed to the settlement of Inuit in permanent communities usually located where missions, churches, and the Hudson's Bay Company (HBC) were first established. The construction of schools and hostels was challenging because of the short summer period and high transportation costs. The "day schools" were usually built first. Inuit children were often gathered by the Royal Canadian Mounted Police (RCMP), missionaries and government employees or agents from their small camps on the land and sent to these "day schools." In situations where hostels had not yet been constructed, children were placed in whatever buildings existed at the time, such as at the HBC's staff house, the church mission house, the teachers' houses, the nursing station, or in tents located near the schools.[27] Some children were placed in rudimentary and overcrowded houses with the first Inuit families to move permanently in these early settlements. Many Inuit children attended these "day schools" away from their families for many years until a small hostel was built. In the early 1970s, once the migration of Inuit families in permanent settlements was essentially completed, most

[25] For instance, Fort George in northern Québec and Coppermine in Nunavut.
[26]In Nunavut, they were mostly small hostels for 8 to 12 children with exceptions such of Turquetil Hall in Chesterfield Inlet (capacity of 70), The Churchill Vocational Centre in Manitoba (capacity of 160), or the Coppermine Tent Hostel (an average of 30-45 residents). The other larger hostels sometimes attended by Nunavut Inuit after 1955 were in Aklavik, Inuvik and Yellowknife. Many Inuit from Nunavik resided at The Churchill Vocational Centre in Manitoba.
[27] This was the case for former students at the Federal hostel in George River (now Kangiqsualujjuaq, Nunavik) where former students reported living in tents and using rocks as school desks.

of the small hostels in Nunavut closed. In northern Québec, the last federal hostel (Inukjuak) closed in 1971 and in 1978, the Kativik School Board[28] assumed authority over all Inuit schools in Nunavik.[29] In some Nunavik communities, federal schools operated for a certain period of time alongside provincial schools. The situation of the residential students attending provincial schools in Nunavik, where they experienced the same hardship and trauma as the students of the federal residential schools, has yet to be addressed.[30]

21. Inuit from Nunavut who were removed from their families and their traditional lifestyle to attend federal day schools in these early settlements and who lived with a priest, teacher, nurse, or another Inuit family, did not qualify for the CEP for these years.[31] School years were only recognized for the purpose of the CEP for years resided at the small hostels, once they were built if the students were placed there, provided that the hostel was included in the schedule of additional schools (Schedule "F") attached to the Settlement Agreement. For instance, a former student who was removed at the age of seven from his family and from their summer encampment to go attend a federal day school 100 kilometres away, but was required to live in a tent near the school for three years before the hostel was built, where he resided for one year, would only receive the CEP for the one year he lived at the hostel. In September 2011, NTI, together with former students Rhoda Katsok and Tuqiqki Osuitok, filed a Request for Direction to have these living arrangements recognized under the Settlement Agreement. NTI was advancing that the Settlement Agreement should be interpreted in a manner that would include these various residences or, alternatively, that such living arrangement should be added as "institutions" to the list of residential schools. The first argument failed when the Court decided in another case (known as the

[28] A school board newly established under the 1975 James Bay and Northern Québec Agreement.
[29] *Canada's Residential schools: The Inuit and Northern Experience, The Final Report of the Truth and Reconciliation Commission of Canada*, Volume 2, at p. 180.
[30] Many thought they were eligible for compensation under the Settlement Agreement and unsuccessfully applied for the CEP.
[31] Like the students who resided at recognized hostels, these students were often gathered from their camp by the RCMP (or other government officials) and traveled by boat or dog team to a village that usually consisted of the school, the church and the HBC's store, leaving behind their parents in a state of confusion and fear.

"Beardy Decision")[32] that older First Nations or Métis students who were placed in private family homes were not included under the Settlement Agreement. The second argument required NTI to provide evidence on each residential arrangement, a costly and near impossible task given that a significant amount of time had passed since the arrangements took place, the informal and diverse nature of the arrangements, the death of the adults involved at the time, and the lack of available written documentation. In light of these difficulties, NTI advised the Court in September 2014 that it would not pursue further the Request for Direction. To this day, many Inuit removed by Canada from their family and their way of life at a young age for the purpose of education have yet to obtain justice for their ordeal.[33] Unfortunately, many have since passed away.

22. Other residential institutions where Inuit students attended, such as Kivalliq Hall in Rankin Inlet, NWT (now Nunavut), were the objects of requests made pursuant to Article 12 to be added as institutions under the Settlement Agreement.[34] All such requests were denied by Canada which maintained that these hostels or residences were territorially operated by the Government of the NWT. On April 23, 2013, NTI and former student Simeon Mikkungwak filed a Request for Direction to have Kivalliq Hall recognized as a residential school under the Settlement Agreement. Kivalliq Hall opened in 1985 and operated until 1995. Canada's position was that as of 1970, the NWT Department of Education was responsible for all aspects of the education program operated by the Government of the NWT and that by 1984, the devolution to full territorial responsible government was completed. On December 14, 2016, Madam Justice B. Tulloch of the Nunavut Court of Justice found that Canada was jointly responsible for the operation of Kivalliq Hall which should be added to Schedule "F" of the Settlement Agreement because of the general extent to which Canada remained involved in the education-related affairs of the NWT, and the continuing financial dependence of the NWT on Canada which had granted all the funding for the

[32] *Fontaine v. Canada (Attorney General)*, 2014 BCSC 941.
[33] Many thought they were eligible for compensation under the Settlement Agreement and unsuccessfully applied for the CEP.
[34] The list all institutions requested can be found at List of Residential Schools.

construction and operation of Kivalliq Hall. Justice Tulloch found that through at least 1985: (1) the federally-appointed Commissioner of the NWT maintained at least some power and authority over the governance of the NWT and (2) the project of devolution and attaining responsible government was still ongoing.[35] On July 20, 2018, the Nunavut Court of Appeal confirmed the decision of Justice Tulloch.[36] Canada did not appeal further the decision and Kivalliq Hall was added as an IRS under the Settlement Agreement. It is estimated that 225 Inuit former students lived at Kivalliq Hall.[37]

23. The addition of Kivalliq Hall was a bitter-sweet victory for NTI and Inuit former students. First, other residential institutions which operated in the NWT had been denied because they were according to Canada "territorially operated" and it was now too late to have them recognized. Second, the issue of the gradual transfer of responsibility from the federal government to the NWT had been discussed and resolved at the time of the Agreement in Principle and the Settlement Agreement. This issue was an important concern for IRC and NTI. For instance, IRC had determined that approximately 63% of Inuvialuit had attended recognized residential schools in the NWT after 1970. If Canada was to subsequently invoke that the CEP would not be payable because Canada's direct oversight of education in the NWT ceased in 1970,[38] the majority of Inuvialuit former students would be denied some or all of their CEP. The IRC would not have signed the Agreement in Principle if the residential schools attended by Inuvialuit former students in the NWT were not recognized until their closure, and in fact, IRS like Grollier Hall (Inuvik) and Akaitcho Hall (Yellowknife) were recognized until 1997 and 1994, respectively. Prior to the Settlement Agreement, and as a condition for approving it, the Inuit Representatives requested and received a written confirmation that the residential schools located in the NWT and Nunavut listed in Schedule "F" that were included as a result of their efforts would also be recognized until December 31, 1997. This was intended to ensure that the CEP would be paid

[35] The information in this paragraph is from the decision of Justice B. Tulloch in *Fontaine v. Canada (Attorney General)*, 2016 NUCJ 31.
[36] *Fontaine v. Canada (Attorney General)*, 2018 NUCA 4.
[37] According to the website of the IAP Secretariat. See IAP Secretariat.
[38] Prior to April 1, 1970, Canada exercised full authority over education in the NWT. On April 1, 1970, the NWT Department of Education began to operate.

notwithstanding the gradual devolution of powers from the federal government to the territorial government, and that Canada would not invoke devolution as a means to deny the CEP for residential schools that operated in the NWT and Nunavut. It was thus disappointing to subsequently see Canada refuse to add residential institutions similar to Kivalliq Hall to the list of Schedule "F" residential schools on the basis that they were "territorially operated."

24. With regards to physical or sexual abuse, 849 Inuit claimed compensation in the Independent Assessment Process.[39] Many Inuit who suffered abused at residential schools were at first very reluctant to disclose they were abused and to file IAP claims. Inuit mental health workers worked closely with Inuit former students to explain the IAP claim process and to support those who decided to proceed with a claim. In 2011, the Inuit Representatives collaborated with the IAP Secretariat to conduct outreach activities to increase the number of Inuit IAP claimants. In 2012, NTI was contracted by the IAP Secretariat to help self-represented claimants in Nunavut. The Inuit Representatives were also careful to ensure that only reputable lawyers with experience in IRS claims would assist Inuit former students and many of the problems encountered in the south with some unscrupulous lawyers and form fillers generally did not occur in the north.[40]

25. In 2017, the Inuit Representatives were a party to the case decided by the Supreme Court of Canada respecting the faith of the IAP documents. They supported the position of the Chief Adjudicator that IAP claimants were promised by the Settlement Agreement that their IAP documents and their testimonies would remain confidential and would never be disclosed without their consent. For the Inuit Representatives, the positions advanced by Canada and the National Centre for Truth and Reconciliation (NCTR) that IAP documents had to be preserved, were subject to federal privacy and access legislation, and would eventually be archived at Library and Archives Canada (LAC) and available to the public, was both irreconcilable with the provisions of the

[39] This number was provided by the IAP Secretariat to the Inuit Representatives on March 1, 2019.
[40] See section VIII of this report - *NAC's Involvement in Requests for Direction Counsel Conduct Issues.*

Settlement Agreement and constituted a serious breach of trust. The Inuit Representatives welcomed the decision of the Supreme Court who decided that IAP documents would be destroyed following a notice program to advise IAP claimants of the possibility to voluntary archive their IAP documents with the NCTR. The Inuit Representatives participated in the discussions organized by the Chief Adjudicator to develop the notice program as well as in the Request for Direction that followed to obtain Court approval of the notice program. IRC and Makivik are currently assisting Inuit former students understand the options they have respecting their IAP documents. The budget authorized by the Court was however insufficient to allow NTI to properly assist Inuit former students from Nunavut, and NTI decided not to participate in it.

26. During the implementation of the Settlement Agreement, the objective of the Inuit Representatives was to ensure that Inuit former students would receive the compensation promised by the Settlement Agreement and promote healing and reconciliation for Inuit former students, their families and communities with a view to increasing the understanding by the general Canadian public of the impacts of residential schools and their relationship to some of the problems experienced today by Inuit. To achieve the objectives described above, the Inuit Representatives have often cooperated with Canada, the AFN, the churches, the IAP Chief Adjudicator (and the IAP Secretariat), the TRC, and the NCTR. While many of the objectives have been achieved, it remains that the experience of some Inuit former students was not recognized by the Settlement Agreement and Canada.

27. Finally, the Inuit Representatives wish to thank all involved in the Settlement Agreement who have worked hard and in good faith to achieve *"a fair, comprehensive and lasting resolution of the legacy"*[41] of residential schools for Inuit former students.

[41] Preamble of the Settlement Agreement.

THIS IS EXHIBIT " B " REFERRED TO IN THE
AFFIDAVIT OF Peter Grant
SWORN BEFORE ME AT Vancouver
THIS 8 DAY OF November, 2019

A Commissioner for taking Affidavits within
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May 8, 2006

CANADA, as represented by the Honourable Frank Iacobucci

-and-

PLAINTIFFS, as represented by the National Consortium
and the Merchant Law Group

-and-

Independent Counsel

-and-

THE ASSEMBLY OF FIRST NATIONS and INUIT REPRESENTATIVES

-and-

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA,
THE PRESBYTERIAN CHURCH OF CANADA,
THE UNITED CHURCH OF CANADA AND
ROMAN CATHOLIC ENTITIES

INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT

May 8, 2006

INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT

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May 8, 2006

Indian Residential Schools
Settlement Agreement

WHEREAS:

A. Canada and certain religious organizations operated Indian Residential Schools for the education of aboriginal children and certain harms and abuses were committed against those children;

B. The Parties desire a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools;

C. The Parties further desire the promotion of healing, education, truth and reconciliation and commemoration;

D. The Parties entered into an Agreement in Principle on November 20, 2005 for the resolution of the legacy of Indian Residential Schools:

(i) to settle the Class Actions and the Cloud Class Action, in accordance with and as provided in this Agreement;
(ii) to provide for payment by Canada of the Designated Amount to the Trustee for the Common Experience Payment;
(iii) to provide for the Independent Assessment Process;
(iv) to establish a Truth and Reconciliation Commission;
(v) to provide for an endowment to the Aboriginal Healing Foundation to fund healing programmes addressing the legacy

of harms suffered at Indian Residential Schools including the intergenerational effects; and

(vi) to provide funding for commemoration of the legacy of Indian Residential Schools;

E. The Parties, subject to the Approval Orders, have agreed to amend and merge all of the existing proposed class action statements of claim to assert a common series of Class Actions for the purposes of settlement;

F. The Parties, subject to the Approval Orders and the expiration of the Opt Out Periods without the Opt Out Threshold being met, have agreed to settle the Class Actions upon the terms contained in this Agreement;

G. The Parties, subject to the Approval Orders, agree to settle all pending individual actions relating to Indian Residential Schools upon the terms contained in this Agreement, save and except those actions brought by individuals who opt out of the Class Actions in the manner set out in this Agreement, or who will be deemed to have opted out pursuant to Article 1008 of *The Code of Civil Procedure of Quebec*;

H. This Agreement is not to be construed as an admission of liability by any of the defendants named in the Class Actions or the Cloud Class Action.

THEREFORE, in consideration of the mutual agreements, covenants and undertakings set out herein, the Parties agree that all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any

Class Member or Cloud Class Member ever had, now has or may hereafter have arising in relation to an Indian Residential School or the operation of Indian Residential Schools, whether such claims were made or could have been made in any proceeding including the Class Actions, will be finally settled based on the terms and conditions set out in this Agreement upon the Implementation Date, and the Releasees will have no further liability except as set out in this Agreement.

ARTICLE ONE
INTERPRETATION

1.01 Definitions

In this Agreement, the following terms will have the following meanings:

"Aboriginal Healing Foundation" means the non-profit corporation established under Part II of the *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970 to address the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including intergenerational effects.

"Agreement in Principle" means the Agreement between Canada, as represented by the Honourable Frank Iacobucci; Plaintiffs, as represented by the National Consortium, Merchant Law Group, Inuvialuit Regional Corporation, Makivik Corporation, Nunavut Tunngavik Inc., Independent Counsel, and the Assembly of First Nations; the General Synod of the Anglican Church of Canada, the Presbyterian Church in Canada, the United

Church of Canada and Roman Catholic Entities, signed November 20, 2005;

"Appropriate Court" means the court of the province or territory where the Class Member resided on the Approval Date save and except:

a) that residents of the provinces of Newfoundland and Labrador, Nova Scotia, New Brunswick and Prince Edward Island will be deemed to be subject to the Approval Order of the Superior Court of Justice for Ontario;

b) International Residents will be deemed to be subject to the Approval Order of the Superior Court of Justice for Ontario;

"Approval Date" means the date the last Court issues its Approval Order;

"Approval Orders" means the judgments or orders of the Courts certifying the Class Actions and approving this Agreement as fair, reasonable and in the best interests of the Class Members and Cloud Class Members for the purposes of settlement of the Class Actions pursuant to the applicable class proceedings legislation, the common law or Quebec civil law;

"Business Day" means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person who needs to take action pursuant to this Agreement is situated or a holiday under the federal laws of Canada applicable in the said Province or Territory;

"Canada" or "Government" means the Government of Canada**;**

"CEP" and **"Common Experience Payment"** mean a lump sum payment made to an Eligible CEP Recipient in the manner set out in Article Five (5) of this Agreement;

"CEP Application" means an application for a Common Experience Payment completed substantially in the form attached hereto as Schedule "A" of this Agreement and signed by an Eligible CEP Recipient or his or her Personal Representative along with the documentation required by the CEP Application.

"CEP Application Deadline" means the fourth anniversary of the Implementation Date;

"Church" or **"Church Organization"** means collectively, The General Synod of the Anglican Church of Canada, The Missionary Society of the Anglican Church of Canada, The Dioceses of the Anglican Church of Canada listed in Schedule "B", The Presbyterian Church in Canada, The Trustee Board of the Presbyterian Church in Canada, The Foreign Mission of the Presbyterian Church in Canada, Board of Home Missions and Social Services of the Presbyterian Church in Canada, The Women's Missionary Society of the Presbyterian Church in Canada, The United Church of Canada, The Board of Home Missions of the United Church of Canada, The Women's Missionary Society of the United Church of Canada, The Methodist Church of Canada, The Missionary Society of The Methodist Church of Canada **and the Catholic Entities listed in Schedule "C"**.

"Class Actions" means the omnibus Indian Residential Schools Class Actions Statements of Claim referred to in Article Four (4) of this Agreement;

"Class Members" means all individuals including Persons Under Disability who are members of any class defined in the Class Actions and who have not opted out or are not deemed to have opted out of the Class Actions on or before the expiry of the Opt Out Period**;**

"Cloud Class Action" means the *Marlene C. Cloud et al. v. Attorney General of Canada et al.* (C40771*)* action certified by the Ontario Court of Appeal by Order entered at Toronto on February 16, 2005;

"Cloud Class Members" means all individuals who are members of the classes certified in the Cloud Class Action;

"Cloud Student Class Member" means all individuals who are members of the student class certified in the Cloud Class Action**;**

"Commission" means the Truth and Reconciliation Commission established pursuant to Article Seven (7) of this Agreement;

"Continuing Claims" means those claims set out in Section I of Schedule "D" of this Agreement.

"Courts" means collectively the Quebec Superior Court, the Superior Court

of Justice for Ontario, the Manitoba Court of Queen's Bench, the Saskatchewan Court of Queen's Bench, the Alberta Court of Queen's Bench, the Supreme Court of British Columbia, the Nunavut Court of Justice, the Supreme Court of the Yukon and the Supreme Court of the Northwest Territories;

"Designated Amount" means one billion nine hundred million dollars ($1,900,000,000.00) less any amounts paid by way of advance payments, if any, as at the Implementation Date.;

"Designated Amount Fund" means the trust fund established to hold the Designated Amount to be allocated in the manner set out in Article Five of this Agreement;

"DR Model" means the dispute resolution model offered by Canada since November 2003;

"Educational Programs or Services" shall include, but not be limited to, those provided by universities, colleges, trade or training schools, or which relate to literacy or trades, as well as programs or services which relate to the preservation, reclamation, development or understanding of native history, cultures, or languages.

"Eligible CEP Recipient" means any former Indian Residential School student who resided at any Indian Residential School prior to December 31, 1997 and who was alive on May 30, 2005 and who does not opt out, or is not deemed to have opted out of the Class Actions during the Opt-Out

Periods or is a Cloud Student Class Member;

"Eligible IAP Claimants" means all Eligible CEP Recipients, all Non-resident Claimants and includes references to the term "Claimants" in the IAP.

"Federal Representative" means the Honourable Frank Iacobucci;

"**IAP Application Deadline**" means the fifth anniversary of the Implementation Date:

"IAP Working Group" means counsel set out in Schedule "U" of this Agreement.

"Implementation Date" means the latest of :

(1) the expiry of thirty (30) days following the expiry of the Opt-Out Periods; and

(2) the day following the last day on which a Class Member in any jurisdiction may appeal or seek leave to appeal any of the Approval Orders; and

(3) the date of a final determination of any appeal brought in relation to the Approval Orders;

"Independent Counsel" means Plaintiffs' Legal Counsel who have signed this Agreement, excluding Legal Counsel who have signed this Agreement in their capacity as counsel for the Assembly of First Nations or for the Inuit Representatives or Counsel who are members of the Merchant Law Group or

members of any of the firms who are members of the National Consortium;

"Independent Assessment Process" and **"IAP"** mean the process for the determination of Continuing Claims, attached as Schedule "D";

"Indian Residential Schools" means the following:

(1) Institutions listed on List "A" to OIRSRC's Dispute Resolution Process attached as Schedule "E";

(2) Institutions listed in Schedule "F" ("Additional Residential Schools") which may be expanded from time to time in accordance with Article 12.01 of this Agreement; and,

(3) Any institution which is determined to meet the criteria set out in Section 12.01(2) and (3) of this Agreement:

"International Residents" means Class Members who are not resident in a Canadian Province or Territory on the Approval Date.

"Inuit Representatives" includes Inuvialuit Regional Corporation ("IRC"), Nunavut Tunngavik Inc. ("NTI") and Makivik Corporation; and may include other Inuit representative organizations or corporations.

"NAC" means the National Administration Committee as set out in Article Four (4) of this Agreement;

"NCC" means the National Certification Committee as set out in Article Four (4) of this Agreement;

"Non-resident Claimants" means all individuals who did not reside at an Indian Residential School who, while under the age of 21, were permitted by an adult employee of an Indian Residential School to be on the premises of an Indian Residential School to take part in authorized school activities prior to December 31, 1997. For greater certainty, Non-resident Claimants are not Class Members or Cloud Class Members;

"OIRSRC" means the Office of Indian Residential Schools Resolution Canada;

"Opt Out Periods" means the period commencing on the Approval Date as set out in the Approval Orders;

"Opt Out Threshold" means the Opt Out Threshold set out in Section 4.14 of this Agreement;

"Other Released Church Organizations" includes the Dioceses of the Anglican Church of Canada listed in Schedule "G" and the Catholic Entities listed in Schedule "H", that did not operate an Indian Residential School or did not have an Indian Residential School located within their geographical boundaries and have made, or will make, a financial contribution towards the resolution of claims advanced by persons who attended an Indian Residential School;

"Oversight Committee" means the Oversight Committee set out in the Independent Assessment Process attached as Schedule "D";

"Parties" means collectively and individually the signatories to this Agreement;

"Personal Credits" means credits that have no cash value, are transferable only to a family member who is a member of the family class as defined in the Class Actions or the Cloud Class Action, may be combined with the Personal Credits of other individuals and are only redeemable for either personal or group education services provided by education entities or groups jointly approved by Canada and the Assembly of First Nations pursuant to terms and conditions to be developed by Canada and the Assembly of First Nations. Similar sets of terms and conditions will be developed by Canada and Inuit Representatives for Eligible CEP Recipients having received the CEP who are Inuit. In carrying out these discussions with the Assembly of First Nations and Inuit Representatives, Canada shall obtain input from counsel for the groups set out in Section 4.09(4)(d), (e), (f) and (g);

"Personal Representative" includes, if a person is deceased, an executor, administrator, estate trustee, trustee or liquidator of the deceased or, if the person is mentally incompetent, the tutor, committee, Guardian, curator of the person or the Public Trustee or their equivalent or, if the person is a minor, the person or party that has been appointed to administer his or her affairs or the tutor where applicable;

"Person Under Disability" means

(1) a minor as defined by that person's Province or Territory of residence; or

(2) a person who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity and for whom a Personal Representative has been appointed;

"Pilot Project" means the dispute resolution projects set out in Schedule "T" of this Agreement;

"RACs" means the Regional Administration Committees as set out in Article Four of this Agreement;

"Releasees" means, jointly and severally, individually and collectively, the defendants in the Class Actions and the defendants in the Cloud Class Action and each of their respective past and present parents, subsidiaries and related or affiliated entities and their respective employees, agents, officers, directors, shareholders, partners, principals, members, attorneys, insurers, subrogees, representatives, executors, administrators, predecessors, successors, heirs, transferees and assigns the definition and also the entities listed in Schedules "B", "C", "G" and "H" of this Agreement.

"Trustee" means Her Majesty in right of Canada as represented by the incumbent Ministers from time to time responsible for Indian Residential

Schools Resolution and Service Canada. The initial Representative Ministers will be the Minister of Canadian Heritage and Status of Women and the Minister of Human Resources Skills Development, respectively.

1.02 Headings

The division of this Agreement into Articles, Sections and Schedules and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “herein”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Agreement.

1.03 Extended Meanings

In this Agreement, words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

1.04 No Contra Proferentem

The Parties acknowledge that they have reviewed and participated in settling

the terms of this Agreement and they agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting parties is not applicable in interpreting this Agreement.

1.05 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date hereof or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.06 Day For Any Action

Where the time on or by which any action required to be taken hereunder expires or falls on a day that is not a Business Day, such action may be done on the next succeeding day that is a Business Day.

1.07 When Order Final

For the purposes of this Agreement a judgment or order becomes final when the time for appealing or seeking leave to appeal the judgment or order has expired without an appeal being taken or leave to appeal being sought or, in the event that an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals as may be taken have been disposed of and the time for further appeal, if any, has expired.

1.08 Currency

All references to currency herein are to lawful money of Canada.

1.09 Schedules

The following Schedules to this Agreement are incorporated into and form part of it by this reference as fully as if contained in the body of this Agreement:

Schedule A – CEP Application Form
Schedule B – Dioceses of the Anglican Church
Schedule C – Roman Catholic Entities
Schedule D – Independent Assessment Process
Schedule E – Residential Schools
Schedule F – Additional Residential Schools
Schedule G – Anglican Releasees
Schedule H – Catholic Releasees
Schedule I – Trust Agreement
Schedule J – Commemoration Policy Directive
Schedule K – Settlement Notice Plan
Schedule L – Process Flow Chart
Schedule M – Funding Agreement between the Aboriginal Healing Foundation and Canada
Schedule N – Mandate for Truth and Reconciliation Commission
Schedule O-1 – The Presbyterian Church Entities in Canada Agreement
Schedule O-2 – The Anglican Entities Agreement

Schedule O-3 – The Catholic Entities Church Agreement

Schedule O-4 – The United Church of Canada Agreement

Schedule P – IAP Full and Final Release

Schedule Q – Treasury Board Travel Directive

Schedule R – No Prejudice Commitment Letter

Schedule S – National Certification Committee Members

Schedule T – Pilot Projects

Schedule U – IAP Working Group Members

Schedule V – Agreement Between the Government of Canada and the Merchant Law Group Respecting the Verification of Legal Fees

1.10 No Other Obligations

It is understood that Canada will not have any obligations relating to the CEP, IAP, truth and reconciliation, commemoration, education and healing except for the obligations and liabilities as set out in this Agreement.

ARTICLE TWO
EFFECTIVE DATE OF AGREEMENT

2.01 Date when Binding and Effective

This Agreement will become effective and be binding on and after the Implementation Date on all the Parties including the Class Members and Cloud Class Members subject to Section 4.14. The Cloud Class Action Approval Order and each Approval Order will constitute approval of this Agreement in respect of all Class Members and Cloud Class Members

residing in the province or territory of the Court which made the Approval Order, or who are deemed to be subject to such Approval Order pursuant to Section 4.04 of this Agreement. No additional court approval of any payment to be made to any Class Member or Cloud Class Member will be necessary.

2.02 Effective in Entirety

None of the provisions of this Agreement will become effective unless and until the Courts approve all the provisions of this Agreement, except that the fees and disbursements of the NCC will be paid in any event.

ARTICLE THREE
FUNDING

3.01 CEP Funding

(1) Canada will provide the Designated Amount to the legal representatives of the Class Members and the Cloud Class Members in trust on the Implementation Date. The Class Members and the Cloud Class Members agree that, contemporaneous with the receipt of the Designated Amount by their legal representatives, the Class Members and Cloud Class Members irrevocably direct the Designated Amount, in its entirety, be paid to the Trustee.

(2) The Parties agree that the Designated Amount Fund will be held

and administered by the Trustee as set out in the Trust Agreement attached as Schedule "I" of this Agreement.

3.02 Healing Funding

On the Implementation Date Canada will transfer one hundred and twenty-five million dollars ($125,000,000.00) as an endowment for a five year period to the Aboriginal Healing Foundation in accordance with Article Eight (8) of this Agreement. After the Implementation Date the only obligations and liabilities of Canada with respect to healing funding are those set out in this Agreement.

3.03 Truth and Reconciliation Funding

(1) Canada will provide sixty million dollars ($60,000,000.00) in two instalments for the establishment and work of the Commission. Two million dollars ($2,000,000.00) will be available on the Approval Date to begin start-up procedures in advance of the establishment of the Commission. The remaining fifty-eight million dollars ($58,000,000.00) will be transferred within thirty (30) days of the approval of the Commission's budget by Canada. After the date of the final transfer, Canada will have no further obligations or liabilities with respect to truth and reconciliation funding except as set out in this Agreement.

(2) Canada will appoint an interim Executive Director to begin

start-up procedures for the Commission. The interim Executive Director may make reports to the NCC. The interim Executive Director will be appointed as soon as practicable after the Approval Date. That appointment will remain effective until the appointment of the Commissioners. Canada will assume responsibility for the salary of the Executive Director Position during this interim period.

3.04 Commemoration Funding

The funding for commemoration will be twenty million dollars ($20,000,000.00) for both national commemorative and community-based commemorative projects. The funding will be available in accordance with the Commemoration Policy Directive, attached as Schedule "J". For greater certainty, funding under this Section 3.04 includes funding previously authorized in the amount of ten million dollars ($10,000,000) for commemoration events. This previously authorized amount of ten million dollars ($10,000,000) will not be available until after the Implementation Date. After the Implementation Date the only obligations and liabilities of Canada with respect to commemoration funding are those set out in this Agreement.

3.05 IAP Funding

Canada will fund the IAP to the extent sufficient to ensure the full and timely implementation of the provisions set out in Article Six (6) of this Agreement.

3.06 Social Benefits

(1) Canada will make its best efforts to obtain the agreement of the provinces and territories that the receipt of any payments pursuant to this Agreement will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member or a Cloud Class Member pursuant to any legislation of any province or territory of Canada.

(2) Canada will make its best efforts to obtain the agreement of the necessary Federal Government Departments that the receipt of any payments pursuant to this Agreement will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member or a Cloud Class Member pursuant to any social benefit programs of the Federal Government such as old age security and Canada Pension Plan.

3.07 Family Class Claims

The Parties agree and acknowledge that the programmes described in Sections 3.02, 3.03 and 3.04 will be available for the benefit of the Cloud Class Members and all Class Members including the family class defined in the Class Actions.

ARTICLE FOUR
IMPLEMENTATION OF THIS AGREEMENT

4.01 Class Actions

The Parties agree that all existing class action statements of claim and representative actions, except the Cloud Class Action, filed against Canada in relation to Indian Residential Schools in any court in any Canadian jurisdiction except the Federal Court of Canada (the "original claims") will be merged into a uniform omnibus Statement of Claim in each jurisdiction (the "Class Actions"). The omnibus Statement of Claim will name all plaintiffs named in the original claims and will name as Defendants, Canada and the Church Organizations.

4.02 Content of Class Actions

(1) The Class Actions will assert common causes of action encompassing and incorporating all claims and causes of action asserted in the original claims.

(2) Subject to Section 4.04, the Class Actions will subsume all classes contained in the original claims with such modification as is necessary to limit the scope of the classes and subclasses certified by each of the Courts to the provincial or territorial boundaries of that Court save and except the Aboriginal Sub-class as set out and defined in the *Fontaine v. Attorney General*

of Canada, (05-CV-294716 CP) proposed class action filed in the Ontario Superior Court of Justice on August 5, 2005 which will not be asserted in the Class Actions.

4.03 Consent Order

(1) The Parties will consent to an order in each of the Courts amending and merging the original claims as set out in Section 4.01 and 4.02 of this Agreement.

(2) For greater certainty, the order consented to in the Ontario Superior Court of Justice will not amend **or** merge the Cloud Class Action.

4.04 Class Membership

Class membership in each of the Class Actions will be determined by reference to the province or territory of residence of each Class Member on the Approval Date save and except**:**

(a) residents of the provinces of Newfoundland and Labrador, Nova Scotia, New Brunswick and Prince Edward Island, and;

(b) International Residents,

who are be deemed to be members of the Ontario Class.

4.05 Consent Certification

(1) The Parties agree that concurrent with the applications referred to in Section 4.03, applications will be brought in each of the Courts for consent certification of each of the Class Actions for the purposes of Settlement in accordance with the terms of the Agreement.

(2) Consent certification will be sought on the express condition that each of the Courts, pursuant to the applications for consent certification under Section 4.05(1), certify on the same terms and conditions; including the terms and conditions set out in Section 4.06 save and except for the variations in class and subclass membership set out in Sections 4.02 and 4.04 of this Agreement.

4.06 Approval Orders

Approval Orders will be sought:

(a) incorporating by reference this Agreement in its entirety;

(b) ordering and declaring that such orders are binding on all Class Members, including Persons Under Disability, unless they opt out or are deemed to have opted out on or before the expiry of the Opt Out Periods;

(c) ordering and declaring that on the expiry of the Opt Out Periods all pending actions of all Class Members, other than the Class Actions, relating to Indian Residential Schools, which have been filed in any court in any Canadian jurisdiction against Canada or the Church Organizations, except for any pending actions in Quebec which have not been voluntarily discontinued by the expiry of the Opt Out Period**,** will be deemed to be dismissed without costs unless the individual has opted out, or is deemed to have opted out on or before the expiry of the Opt Out Periods.

(d) ordering and declaring that on the expiry of the Opt Out Periods all class members, unless they have opted out or are deemed to have opted out on or before the expiry of the Opt Out Periods, have released each of the defendants and Other Released Church Organizations from any and all actions they have, may have had or in the future may acquire against any of the defendants and Other Released Church Organizations arising in relation to an Indian Residential School or the operation of Indian Residential Schools.

(e) ordering and declaring that in the event the number of Eligible CEP Recipients opting out or deemed to have opted out under the Approval Orders exceeds five thousand (5000), this Agreement will be rendered void and the Approval Orders set aside in their entirety subject only to the right of Canada, in its

sole discretion, to waive compliance with Section 4.14 of this Agreement.

(f) ordering and declaring that on the expiration of the Opt Out Periods all Class Members who have not opted out have agreed that they will not make any claim arising from or in relation to an Indian Residential School or the operation of Indian Residential Schools against any person who may in turn claim against any of the defendants or Other Released Church Organizations.

(g) ordering and declaring that the obligations assumed by the defendants under this Agreement are in full and final satisfaction of all claims arising from or in relation to an Indian Residential School or the operation of Indian Residential Schools of the Class Members and that the Approval Orders are the sole recourse on account of any and all claims referred to therein.

(h) ordering and declaring that the fees and disbursements of all counsel participating in this Agreement are to be approved by the Courts on the basis provided in Articles Four (4) and Thirteen (13) of this Agreement, except that the fees and disbursements of the NCC and the IAP Working Group will be paid in any event.

(i) ordering and declaring that notwithstanding Section 4.06(c), (d)

and (f), a Class Member who on or after the fifth anniversary of the Implementation Date had never commenced an action other than a class action in relation to an Indian Residential School or the operation of Indian Residential Schools, participated in a Pilot Project, applied to the DR Model, or applied to the IAP, may commence an action for any of the Continuing Claims within the jurisdiction of the court in which the action is commenced. For greater certainty, the rules, procedures and standards of the IAP are not applicable to such actions.

(j) ordering and declaring that where an action permitted by Section 4.06(i) is brought, the deemed release set out in Section 11.01 is amended to the extent necessary to permit the action to proceed only with respect to Continuing Claims.

(k) ordering and declaring that for an action brought under Section 4.06(i) all limitations periods will be tolled, and any defences based on laches or delay will not be asserted by the Parties with regard to a period of five years from the Implementation Date.

(l) ordering and declaring that notwithstanding Section 4.06(d) no action, except for Family Class claims as set out in the Class Actions and the Cloud Class Action, capable of being brought by a Class Member or Cloud Class Member will be released where such an action would be released only by virtue of being a member of a Family Class in the Class Actions or the Cloud Class Action.

4.07 Cloud Class Action Approval Order

There will be a separate approval order in relation to the Cloud Class Action which will be, in all respects save as to class membership and Section 17.02 of this Agreement, in the same terms and conditions as the Approval Orders referred to herein.

4.08 Notice

(1) The parties agree that the NCC will implement the Residential Schools Class Action Litigation Settlement Notice Plan prepared by Hilsoft Notifications and generally in the form attached as Schedule "K".

(2) The NCC will develop a list of counsel with active Indian Residential Schools claims and who agree to be bound by the terms of this Agreement, before the Approval date, which will be referenced in the written materials and website information of the notice program.

(3) The legal notice will include an opt out coupon which will be returnable to a Post Office Box address at Edmonton, Alberta.

(4) There will be a "1-800" number funded by Canada which will provide scripted information concerning the settlement. The information will convey a statement to the effect that although

there is no requirement to do so, Class Members may wish to consult a lawyer.

4.09 National Certification Committee

(1) The Parties agree to the establishment of a NCC with a mandate to:

a) designate counsel having carriage in respect of drafting the consent certification documents and obtaining consent certification and approval of this Agreement;

b) provide input to and consult with Trustee on the request of Trustee;

c) obtain consent certification and approval of the Approval Orders in the Courts on the express condition that the Courts all certify on the same terms and conditions.

d) exercise all necessary powers to fulfill its functions under the Independent Assessment Process.

(2) The NCC will have seven (7) members with the intention that decisions will be made by consensus.

(3) Where consensus can not be reached, a majority of five (5) of the seven (7) members is required.

(4) The composition of the NCC will be one (1) counsel from each of the following groups:

a) Canada;
b) Church Organizations;
c) Assembly of First Nations;
d) The National Consortium;
e) Merchant Law Group;
f) Inuit Representatives; and
g) Independent Counsel

(5) The NCC will be dissolved on the Implementation Date.

(6) Notwithstanding Section 4.09(4) the Church Organizations may designate a second counsel to attend and participate in meetings of the NCC. Designated second counsel will not participate in any vote conducted under Section 4.09(3).

4.10 Administration Committees

(1) In order to implement the Approval Orders the Parties agree to the establishment of administrative committees as follows:

a) one National Administration Committee ("NAC"); and

b) three Regional Administration Committees ("RACs").

(2) Notwithstanding Section 4.10(1) neither the NAC nor the RAC's will meet or conduct any business whatsoever prior to the Implementation Date, unless Canada agrees otherwise.

4.11 National Administration Committee

(1) The composition of the NAC will be one (1) representative counsel from each of the groups set out at section 4.09(4):

(2) The first NAC member from each group will be named by that group on or before the execution of this Agreement.

(3) Each NAC member may name a designate to attend meetings of the NAC and act on their behalf and the designate will have the powers, authorities and responsibilities of the NAC member while in attendance.

(4) Upon the resignation, death or expiration of the term of any NAC member or where the Court otherwise directs in accordance with 4.11(6) of this Agreement, a replacement NAC member will be named by the group represented by that member.

(5) Membership on the NAC will be for a term of two (2) years.

(6) In the event of any dispute related to the appointment or service

of an individual as a member of the NAC, the affected group or individual may apply to the court of the jurisdiction where the affected individual resides for advice and directions.

(7) The Parties agree that Canada will not be liable for any costs associated with an application contemplated in Section 4.11(6) that relates to the appointment of an individual as a member of the NAC.

(8) No NAC member may serve as a member of a RAC or as a member of the Oversight Committee during their term on the NAC.

(9) Decisions of the NAC will be made by consensus and where consensus can not be reached, a majority of five (5) of the seven (7) members is required to make any decision. In the event that a majority of five (5) members can not be reached the dispute may be referred by a simple majority of four (4) NAC members to the Appropriate Court in the jurisdiction where the dispute arose by way of reference styled as *In Re Residential Schools*.

(10) Notwithstanding Section 4.11(9), where a vote would increase the costs of the Approval Orders whether for compensation or procedural matters, the representative for Canada must be one (1) of the five (5) member majority.

(11) There will not be reference to the Courts for any dispute arising under Section 4.11(10**)**.

(12) The mandate of the NAC is to:

(a) interpret the Approval Orders;

(b) consult with and provide input to the Trustee with respect to the Common Experience Payment;

(c) ensure national consistency with respect to implementation of the Approval Orders to the greatest extent possible;

(d) produce and implement a policy protocol document with respect to implementation of the Approval Orders;

(e) produce a standard operating procedures document with respect to implementation of the Approval Orders;

(f) act as the appellate forum from the RACs;

(g) review the continuation of RACs as set out in Section 4.13;

(h) assume the RACs mandate in the event that the RACs cease to operate pursuant to Section 4.13;

(i) hear applications from the RACs arising from a dispute

related to the appointment or service of an individual as a member of the RACs;

(j) review and determine references from the Truth and Reconciliation Commission made pursuant to Section 7.01(2) of this Agreement or may, without deciding the reference, refer it to any one of the Courts for a determination of the matter;

(k) hear appeals from an Eligible CEP Recipient as set out in Section 5.09(1) and recommend costs as set out in Section 5.09(3) of this Agreement;

(l) apply to any one of the Courts for determination with respect to a refusal to add an institution as set out in Section 12.01 of this Agreement;

(m) retain and instruct counsel as directed by Canada for the purpose of fulfilling its mandate as set out in Sections 4.11(12)(j),(l) and(q) and Section 4.11(13) of this Agreement;

(n) develop a list of counsel with active Indian Residential Schools claims who agree to be bound by the terms of this Agreement as set out in Section 4.08(5) of this Agreement;

(o) exercise all the necessary powers to fulfill its functions

under the IAP;

(p) request additional funding from Canada for the IAP as set out in Section 6.03(3) of this Agreement;

(q) apply to the Courts for orders modifying the IAP as set out in Section 6.03(3) of this Agreement.

(r) recommend to Canada the provision of one additional notice of the IAP Application Deadline to Class Members and Cloud Class Members in accordance with Section 6.04 of this Agreement.

(13) Where there is a disagreement between the Trustee and the NAC, with respect to the terms of the Approval Orders the NAC or the Trustee may refer the dispute to the Appropriate Court in the jurisdiction where the dispute arose by way of reference styled as *In Re Residential Schools.*

(14) Subject to Section 6.03(3), no material amendment to the Approval Orders can occur without the unanimous consent of the NAC ratified by the unanimous approval of the Courts.

(15) Canada's representative on the NAC will serve as Secretary of the NAC.

(16) Notwithstanding Section 4.11(1) the Church Organizations may

designate a second counsel to attend and participate in meetings of the NAC. Designated second counsel will not participate in any vote conducted under Section 4.11(9).

4.12 Regional Administration Committees

(1) One (1) RAC will operate for the benefit of both the Class Members, as defined in Section 4.04, and Cloud Class Members in each of the following three (3) regions:

a) British Columbia, Alberta, Northwest Territories and the Yukon Territory;

b) Saskatchewan and Manitoba; and

c) Ontario, Quebec and Nunavut.

(2) Each of the three (3) RACs will have three (3) members chosen from the four (4) plaintiff's representative groups set out in Sections 4.09**(**4)(d),(e),(f) and (g) of this Agreement.

(3) Initial members of each of the three (3) RAC's will be named by the groups set out in sections 4.09(4)(d),(e),(f) and(g) of this Agreement on or before the execution of this Agreement and Canada will be advised of the names of the initial members.

(4) Upon the resignation, death or expiration of the term of any

RAC member or where the Court otherwise directs in accordance with 4.12(7) of this Agreement, a replacement RAC member will be named by the group represented by that member.

(5) Membership on each of the RACs will be for a two (2) year term.

(6) Each RAC member may name a designate to attend meetings of the RAC and the designate will have the powers, authorities and responsibilities of the RAC member while in attendance.

(7) In the event of any dispute related to the appointment or service of an individual as a member of the RAC, the affected group or individual may apply to the NAC for a determination of the issue.

(8) No RAC member may serve as a member of the NAC or as a member of the Oversight Committee during their term on a RAC.

(9) Each RAC will operate independently of the other RACs. Each RAC will make its decisions by consensus among its three members. Where consensus can not be reached, a majority is required to make a decision.

(10) In the event that an Eligible CEP Recipient, a member of a

RAC, or a member of the NAC is not satisfied with a decision of a RAC that individual may submit the dispute to the NAC for resolution.

(11) The RACs will deal only with the day-to-day operational issues relating to implementation of the Approval Orders arising within their individual regions which do not have national significance. In no circumstance will a RAC have authority to review any decision related to the IAP.

4.13 Review by NAC

Eighteen months following the Implementation Date, the NAC will consider and determine the necessity for the continuation of the operation of any or all of the 3 RACs provided that any determination made by the NAC must be unanimous.

4.14 Opt Out Threshold

In the event that the number of Eligible CEP Recipients opting out or deemed to have opted out under the Approval Orders exceeds five thousand (5,000), this Agreement will be rendered void and the Approval Orders set aside in their entirety subject only to the right of Canada, in its sole discretion, to waive compliance with this Section of this Agreement. Canada has the right to waive compliance with this Section of the Agreement until thirty (30) days after the end of the Opt Out Periods.

4.15 Federal Court Actions Exception

The Parties agree that both the *Kenneth Sparvier et al. v. Attorney General of Canada* proposed class action filed in the Federal Court on May 13, 2005 as Court File Number: T 848-05, and the *George Laliberte et al v. Attorney General of Canada* proposed class action filed in the Federal Court on September 23, 2005 as Court File Number: T-1620-05, will be discontinued without costs on or before the Implementation Date.

ARTICLE FIVE
COMMON EXPERIENCE PAYMENT

5.01 CEP

Subject to Sections 17.01 and 17.02, the Trustee will make a Common Experience Payment out of the Designated Amount Fund to every Eligible CEP Recipient who submits a CEP Application provided that:

(1) the CEP Application is submitted to the Trustee in accordance with the provisions of this Agreement;

(2) the CEP Application is received prior to the CEP Application Deadline;

(3) the CEP Application is validated in accordance with the provisions of this Agreement; and

(4) the Eligible CEP Recipient was alive on May 30, 2005.

5.02 Amount of CEP

The amount of the Common Experience Payment will be:

(1) ten thousand dollars ($10,000.00) to every Eligible CEP Recipient who resided at one or more Indian Residential Schools for one school year or part thereof; and

(2) an additional three thousand ($3,000.00) to every eligible CEP Recipient who resided at one or more Indian Residential Schools for each school year or part thereof, after the first school year; and

(3) less the amount of any advance payment on the CEP received

5.03 Interest on Designated Amount Fund

Interest on the assets of the Designated Amount Fund will be earned and paid as provided in Order in Council P.C. 1970-300 of February 17, 1970 made pursuant to section 21(2) of the Financial Administration Act as set out in the Trust Agreement attached as Schedule "I"**.**

5.04 CEP Application Process

(1) No Eligible CEP Recipient will receive a CEP without

submitting a CEP Application to the Trustee.

(2) The Trustee will not accept a CEP Application prior to the Implementation Date or after the CEP Application Deadline.

(3) Notwithstanding Sections 5.01(2) and 5.04(2) of this Agreement, where the Trustee is satisfied that an Eligible CEP Recipient is a Person Under Disability on the CEP Application Deadline or was delayed from delivering a CEP Application on or before the CEP Application Deadline as prescribed in Section 5.04(2) as a result of undue hardship or exceptional circumstances, the Trustee will consider the CEP Application filed after the CEP Application Deadline, but in no case will the Trustee consider a CEP Application filed more than one year after the CEP Application Deadline unless directed by the Court.

(4) No person may submit more than one (1) CEP Application on his or her own behalf.

(5) Where an Eligible CEP Recipient does not submit a CEP Application as prescribed in this Section 5.04 that Eligible CEP Recipient will not be entitled to receive a Common Experience Payment and any such entitlement will be forever extinguished.

(6) The Trustee will process all CEP Applications substantially in accordance with Schedule "L" attached hereto. All CEP

Applications will be subject to verification.

(7) The Trustee will give notice to an Eligible CEP Recipient of its decision in respect of his or her CEP Application within 60 days of the decision being made.

(8) A decision of the Trustee is final and binding upon the claimant and the Trustee, subject only to the CEP Appeal Procedure set out in Section 5.09 of this Agreement.

(9) The Trustee agrees to make all Common Experience Payments as soon as practicable.

5.05 Review and Audit to Determine Holdings

(1) The Trustee will review the Designated Amount Fund on or before the first anniversary of the Implementation Date and from time to time thereafter to determine the sufficiency of the Designated Amount Fund to pay all Eligible CEP Recipients who have applied for a CEP as of the date of the review.

(2) The Trustee will audit the Designated Amount Fund within twelve (12) months following the CEP Application Deadline to determine the balance held in that fund on the date of the audit.

5.06 Insufficiency of Designated Amount

In the event that a review under Section 5.05(1) determines that the Designated Amount Fund is insufficient to pay all Eligible CEP Recipients who have applied, as of the date of the review, to receive the Common Experience Payment to which they are entitled, Canada will add an amount sufficient to remedy any deficiency in this respect within 90 days of being notified of the deficiency by the Trustee.

5.07 Excess Designated Amount

(1) If the audit under Section 5.05(2) determines that the balance in the Designated Amount Fund exceeds the amount required to make the Common Experience Payment to all Eligible CEP Recipients who have applied before the CEP Application Deadline by more than forty million dollars ($40,000,000.00), the excess will be apportioned *pro rata* to all those who received a Common Experience Payment to a maximum amount of three thousand dollars ($3,000.00) per person in the form of Personal Credits.

(2) After the payment of the maximum amount of Personal Credits to all Eligible CEP Recipients who have received the CEP, including payment of all administration costs related thereto, all excess funds remaining in the Designated Amount Found will be transferred to the National Indian Brotherhood Trust Fund (NIBTF) and to the Inuvialuit Education Foundation (IEF),

consistent with applicable Treasury Board policies, in the proportion set out in Section 5.07(5). The monies so transferred shall be used for educational programs on terms and conditions agreed between Canada and NIBTF and IEF, which terms and conditions shall ensure fair and reasonable access to such programs by all class members including all First Nations, Inuit, Inuvialuit and Métis persons. In carrying out its discussions with NIBTF and IEF, Canada shall obtain input from counsel for the groups set out in Section 4.09(d), (e), (f) and (g).

(3) If the audit under Section 5.05(2) determines that the balance in the Designated Amount Fund exceeds the amount required to make Common Experience Payments to all Eligible CEP Recipients who have applied before the CEP Application Deadline by less than forty million dollars ($40,000,000.00), there will be no entitlement to Personal Credits, and the excess will be transferred to the NIBTF and IEF in the proportions set out in Section 5.07(5) for the same purposes and on the same terms and conditions set out in Section 5.07(2).

(4) Any and all amounts remaining in the Designated Amount Fund on January 1, 2015 will be paid to the NIBTF and the IEF in the proportions set out in Section 5.07(5) for the same purposes and on the same terms and conditions set out in Section 5.07(2).

(5) Funds in the Designated Amount Fund shall be transferred to

the NIBTF and the IEF respectively proportionately based on the total number of Eligible CEP Recipients other than Inuit and Inuvialuit who have received the CEP in the case of the NIBTF and the total number of Inuit and Inuvialuit Eligible CEP Recipients who have received the CEP in the case of the IEF.

5.08 CEP Administrative Costs

(1) It is agreed that Canada will assume all internal administrative costs relating to the CEP and its distribution.

(2) It is agreed that all internal administrative costs relating to the Personal Credits and their distribution will be paid from the Designated Amount Fund.

5.09 CEP Appeal Procedure

(1) Where a claim made in a CEP Application has been denied in whole or in part, the applicant may appeal the decision to the NAC for a determination.

(2) In the event the NAC denies the appeal in whole or in part the applicant may apply to the Appropriate Court for a determination of the issue.

(3) The NAC may recommend to Canada that the costs of an appeal under Section 5.09(1) be borne by Canada. In

exceptional circumstances, the NAC may apply to the Appropriate Court for an order that the costs of an appeal under Section 5.09(1) be borne by Canada.

ARTICLE SIX
INDEPENDENT ASSESSMENT PROCESS

6.01 IAP

An Independent Assessment Process will be established as set out in Schedule "D" of this Agreement.

6.02 IAP Application Deadline

(1) Applications to the IAP will not be accepted prior to the Implementation Date or after the IAP Application Deadline.

(2) Where an Eligible IAP Claimant does not submit an IAP Application as prescribed in this Section 6.02(1) that Eligible IAP Claimant will not be admitted to the IAP and any such entitlement to make a claim in the IAP will be forever extinguished.

(3) All applications to the IAP which have been delivered prior to the IAP Application Deadline will be processed within the IAP as set out in Schedule "D" of this Agreement.

6.03 Resources

(1) The parties agree that Canada will provide sufficient resources to the IAP to ensure that:

a) Following the expiry of a six month start-up period commencing on the Implementation Date:

(i) Continuing Claims which have been screened into the IAP will be processed at a minimum rate of two-thousand five-hundred (2500) in each twelve (12) month period thereafter; and

(ii) the Claimant in each of those two-thousand five hundred (2500) Continuing Claims will be offered a hearing date within nine months of their application being screened-in. The hearing date will be within the nine month period following the claim being screened-in, or within a reasonable period of time thereafter, unless the claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that objective.

b) Notwithstanding Section 6.03(1)(a), all IAP claimants whose applications have been screened into the IAP as of the eighteen (18) month anniversary of the Implementation

Date will be offered a hearing date before the expiry of a further nine month period or within a reasonable period of time thereafter, unless the claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that objective.

c) All IAP claimants screened-in after the eighteen (18) month anniversary of the Implementation Date will be offered a hearing within nine (9) months of their claim being screened in. The hearing date will be within the nine month period following the claim being screened-in, or within a reasonable period of time thereafter, unless the claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that objective.

d) For greater certainty, all IAP Applications filed before the expiration of the IAP Application Deadline will be processed prior to the six (6) year anniversary of the Implementation Date unless a claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that objective.

(2) In the event that Continuing Claims are submitted at a rate that is less than two-thousand five hundred (2,500) per twelve month period, Canada will be required only to provide resources sufficient to process the Continuing Claims at the rate at which they are received, and within the timeframes set out in

Section 6.03 (1)(a) and (b) of this Agreement.

(3) Notwithstanding Article 4.11(11), in the event that Continuing Claims are not processed at the rate and within the timeframes set out in Section 6.03(1)(a) and (b) of this Agreement, the NAC may request that Canada provide additional resources for claims processing and, after providing a reasonable period for Canada's response, apply to the Courts for orders necessary to permit the realization of Section 6.03(1).

6.04 Notice of IAP Application Deadline

One additional notice of the IAP Application Deadline may be provided on the recommendation of the NAC to Canada.

ARTICLE SEVEN
TRUTH AND RECONCILIATION AND COMMEMORATION

7.01 Truth and Reconciliation

(1) A Truth and Reconciliation process will be established as set out in Schedule "N" of this Agreement.

(2) The Truth and Reconciliation Commission may refer to the NAC for determination of disputes involving document production, document disposal and archiving, contents of the

Commission's Report and Recommendations and Commission decisions regarding the scope of its research and issues to be examined. The Commission shall make best efforts to resolve the matter itself before referring it to the NAC.

(3) Where the NAC makes a decision in respect of a dispute or disagreement that arises in respect of the Truth and Reconciliation Commission as contemplated in Section 7.01(2), either or both the Church Organization and Canada may apply to any one of the Courts for a hearing *de novo*.

7.02 Commemoration

Proposals for commemoration will be addressed in accordance with the Commemoration Policy Directive set out in Schedule "J" of this Agreement.

ARTICLE EIGHT
HEALING

8.01 Healing

(1) To facilitate access to healing programmes, Canada will provide the endowment to the Aboriginal Healing Foundation as set out in Section 3.02 on terms and conditions substantially similar to the draft attached hereto as Schedule "M".

(2) On or before the expiry of the fourth anniversary of the

Implementation Date, Canada will conduct an evaluation of the healing initiatives and programmes undertaken by the Aboriginal Healing Foundation to determine the efficacy of such initiatives and programmes and recommend whether and to what extent funding should continue beyond the five year period.

8.02 Availability of Mental Health and Emotional Support Services

Canada agrees that it will continue to provide existing mental health and emotional support services and agrees to make those services available to those who are resolving a claim through the Independent Assessment Process or who are eligible to receive compensation under the Independent Assessment Process. Canada agrees that it will also make those services available to Common Experience Payment recipients and those participating in truth and reconciliation or commemorative initiatives.

ARTICLE NINE
CHURCH ORGANIZATIONS

9.01 The Parties agree that the Church Organizations will participate in this Agreement as set out herein and in accordance with the Agreements between Canada and the Church Organizations attached hereto in Schedules "O-1", The Presbyterian Church Agreement, Schedule "O-2", The Anglican Entities Agreement, Schedule "O-3", The Catholic Entities Agreement and Schedule "O-4", The United Church of Canada Agreement.

ARTICLE TEN
Duties of the Trustee

10.01 Trustee

In addition to the duties set out in the Trust Agreement, the Trustee's duties and responsibilities will be the following:

a) developing, installing and implementing systems and procedures for processing, evaluating and making decisions respecting CEP Applications which reflect the need for simplicity in form, expedition of payments and an appropriate form of audit verification, including processing the CEP Applications substantially in accordance with Schedule "L"of this Agreement;

b) developing, installing and implementing systems and procedures necessary to meet its obligations as set out in the Trust Agreement attached as Schedule "I" hereto;

c) developing, installing and implementing systems and procedures for paying out compensation for validated CEP Applications;

d) reporting to the NAC and the Courts respecting CEP Applications received and being administered and compensation paid;

e) providing personnel in such reasonable numbers as are required for the performance of its duties, and training and instructing them;

f) keeping or causing to be kept accurate accounts of its activities and its administration of the CEP, including payment of compensation under the CEP, preparing such financial statements, reports and records as are required by the NAC and the Courts, in form and content as directed by the Courts and submitting them to the Courts so often as the Courts direct;

g) receiving and responding to all enquiries and correspondence respecting the validation of CEP Applications, reviewing and evaluating all CEP Applications, making decisions in respect of CEP Applications, giving notice of its decisions in accordance with the provisions this Agreement and communicating with Eligible CEP Recipients, in either English or French, as the Eligible CEP Recipient elects;

h) receiving and responding to all enquiries and correspondence respecting payment of compensation for valid CEP Applications, and forwarding the compensation in accordance with the provisions of this Agreement and communicating with Eligible CEP Recipients, in either

English or French, as the Eligible CEP Recipient elects;

i) administering Personal Credits in accordance with Section 5.07 of this Agreement;

j) maintaining a database with all information necessary to permit the NAC and the Courts to evaluate the financial viability and sufficiency of the Designated Amount Fund from time to time, subject to applicable law; and,

k) such other duties and responsibilities as the Courts may from time to time by order direct.

ARTICLE ELEVEN
RELEASES

11.01 Class Member and Cloud Class Member Releases

(1) The Approval Orders will declare that in the case of Class Members and Cloud Class Members:

a) Each Class Member and Cloud Class Member has fully, finally and forever released each of the Releasees from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including

for damages, contribution, indemnity, costs, expenses and interest which any such Class Member or Cloud Class Member ever had, now has, or may hereafter have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to an Indian Residential School or the operation of Indian Residential Schools and this release includes any such claim made or that could have been made in any proceeding including the Class Actions or the Cloud Class Action whether asserted directly by the Class Member or Cloud Class Member or by any other person, group or legal entity on behalf of or as representative for the Class Member or Cloud Class Member.

b) The Class Members and Cloud Class Members are deemed to agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or any other person or persons in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act*, R.S.O. 1990, c. N-3, or its counterpart in other jurisdictions, the common law, Quebec civil law or any other statute of Ontario or any other jurisdiction in relation to an Indian Residential School or the operation of Indian Residential Schools;

c) Canada's, the Church Organizations' and the Other Released Church Organizations' obligations and liabilities under this Agreement constitute the consideration for the releases and other matters referred to in Section 11.01(a) and (b) inclusive and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Class Members or and Cloud Class Members are limited to the benefits provided and compensation payable pursuant to this Agreement, in whole or in part, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.

(2) Notwithstanding Section 11.01(1), no action, except for Family Class claims as set out in the Class Actions and the Cloud Class Action, capable of being brought by a Class Member or Cloud Class Member will be released where such an action would be released only by virtue of being a member of a Family Class in the Class Actions or the Cloud Class Action.

11.02 Non-resident Claimant Releases

(1) The Approval Orders will order and declare that Non-resident Claimants on being accepted into the IAP, must execute a Release in the form set out in Schedule "P" of this Agreement.

(2) Nothing in Section 4.06 (c), (d) or (f) or Section 11.01(1)(a)

will prevent a Non-resident Claimant from pursuing his or her claim in the IAP.

(3) For greater certainty nothing in this Section 11.02 will prevent the bringing of an action contemplated in Section 4.06(i) and (j) of this Agreement.

11.03 Claims by Opt Outs and Others

If any person not bound by this Agreement claims over or brings a third party claim, makes any claim or demand or takes any action or proceeding against any defendant named in the Class Actions or the Cloud Class Action arising in relation to an Indian Residential School or the operation of Indian Residential Schools, no amount payable by any defendant named in the Class Actions of the Cloud Class Action to that person will be paid out of the Designated Amount Fund.

11.04 Cessation of litigation

(1) Upon execution of this Agreement, the representative plaintiffs named in the Class Actions and the Cloud Class Action, and counsel from each of the groups set out in Section 4.09(4)(c), (d), (e), (f) and (g) will cooperate with the defendants named in the Class Actions and in the Cloud Class Action to obtain approval of this Agreement and general participation by Class Members and Cloud Class Members and Non-resident Claimants in all aspects of the Agreement.

(2) Each counsel from each of the groups set out in section 4.09(4)(c), (d), (e), (f) and (g) will undertake, within five days after the Approval Date, not to commence or assist or advise on the commencement or continuation of any actions or proceedings calculated to or having the effect of undermining this Agreement against any of the Releasees, or against any person who may claim contribution or indemnity from any of the Releasees in any way relating to or arising from any claim which is subject to this Agreement, provided that nothing in the Agreement will prevent any counsel from advising any person whether to opt out of the Class Actions and to continue to act for that person.

ARTICLE TWELVE
ADDITIONAL INDIAN RESIDENTIAL SCHOOLS

12.01 Request to Add Institution

(1) Any person or organization (the "Requestor") may request that an institution be added to Schedule "F", in accordance with the criteria set out in Section 12.01(2) of this Agreement, by submitting the name of the institution and any relevant information in the Requestor's possession to Canada;

(2) The criteria for adding an institution to Schedule "F" are:

a) The child was placed in a residence away from the family home by or under the authority of Canada for the purposes of education; and,

b) Canada was jointly or solely responsible for the operation of the residence and care of the children resident there.

(3) Indicators that Canada was jointly or solely responsible for the operation of the residence and care of children there include, but are not limited to, whether:

a) The institution was federally owned;

b) Canada stood as the parent to the child;

c) Canada was at least partially responsible for the administration of the institution;

d) Canada inspected or had a right to inspect the institution; or,

e) Canada did or did not stipulate the institution as an IRS.

(4) Within 60 days of receiving a request to add an institution to Schedule "F", Canada will research the proposed institution and determine whether it is an Indian Residential School as defined in this Agreement and will provide both the Requestor and the NAC with:

a) Canada's decision on whether the institution is an Indian Residential School;

b) Written reasons for that decision; and

c) A list of materials upon which that decision was made;

provided that Canada may ask the Requestor for an extension of time to complete the research.

(5) Should either the Requestor or the NAC dispute Canada's decision to refuse to add a proposed institution, the Requestor may apply to the Appropriate Court, or the NAC may apply to the court of the province or territory where the Requestor resides for a determination.

(6) Where Canada adds an institution to Schedule "F" under Section 12.01(4), Canada may provide the Requestor with reasonable legal costs and disbursements.

ARTICLE THIRTEEN
LEGAL FEES

13.01 Legal Fees

Canada agrees to compensate legal counsel in respect of their legal fees as

set out herein.

13.02 Negotiation Fees (July 2005 – November 20, 2005)

(1) Canada agrees to pay each lawyer, other than lawyers representing the Church Organizations, who attended the settlement negotiations beginning July 2005 leading to the Agreement in Principle for time spent up to the date of the Agreement in Principle in respect of the settlement negotiations at his or her normal hourly rate, plus reasonable disbursements, and GST and PST, if applicable except that no amount is payable under this Section 13.02(1) for fees previously paid directly by OIRSRC.

(2) All legal fees payable under Section 13.02(1) will be paid no later than 60 days after the Implementation Date.

13.03 Fees to Complete Settlement Agreement (November 20, 2005 – Execution of Settlement Agreement)

(1) Canada agrees to pay each lawyer, other than lawyers representing the Church Organizations, for time spent between November 20, 2005 and the date of execution of this Agreement in respect of finalizing this Agreement at each lawyer's normal hourly rate, plus reasonable disbursements and GST and PST, if applicable except that no amount is payable under this Section 13.03(1) for fees previously paid directly by OIRSRC.

(2) No fees will be payable under Section 13.03(1) for any work compensated under Section 13.04 of this Agreement.

(3) All legal fees payable under Section 13.03(1) will be paid no later than 60 days after the Implementation Date.

13.04 Fees Accrued after November 20, 2005 (NCC Fees)

(1) Legal fees payable to legal counsel from November 20, 2005 forward will be paid in accordance with the terms set out in Section 13.10(1)(2)(4) and (5) of this Agreement.

(2) Subject to 13.07, all legal fees payable under Section 13.06 and 13.08 will be paid no later than 60 days after the Implementation Date.

13.05 No Fees on CEP Payments

No lawyer or law firm that has signed this Settlement Agreement or who accepts a payment for legal fees from Canada, pursuant to Sections 13.06 or 13.08, will charge an Eligible CEP Recipient any fees or disbursements in respect of the Common Experience Payment.

13.06 Fees Where Retainer Agreements

Each lawyer who had a retainer agreement or a substantial solicitor-client

relationship (a "Retainer Agreement") with an Eligible CEP Recipient as of May 30, 2005, will be paid an amount equal to the lesser of:

a) the amount of outstanding Work-in-Progress as of the date of the Agreement in Principle in respect of that Retainer Agreement and

b) $4,000, plus reasonable disbursements, and GST and PST, if applicable,

and will agree that no other or further fee will be charged with respect to the CEP.

13.07 Proof of Fees

In order to receive payment pursuant to Section 13.06 of this Agreement, each lawyer will provide to OIRSRC a statutory declaration that attests to the number of Retainer Agreements he or she had with Eligible CEP Recipients as of May 30, 2005 and the amount of outstanding Work-in-Progress in respect of each of those Retainer Agreements as docketed or determined by review. OIRSRC will review these statutory declarations within 60 days of the Implementation Date and will rely on these statutory declarations to verify the amounts being paid to lawyers and will engage in such further verification processes with individual lawyers as circumstances require with the consent of the lawyers involved, such consent not to be unreasonably withheld.

13.08 The National Consortium and the Merchant Law Group Fees

(1) The National Consortium will be paid forty million dollars ($40,000,000.00) plus reasonable disbursements, and GST and PST, if applicable, in recognition of the substantial number of Eligible CEP Recipients each of them represents and the class action work they have done on behalf of Eligible CEP Recipients**.** Any lawyer who is a partner of, employed by or otherwise affiliated with a National Consortium member law firm is not entitled to the payments described in Section 13.02 and 13.06 of this Agreement.

(2) The fees of the Merchant Law Group will be determined in accordance with the provisions of the Agreement in Principle executed November 20, 2005 and the Agreement between Canada and the Merchant Law Group respecting verification of legal fees dated November 20, 2005 attached hereto as Schedule "V", except that the determination described in paragraph 4 of the latter Agreement, will be made by Justice Ball, or, if he is not available, another Justice of the Court of Queen's Bench of Saskatchewan, rather than by an arbitrator.

(3) The Federal Representative will engage in such further verification processes with respect to the amounts payable to the National Consortium as have been agreed to by those parties.

(4) In the event that the Federal Representative and either the National Consortium or the Merchant Law Group cannot agree on the amount payable for reasonable disbursements incurred up to and including November 20, 2005, under Section 13.08(1) of this Agreement, the Federal Representative will refer the matter to:

(a) the Ontario Superior Court of Justice, or an official designated by it, if the matter involves the National Consortium;

(b) the Saskatchewan Court of Queen's Bench, or an official designated by it, if the matter involves the Merchant Law Group;

to fix such amount.

(5) The National Consortium member law firms are as follows:

- Thomson, Rogers
- Richard W. Courtis Law Office
- Field LLP
- David Paterson Law Corp.
- Docken & Company
- Troniak Law Office
- Koskie Minsky LLP
- Leslie R. Meiklejohn Law Office
- Huck Birchard
- Ruston Marshall

- Arnold, Pizzo, McKiggan
- Cohen Highley LLP
- White, Ottenheimer & Baker
- Thompson Dorfman Sweatman
- Ahlstrom Wright Oliver & Cooper
- Rath & Company
- Levene Tadman Gutkin Golub
- Coller Levine
- Adams Gareau
-

All legal fees payable under Section 13.08 will be paid no later than 60 days after the Implementation Date.

13.09 Cloud Class Action Costs, Fees and Disbursements

(1) Canada will pay all cost awards in the Cloud Class Action that remain outstanding as of November 20, 2005 to Counsel for the Plaintiffs in that action. Canada will not seek to recover any portion of any costs paid pursuant to this Section 13.09(1) from the Anglican entities named as Defendants in the Cloud Class Action.

(2) Canada will pay the fees and disbursements of the Plaintiffs in the Cloud Class Action as set out in Article 13 of this Agreement.

13.10 NCC Fees

(1) Canada will pay members of the NCC fees based upon reasonable hourly rates and reasonable disbursements, but such fees will not include any fee for the Government of Canada, or the Church Organizations.

(2) Subject to Section 13.10(4), any fees referred to in Section 13.10(1) and accrued after April 1, 2006 will be subject to a maximum operating budget of sixty-thousand dollars ($60,000.00) per month.

(3) Notwithstanding Section 13.10(2) and subject to Section 13.10(4), the NCC may apply to Canada for additional funding in exceptional circumstances up to a maximum monthly amount of fifteen thousand dollars ($15,000.00).

(4) The maximum operating budget referred to in Section 13.10(1) and the maximum additional funding in exceptional circumstances referred to in Section 13.10(3) will be reviewed and reassessed by Canada on July 1, 2006 and the first day of each month thereafter. Canada, in its sole discretion, may reduce or increase the maximum operating budget or the maximum additional funding or both.

(5) Counsel who is designated by the NCC as counsel having carriage in respect of drafting, consent certification and

approval of the settlement will be paid their normal hourly rates and reasonable disbursements to be billed by Counsel and paid by Canada on an ongoing basis. Such fees and disbursements are not subject to the maximum operating budget referred to in paragraph 13.10(2).

(6) Other counsel who appear in court, if designated by the NCC and approved by Canada, will be paid an appearance fee of two thousand dollars ($2000.00) per diem. Such fees are not subject to the maximum operating budget referred to in paragraph 13.10(2).

(7) The NCC, and counsel appointed on behalf of the NCC, will submit their accounts to the OIRSRC for payment**,** and will be paid within 60 days of such submission.

(8) The NCC will submit its accounts to the OIRSRC for payment. The submitted accounts will be verified by OIRSRC to ensure compliance with the Treasury Board Travel Directive, attached as Schedule "Q", prior to payment.

13.11 NAC Fees

(1) Members of the NAC will be compensated at reasonable hourly rates subject to the maximum monthly operating budget set out at Section 13.11(2) of this Agreement except the representatives for Canada or the Church Organizations, who will not be

compensated under this Agreement.

(2) Subject to Section 13.11(4), any fees referred to in Section 13.10(1) will be subject to a maximum operating budget of sixty-thousand dollars ($60,000.00) per month.

(3) Notwithstanding Section 13.11(2) and subject to Section 13.11(4), the NAC may apply to Canada for additional funding in exceptional circumstances up to a maximum monthly amount of fifteen thousand dollars ($15,000.00).

(4) The maximum operating budget referred to in Section 13.11(2) and the maximum additional funding in exceptional circumstances referred to in Section 13.11(3) will be reviewed and reassessed by Canada on the first day of the first month after the Implementation Date and on the first day of each month thereafter. Canada, in its sole discretion, may reduce or increase the maximum operating budget or the maximum additional funding or both.

(5) The NAC will submit its accounts to the OIRSRC for payment. The submitted accounts will be verified by OIRSRC to ensure compliance with the Treasury Board Travel Directive, attached as Schedule "Q", prior to payment.

13.12 RAC Fees

(1) Members of the RACs, will be compensated at reasonable hourly rates subject to the maximum monthly operating budget set out at Section 13.12(2).

(2) Canada will provide each RAC with an operating budget that will not exceed seven thousand dollars ($7,000.00) per month for each RAC except that each RAC may apply for additional funding in exceptional circumstances.

(3) The RACs will submit their accounts to the OIRSRC for payment. The submitted accounts will be verified by OIRSRC to ensure compliance with the Treasury Board Travel Directive, attached as Schedule "Q", prior to payment.

13.13 IAP Working Group Fees

(1) Canada agrees to pay each member of the IAP Working Group, other than lawyers representing Canada or the Church Organizations, who attended the IAP Working Group meetings beginning November 20, 2005 for time spent up to the Implementation Date, as requested in writing by Canada, at his or her normal hourly rate, plus reasonable disbursements, and GST and PST, if applicable except that no amount is payable under this Section 13.13(1) for fees previously paid directly by OIRSRC.

(2) No fees are payable under Section 13.13(1) for time billed

under Section 13.02 or 13.03.

(3) The IAP Working Group, will submit their accounts to the OIRSRC for payment**,** and will be paid within 60 days of such submission.

13.14 Oversight Committee Fees

(1) Canada agrees to pay an honorarium to each member of the Oversight Committee, other than members representing Canada or the Church Organizations, at the same rate and on the same conditions as apply from time to time for adjudicators appointed for the IAP.

(2) Notwithstanding 13.14(1), Oversight Committee members will be paid the honorarium set out in 13.14(1) for a period not exceeding 3 days per month in those months where they attend in-person meetings or 1 day per month in those months where the meeting is held by teleconference or other means.

(2) The Oversight Committee members will submit their accounts to the OIRSRC for payment. The accounts will be paid within 60 days of their submission. The accounts will be verified by OIRSRC to ensure compliance with the Treasury Board Travel Directive, attached as Schedule "Q", prior to payment.

ARTICLE FOURTEEN
FIRST NATIONS, INUIT, INUVIALUIT AND MÉTIS

14.01 Inclusion

For greater certainty, every Eligible CEP Recipient who resided at an Indian Residential School is eligible for the CEP and will have access to the IAP in accordance with the terms of this Agreement including all First Nations, Inuit, Inuvialuit and Métis students.

ARTICLE FIFTEEN
TRANSITION PROVISIONS

15.01 No Prejudice

The parties agree that the no prejudice commitment set out in the letter of the Deputy Minister of the OIRSRC dated July, 2005, and attached as Schedule "R" means that following the Implementation Date:

(1) All Eligible CEP Recipients are entitled to apply to receive the CEP regardless of whether a release has been signed or a judgment received for their Indian Residential School claim prior to the Implementation Date.

(2) Where a release of an Indian Residential School claim was signed after May 30, 2005 in order to receive the payment of an award under the DR Model:

a) Canada will adjust the award to reflect the compensation scale set out at page 6 of the IAP attached as Schedule "D" of this Agreement;

b) the Eligible IAP Claimant may apply to have their hearing re-opened to reconsider the assignment of points under the Consequential Loss of Opportunity category set out at page 6 of the IAP attached as Schedule "D" of this Agreement, and pursuant to the standards of the IAP, in any case where the adjudicator assessed their claim as falling within the highest level in the Consequential Loss of Opportunity category in the DR Model;

c) an Eligible IAP Claimant who alleges sexual abuse by another student at the SL4 or SL5 category, where such abuse if proven would be the most serious proven abuse in their case, may have their hearing re-opened to consider such an allegation in accordance with the standards of the IAP.

(3) Following the coming into force of the Approval Orders, at the request of an Eligible IAP Claimant whose IRS abuse claim was settled by Canada without contribution from a Catholic Entity set out in Schedule "C" of this Agreement, such settlement having been for an amount representing a fixed reduction from the assessed Compensation, Canada will pay the

balance of the assessed compensation to the Eligible IAP Claimant. Provided, however, that no amount will be paid to an Eligible IAP Claimant pursuant to this section until the Eligible IAP Claimant agrees to accept such amount in full and final satisfaction of his or her claim against a Catholic Entity set out in Schedule "C" of this Agreement, and to release them by executing a release substantially in the form of the release referred to in Section 11.02 of this Agreement.

(4) Until the Implementation Date, Canada will use its best efforts to resolve cases currently in litigation, including those that would not fit within the IAP.

15.02 Acceptance and Transfer of DR Model Claims

(1) No applications to the DR Model will be accepted after the Approval Date.

(2) DR applications received on or before the expiration of the Approval Date for which a hearing date had not been set as of the Implementation Date will be dealt with as follows:

a) any application which alleges only physical abuse will be processed under the DR Model unless the claimant elects to transfer it to the IAP;

b) any application which includes an allegation of sexual

abuse will be transferred to the IAP unless the claimant, within 60 days of receiving notice of the proposed transfer, elects in writing to remain in the DR Model.

(3) An Individual whose claim is transferred under Section 15.02(2) of this Agreement is not required to complete an additional application to the IAP, but may modify their existing DR application to the extent necessary to claim the relief available under the IAP.

(4) Any Eligible IAP Claimant who received but did not accept a decision under the DR Model or a Pilot Project decision may apply to the IAP on the condition that all evidence used in the DR Model hearing or pilot project hearing will be transferred to the IAP proceeding.

ARTICLE SIXTEEN
CONDITIONS AND TERMINATION

16.01 Agreement is Conditional

This Agreement will not be effective unless and until it is approved by the Courts, and if such approvals are not granted by each of the Courts on substantially the same terms and conditions save and except for the variations in membership contemplated in Sections 4.04 and 4.07 of this Agreement, this Agreement will thereupon be terminated and none of the

Parties will be liable to any of the other Parties hereunder, except that the fees and disbursements of the members of the NCC will be paid in any event.

16.02 Termination of Agreement

This Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled.

ARTICLE SEVENTEEN
CEP PAYMENTS TO APPROVED PERSONAL REPRESENTATIVES

17.01 Compensation if Deceased on or after May 30, 2005

If an Eligible CEP Recipient, dies or died on or after May 30, 2005 and the CEP Application required under Article Five (5) has been submitted to the Trustee by him or her prior to his or her death or by his or her Personal Representative after his or her death and within the period set out in Section 5.04(2), the Personal Representative will be paid the amount payable under Article Five (5) to which the deceased Eligible CEP Recipient would have been entitled if he or she had not died.

17.02 Deceased Cloud Class Members

Notwithstanding Section 17.01, if an Eligible CEP Recipient who is a

member of a certified class in the Cloud Class Action died on or after October 5, 1996, and the CEP Application required under Article Five (5) has been submitted to the Trustee by his or her Personal Representative within the period set out in Section 5.04(2), the Personal Representative will be paid the amount payable under Article Five (5) to which the deceased Eligible CEP Recipient would have been entitled if he or she had not died.

17.03 Person Under Disability

If an Eligible CEP Recipient is or becomes a Person Under Disability prior to receipt of a Common Experience Payment and the CEP Application required under Article Five (5) has been submitted to the Trustee by him or her prior to becoming a Person Under Disability or by his or her Personal Representative after he or she becomes a Person Under Disability within the period set out in Section 5.04(2), the Personal Representative will be paid the amount payable under Article Five (5) to which the Eligible CEP Recipient who has become a Person Under Disability would have been entitled if he or she had not become a Person Under Disability.

ARTICLE EIGHTEEN
GENERAL

18.01 No Assignment

No amount payable under this Agreement can be assigned and such assignment is null and void except as expressly provided for in this Agreement.

18.02 Compensation Inclusive

For greater certainty, the amounts payable to Eligible IAP Claimants under this Agreement are inclusive of any prejudgment interest or other amounts that may be claimed by Eligible IAP Claimants.

18.03 Applicable Law

This Agreement will be governed by the law of Ontario.

18.04 Dispute Resolution

The parties agree that they will fully exhaust the dispute resolution mechanisms contemplated in this Agreement before making any application to the Courts for directions in respect of the implementation, administration or amendment of this Agreement or the implementation of the Approval Orders. Application to the Courts will be made with leave of the Courts, on notice to all affected parties, or otherwise in conformity with the terms of the Agreement.

18.05 Notices

Any notice or other communication to be given in connection with this Agreement will be given in writing and will be given by personal delivery or by electronic communication addressed to each member of the NCC or NAC as the case may be or to such other address, individual or electronic

communication number as a Party may from time to time advise by notice given pursuant to this Section. Any notice or other communication will be exclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not so transmitted. The names and business addresses of the members of the NCC are attached as Schedule "S".

18.06 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Agreement.

18.07 Benefit of the Agreement

This Agreement will enure to the benefit of and be binding upon the respective heirs, assigns, executors, administrators and successors of the Parties.

18.08 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

18.09 Official Languages

Canada will prepare a French translation of this Agreement for use at the Approval Hearings. Prior to Implementation Date, Canada will pay the costs of the preparation of an authoritative French version of this Agreement and

such cost shall include costs of review by a designate of the Parties. The authoritative French version shall be executed by the same Parties who executed this Agreement and, once executed, shall be of equal weight and force at law.

Signed this _____ day of _____, 2006.

ON BEHALF OF HER MAJESTY THE
QUEEN IN RIGHT OF CANADA

By: _____
The Honourable Jim Prentice

THE FEDERAL REPRESENTATIVE

By: _____
The Honourable Frank Iacobucci

ASSEMBLY OF FIRST NATIONS

By: _____
Phil Fontaine, National Chief

By: _____
Kathleen Mahoney

NUNAVUT TUNNGAVIK INC.

By: _____
Janice Payne

INUVIALUIT REGIONAL CORPORATION

By: _____
Hugo Prud'homme

MAKIVIK CORPORATION

By: _____
Gilles Gagne

NATIONAL CONSORTIUM

By: _____
Craig Brown

MERCHANT LAW GROUP

By: _____
E.F. Anthony Merchant, Q.C.

COHEN HIGHLY LLP

By: _____
Russell Raikes

THE PRESBYTERIAN CHURCH IN CANADA

By:
_____
Stephen Kendall, Principal Clerk

THE UNITED CHURCH OF CANADA

By: _____
Jim Sinclair-General Secretary

By: _____
Cynthia Gunn-Legal/Judicial Counsel

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA

By: _____
Peter C.H. Blachford
Treasurer, General Synod

SISTERS OF CHARITY, a body corporate also known as Sisters of Charity of St. Vincent de Paul, Halifax also known as Sisters of Charity of Halifax

By: _____
Thomas Mcdonald

THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX

By: _____
Hugh Wright

LES SOEURS DE NOTRE DAME-AUXILIATRICE

By: _____
Pierre L. Baribeau

LES SOEURS DE ST. FRANCOIS D'ASSISE

By: _____
Pierre L. Baribeau

INSITUT DES SOEURS DU BON CONSEIL

By: _____
Pierre L. Baribeau

LES SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE (The Sisters of St. Joseph of St. Hyacinthe)

By: _____
Pierre L. Baribeau

LES SOEURS DE JESUS-MARIE

By: _____
Pierre L. Baribeau

LES SOEURS DE L'ASSOMPTION DE LA SAINTE VERGE

By: _____
Pierre L. Baribeau

LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE L'ALBERTA

By: _____
Pierre L. Baribeau

LES SOEURS DE LA CHARITÉ DE ST.-HYACINTHE

By: _____
Pierre L. Baribeau

LES OEUVRES OBLATES DE L'ONTARIO

By: _____
Pierre Champagne or Ron Caza

LES RÉSIDENCES OBLATES DU QUÉBEC

By: _____
Pierre Champagne or Ron Caza

LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE JAMES (The Roman Catholic Episcopal Corporation of James Bay)
THE CATHOLIC DIOCESE OF MOOSONEE

By: _____
Pierre Champagne or Ron Caza

SOEURS GRISES DE MONTRÉAL/GREY NUNS OF MONTREAL

By: _____
W. Roderick Donlevy or Michel Thibault

SISTERS OF CHARITY (GREY NUNS) OF ALBERTA

By: _____
W. Roderick Donlevy or Michel Thibault

LES SOEURS DE LA CHARITÉ DES T.N.O.

By: _____
W. Roderick Donlevy or Michel Thibault

HÔTEL-DIEU DE NICOLET (HDN)

By: _____
W. Roderick Donlevy

THE GREY NUNS OF MANITOBA INC. – LES SOEURS GRISES DU MANITOBA INC.

By: _____
W. Roderick Donlevy

LA CORPORATION EPISCOPAL CATHOLIQUE ROMAINE DE LA BAIE D' HUDSON THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY

By: _____
Rheal Teffaine

MISSIONARY OBLATES–GRANDIN

By: _____
Curtis Onishenko

LES OBLATS DE MARIE IMMACULÉE DU MANITOBA

By: _____
Rheal Teffaine

THE ARCHIEPISCOPAL CORPORATION OF REGINA

By: _____
Archbishop of Regina

THE SISTERS OF THE PRESENTATION

By: _____
Mitchell Holash

THE SISTERS OF ST. JOSEPH OF SAULT ST. MARIE

By: _____
Charles Gibson

LES SOEURS DE LA CHARITÉ D'OTTAWA – SISTERS OF CHARITY OF OTTAWA

By: _____
Pierre Champagne or Ron Caza

OBLATES OF MARY IMMACULATE-ST. PETER'S PROVINCE

By: _____
Gilbert J.S. – Mason, OMI
By: _____
Jan Rademaker, OMI

THE SISTERS OF SAINT ANN

By: _____
Patrick J. Delsey Law Corporation

SISTERS OF INSTRUCTION OF THE CHILD JESUS

By: _____
Violet Allard

THE BENEDICTINE SISTERS OF MT. ANGEL OREGON

By: _____
Azool Jaffer-Jeraj

LES PERES MONTFORTAINS

By: _____
Bernie Buettner

THE ROMAN CATHOLIC BISHOP OF KAMLOOPS CORPORATION SOLE

By: _____
John Hogg

THE BISHOP OF VICTORIA, CORPORATION SOLE

By: _____
Frank D. Corbett

THE ROMAN CATHOLIC BISHOP OF NELSON CORPORATION SOLE

By: _____
John Hogg

ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA

By: _____
Fr. Terry MacNamara OMI

THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA

By: _____
Ray Baril, Q.C.

LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD

By: _____
Administrator of the Diocese of Grouard

ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN

By: _____
Archbishop of Keewatin

LA CORPORATION ARCHIÉPISCOPALE CATHOLIQUE ROMAINE DE ST. BONIFACE

By: _____
Rheal Teffaine

LES MISSIONNAIRES OBLATES DE ST. BONIFACE THE MISSIONARY OBLATES SISTERS OF ST. BONIFACE

By: _____
Rheal Teffaine

ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG

By: _____
Bill Emslie, Q.C.

LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT

By: _____
Mitchell Holash

THE ROMAN CATHOLIC BISHOP OF THUNDER BAY

By: _____
John Cyr

IMMACULATE HEART COMMUNITY OF LOS ANGELES CA

By: _____
Mark Rowan

ARCHDIOCESE OF VANCOUVER THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER

By: _____
Mary Margaret MacKinnon

ROMAN CATHOLIC DIOCESE OF WHITEHORSE

By: _____
Azool Jaffer-Jeraj

THE ROMAN CATHOLIC EPISCOPALE CORPORATION OF MACKENZIE-FORT SMITH

By: _____
Archbishop of MacKenzie

THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT

By: _____
Gary R. Brown

FULTON & COMPANY

By: _____
Len Marchand, P. Eng.

ROSE A. KEITH, LLP

By: _____
Rose A. Keith

LACKOWICZ, SHIER & HOFFMAN

By: _____
Dan Shier

CABOTT & CABOTT

By: _____
Laura I. Cabott

KESHEN MAJOR

By: _____
Greg Rickford

BILKEY, QUINN

By: _____
David Bilkey

By: _____
Kevin Simcoe

F. J. SCOTT HALL LAW CORPORATION

By: _____
Scott Hall

HEATHER SADLER JENKINS

By: _____
Sandra Staats

HUTCHINS GRANT & ASSOCIATES

By: _____
Peter Grant

By: _____
Brian O'Reilly

DUBOFF EDWARDS HAIGHT & SCHACHTER

By: _____
Harley Schachter

MACDERMID LAMARSH GORSALITZ

By: _____
Robert Emigh (Fort McMurray)

MACPHERSON LESLIE & TYERMAN LLP

By: _____
Maurice Laprairie, Q.C.

JOHN A. TAMMING LAW OFFICE

By: _____
John A. Tamming

DINNING HUNTER LAMBERT & JACKSON

By: _____
Eric Wagner

MACDERMID LAMARSH

By: _____
Robert Emigh (Saskatoon)

KOSKIE MINSKY LLP

By:
_____
Kirk M. Baert

WALLBRIDGE, WALLBRIDGE

By: _____
Kathleen Erin Cullin

GILLES GAGNÉ

By:
_____
Gilles Gagné

GREY MUNDAY LLP

By: _____
Leighton B. U. Grey

CRYSTAL MCLEOD LAW FIRM

By: _____
Crystal McLeod

DIOCESE OF SASKATOON

BY: _____
W. Roderick Donlevy

OMI LACOMBE AND CORPORATION

BY: _____
W. Roderick Donlevy

DUFOUR & JACQUES

BY: _____
Patrick Jacques

MCDOUGALL GAULEY LLP

BY: _____
Wayne L. Bernakevitch

BIAMONTE CAIRO & SHORTREED

BY: _____
Terry Antonello

ROSS, SCULLION

BY: _____
Kevin J. Scullion

CUELENAERE, KENDALL, KATZMAN & WATSON

BY: _____
Michael D. Nolin

BERTHA JOSEPH, LLB MBA

BY: _____
Bertha Joseph

GATES AND COMPANY

BY: _____
Sheldon Stener

BRIDGELAND LAW PRACTICE

BY: _____
Cheryllynn Klassen

RUSSELL KRONICK LLB

BY: _____
Russell S. Kronick

CARROLL MAYES

BY:
_____
Karen Webb

NELSON & NELSON

BY: _____
Stephen B. Nelson

LISA M. DEWAR FAMILY LAW & MEDIATION

BY: _____
Lisa M. Dewar

BRONSTEIN & COMPANY

BY: _____
Stephen J. Bronstein

PIVOT LEGAL LLP

BY: _____
Shabnum Durrani

WOLOSHYN AND COMPANY

BY: _____
Stephen Nicholson

FOWLE & COMPANY

BY: _____
Ryan Fowle

DIONNE GERTLER SCHULZE

BY: _____
Geeta Narang/David Schulze

MAURICE LAW

BY: _____
Dale Szakacs

ANDREW BENKO

BY: _____
Peggy Benko

MICHELLE GOOD & COMPANY

BY: _____
Michelle Good

ME LEPINE

BY: _____
Eric Lepine

POYNER BAXTER LLP

BY: _____
Patrick Poyner

McKAY & ASSOCIATES

BY: _____
David R. Barth

DAVID GIBSON AND ASSOCIATES

BY: _____
David Gibson

PHILLIPS AIELLO

BY: _____
Joe Aiello

BIAMONTE CAIRO & SHORTREED LLP

BY: _____
Rosanna M. Saccomani

DICK BYL LAW CORPORATION

BY: _____
Jon M. Duncan

DONOVAN & COMPANY

BY: _____
Karim Ramji

ANJA BROWN, BARRISTER & SOLICITOR

BY: _____
Anja Brown

WILLOWS TULLOCH

BY: _____
Neil J.D. Tulloch

EISNER MAHON

BY: _____
Michael Mahon

SCOTT PHELPS & MASON

BY: _____
Kevin Wayne Scott

ANDREW CROLL LAW CORPORATION

BY: _____
Andrew Croll

SANDERSON BALICKI PARCHOMCHUK

BY: _____
Ronald G. Parchomchuk

DANIEL TAPP LAW FIRM PROFESSIONAL CORPORATION

BY: _____
Daniel S. Tapp

MYERS WEINBERG LLP

BY: _____
Priscilla Sternat-McIvor

BRUCE SLUSAR LAW OFFICE

BY: _____
Bruce J. Slusar

HUTCHINS CARON & ASSOCIÉS

BY: _____
Julie Corry

WILLIER AND CO.

BY: _____
Will Willier

NAHWEGAHBOW CORBIERE GENOODMAGEJIG, BARRISTERS AND SOLICITORS

BY: _____
Amber Crowe

CARROLL AND BELDING

BY: _____
Ken Carroll

BY: _____
Stacy Belding

ZATLYN LAW OFFICE

BY: _____
Neil Raas

GILBERT DESCHAMPS
BARRISTER AND SOLICITOR

BY: _____
Gilbert Deschamps

RIDGWAY AND COMPANY

BY: _____
Eric Wagner

BURKE FRAME BARRISTERS

BY: _____
Alana Hughes

AMANA LAW OFFICE

BY: _____
Idorenyin E. Amana

WILCOX ZUK CHOVIN LAW OFFICES

BY: _____
Trish Greyeyes

CONNOLLY, WOOD AND COMPANY

BY: _____
Yoshio (Joe) Sumiya

TRIAL LAWYERS ADVOCACY GROUP

BY: _____
Shawn Bobb

ALGHOUL & ASSOCIATES LAW FIRM

BY: _____
Louay Alghoul

FRIGAULT LAW

BY: _____
Lise Frigault

LAW OFFICES OF AUDRA BENNETT

BY: _____
Audra Bennett

DANIEL S. SHIER LAW OFFICE

BY: _____
Daniel Shier

FORD LAW OFFICE

BY: _____
Violet Ford

ALGHOUL & ASSOCIATES LAW FIRM

BY: _____
Kathleen Mazur

SACK GOLDBLATT MITCHELL LLP

BY: _____
Fay Brunning

SUZANNE DESROSIERS BARRISTER & SOLICITOR

BY: _____
Suzanne Desrosiers

WARDELL GILLIS BARRISTERS & SOLICITORS

BY:_____
Evan H. Jenkins

BY: _____
Helen A. Cotton

BLAIN LAW	NICKERSON ROBERTS HOLINSKI & MERCER
BY: _____	BY: _____
Darrin Blain	Elaine Hancheruk

THIS IS EXHIBIT " C " REFERRED TO IN THE
AFFIDAVIT OF Peter Grant
SWORN BEFORE ME AT Vancouver
THIS 8 DAY OF November, 2019

A Commissioner for taking Affidavits within
British Columbia

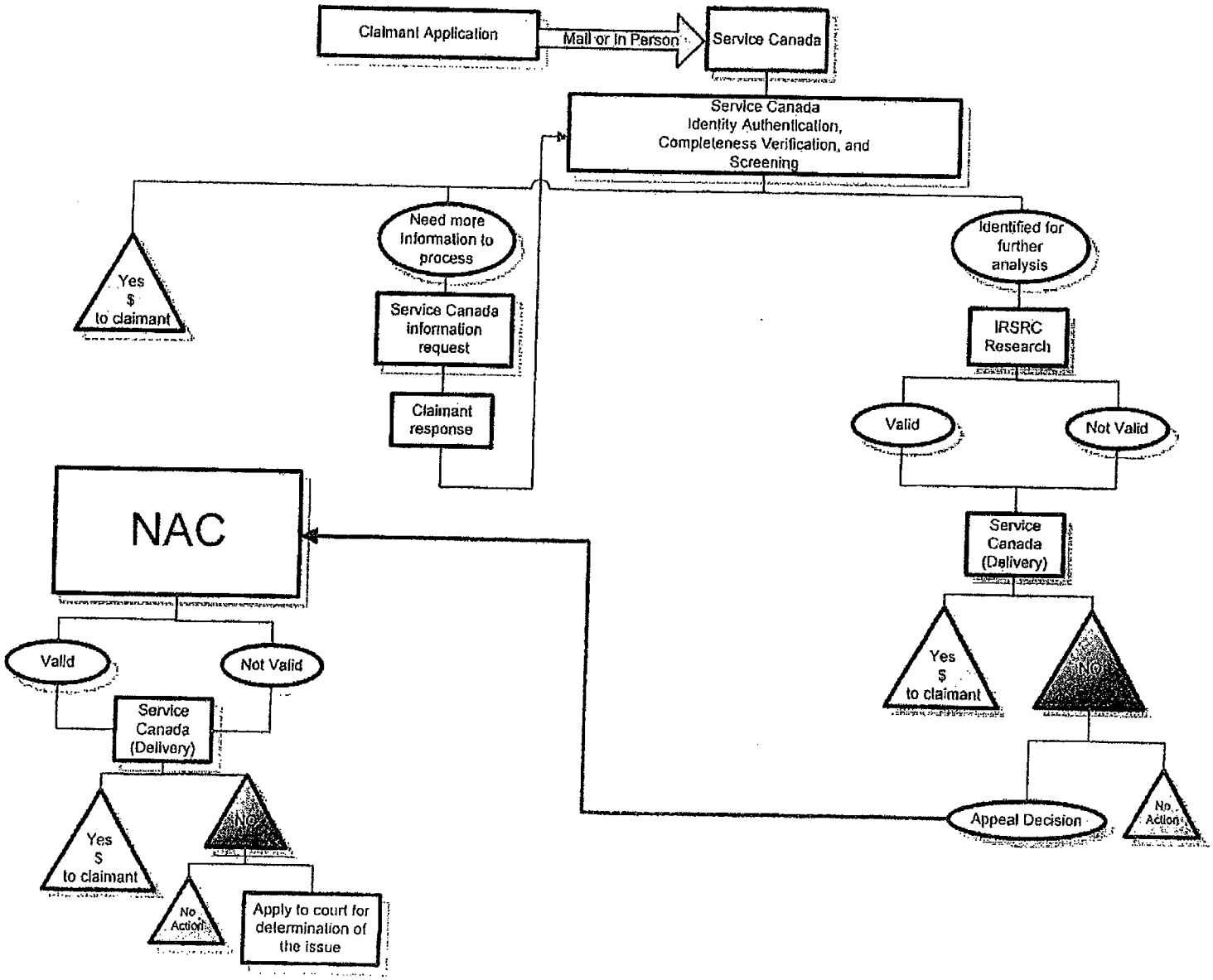
Rosalind M. Campbell
GRANT HUBERMAN
Barristers & Solicitors
1620-1075 W. Georgia Street
Vancouver, BC V6E 3C9
Tel: 604-685-1229 Fax: 604-685-0244

SCHEDULE "L"

Indian Residential Schools Resolution Canada | Résolution des questions des pensionnats indiens Canada

CEP Process Flow

4/18/2006



Processing of Common Experience Payments (CEP)

1. Applications can be made in person at a Service Canada Centre, a partner organization or through an Outreach officer in the Applicant's community. Applications can also be made by mail to Service Canada. Service Canada will provide:
   - general information on the CEP, including the application and payment process for the CEP; and,
   - information on the locations and hours where assistance can be provided in or near the client's community, as well as outreach schedules.

   Claimants or their Personal Representatives can locate the nearest Service Canada Centre by calling 1-800 O-Canada or checking the Service Canada website (www.servicecanada.gc.ca).

2. All Applications will be registered on the date of receipt by Service Canada. Payment will be issued on valid Applications within 35 days of receipt with the expectation that 80% would be paid within 28 days. Applications requiring further research may require more processing time.

3. Service Canada will:
   - document the date of receipt and ensure that the application is complete;
   - confirm the claimant has proper identification as required by the CEP application form;
   - confirm the statement of attendance made on the CEP application form against data provided by the Office of Indian Residential Schools Resolution Canada.

4. Service Canada will make payment on Applications which are determined to be valid, in whole or in part; however, all others will be forwarded to the Office of Indian Residential Schools Resolution for further research.

5. Where an Application is determined not to be valid, in whole or in part, Service Canada will advise in writing the reason for the determination and the process by which the Applicant may appeal the determination to the NAC.

6. Service Canada will maintain records of the numbers of claims which are determined to be completely valid, which are determined to be valid in part and which are determined to be invalid and will report those findings to IRSRC and the NAC monthly or as NAC, IRSRC and Service Canada may otherwise agree.

THIS IS EXHIBIT " D " REFERRED TO IN THE
AFFIDAVIT OF Peter Grant
SWORN BEFORE ME AT Vancouver
THIS 8 DAY OF November, 2019

A Commissioner for taking Affidavits within
British Columbia

Rosalind M. Campbell
GRANT HUBERMAN
Barristers & Solicitors
1620-1075 W. Georgia Street
Vancouver, BC V6E 3C9
Tel: 604-685-1229 Fax: 604-685-0244

Court File No. 00-CV-192059CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	FRIDAY, THE
REGIONAL SENIOR JUSTICE	)	15TH DAY OF DECEMBER 2006
WARREN K. WINKLER	)	

B E T W E E N:

LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, MICHELLINE AMMAQ, PERCY ARCHIE, CHARLES BAXTER SR., ELIJAH BAXTER, EVELYN BAXTER, DONALD BELCOURT, NORA BERNARD, JOHN BOSUM, JANET BREWSTER, RHONDA BUFFALO, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, BRENDA CYR, DEANNA CYR, MALCOLM DAWSON, ANN DENE, BENNY DOCTOR, LUCY DOCTOR, JAMES FONTAINE in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, VINCENT BRADLEY FONTAINE, DANA EVA MARIE FRANCEY, PEGGY GOOD, FRED KELLY, ROSEMARIE KUPTANA, ELIZABETH KUSIAK, THERESA LAROCQUE, JANE McCULLUM, CORNELIUS McCOMBER, VERONICA MARTEN, STANLEY THOMAS NEPETAYPO, FLORA NORTHWEST, NORMAN PAUCHEY, CAMBLE QUATELL, ALVIN BARNEY SAULTEAUX, CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER, EDWARD TAPIATIC, HELEN WINDERMAN and ADRIAN YELLOWKNEE

Plaintiffs

- and –

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE UNITED CHURCH OF CANADA, THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH, THE BAPTIST CHURCH IN CANADA, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN BAY, THE CANADA IMPACT NORTH MINISTRIES OF THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (ALSO KNOWN AS THE METHODIST MISSIONARY SOCIETY OF CANADA), THE INCORPORATED SYNOD OF THE

DIOCESE OF ALGOMA, THE SYNOD OF THE ANGLICAN CHURCH OF THE DIOCESE OF QUEBEC, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF NEW WESTMINISTER, THE SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE BOARD OF HOME MISSIONS AND SOCIAL SERVICE OF THE PRESBYTERIAN CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH IN CANADA, SISTERS OF CHARITY, A BODY CORPORATE ALSO KNOWN AS SISTERS OF CHARITY OF ST. VINCENT DE PAUL, HALIFAX, ALSO KNOWN AS SISTERS OF CHARITY HALIFAX, ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, LES SOEURS DE NOTRE DAME-AUXILIATRICE, LES SOEURS DE ST. FRANCOIS D'ASSISE, INSITUT DES SOEURS DU BON CONSEIL, LES SOEURS DE SAINT-JOSEPH DE SAINT-HYANCITHE, LES SOEURS DE JESUS-MARIE, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE, LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE L'ALBERTA, LES SOEURS DE LA CHARITE DE ST.-HYACINTHE, LES OEUVRES OBLATES DE L'ONTARIO, LES RESIDENCES OBLATES DU QUEBEC, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE JAMES (THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY), THE CATHOLIC DIOCESE OF MOOSONEE, SOEURS GRISES DE MONTRÉAL/GREY NUNS OF MONTREAL, SISTERS OF CHARITY (GREY NUNS) OF ALBERTA, LES SOEURS DE LA CHARITÉ DES T.N.O., HOTEL-DIEU DE NICOLET, THE GREY NUNS OF MANITOBA INC.-LES SOEURS GRISES DU MANITOBA INC., LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE D'HUDSON – THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, MISSIONARY OBLATES – GRANDIN PROVINCE, LES OBLATS DE MARIE IMMACULEE DU MANITOBA, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE SISTERS OF THE PRESENTATION, THE SISTERS OF ST. JOSEPH OF SAULT ST. MARIE, SISTERS OF CHARITY OF OTTAWA, OBLATES OF MARY IMMACULATE –ST. PETER'S PROVINCE, THE SISTERS OF SAINT ANN, SISTERS OF INSTRUCTION OF THE CHILD JESUS, THE BENEDICTINE SISTERS OF MT. ANGEL OREGON, LES PERES MONTFORTAINS, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS CORPORATION SOLE, THE BISHOP OF VICTORIA, CORPORATION SOLE, THE ROMAN CATHOLIC BISHOP OF NELSON, CORPORATION SOLE, ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD, ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, LA CORPORATION ARCHIÉPISCOPALE CATHOLIQUE ROMAINE DE ST. BONIFACE, LES MISSIONNAIRES OBLATES SISTERS DE ST. BONIFACE-THE MISSIONARY OBLATES SISTERS OF ST. BONIFACE, ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN CATHOLIC BISHOP OF THUNDER

BAY, IMMACULATE HEART COMMUNITY OF LOS ANGELES CA, ARCHDIOCESE OF VANCOUVER – THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, ROMAN CATHOLIC DIOCESE OF WHITEHORSE, THE CATHOLIC EPISCOPALE CORPORATION OF MACKENZIE-FORT SMITH, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, EPISCOPAL CORPORATION OF SASKATOON, OMI LACOMBE CANADA INC. and MT. ANGEL ABBEY INC.

Defendants

PROCEEDING UNDER the following legislation, as appropriate:

(a) In the Province of Alberta: the *Class Proceedings Act*, S.A. 2003, c. C-16.5;

(b) In the Province of British Columbia: the *Class Proceedings Act*, R.S.B.C. 1996, c.50;

(c) In the Province of Manitoba: *The Class Proceedings Act*, C.C.S.M. c. C130;

(d) In the Provinces of Newfoundland and Labrador, Prince Edward Island, New Brunswick and Nova Scotia: the *Class Proceedings Act, 1992,* S.O. 1992, c. 6;

(e) In The Northwest Territories: Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg. 010-96;

(f) In Nunavut: Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg 010-96, as adopted by the Territory by operation of Section 29 of the *Nunavut Act*, S.C. 1993, c. 28.

(g) In the Province of Ontario: the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;

(h) In the Province of Québec: Articles 999–1051 of the *Code of Civil Procedure* (Québec);

(i) In the Province of Saskatchewan: *The Class Actions Act*, S.S. 2001, c.C-12.01; and

(j) In the Yukon Territory: Rule 5(11) of the *Supreme Court Rules (British Columbia.)* B.C. Reg. 220/90 as adopted by the Territory by operation of Section 38 of the *Judicature Act,* R.S.Y. 2002, c. 128.

JUDGMENT

THIS MOTION, made by the Plaintiffs for certification of this action as a class proceeding and for judgment approving the settlement of the action, in accordance with the terms of the Agreement, was heard August 29, 30 and 31, 2006, at the Court House, at 361 University Avenue, Toronto, Ontario, judgment having been reserved until this day.

ON READING the joint motion record of the parties, the facta of the Plaintiffs and the Defendants and upon hearing all interested parties, including all objections, written and oral, and upon being advised of the consent and support of this motion of all of the parties to the Settlement Agreement dated May 10th, 2006,

AND WITHOUT ADMISSION OF LIABILITY on the part of any of the Defendants who deny liability,

AND UPON HEARING the submissions of counsel for the Plaintiffs and the Defendants, for written reasons delivered this day,

1. **THIS COURT ORDERS AND DECLARES** that for the purpose of this judgment, and all subsequent judgments or orders herein, the following definitions shall apply:

DEFINITIONS:

a) "Action" means this proceeding, court file number 00-CV-192059CP;

b) "Agreement" means the Settlement Agreement entered into by the parties on May 10th, 2006, with schedules, attached hereto as Schedule "A";

c) "Approval Date" means the date the last Court issues its approval order;

d) "Approval Orders" means the judgment or orders of the Courts certifying the Class Actions and approving the Agreement as fair, reasonable and in the best interests of the Class Members for the purposes of settlement of the Class Actions pursuant to the applicable class proceedings law;

e) "Canada" means the Defendant, the Government of Canada, as represented in this proceeding by the Attorney General of Canada;

f) "Class" or "Class Members" means:

a. each and every person

i. who, at anytime prior to December 31, 1997, resided at an Indian Residential School in Canada; or

ii. who is a parent, child, grandparent, grandchild, sibling or spouse of a person who, at anytime prior to December 31, 1997, resided at an Indian Residential School in Canada,

and,

b. who, at the date of death resided in, or if living, as of the date hereof, resided in:

i. Alberta, for the purposes of the Alberta Court of Queen's Bench;

ii. British Columbia, for the purposes of the Supreme Court of British Columbia;

iii. Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

iv. Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;

v. Nunavut, for the purposes of the Nunavut Court of Justice;

vi. Ontario, Prince Edward Island, Newfoundland, Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;

vii. Quebec, for the purposes of the Quebec Superior Court;

viii. Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan; and

ix. Yukon, for the purposes of the Supreme Court of the Yukon Territory,

but excepting all Excluded Persons,

and

c. the Family Class as defined in paragraph 5 hereof.

g) "Class Actions" means the omnibus Indian Residential Schools Class Actions Statement of Claim referred to in Article Four (4) of the Agreement;

h) "Class Period" means until December 31, 1997;

i) "Common Experience Payment" means a lump sum payment made to an Eligible CEP Recipient in the manner set out in Article Five (5) of the Agreement;

j) "Court" means, in Alberta, the Alberta Court of Queen's Bench, in British Columbia, the Supreme Court of British Columbia, in Manitoba, the Manitoba Court of Queen's Bench, in the Northwest Territories, the Supreme Court of the Northwest Territories, in Nunavut, the Nunavut Court of Justice, in Ontario, the Ontario Superior Court of Justice, in Quebec, the Quebec Superior Court, in Saskatchewan, the Court of Queen's Bench for Saskatchewan and in the Yukon, the Supreme Court of the Yukon Territory;

k) "Defendants" mean Canada and each of the other party Defendants, including each of their respective past and present parents, subsidiaries and related or affiliated entities and their respective employees, agents, officers, directors, shareholders, principals, members, attorneys, insurers, subrogees, representatives, executors, administrators, predecessors, successors, heirs, transferees and assigns and also the entities listed in Schedules "B", "C", "G" and "H" of the Agreement;

l) "Eligible CEP Recipient" means any former Indian Residential School student who resided at any Indian Residential School prior to December 31, 1997 and who was alive on May 30, 2005 and who is not an Excluded Person;

m) "Excluded Persons" means:

(i) any person who opts out of this proceeding in accordance with this judgment; or

(ii) all persons who attended the Mohawk Institute Residential School in Brantford, Ontario, between 1922 and 1969, and their parents, siblings, spouses, grandparents or children (including minors, the unborn and disabled individuals) of such a person;

n) "Forum" means the Alberta Court of Queen's Bench, the Supreme Court of British Columbia, the Manitoba Court of Queen's Bench, the Supreme Court of the Northwest Territories, the Nunavut Court of Justice, the Ontario Superior Court of Justice, the Quebec Superior Court, the Court of Queen's Bench for Saskatchewan and the Supreme Court of the Yukon Territory, and "Fora" refers to them all;

o) "Implementation Date" means the latest of:

i. the expiry of thirty (30) days following the expiry of the Opt-Out Periods; and

ii. the date following the last day on which a Class Member in any jurisdiction may appeal or seek leave to appeal any of the Approval Orders; and

iii. the date of a final determination of any appeal brought in relation to the Approval Orders.

p) "Indian Residential School" means:

i. institutions listed on List "A" to OIRSRC's Dispute Resolution Process attached to the Agreement as Schedule "E";

ii. institutions listed in Schedule "F" of the Agreement ("Additional Residential Schools") which may be expanded from time to time in accordance with Article 12.01 of the Agreement; and

iii. any institution which is determined to meet the criteria set out in Sections 12.01(2) and (3) of the Agreement;

q) "Mailing Costs" means the cost of mailing a notice to the Class Members as described in *infra* below;

r) "Notice Costs" means the cost of publishing the Notice at Schedule "B" attached hereto;

s) "Opt Out Period" or "Opt Out Deadline" means the period commencing on the Approval Date and ending on August 20, 2007, during which an individual may opt out of this class proceeding without leave of the Court, as set out in the Approval Orders;

t) "Other Released Church Organizations" includes the Dioceses of the Anglican Church of Canada listed in Schedule "G" of the Agreement and the Catholic entities listed in Schedule "H" of the Agreement, that did not operate an Indian Residential School or did not have an Indian Residential School located within their geographical boundaries and have made, or will make, a financial contribution towards the resolution of claims advanced by persons who attended an Indian Residential School;

u) "Releasees" means, jointly and severally, individually and collectively, the defendants in the Class Actions and each of their respective past and present parents, subsidiaries and related or affiliated entities and their respective employees, agents, officers, directors, shareholders, principals, members, attorneys, insurers, subrogees, representatives, executors, administrators, predecessors, successors, heirs, transferees and assigns and also the entities listed in Schedules "B", "C", "G" and "H" of the Agreement;

v) "Representative Plaintiffs" are those individuals listed as plaintiffs in this title of proceedings;

w) "Spouse" includes a person of the same or opposite sex to a Survivor Class Member who cohabited for a period of at least one year with that Survivor Class Member immediately before his or her death or a person of the same or opposite sex to a Survivor Class Member who was cohabiting with that Survivor Class Member at the date of his or her death and to whom that Survivor Class Member was providing support or was under a legal obligation to provide support on the date of his or her death; and

x) "Trustee" means Her Majesty in Right of Canada as represented by the incumbent Ministers from time to time responsible for Indian Residential Schools Resolution Canada and Service Canada. The initial Ministers will be the Minister of Canadian

Heritage and Status of Women and the Minister of Human Resources Skills and Development, respectively.

2. **THIS COURT ORDERS** that this Action be and is hereby certified as a Class Proceeding.

3. **THIS COURT ORDERS AND DECLARES** that to the extent the Amended Statement of Claim, the materials filed in connection with the motion for certification and approval of settlement, or this judgment are inconsistent with the applicable rules of civil procedure or rules of court, strict compliance with such rules is waived in order to ensure the most just, expeditious and efficient resolution of this matter.

4. **THIS COURT ORDERS** that the Survivor Class is defined as the following:

All persons who resided at an Indian Residential School in Canada at anytime prior to December 31, 1997, who are living, or who were living as of May 30, 2005, and who, as of the date hereof, or who, at the date of death resided in:

(a) Alberta, for the purposes of the Alberta Court of Queen's Bench;

(b) British Columbia, for the purposes of the Supreme Court of British Columbia;

(c) Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

(d) Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;

(e) Nunavut, for the purposes of the Nunavut Court of Justice;

(f) Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;

(g) Quebec, for the purposes of the Quebec Superior Court;

(h) Saskatchewan, for the purposes of the Saskatchewan Court of Queen's Bench; and

(i) Yukon, for the purposes of the Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

5. **THIS COURT ORDERS** that the Family Class is defined as the following:

(a) the spouse, child, grandchild, parent, grandparent or sibling of a Survivor Class Member;

(b) the spouse of a child, grandchild, parent, grandparent or sibling of a Survivor Class Member;

(c) a former spouse of a Survivor Class Member;

(d) a child or other lineal descendent of a grandchild of a Survivor Class Member;

(e) a person of the same or opposite sex to a Survivor Class Member who cohabited for a period of at least one year with that Survivor Class Member immediately before his or her death;

(f) a person of the same or opposite sex to a Survivor Class Member who was cohabiting with that Survivor Class Member at the date of his or her death and to whom that Survivor Class Member was providing support or was under a legal obligation to provide support on the date of his or her death; or

(g) any other person to whom a Survivor Class Member was providing support for a period of at least three years immediately prior to his or her death; and

Who, as of the date hereof, are resident in:

(a) Alberta, for the purposes of the Alberta Court of Queen's Bench;

(b) British Columbia, for the purposes of the Supreme Court of British Columbia;

(c) Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

(d) Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;

(e) Nunavut, for the purposes of the Nunavut Court of Justice;

(f) Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;

(g) Quebec, for the purposes of the Quebec Superior Court;

(h) Saskatchewan, for the purposes of the Saskatchewan Court of Queen's Bench; and

(i) Yukon, for the purposes of the Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

6. **THIS COURT ORDERS** that the Deceased Class is defined as the following:

All persons who resided at an Indian Residential School in Canada at anytime prior to December 31, 1997, who died before May 30, 2005, and who were, at their date of death, residents of:

(a) Alberta, for the purposes of the Alberta Court of Queen's Bench;

(b) British Columbia, for the purposes of the Supreme Court of British Columbia;

(c) Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

(d) Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;

(e) Nunavut, for the purposes of the Nunavut Court of Justice;

(f) Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;

(g) Quebec, for the purposes of the Quebec Superior Court;

(h) Saskatchewan, for the purposes of the Saskatchewan Court of Queen's Bench; and

(i) Yukon, for the purposes of the Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

7. **THIS COURT ORDERS** that the Class shall consist of the Survivor Class, the Family Class and the Deceased Class.

8. **THIS COURT ORDERS AND DECLARES** that the Representative Plaintiffs be and are hereby appointed as representatives of the Class.

9. **THIS COURT ORDERS AND DECLARES** that the Representative Plaintiffs are adequate representatives of the Class and comply with the requirements in the applicable class proceedings law.

10. **THIS COURT ORDERS AND DECLARES** that the common issues in the Action are the following:

a) By their operation or management of Indian Residential Schools during the Class Period, did the Defendants breach a duty of care they owed to the Survivor Class and the Deceased Class to protect them from actionable physical or mental harm?

b) By their purpose, operation or management of Indian Residential Schools during the Class Period, did the Defendants breach a fiduciary duty they owed to the Survivor Class and the Deceased Class or the aboriginal or treaty rights of the Survivor Class and the Deceased Class to protect them from actionable physical or mental harm?

c) By their purpose, operation or management of Indian Residential Schools during the Class Period, did the Defendants breach a fiduciary duty they owed to the Family Class?

d) If the answer to any of these common issues is yes, can the Court make an aggregate assessment of the damages suffered by all Class members of each class as part of the common trial?

11. **THIS COURT ORDERS AND DECLARES** that the certification of this Action is conditional on the approval of the Agreement in the Fora in accordance with the terms of the Agreement and upon it not being set aside pursuant to paragraph 35 of this judgment and is without prejudice to the Defendants' right to contest certification or to contest the jurisdiction of this court in the future. Should the Agreement not be so approved or be set aside pursuant to paragraph 35 of this judgment, all materials filed, submissions made or positions taken by any party are without prejudice.

12. **THIS COURT ORDERS** that the Agreement, which is attached hereto as Schedule "A", and which is expressly incorporated by reference into this judgment, including the definitions included therein, is hereby approved and shall be implemented, in accordance with this judgment and any further order of this Court.

13. **THIS COURT ORDERS AND DECLARES** that this Court shall supervise the implementation of the Agreement and this judgment and, without limiting the generality of the

foregoing, may issue such orders as are necessary to implement and enforce the provisions of the Agreement and this judgment.

14. **THIS COURT ORDERS AND DECLARES** that the Trustee be and is hereby appointed, until further order of this court, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Agreement and this judgment.

15. **THIS COURT ORDERS AND DECLARES** that, subject to the provisions of the Agreement, and in particular, section 4.06 thereof, each Class Member and his or her heirs, personal representatives and assigns or their past and present agents, representatives, executors, administrators, predecessors, successors, transferees and assigns, have released and shall be conclusively deemed to have fully, finally and forever released the Defendants and the Other Released Church Organizations and each of their respective past and present parents, subsidiaries and related or affiliated entities and their respective employees, agents, officers, directors, shareholders, partners, principals, members, attorneys, insurers, subrogees, representatives, executors, administrators, predecessor, successors, heirs, transferees and assigns from any and all actions, causes of action, common law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which they ever had, now have or may have hereafter have, directly or indirectly or any way relating to or arising directly or indirectly by way of any subrogated or assigned right or otherwise in relation to an Indian Residential School or the operation generally of Indian Residential Schools and this release includes any such claim made or that could have been made in any proceeding including the Class Actions and including claims that belong to the Class Member personally, whether asserted directly by the Class member or by any other person, group or legal entity on behalf of or as a representative for the Class Member.

16. **AND THIS COURT ORDERS AND DECLARES** for greater certainty that the Releases referred to in paragraph 15 above bind each Class Member whether or not he or she submits a claim to the Trustee, whether or not he or she is eligible for individual compensation under the Agreements or whether the Class Member's claim is accepted in whole or in part.

17. **THIS COURT ORDERS AND DECLARES** that any individual action, and all related cross-claims and third party claims, brought by a Class Member, arising out of the operation of Indian Residential Schools, and all related cross-claims and third party claims, are hereby stayed and shall be dismissed on the Implementation Date.

18. **THIS COURT ORDERS AND DECLARES** that any existing class proceeding or representative action arising out of the operation of Indian Residential Schools, and all related cross-claims and third party claims, brought by a Class Member within the jurisdiction of this court are hereby stayed and shall be dismissed on the Implementation Date.

19. **THIS COURT ORDERS AND DECLARES** that each Class Member and each of his or her respective heirs, executors, administrators, personal representatives, agents, subrogees, insurers, successors and assigns shall not make any claim or take any proceeding against any person or corporation, including the Crown, in connection with or related to the claims released pursuant to paragraph 15 of this judgment, who might claim or take a proceeding against the Defendants or Other Released Church Organizations, in any manner or forum, for contribution or indemnity or any other relief at common law or in equity or under any other federal, provincial or territorial statute or the applicable rules of court. A Class Member who makes any claim or takes any proceeding that is subject to this paragraph shall immediately discontinue such claim or proceeding and this paragraph shall operate conclusively as a bar to any such action or proceeding.

20. **THIS COURT ORDERS AND DECLARES** that the claims of the Class Members in this action and all related cross-claims and third party claims are hereby dismissed, without costs and with prejudice and that such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

21. **THIS COURT ORDERS** that, for greater certainty, notwithstanding paragraphs 15, 16, 17, 18, 19 and 20 of this judgment, no action capable of being brought by an individual, except for Family Class Claims, will be released, stayed, dismissed or discontinued, where such action would be released, stayed, dismissed or discontinued only by virtue of the individual being a member of the Family Class.

22. **THIS COURT ORDERS** that commencing on or before March 22, 2007, notice shall be given of this judgment and the approval of the Agreement, by the commencement of the Notice Plan designed by Hilsoft Notifications attached as Schedule "B" and at the expense of Canada, as set out in the Notice Plan. Hilsoft Notifications is authorized by this Court to carry out the Notice Plan in accordance with its terms.

23. **THIS COURT DECLARES** that the notice provided in paragraph 22 above, satisfies the requirements of the applicable class proceeding law, this court and is the best notice practicable under the circumstances.

24. **THIS COURT ORDERS** that forthwith after the publication and delivery of the notice required by paragraph 22 of this judgment, Canada shall serve upon the National Certification Committee, the Defendants and the Trustee and file with this Court, affidavits confirming that notice has been given in accordance with the Notice Plan, the Agreement and this judgment.

25. **THIS COURT ORDERS** that no Class Member may opt out of this class proceeding after August 20, 2007, without leave of this Court.

26. **THIS COURT ORDERS** that no person may opt out a minor or a person who is under a disability without leave of the Court after notice to the Public Guardian and trustee of the minor or person under disability and to the Children's Lawyer, or such other public trustee as may be applicable.

27. **THIS COURT ORDERS** that Crawford Class Action Services, shall, within thirty (30) days of the end of the Opt Out Period, report to this Court and advise as to the names of those persons who have opted out of this class proceeding.

28. **THIS COURT ORDERS AND DECLARES** that the Agreement and this judgment are binding upon each Class Member, including those persons who are minors or are mentally incapable and that any requirements or rules of civil procedure which would impose further obligations with respect to this judgment are dispensed with.

29. **THIS COURT ORDERS THAT** the Honourable Ted Hughes Q.C. be approved as Chief Adjudicator until further order of this court, with the duties and responsibilities as set out in the Agreement.

30. **THIS COURT ORDERS AND DECLARES** that no person may bring any action or take any proceedings against the Trustee, the Chief Adjudicator, the IAP Oversight Committee, the National Certification Committee, the National Administration Committee, the Chief Adjudicator's Reference Group, the Regional Administration Committees, as defined in the Agreement, or the members of such bodies, the adjudicators, or any employees, agents, partners, associates, representatives, successors or assigns, of any of the aforementioned, for any matter in any way relating to the Agreement, the administration of the Agreement or the implementation of this judgment, except with leave of this court on notice to all affected parties.

31. **THIS COURTS DECLARES** that the Representative Plaintiffs, Defendants, Released Church Organizations, Class Counsel, the National Administration Committee, or the Trustee, or such other person or entity as this Court may allow, after fully exhausting the dispute resolution mechanisms contemplated in the Agreement, may apply to the Court for directions in respect of the implementation, administration or amendment of the Agreement or the implementation of this judgment on notice to all affected parties, all in conformity with the terms of the Agreement.

32. **THIS COURT DECLARES** that the Consent and Agreements which were entered into by the Defendants and the Released Church Organizations and this judgment that is issued by this court, is without any admission of liability, that the Defendants and the Released Church Organizations deny liability and that the Consent to the Agreement is not an admission of liability by conduct by the Defendants and that this judgment is deemed to be a without prejudice settlement for evidentiary purposes.

33. **THIS COURT ORDERS AND DECLARES** that in the event that the number of persons who would otherwise be Eligible CEP Recipients who opt out of this class proceeding exceeds five thousand (5,000), the Agreement will be void and this judgment will be set aside in its entirety subject only to the right of Canada, at its sole discretion, to waive compliance with section 4.14 of the Agreement. For greater certainty, the words "Eligible CEP Recipients" in

section 4.14 of the Agreement shall be deemed to read "Persons who would otherwise be Eligible CEP Recipients".

34. **THIS COURT ORDERS**, for greater certainty, the word "the Court" in section 4.12(4) of the Agreement shall be deemed to read "the NAC".

35. **THIS COURT DECLARES** that this order will be rendered null and void in accordance with the terms of the Agreement, in the event that the Agreement is not approved in substantially the same terms by way of order or judgment of each court in the Fora.

36. **THIS COURT DECLARES** that the provisions of the applicable class proceedings law shall apply in their entirety to the supervision, operation and implementation of the Agreement and this judgment.

Regional Senior Justice Warren K. Winkler

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 15 2007

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:

LARRY PHILIP FONTAINE et. al. Plaintiffs	**v.**	**THE ATTORNEY GENERAL OF CANADA et. al.** Defendants	Court File No: 00-CV-192059CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

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THIS IS EXHIBIT " E " REFERRED TO IN THE
AFFIDAVIT OF Peter Grant
SWORN BEFORE ME AT Vancouver
THIS 8 DAY OF November, 2019

A Commissioner for taking Affidavits within
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SCHEDULE "D"
INDEPENDENT ASSESSMENT PROCESS (IAP)
FOR CONTINUING INDIAN RESIDENTIAL SCHOOL ABUSE CLAIMS

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CONSOLIDATED IAP FOR CONTINUING IRS ABUSE CLAIMS

I: COMPENSABLE ABUSE

The following categories of claims are compensable within this IAP.

1. Sexual and physical assaults, as particularized in the Compensation Rules and Instructions below, arising from or connected to the operation of an IRS, whether or not occurring on the premises or during the school year, committed by adult employees of the government or a church entity which operated the IRS in question, or other adults lawfully on the premises, where the Claimant was a student or resident, or where the Claimant was under the age of 21 and was permitted by an adult employee to be on the premises to take part in authorized school activities.

2. Sexual or physical assaults, as particularized in the Compensation Rules and Instructions below, committed by one student against another at an IRS where:

    a) the Claimant proves that an adult employee of the government or church entity which operated the IRS in question had or should reasonably have had knowledge that abuse of the kind alleged was occurring at the IRS in question during the time period of the alleged abuse, and did not take reasonable steps to prevent such abuse; or,

    b) in a case in which the proven assault is a predatory or exploitative sexual assault at the SL4 or SL5 level, the defendants do not establish on a balance of probabilities that reasonable supervision was in place at the time.

3. Any other wrongful act or acts committed by adult employees of the government or a church entity which operated the IRS in question, or other adults lawfully on the premises, which are proven to have caused serious psychological consequences for the Claimant, as particularized in and causing the harms set out in the Compensation Rules and Instructions below. These claims are referred to in this document as “other wrongful acts”

For the purposes of this document, the above claims are collectively referred to as the “continuing claims”.

II: COMPENSATION RULES

	Acts Proven	Compensation Points
SL5	• Repeated, persistent incidents of anal or vaginal intercourse. • Repeated, persistent incidents of anal/vaginal penetration with an object.	45-60
SL4	• One or more incidents of anal or vaginal intercourse. • Repeated, persistent incidents of oral intercourse. • One or more incidents of anal/vaginal penetration with an object.	36-44
SL3	• One or more incidents of oral intercourse. • One or more incidents of digital anal/vaginal penetration. • One or more incidents of attempted anal/vaginal penetration (excluding attempted digital penetration). • Repeated, persistent incidents of masturbation.	26-35
PL	• One or more physical assaults causing a physical injury that led to or should have led to hospitalization or serious medical treatment by a physician; permanent or demonstrated long-term physical injury, impairment or disfigurement; loss of consciousness; broken bones; or a serious but temporary incapacitation such that bed rest or infirmary care of several days duration was required. Examples include severe beating, whipping and second-degree burning.	11-25
SL2	• One or more incidents of simulated intercourse. • One or more incidents of masturbation. • Repeated, persistent fondling under clothing.	11-25
SL1	• One or more incidents of fondling or kissing. • Nude photographs taken of the Claimant. • The act of an adult employee or other adult lawfully on the premises exposing themselves. • Any touching of a student, including touching with an object, by an adult employee or other adult lawfully on the premises which exceeds recognized parental contact and violates the sexual integrity of the student.	5-10
OWA	• Being singled out for physical abuse by an adult employee or other adult lawfully on the premises which was grossly excessive in duration and frequency and which caused psychological consequential harms at the H3 level or higher. • Any other wrongful act committed by an adult employee or other adult lawfully on the premises which is proven to have caused psychological consequential harms at the H4 or H5 level.	5-25

Level of Harm	Consequential Harm	Compensation Points
H5	Continued harm resulting in serious dysfunction. Evidenced by: psychotic disorganization, loss of ego boundaries, personality disorders, pregnancy resulting from a defined sexual assault or the forced termination of such pregnancy or being required to place for adoption a child resulting therefrom, self-injury, suicidal tendencies, inability to form or maintain personal relationships, chronic post-traumatic state, sexual dysfunction, or eating disorders.	20-25
H4	Harm resulting in some dysfunction. Evidenced by: frequent difficulties with interpersonal relationships, development of obsessive-compulsive and panic states, severe anxiety, occasional suicidal tendencies, permanent significantly disabling physical injury, overwhelming guilt, self-blame, lack of trust in others, severe post-traumatic stress disorder, some sexual dysfunction, or eating disorders.	16-19
H3	Continued detrimental impact. Evidenced by: difficulties with interpersonal relationships, occasional obsessive-compulsive and panic states, some post-traumatic stress disorder, occasional sexual dysfunction, addiction to drugs, alcohol or substances, a long term significantly disabling physical injury resulting from a defined sexual assault, or lasting and significant anxiety, guilt, self-blame, lack of trust in others, nightmares, bed-wetting, aggression, hyper-vigilance, anger, retaliatory rage and possibly self-inflicted injury.	11-15
H2	Some detrimental impact. Evidenced by: occasional difficulty with personal relationships, some mild post-traumatic stress disorder, self-blame, lack of trust in others, and low self-esteem; and/or several occasions and several symptoms of: anxiety, guilt, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.	6-10
H1	Modest Detrimental Impact. Evidenced by: Occasional short-term, one of: anxiety, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.	1-5

Aggravating Factors Add 5-15% of points for Act and Harm combined (rounded up to nearest whole number)
Verbal abuse
Racist acts
Threats
Intimidation/inability to complain; oppression
Humiliation; degradation
Sexual abuse accompanied by violence
Age of the victim or abuse of a particularly vulnerable child
Failure to provide care or emotional support following abuse requiring such care
Witnessing another student being subjected to an act set out on page 3
Use of religious doctrine, paraphernalia or authority during, or in order to facilitate, the abuse.
Being abused by an adult who had built a particular relationship of trust and caring with the victim (betrayal)

Future Care	Additional Compensation (Dollars)
General – medical treatment, counselling	up to $10,000
If psychiatric treatment required, cumulative total	up to $15,000

	Consequential Loss of Opportunity	Additional Compensation (Points)
OL5	Chronic inability to obtain employment	21-25
OL4	Chronic inability to retain employment	16-20
OL3	Periodic inability to obtain or retain employment	11-15
OL2	Inability to undertake/complete education or training resulting in underemployment, and/or unemployment	6-10
OL1	Diminished work capacity – physical strength, attention span	1-5

Compensation Points	Compensation ($)
1-10	$5,000-$10,000
11-20	$11,000-$20,000
21-30	$21,000-$35,000
31-40	$36,000-50,000
41-50	$51,000-$65,000
51-60	$66,000-$85,000
61-70	$86,000-$105,000
71-80	$106,000-$125,000
81-90	$126,000-$150,000
91-100	$151,000-$180,000
101-110	$181,000-$210,000
111-120	$211,000 to $245,000
121 or more	Up to $275,000

Proven Actual Income Loss

Where actual income losses are proven pursuant to the standards set within the complex issues track of this IAP, an adjudicator may make an award for the amount of such proven loss up to a maximum of $250,000 in addition to the amount determined pursuant to the above grid, provided that compensation within the grid is established without the allocation of points for consequential loss of opportunity. The amount awarded for actual income loss shall be determined using the legal analyses and amounts awarded in court decisions for like matters.

III. ASSESSMENT PROCESS OUTLINE

a. Core Assumptions as to Legal and Compensation Standards

i. All Eligible CEP Recipients will, by the terms of the Approval Orders, be deemed to have released the defendants for all claims arising from their IRS attendance or experience, subject to retaining the right to resolve within this IAP their continuing claims for IRS abuse.
ii. This outline assumes that the parties have legal representation. See below for procedural modifications where Claimants represent themselves. The defendants may be represented by their employees on the same basis as by counsel.
iii. Standards for compensable wrongs and for the assessment of compensation have been defined for this IAP. The adjudicator is bound by those standards.
iv. The compensation rules set the ranges of compensation to be paid having regard to the objective seriousness of the proven act(s) and the subjective impact of proven aggravating factors and harms, as defined. An award can also be made to assist with future care.
v. Adjudicators are, subject to rights of review, empowered to make binding findings on credibility, liability and compensation within the standards set for the IAP.
vi. Where compensation is awarded to a Claimant who has been represented by counsel, a further 15% of the amount paid will be added as a contribution towards legal fees. Reasonable and necessary disbursements will also be paid. Adjudicators may resolve disputes about the disbursements to be paid.
vii. Where a review is sought by counsel for a Claimant who was unrepresented at the initial hearing, and the review is successful, an amount equal to 15% of the compensation obtained on the review beyond the initial award will be paid as a contribution towards the Claimant's legal fees for the review. Reasonable and necessary disbursements for the review will also be paid, with the review adjudicator having jurisdiction to resolve any dispute as to disbursements.

b. Resolution Processes within this IAP

i. This IAP consists of a standard track, a complex issues track, and a provision for access to the courts for the resolution of certain of the continuing claims as set out below.

ii. The complex issues track is for those continuing claims where the Claimant seeks an assessment of compensation for proven actual income losses resulting from continuing claims, and for other wrongful act claims (category OWA on page 3).

iii. At the request of a Claimant, access to the courts to resolve a continuing claim may be granted by the Chief Adjudicator where he or she is satisfied that:

- there is sufficient evidence that the claim is one where the actual income loss or consequential loss of opportunity may exceed the maximum permitted by this IAP;
- there is sufficient evidence that the Claimant suffered catastrophic physical harms such that compensation available through the courts may exceed the maximum permitted by this IAP; or,
- in an other wrongful act claim, the evidence required to address the alleged harms is so complex and extensive that recourse to the courts is the more appropriate procedural approach.

In such cases, the Approval Orders will exempt the continuing claims from the deemed release, and thereafter the matter shall be addressed by the courts according to their own standards, rules and processes.

iv. Both tracks within the IAP utilize the inquisitorial model, as defined below.

v. In the standard track, consequential harms and consequential loss of opportunity must be proven on a balance of probabilities and then proven to be plausibly linked to one or more acts proven. A finding of a plausible link does not require the negation of other potential causes of harms, but it must be based on or reasonably inferred from the evidence led in the case rather than assumptions or speculation as to possible links. Adjudicators shall have regard to their powers under Appendix X, below

vi. In the complex issues track, consequential harms, consequential opportunity losses and actual income losses must be proven to have been caused by one or more continuing claims, and compensation must be assessed within the Compensation Rules, in both matters according to the same standards a court would apply in like matters.

vii. In the standard track, when a case is ready to proceed to a hearing, the government and the Claimant may attempt to resolve the claim without a hearing, using a procedure acceptable to them for the case in question. At the request of the parties, the IAP Secretariat may assign an adjudicator to assist with efforts to resolve the claim.

viii. In the complex issues track:

- After the IAP Secretariat has determined that a case is ready to proceed to a hearing, the Claimant shall attend a preliminary case assessment hearing and answer an adjudicator's questions. The purpose of such a hearing is to provide for a preliminary assessment of credibility, and to ensure that there is a *prima facie* basis to support a claim of the nature for which the

complex track is designed. Any answers given in these proceedings are on a without prejudice basis, shall not be recorded or transcribed, and are not admissible in other phases of the hearing.

- Provided the *prima facie* basis has been made out, the adjudicator shall arrange for expert assessments as required by the standards set in this IAP.
- On the receipt of the expert and/or medical evidence or at any point if such have been waived, the government and the Claimant may attempt to settle the claim having regard to the available evidence, the preliminary assessment of credibility, and all other evidence, or the claim may proceed to a hearing.

c. Safety and Support

i. Reasonable costs for support persons for Claimants to travel to hearings will be paid.
ii. Counsellors, or at least ready access to counselling services, will be available for the hearing process.
iii. Cultural ceremonies such as an opening prayer or smudge will be incorporated at the request of the Claimant to the extent possible.

d. Materials for Adjudicator for Individual Cases

i. The IAP Secretariat will provide the adjudicator with relevant documents and witness statements (as submitted by the parties), two weeks before hearings to facilitate structured questioning.
ii. Before a hearing counsel may identify particular areas of concern or issues that they believe require extra scrutiny and may provide suggested questions. The adjudicator retains discretion on the wording of the questions put to a witness, but must explore the area proposed by counsel unless the adjudicator rules it to be irrelevant to credibility, liability or compensation in the IAP.

e. Procedure---General

i. This IAP uses a uniform inquisitorial process for all claims to assess credibility, to determine which allegations are proven and result in compensation, to set compensation according to the Compensation Rules, and to determine actual income loss claims.
ii. In this inquisitorial model, the adjudicator is responsible for managing the hearing, questioning all witnesses (other than experts retained by the adjudicator) and preparing a decision with his or her conclusions and reasons.
iii. The adjudicator's questioning must both draw out the full story from witnesses (leading questions are permitted where required to do this), and test the evidence that is given (questioning in the form of cross examination is permitted where required to do this).

iv. The role is inquisitorial, not investigative. This means that while the adjudicator must bring out and test the evidence of witnesses, only the parties may call witnesses or produce evidence, other than expert evidence.
v. The Claimant and the alleged perpetrator may give their evidence in their own words in narrative form and are subject to questioning by the adjudicator. Refusal to answer questions may result in finding that answers would have been detrimental to the witness's position.
vi. The Claimant may read a prepared statement, but this may impact credibility.
vii. The Claimant may refer to their own notes as long as the notes are produced to counsel for the defendants two weeks in advance. Notes are not evidence.
viii. The Claimant may refer to documents that are before the adjudicator.
ix. Where counsel attend hearings, they may meet with the adjudicator at intervals to suggest questions or lines of inquiry. The adjudicator must explore the proposed lines of inquiry unless he or she rules them to be irrelevant to credibility, liability or compensation in the IAP, but the adjudicator retains discretion on the wording of the questions put to a witness.
x. The parties may require the adjudicator to hear any witness who is willing to appear and who has evidence relevant to credibility, liability or compensation within the IAP, other than a medical professional or an expert witness on the issue of consequential harms, consequential loss of opportunity, or actual income loss, provided notice and a witness statement are given two weeks before the hearing. Criteria for the use of expert witnesses are set out in section (f) and Appendix VI, below.
xi. Since witnesses cannot be compelled to appear, no adverse inference is to be drawn from the failure to produce a witness who may have relevant evidence, but the report of a treatment professional may be given less weight if they are available but refuse to testify.
xii. Alleged perpetrators may be heard as of right, provided the parties are advised in advance of what their evidence will be.
xiii. Except as required to obtain medical or expert evidence, or otherwise as provided for in this IAP, hearings should be adjourned only in very exceptional circumstances, for example where the evidence of the Claimant differs so substantially from the application that it amounts to a new application.
xiv. At the conclusion of the evidence, counsel for the parties, if participating, may make brief oral submissions.
xv. Where compensable abuse is proven, compensation is awarded for acts and, if the applicable evidentiary threshold is crossed, compensation is also awarded for impacts as set out in the Compensation Rules. Unless the parties consent, expert evidence is required to establish consequential harms or consequential loss of opportunity at levels 4 or 5, or actual income loss. Such evidence may only be obtained where the adjudicator is satisfied that it is justified and necessary, or where the parties have made a joint recommendation that it be obtained.

f. Procedure---Treatment Reports and Expert Evidence (see consolidation in Appendix VI)

i. Treatment notes and clinical records are admissible to prove that the treatment was given and observations were made, but not as proof of diagnoses of psychological conditions or the opinion leading to them. Such notes and records may also be used to provide evidence of the fact of a physical injury. They may also be used by the adjudicator as the basis for lines of questions, the answers to which could provide the basis for findings of consequential harms or consequential loss of opportunity at levels 1-3. They may also support a finding of consequential harms or consequential loss of opportunity at levels 4 or 5 where the parties consent to proceeding without expert reports.

ii. If treatment notes and clinical records from treating doctors or counsellors are not available, Claimants may submit reports from treating doctors or counsellors for the same purposes, without the requirement of defence medicals, but the defendants may require the treatment professional to testify. If the treatment professional is not available, or is available but will not testify, a report remains admissible, but the adjudicator may give it less weight.

iii. Unless the parties consent, an adjudicator shall not make a finding of a physical injury for the purposes of this IAP without obtaining and considering medical evidence as to the timing, causation, and continuing impact of such injury. Where such evidence is not contained in treatment notes or clinical records, or treatment reports admitted into evidence, the adjudicator shall ask the Claimant to submit to an examination by an appropriate medical professional. Provided the Claimant has submitted to the medical assessment, as required, the adjudicator shall decide the issue having regard to the available evidence and the standard of proof, including where the results of the medical assessment are inconclusive.

iv. Except on consent, points within the compensation rules for consequential harms or consequential loss of opportunity above level 3, or compensation for actual income loss, may only be awarded where the adjudicator has obtained and considered expert assessments of the extent and causation of the harms or losses, or medical evidence as to the timing, causation and continuing effect of the alleged physical harms.

v. Where the Claimant is seeking compensation based on psychological harms at level 4 or 5 of the consequential harms or consequential loss of opportunity at levels 4 or 5 or actual income loss caused by psychological harms:

- The Claimant so indicates in the application
- The adjudicator has discretion to order an assessment by an expert. Only the adjudicator may order such assessments, and unless the parties have made a joint recommendation for such an assessment before the hearing, only after hearing the claim and making findings as to credibility, and determining that the assessment is justified by the evidence accepted and is necessary to assess compensation fairly.
- Where an assessment is ordered, the adjudicator retains and instructs an expert from a roster approved by the IAP Oversight Committee. The expert prepares a report which is tabled before the adjudicator.

- Counsel for the parties may require that the expert give oral evidence and that they be allowed to question the expert at the hearing and make submissions.
- When the parties consent to the adjudicator considering the assignment of points within those ranges, or actual income loss, without the benefit of an expert assessment, such consent does not eliminate the need for the adjudicator to be satisfied, on the civil standard of proof, that the Claimant suffers from those harms, and that they are linked to proven abuses at the IRS according to the standards in this IAP.

vi. In the complex issues track where a claim for actual income loss is being advanced, the adjudicator shall order psychiatric and medical reports as outlined above or any other expert reports required to assess and evaluate the claim.

g. Procedure--Involvement of Alleged Perpetrator At Hearing

i. An alleged perpetrator is to be heard as of right, provided the parties are advised in advance of what their evidence will be. The alleged perpetrator must submit a statement of their proposed evidence two weeks before the hearing; if they do not, counsel must share their notes, again two weeks before the hearing, of what the alleged perpetrator said when interviewed.
ii. Normally the alleged perpetrator will be heard after the Claimant. Either can be recalled to resolve a credibility issue, but this should happen rarely.
iii. The alleged perpetrator does not have a role as a party.
iv. There is no right of confrontation.
v. See Appendix III for additional provisions concerning alleged perpetrators.

h. Burden of Proof and Evidentiary Standards

i. Except as otherwise provided in this IAP, the standard of proof is the standard used by the civil courts for matters of like seriousness. Although this means that as the alleged acts become more serious, adjudicators may require more cogent evidence before being satisfied that the Claimant has met their burden of proof, the standard of proof remains the balance of probabilities in all matters.
ii. The adjudicator may receive, and base a decision on, evidence adduced in the proceedings and considered credible or trustworthy in the circumstances.
iii. The application and witness statements may be used as a basis for questioning at the hearing, and material variations from them may be used in deciding the claim, unless those variations are explained to the adjudicator's satisfaction by progressive disclosure or otherwise.
iv. At a hearing, the application form may also be used by the Claimant to assist their own recall. While the Claimant may refer to their application at the hearing, it is not evidence (other than of a prior inconsistent statement). This reflects the rules of evidence used by the courts which provide that in general, prior statements of a party can be used as admissions against interest, but not otherwise as evidence of their truth. They can also be used to demonstrate a prior inconsistent statement,

although in this IAP it is specifically recognized that progressive disclosure is a possible explanation for inconsistencies.

v. Counsel may agree on foundation and other facts and so advise the adjudicator. Such agreement binds the adjudicator. This is not to prevent the whole narrative being told if the Claimant so wishes.
vi. Relevant findings in previous criminal or civil trials, where not subject to appeal, may be accepted without further proof.
vii. An adjudicator may permit a witness to give their evidence by video-conference where such facilities are available to them, and may also permit a Claimant to do so where a medical professional provides advice that the Claimant's health prohibits them from travelling to a hearing.
viii. A Claimant may adopt their prior recorded statements, provided they remain subject to questioning by adjudicator, and provided that, without the consent of the defendants, a recorded statement is not admissible if it was made for the purpose of seeking redress for the Claimant's IRS experience.
ix. Where an alleged perpetrator has given an interview or submitted a witness statement, but thereafter does not appear at a hearing to give evidence, neither the interview notes nor the statement (including any documents submitted with it which are not otherwise admitted in evidence, and whether or not it is in the form of an affidavit) is admissible in evidence at the hearing except to the extent it contains an admission.

i. Solemnity

i. Participants and other witnesses shall give evidence under oath, by affirmation or another way that binds their conscience.

j. Setting

i. Hearings will take place in a relaxed and comfortable setting. Claimant will have a choice of location, subject to hearings being scheduled to promote economy.

k. Decision

i. The adjudicator will produce a decision in a standard format outlining key factual findings and providing a rationale for finding or not finding compensibility within the IAP and for the compensation assessed, if any.
ii. At the conclusion of the hearing, the adjudicator will advise the Claimant that the decision will be provided in writing within 30 days for standard track hearings and within 45 days for complex track hearings.
iii. The decision will normally be delivered to the Claimant via their counsel, who will be able to access health supports for the Claimant at the time the decision is shared with them.
iv. Where the Claimant is not represented by counsel, the adjudicator will also inquire at the end of the hearing into how the Claimant would like to receive the

decision, having regard to the desirability of health or family support being available at the time of receipt.

l. Review

i. For cases within the standard or complex track, any party may ask the Chief Adjudicator or designate to determine whether an adjudicator's, or reviewing adjudicator's, decision properly applied the IAP Model to the facts as found by the adjudicator, and if not, to correct the decision, and the Chief Adjudicator or designate may do so.
ii. In both the standard and the complex issues tracks, Claimants may require that a second adjudicator review a decision to determine whether it contains a palpable and overriding error.
iii. In the complex issues track, the defendants may require that a second adjudicator review a decision to determine whether it contains a palpable and overriding error.
iv. If a palpable and overriding error is found, the reviewing adjudicator may substitute their own decision or order a new hearing.
v. All reviews are on the record (no new evidence permitted) and without oral submissions.
vi. The party seeking the review may provide a short written statement of their objections to the decision (not to exceed 1500 words) and the other parties may provide a brief reply (not to exceed 1000 words). In exceptional circumstances the Chief Adjudicator may permit the parties to exceed these limits.
vii. The reply shall be provided to the party seeking the review, who may seek leave from the Chief Adjudicator to make further submissions, not to exceed 500 words. The application shall be accompanied by the proposed submissions. Leave may be granted only in exceptional cases where the Chief Adjudicator determines that the submissions respond to a significant issue raised for the first time in the reply, or seek to correct a fundamental error of fact or interpretation in the reply.

m. Consistency

i. Adjudicators may consult each other about the hearing and decision-making processes. They will attempt to conduct consistent sessions and produce decisions in a consistent fashion, and may discuss issues arising in individual cases provided they remain solely responsible for deciding the claims they have heard.
ii. The Chief Adjudicator shall implement training programs and administrative measures designed to ensure consistency among the decisions of adjudicators in the interpretation and application of the IAP.

n. Specialization of Adjudicators

i. The Chief Adjudicator shall endeavour to assign adjudicators to cases in a way which facilitates their specialization in one or more schools.

ii. In assigning adjudicators to cases within the complex issues track, the Chief Adjudicator shall have regard to their experience and/or expertise in like matters. For greater certainty, where an other wrongful act claim involves allegations of physical abuse which was grossly excessive in duration and frequency, the Chief Adjudicator shall have regard to expertise in the assessment of child abuse in the assignment of an adjudicator.

o. Privacy

i. Hearings are closed to the public. Parties, an alleged perpetrator and other witnesses are required to sign agreements to keep information disclosed at a hearing confidential, except their own evidence, or as required within this process or otherwise by law. Claimants will receive a copy of the decision, redacted to remove identifying information about any alleged perpetrators, and are free to discuss the outcome of their hearing, including the amount of any compensation they are awarded.
ii. Adjudicators may require a transcript to facilitate report writing, especially since they are conducting questioning. A transcript will also be needed for a review, if requested. Proceedings will be recorded and will be transcribed for these purposes, as well as if a Claimant requests a copy of their own evidence for memorialization. Claimants will also be given the option of having the transcript deposited in an archive developed for the purpose.

p. Self-represented Claimants

i. Self-represented Claimants (SRCs) will receive document production and witness statements on the same basis as if represented.
ii. SRCs will receive notes of what was said at any interview provided by an alleged perpetrator, and a witness statement, if provided.
iii. SRCs may submit proposed areas for scrutiny and proposed lines of questioning to the adjudicator in advance of a hearing (this will particularly apply where the alleged perpetrator or a defence witness is to give evidence).
iv. SRCs will receive the defendants' advance submissions to the adjudicator on areas/lines of questioning to be explored.
v. During a hearing, both SRCs and the defendants may suggest lines of questioning, but this will be done in the hearing room, on the record and in the presence of each other, and SRCs will be allowed to make brief closing submissions.

q. Representation of Claimants by Agents

i. Agents, whether paid by the Claimant or not, may not discharge the roles specifically established for counsel in this IAP.

r. IAP Oversight Committee

i. The Chief Adjudicator Reference Group shall be reconstituted as the IAP Oversight Committee, which shall be composed of an independent chair and 8 other members, two reflecting the interests of each of the following constituencies: former students; plaintiffs' counsel; church entities; government.

ii. The Committee shall operate by consensus to the greatest extent possible. In the event a vote is required, the Chair may vote, and a majority of seven shall be required to decide an issue, provided that if the issue would increase the cost of the IAP, whether for compensation or procedural matters, one government representative must be among the seven.

iii. The duties of the Oversight Committee are to:

- Recruit and appoint, and if necessary terminate the appointment of, the Chief Adjudicator.
- Provide advice to the Chief Adjudicator on any issues he or she brings to it.
- Recruit and appoint adjudicators, and approve training programs for them.
- Approve designates to exercise the Chief Adjudicator's review authority as set out in item l(i) above.
- On the advice of the Chief Adjudicator, renew or terminate the contract of an adjudicator.
- Recruit and appoint experts for psychological assessments.
- Consider any proposed instructions from the Chief Adjudicator on the interpretation and application of the IAP Model, and as appropriate prepare its own instructions or forward proposed instructions from the Chief Adjudicator for approval by the National Administration Committee, provided that:
    - no instruction may alter pages 2-6 of this IAP, nor the interpretation of those pages set out elsewhere in this IAP, nor the provisions of the IAP allocating claims to the standard or complex issues tracks or requiring expert evidence or medical assessments; and,
    - instructions only come into force when approved by the National Administration Committee and published by the Oversight Committee, and only bind participants who have had at least two weeks notice of the instructions before their hearing.
- Monitor the implementation of the IAP and make recommendations to the National Administration Committee on changes to the IAP as are necessary to ensure its effectiveness over time.

s. The Chief Adjudicator

i) The duties of the Chief Adjudicator are to:

- Assist in the selection of adjudicators.
- Implement training programs and administrative measures designed to ensure consistency among the decisions of adjudicators in the interpretation and application of the IAP.
- Assess on an ongoing basis the other training and mentoring needs of adjudicators and develop appropriate programs.
- Assign adjudicators to hearings and reviews or to assist with settlement discussions.
- Provide advice to adjudicators on compliance with this IAP.
- Prepare for consideration by the Oversight Committee any proposed instructions to better give effect to the provisions of the IAP.
- Receive complaints about the performance of adjudicators and as appropriate meet with adjudicators to discuss concerns and develop remedial actions to resolve same.
- Determine, in his or her exclusive authority, whether to terminate or renew the contract of an adjudicator.
- Conduct reviews as provided for in item l(i) above, or assign such to designates approved by the Oversight Committee.
- Set the policies and standards for the Secretariat and direct its operations.
- Make the final decision on a request by a Claimant for a reconsideration of a decision by the Secretariat that their application to this IAP process fails to allege matters which can be resolved within it.
- Conduct hearings as he or she determines appropriate, provided that designates have been approved for the purpose of item l(i) above.
- Carry out all other functions assigned by this IAP.
- Prepare annual reports to the Oversight Committee on the functioning of the adjudicative process under this IAP.

t. Secretariat

i. A Secretariat shall be established to support the Chief Adjudicator and to be responsible for determining whether applications fall within the terms of the IAP.
ii. Where an application fails to raise a claim which falls within the IAP, the Secretariat shall so advise the Claimant, with reasons, and provide them with the opportunity to make a further application. On the request of the Claimant, a decision to refuse to admit a claim into the IAP will be reviewed by the Chief Adjudicator, whose decision will be final.
iii. The Secretariat shall also recruit and approve a panel of interpreters.
iv. The Secretariat reports to the Chief Adjudicator.

APPENDIX I: THE APPLICATION

a) In applying to the IAP, the Claimant is asked to:
   i. List points of claim: indicate by reference to the standards for this IAP each alleged wrong with dates, places, times and information about the alleged perpetrator for each incident sufficient to identify the alleged perpetrator or in the case of adult employees permit the identification of the individual or their role at the school.
   ii. Provide a narrative as part of the application. The narrative must be in the first person and be signed by the Claimant and can be both a basis for and a subject of questioning at a hearing.
   iii. Indicate by reference to the Compensation Rules established for this IAP the categories under which compensation will be sought and, where appropriate, indicate that compensation will be sought for consequential harm and/or opportunity loss above level 3, or for actual income loss.
   iv. Include authorizations so that the defendants may produce their records as set out in Appendix VIII.
   v. Safety mechanisms will be provided in consultation with Health Canada. Where Claimants are proceeding as a group, they may negotiate to have the group administer the available safety resources.

APPENDIX II: ACCEPTANCE OF APPLICATION

i. The Secretariat will admit claims to the IAP as of right where the application is complete and sets out allegations which if proven would constitute one or more continuing claims, and where the Claimant has signed the Declaration set out in the application form, including the confidentiality provisions in the Declaration.
ii. If the case is not admitted into the IAP the Claimant will be advised why and given a chance to provide additional information. At the request of the Claimant, the Chief Adjudicator may review any final decision to refuse to admit an application into the IAP, and may confirm or reverse that decision. If the decision is reversed. the initial and any subsequent applications, or supplementary information, will be given to the adjudicator.
iii. On admitting the claim to the IAP, the Secretariat shall forward a copy of the application to the Government and to a church entity which is a party to the Class Action Judgments and was involved in the IRS from which the claim arises.
    - A church entity may waive its right to receive applications for all claims, or for defined classes of claims, by notice in writing to the Secretariat, and may amend or withdraw such waiver at any time by notice in writing.
iv. The following conditions apply to the provision of the application to the Government or a church entity:
    - The application will only be shared with those who need to see it to assist the Government with its defence, or to assist the church entities with their ability to defend the claim or in connection with their insurance coverage;
    - If information from the application is to be shared with an alleged perpetrator, only relevant information about allegations of abuse by that person will be shared, and the individual will not be provided with the Claimant's address or the address of any witness named in the application form, nor with any information from the form concerning the effects of the alleged abuse on the Claimant, unless the Claimant asks that this be provided to the alleged perpetrator;
    - Each person with whom the application is shared, including counsel for any party, must agree to respect its confidentiality. Church entities will use their best efforts to secure the same commitment from any insurer with whom it is obliged to share the application;
    - Copies will be made only where absolutely necessary, and all copies other than those held by the Government will be destroyed on the conclusion of the matter, unless the Claimant asks that others retain a copy, or unless counsel for a party is required to retain such copy to comply with his or her professional obligations.
v. Once the claim is admitted, counsel may attempt to agree on certain facts to reduce research needs.
vi. Group claims will be accepted where the individual applications of the group members have been submitted together or within a short interval; each of the Claimants has indicated their desire to proceed as a group member; the applications show commonality among group members (school, community, issues); and a

representative of the group has submitted an application to proceed as a group, demonstrating that:

- the group is an established one with evident viability and decision-making capacity;
- its members are already providing each other with support in connection with their IRS experiences or have a clear plan and realistic capacity to do so;
- the issues raised by the individuals within the group are broadly similar; and
- the group has a clear plan and intention to manage safety resources, where they desire to do so, and to achieve healthy and lasting resolution of their claims.

vii. Where a proposal to proceed as a group is not accepted, the individuals will be advised of their right to continue as individuals if their applications otherwise meet the criteria for this IAP.

APPENDIX III: INVOLVEMENT OF ALLEGED PERPETRATORS

i. The defendants will attempt to locate the alleged perpetrator to invite them to the hearing. If the alleged perpetrator is dead, cannot be located, or declines to attend, the hearing may still occur.
ii. Subject to items (iii) and (iv) below, no hearing may be set to commence until:
    - the Government has had 60 days from its receipt of the screened-in application to attempt to locate the alleged perpetrator, or in the event that contact is first attempted by a church entity with an agreement with the Government providing for a right of first contact, an additional 30 days; and
    - thereafter the alleged perpetrator has had a total of 75 additional days to seek advice on whether to participate, and if so, to provide a witness statement or be interviewed as set out below.
iii. Where the above-noted events occur prior to the expiry of the time allotted, the Government may so notify the Secretariat, and the Secretariat may schedule a hearing when the matter is otherwise ready to proceed.
iv. If a Claimant provides medical evidence that any delay in hearing their testimony involves a significant risk that they may die or lose the capacity to provide testimony, the Secretariat may schedule a hearing for the limited purpose of taking such testimony, after which the hearing shall be adjourned to allow for the location of the alleged perpetrator and the obtaining of their testimony if they decide to participate.
v. The alleged perpetrator will be provided with extracts from the application outlining the allegations made against them, to be returned at the conclusion of the process, in order to help them recall the student/incident and to determine their response. Information on the Claimant's current address or the addresses of other potential witnesses will be deleted from this material, as will information on the impacts of the alleged abuse, unless the Claimant asks that it be provided to the alleged perpetrator.
vi. Notice of the alleged perpetrator's desire to respond to allegations will be given to counsel for the Claimant at the earliest opportunity.
vii. A witness statement will be requested from the alleged perpetrator. If he or she declines to provide one, counsel for any party may request an interview with the alleged perpetrator. This would not be the equivalent of an examination for discovery, and the interview notes of what he or she said must be shared among the parties two weeks before the hearing, as must a witness statement, if provided.
viii. The witness statement, or failing that the interview notes, are a condition of the alleged perpetrator being heard by the adjudicator.
ix. Counsel and a support person for the alleged perpetrator are permitted at a hearing while the alleged perpetrator gives evidence, but the alleged perpetrator or their counsel may not attend at same time and place as the Claimant without the advance consent of the parties. Canada will pay up to $2500 for the alleged perpetrator to receive legal advice about the implications of giving evidence, plus the reasonable costs of the alleged perpetrator's attendance, and of the attendance of a support person. For greater certainty, support person in this context does not include counsel for an alleged perpetrator.
x. Where the testimony of the Claimant at a hearing differs materially from the account provided in the application which was shared with the alleged perpetrator, the

adjudicator shall prepare a summary of the new allegations and provide it to the alleged perpetrator and the parties before the alleged perpetrator gives evidence.

xi. The alleged perpetrator is a witness, not a party.

xii. The alleged perpetrator is entitled to know the results of the hearing with respect to the allegations against them, but not the amount of any compensation awarded.

APPENDIX IV: INFORMATION COLLECTION; SETTING HEARING DATE; ATTENDANCE AND PARTICIPATION AT HEARINGS

i. The defendants will collect and submit their documents to the Secretariat.
ii. Claimants will collect and submit their documents and the treatment notes and clinical records they want to rely on, or, where they cannot obtain such notes or records, will indicate the steps taken to attempt to do so.
iii. Witness statements shall be prepared and submitted by the party calling the witness.
iv. No date shall be set until the IAP Secretariat is satisfied that exchange of documents, including treatment notes and clinical records is as complete as reasonably necessary, unless a Claimant provides medical evidence that any delay in hearing their testimony involves a significant risk that they may die or lose the capacity to provide testimony. In such circumstances, the Secretariat may schedule a hearing for the limited purpose of taking such testimony, after which the hearing shall be adjourned to allow for the preparation of the case as otherwise provided for in this IAP.
v. The hearing date will be set based on the availability of the parties, counsel and the adjudicator, and on cost effectiveness having regard to the location and the number of hearings to be held in any one place in a given time frame.
vi. The Claimant may attend a hearing where the alleged perpetrator gives evidence without that individual's consent. This is based on the Claimant being a party, and needing to be aware of all evidence to raise possible lines of questioning and make submissions if unrepresented, or to instruct counsel if represented.
vii. Given the non-adversarial nature of this IAP and the neutral, inquisitorial role played by the adjudicators under it, as well as the need to respect the safety of the Claimant, neither an alleged perpetrator nor counsel for an alleged perpetrator may attend while the Claimant gives evidence, without the Claimant's advance consent. Where counsel for a church entity also acts for an alleged perpetrator, this means that they may not attend the hearing while the Claimant gives evidence without the Claimant's advance consent. Government representatives may always attend this part of the hearing, as may representatives of church entities who are parties to the Class Action Judgments except their counsel if he or she is also acting for an alleged perpetrator in the case.
viii. Support persons attend hearings to help ensure the health and safety of the Claimant during a stressful event. Their focus needs to be on how the Claimant is handling the stress they face. Accordingly support persons should not become distracted from that goal by seeking to become a participant in the proceedings, for example, by attempting to give evidence. If it becomes necessary for a support person to give evidence, they should be sworn (or affirmed) as a witness, but only after the adjudicator is satisfied that appropriate arrangements for the safety of the Claimant are in place.
ix. Finally, since the central purpose of the hearing is an assessment of credibility, counsel or representatives of any party must refrain from speaking to a witness about the evidence in the case once that witness begins giving evidence and until their evidence is complete. An adjudicator may authorize an exception to this where he or she is of the view that the discussion is necessary to elicit evidence from the witness in a timely manner.

APPENDIX V: CRITERIA FOR THE SELECTION OF ADJUDICATORS

i. Law degree from a recognized university. Consideration will also be given to candidates with a combination of related training and/or significant experience
ii. Knowledge of and sensitivity to Aboriginal culture and history
iii. Knowledge of and sensitivity to sexual and physical abuse issues
iv. Knowledge of personal injury law
v. Knowledge of damages assessment
vi. Ability to interview or examine witnesses
vii. Ability to elicit useful evidence in a concise manner
viii. Ability to act in an impartial manner
ix. Respect for all parties involved
x. Demonstrated ability to assess credibility and reliability
xi. The ability to work under pressure and to write clear, concise and well-reasoned decisions that take into account evidence, submissions, the rules and policies of this IAP, within required deadlines
xii. The ability to work effectively with staff and participants from diverse backgrounds
xiii. Computer literacy and superior communication and writing skills
xiv. Personal suitability including an aptitude for adjudication, fairness, good listening skills, open-mindedness, sound judgment, tact, and comfort with complex and/or sensitive issues
xv. Willingness and ability to travel across Canada or within a designated region, including to First Nations communities, using various modes of transportation
xvi. Flexibility and availability to be called for hearings on an as required basis

APPENDIX VI: CONSOLIDATION OF PROVISIONS CONCERNING EXPERT AND MEDICAL EVIDENCE

This IAP seeks to confine the use of expert witnesses to matters where their evidence is essential, and to eliminate the prospect of competing reports from experts on the same issue. This will produce significant savings in cost and time.

This Appendix consolidates and provides additional instructions on the IAP's provisions concerning medical and expert evidence in four categories:

1. Treatment reports
2. Psychiatric assessments
3. Medical assessments
4. Vocational and actuarial assessments.

1. Treatment Records

Treatment notes and clinical records prepared in the normal course of the Claimant dealing with their injuries, whether physical or psychological, are admissible as of right to help the adjudicator decide the particular case. In this connection, this IAP provides as follows:

- The Claimant may submit treatment notes and clinical records from treating doctors or counsellors, or if such are not available, a report from treating doctors or counsellors, as of right, subject to notice and disclosure as provided for in this IAP.
- This includes records of and reports from customary or traditional counsellors or healers.
- The defence may not require a defence medical, but may ask that the person who provided the treatment give evidence at the hearing.
- If the person who prepared a treatment report is dead or not available, then the report may be admitted subject to the adjudicator being able to give it less weight
- Where the person who provided the treatment gives evidence, only the adjudicator may question them, and the questioning may explore the treatment professional's qualifications as well as the records and report.
- Treatment notes and clinical records are admissible to prove that the treatment was given and observations were made, but not as proof of diagnoses of psychological conditions or the opinion leading to them. Such notes and records may be used to provide evidence of the fact of a physical injury. They may also be used by the adjudicator as the basis for lines of questions, the answers to which could provide the basis for findings of consequential harms or consequential loss of opportunity at levels 1-3. They may also support a finding of consequential harms or consequential loss of opportunity at levels 4 or 5 where the parties consent to proceeding without expert reports.

2. Psychiatric and Psychological Assessments

Assessments prepared for litigation purposes raise different issues. They are very dependent on the information given to the expert as the basis for the report. That information is generally limited to the Claimant's version of events, and can differ from the evidence presented at a hearing, or found credible by the adjudicator. Where the Claimant obtains such an assessment, normally the defendants would as well, quite often leading to a series of complex contradictions between the assessments.

As a result, this IAP adopts a more restrictive approach to assessments. Only the adjudicator may order such assessments, and, unless the parties have made a joint recommendation to the contrary, only after hearing the claim and making preliminary findings as to credibility, and determining that ordering an assessment is justified by the evidence accepted and is necessary to assess compensation fairly. In such circumstances the adjudicator will retain an expert from a roster agreed to by the IAP Oversight Committee, and that expert's assessment will be considered as set out below in assessing compensation. This can only be done where consequential harms or opportunity losses at levels 4 or 5, or actual income losses are in issue.

Except on consent, points within the compensation rules for consequential harms or consequential loss of opportunity above level 3, or compensation for actual income loss, may only be awarded where the adjudicator has obtained and considered an expert's assessment of the extent and causation of the alleged psychological harms (or medical evidence as to the timing, causation and continuing effect of the alleged physical harms: see below).

The following summarizes the approach to psychiatric and psychological evidence:

- An adjudicator has the discretion to order an assessment by an expert. Only the adjudicator may order such assessments, and unless the parties have made a joint recommendation for such an assessment before the hearing, only after hearing the claim and making findings as to credibility, and determining that the assessment is justified by the evidence accepted and is necessary to assess compensation fairly.
- Where an assessment is ordered, the adjudicator retains an expert from a roster approved by the IAP Oversight Committee, and thereafter, the following principles apply:
    - The expert is to be provided with the transcript of the hearing, and any records filed at the hearing that are relevant to the proposed assessment, all on a confidential basis. The parties shall be advised of which records are provided to the expert.
    - The adjudicator is to brief the expert on his or her preliminary findings, so that the assessment may be conducted on the basis of the facts likely to be found, and shall instruct the expert to refrain from making any findings as to credibility.

- The adjudicator shall give significant regard to the expert's opinion on the level of harm and on its causation pursuant to the standards in this IAP.

- After reviewing the expert's report, any party may require that the expert give evidence, and any party may question them.
- When the parties consent to the adjudicator considering the assignment of points within those ranges without the benefit of an expert assessment, such consent does not eliminate the need for the adjudicator to be satisfied, on the civil standard of proof, that the Claimant suffers from those harms, and that they are linked to proven continuing claims according to the standard provided for in this IAP.

3. Adjudicator-ordered Medicals to Assess Physical Injuries

- Unless the parties consent, an adjudicator shall not make a finding of a physical injury for the purposes of this IAP without obtaining and considering medical evidence as to the timing, causation, and continuing impact of such injury. Where such evidence is not contained in treatment notes or clinical records admitted into evidence, the adjudicator shall ask the Claimant to submit to an examination by an appropriate medical professional. Provided the Claimant has submitted to the medical assessment, as required, the adjudicator shall decide the issue having regard to the available evidence and the standard of proof, including where the results of the medical assessment are inconclusive.
- The parties shall endeavour to agree on the medical professional who will conduct the assessment. If they cannot, the adjudicator, with the assistance of the Secretariat, shall select an appropriate individual.
- In both circumstances, the professional is to be retained by the Secretariat and shall take instructions from and report to the adjudicator. The retainer shall be conditional on the professional being willing to testify if required.
- Where a report has been obtained, the parties may require that the professional attend the hearing (or its resumption) and give evidence.
- The same standard for questioning will apply here as for treatment reports: the adjudicator does the questioning, and the questioning can explore the examiner's qualifications as well as the records and report.

4. Actual Income Loss Assessments

- In the complex issues track where a claim for actual income loss is being advanced, the adjudicator shall order expert reports or medical assessments as set out above.
- At the request of a party, the adjudicator shall also order any other expert reports required to assess and evaluate the claim in accordance with the above procedure for obtaining medical assessments.

APPENDIX VII: MANDATORY DOCUMENT PRODUCTION BY CLAIMANTS

Following the receipt of a completed application form, and the acceptance of an individual into the IAP, relevant documents must be exchanged. This appendix outlines the documents a Claimant must produce, or explain the absence of, as a condition of proceeding to a hearing with a claim seeking particular kinds of compensation within the Compensation Rules.

This appendix does not outline other kinds of documents which could assist a Claimant in proving their claim. These will be admissible as provided for in this IAP. The kinds of documents the defendants will produce are outlined in a separate appendix.

In terms of proving the abuse itself, no documents are required from Claimants, although Claimants are free to produce documents to support their claim.

1. TO PROVE CONSEQUENTIAL HARMS

LEVELS 3, 4 AND 5

- Treatment records which are relevant to the harms claimed (including clinical, hospital, medical or other treatment records, but excluding records of counselling obtained to help ensure safety while pursuing an IRS claim). In the complex issues track, records from general practitioners, clinics or community health centres are deemed to be relevant unless the defendants consent to the contrary.
- Workers' Compensation records, if the claim is based in whole or in part on a physical injury.
- Corrections records (insofar as they relate to injuries or harms).

LEVELS 1 AND 2

None required

2. TO PROVE CONSEQUENTIAL LOSS OF OPPORTUNITY

LEVELS 3, 4 AND 5

- Workers' Compensation records, if the claim is based in whole or in part on a physical injury.
- Income Tax records (if not available, then EI and CPP records)
- Treatment records which are relevant to the asserted basis for the opportunity loss (including clinical, hospital, medical or other treatment records , but excluding records of counselling obtained to help ensure safety while pursuing an IRS claim). In the complex issues track, records from general practitioners, clinics or community health centres are deemed to be relevant unless the defendants consent to the contrary.

- Secondary (non-residential) school and post-secondary school records.

LEVEL 2

- Workers' Compensation records, if the claim is based in whole or in part on a physical injury.
- Income Tax records, or at the Claimant's choice, EI and CPP records
- Secondary (non-residential) school and post-secondary school records.

LEVEL 1

None required.

3. TO ESTABLISH A NEED FOR FUTURE CARE

None required, but a treatment plan should be submitted to support any claim for future care in any case where the Claimant is represented by counsel or is otherwise in a position to prepare one.

APPENDIX VIII: GOVERNMENT DOCUMENT DISCLOSURE

The government will search for, collect and provide a report setting out the dates a Claimant attended a residential school. There are several kinds of documents that can confirm attendance at a residential school, and as soon as one or more are found which deal with the entire relevant period, further searches will not be undertaken.

The government will also search for, collect and provide a report about the persons named in the Application Form as having abused the Claimant, including information about those persons' jobs at the residential school and the dates they worked or were there, as well as any allegations of physical or sexual abuse committed by such persons, where such allegations were made while the person was an employee or student.

Upon request, the Claimant or their lawyer will receive copies of the documents located by the government, but information about other students or other persons named in the documents (other than alleged perpetrators of abuse) will be blacked out to protect each person's personal information, as required by the Privacy Act.

The government will also gather documents about the residential school the Claimant attended, and will write a report summarizing those documents. The report and, upon request, the documents will be available for the Claimant or their lawyer to review.

In researching various residential schools to date, some documents have been, and may continue to be, found that mention sexual abuse by individuals other than those named in an application as having abused the Claimant. The information from these documents will be added to the residential school report. Again, the names of other students or persons at the school (other than alleged perpetrators of abuse) will be blacked out to protect their personal information.

The following documents will be given to the adjudicator who will assess a claim:

- documents confirming the Claimant's attendance at the school(s);
- documents about the person(s) named as abusers, including those persons' jobs at the residential school, the dates they worked or were there, and any sexual or physical abuse allegations concerning them;
- the report about the residential school(s) in question and the background documents; and,
- any documents mentioning sexual abuse at the residential school(s) in question.

With respect to student-on-student abuse allegations, the government will work with the parties to develop admissions from completed examinations for discovery, witness or alleged perpetrator interviews, or previous DR or IAP decisions relevant to the Claimant's allegations.

APPENDIX IX: INSTRUCTIONS FOR ADJUDICATORS

I. APPLICATION OF THE COMPENSABLE CLAIMS CRITERIA

In this IAP, compensation will be paid for all proven continuing claims, but not otherwise.

It is the adjudicator's responsibility to assess the credibility of each allegation, and, for those allegations which are proven on the civil standard, to determine whether what has been proven constitutes a continuing claim under this IAP.

The criteria for a continuing claim flow from, but may differ from, established case law on vicarious liability and negligence. Adjudicators are not to have reference to case law on vicarious liability or negligence. The compensability of proven continuing claims must be determined only by reference to the terms of this IAP, including instructions issued pursuant to it.

A. Physical or Sexual Abuse Committed by an Adult

1. Where the victim was a student or resident

Where a sexual or physical assault was committed on a resident or student of an IRS by an adult, the following tests must be met:

a) Was the alleged perpetrator an adult employee of the government or a church entity which operated the IRS in question? If so, it does not matter whether their contract of employment was at that IRS.

b) If the alleged perpetrator was not an adult employee, were they an adult lawfully on the premises?

c) Did the assault arise from, or was its commission connected to, the operation of an IRS? This test will be met where it is shown that a relationship was created at the school which led to or facilitated the abuse. If the test is met, the assault need not have been committed on the premises.

2. Where the victim was not a student or resident

Where a sexual or physical assault was committed by an adult on a non-student, the following tests must be met:

a) Was the alleged perpetrator an adult employee of the government or a church entity which operated the IRS in question? If so, it does not matter whether their contract of employment was at that IRS.

b) If the alleged perpetrator was not an adult employee, were they an adult lawfully on the premises?

c) Was the Claimant under the age of 21 at the time of the assault?

d) Did an adult employee give the Claimant permission i) to be on the premises ii) for the purpose of taking part in school activities?

e) Did the assault arise from, or was it connected to, the operation of the school? This test will be met where it is shown that a relationship was created at the school which led to or facilitated the abuse. If the test is met, the assault need not have been committed on the premises. The permission to be on the premises for an organized activity creates the circumstances in which an assault may be compensable if the other tests are met, but it does not also circumscribe the location in which an assault must have been committed to qualify as one which arose from or was connected to an IRS.

B. Sexual or Physical Assaults Committed by a Student

Where a proven incident of predatory or exploitative sexual abuse at levels SL4 or SL5 was committed by another student, the following tests must be met:

a) Did the assault take place on IRS premises?

b) Was the sexual assault of an exploitative or predatory nature?

c) Has the government failed to prove that reasonable supervision was in place at the school?

In this connection:

A sexual assault is deemed to have been predatory or exploitative where the perpetrator was significantly older than the victim, or where the assault was occasioned by threats, coercion or violence.

For greater certainty, the fact of a sexual assault having taken place at an IRS does not itself prove that reasonable supervision was not in place.

In all other instances where a defined sexual assault (including those at the SL4 or SL5 level which are not predatory or exploitative) or a defined physical assault was proven to have been committed by another student, the following tests must be met:

a) Did the assault take place on school premises?

b) Did an adult employee of the IRS have, or should they reasonably have had, knowledge that abuse (i) of the kind proven was occurring at the IRS (ii) at the relevant time period?

c) Did an adult employee at the IRS fail to take reasonable steps to prevent the assault?

C. Additional Instructions re Physical Assaults

1. Since a physical injury is required to establish a compensable physical assault in this IAP, a need for medical attention or hospitalization to determine whether there was an injury does not establish that the threshold had been met.

2. 'Serious medical treatment by a physician' does not include the application of salves or ointment or bandages or other similar non-invasive interventions.

3. Loss of consciousness must have been directly caused by a blow or blows and does not include momentary blackouts or fainting.

4. Compensation for physical abuse may be awarded in this IAP only where physical force is applied to the person of the Claimant. This test may be deemed to have been met where:

-the Claimant is required by an employee to strike a hard object such as a wall or post, such that the effect of the force to the Claimant's person is the same as if they had been struck by a staff member;

provided that the remaining standards for compensation within this IAP have been met.

D. Other Wrongful Acts

This category is intended to provide compensation for wrongful acts not listed within the Compensation Rules which have caused the defined level of psychological consequential harms. If the basis for a claim being asserted in this category is described in another category, the latter must be applied to the claim.

Because of the novel nature of these claims, and the importance of establishing a clear causal connection between such acts and the defined level of psychological consequential harms, these claims are handled only in the complex issues track.

For the purpose of this category, a wrongful act, other than the specified act of physical abuse of grossly excessive duration and frequency, is one which

a) was committed by an adult employee or another adult lawfully on the premises,

b) is outside the usual operational practices of the IRS at the time in question, and,
c) exceeds recognized parenting or caregiving standards at the time.

Once an act or series of acts have been found to be wrongful, and not to be captured in another part of the Compensation Rules, then unless the parties consent to the contrary, the adjudicator must order the psychiatric or medical reports necessary to determine whether harms at the H4 or H5 level were caused by the act or acts.

In all OWA claims, the standard for proof of causation and the assessment of compensation within the Compensation Rules is the standard applied by the courts in like matters.

II. APPLICATION OF THE COMPENSATION RULES

Compensation for proven continuing claims is to be determined exclusively pursuant to the Compensation Rules. The Rules are designed to ensure that compensation is assessed on an individualized basis. While the abuse suffered is an important indicator of the appropriate level of compensation, so too are the circumstances in which the abuse was suffered by the individual, and the particular impacts it had on him or her.

The Compensation Rules were expressly designed to avoid a mechanistic approach to compensation by recognizing that a relatively less serious act can have severe consequences, and vice versa. They accomplish this goal by requiring both an objective assessment of the severity of the abusive act, and then a distinct and highly subjective assessment of how that act affected the individual Claimant. Accordingly, the categories defining acts and harms must be assessed separately, and the words in each category must be read purposively within their respective contexts.

In particular, in determining the level of harm suffered by a Claimant, adjudicators are to consider each of the five categories as a whole, and in relation to the other categories, rather than focussing on isolated words within a given category. This IAP calls for a contextual consideration, having particular regard to the headings for each category, in order to determine which of the categories best reflects the Claimant's proven level of harms resulting from compensable abuse.

1. The Proven Acts

The first step in applying the framework is to determine which acts of abuse have been proven on the civil standard of proof. The most serious act or acts of proven abuse, whether physical or sexual, determines the single range within which points for all abusive acts suffered over the course of attendance at one or more residential schools are to be assigned. Multiple acts of either physical or sexual abuse are recognized in the definitions of the categories of abuse; the impact of sexual abuse being accompanied by physical abuse is dealt with later as an aggravating circumstance.

Once the most serious category among the proven act categorizations has been determined, a point total will be assigned within that category's range. The adjudicator has the discretion to choose the point level within that range, having regard to the relative seriousness of the proven acts compared to the acts listed within that category. For example, in the category of nude photographs it is expected that a single photo of nude buttocks retained by the photographer would be assigned fewer points for the act itself than a series of highly sexualized photos which had been put into wide distribution. The potential for an individual to suffer a high degree of trauma from an objectively less serious act is recognized, but is to be addressed in the harms categories within the framework, rather than by increasing the points otherwise appropriate for the act itself.

2. Consequential Harms

After the assignment of points for the proven acts has been determined, the next step is to assess any proven consequential harms which flowed from the proven acts, including those which were subsumed for the purpose of assigning points to the acts. This is done by reference to the consequential harms categories.

A Claimant must provide evidence or there must be expert evidence to prove each asserted harm on the balance of probabilities. In the standard track, once a compensable act and a compensable harm have each been established on the evidence according to a balance of probabilities, only a plausible link between them need be established in order for compensation to be awarded for them. A finding of a plausible link does not require the negation of other potential causes of harms, but it must be based on or reasonably inferred from the evidence led in the case rather than assumptions or speculation as to possible links. Adjudicators shall have regard to their powers under Appendix X, below.

In the complex issues track, harms must be proven to have been caused by one or more continuing claims, and compensation must be assessed within the Compensation Rules, using the same standards a court would apply in like matters.

Harms not proven to be linked to or caused by acts constituting compensable abuse may not be taken into account in assessing points in the harms categories.

Harms up to and including H3 are not to be the subject of expert assessments, although treatment notes and clinical records from treating doctors or counsellors, or if such are not available, a report from treating doctors or counsellors may be relied upon to supplement or contradict the Claimant's evidence of harms suffered. Where a Claimant's evidence credibly establishes the abuse plus apparent harms at levels 4 or 5, or on the joint recommendation of the parties before the hearing, the adjudicator may order an expert assessment. Only where such an assessment has been obtained and considered, or where the parties consent to points at these levels being considered without such an assessment, may the adjudicator find that harms at the two highest levels have been proven and were caused by the proven abuse.

Points for consequential harm are assessed only once, at the level of harm which best reflects the evidence in the case and the causation standards of this IAP. Within the range for that level, the adjudicator has the discretion to determine the points to be assigned. Again, the relative gravity of the harm within the appropriate category will determine where within the applicable range the points should be assigned.

3, Aggravating Circumstances

The adjudicator must then determine whether any of the listed aggravating factors have been proven on the civil standard of proof. Only the specific aggravating factors listed in this IAP may be taken into account in assessing this category. Provided such factors are specifically proven, and are proven to have made the compensable abuse worse, they may be taken into account whether or not they were coincident in time and place with such abuse.

Once these tests have been met, the adjudicator has the discretion to determine a percentage to be added for one or more proven aggravating factors collectively. This discretion is to be exercised having regard to the seriousness of the aggravating factor in the specific context in which it occurred, including the impact the factor actually had on the Claimant. No other aggravating factors may be considered.

The percentage for aggravating factors is then applied to the total of the points assigned for the acts and the harms. The resulting number of points for aggravating factors is then rounded up to the nearest whole number.

4. Consequential Loss of Opportunity

Where the Claimant has asserted that the abuse caused them to suffer a consequential loss of opportunity, the adjudicator will then consider that part of the claim. Two aspects must be taken into account. First, the Claimant must prove, on the civil standard of proof, one or more of the circumstances or experiences listed in this part of the Rules, with expert evidence being required to establish the harms leading to the losses at levels 4 or 5 unless the parties have agreed to dispense with it. Second, in the standard track he or she must convince the adjudicator that there is a plausible link between the abuse proven to have occurred at the IRS, and the proven subsequent experience. In the complex track, consequential loss of opportunity must be proven to have been caused by one or more continuing claims, and compensation must be assessed within the Compensation Rules, using the standards a court would apply in like matters.

Where this proof is established, the adjudicator will then select the range of points reflecting the most serious proven loss linked to the abuse according to the standards for the track in question, and assign a point total within that range. Within the appropriate range the adjudicator will assign points based on the relative seriousness within the category of the proven experiences.

It is important to note that consequential loss of opportunity within the compensation framework is not intended as a surrogate for a loss of income claim. Actual income loss claims constitute a distinct basis for compensation within this IAP, and the standards for their assessment do not apply to consequential loss of opportunity claims.

5. Actual Income Loss

Except on consent, actual income loss claims must be determined on the basis of expert evidence. The link between any proven actual income losses and the proven continuing claim must be established, and compensation must be assessed, using the same standards a court would apply in like matters.

Actual income loss claims are an alternative to a claim for consequential loss of opportunity, and both cannot be awarded.

6. Assessment of Compensation

All points assigned will now be totalled. This total determines the dollar range within which compensation can be awarded (except for the actual income loss element of an award), but it does not determine where within that range the adjudicator will award compensation. While a higher number of points within a range will normally lead to a higher level of compensation, the adjudicator has the discretion to determine compensation within the applicable dollar range having regard to the totality of the proven facts and impacts.

7. Future Care

Finally, where a claim has been made for future care, the adjudicator will consider whether to award additional compensation within and according to the criteria in the Compensation Rules. Relevant factors here will include the impacts of the proven abuse on the individual; any treatment already received for those impacts; the availability of treatment in the Claimant's home community and the need for assistance with travel costs; and the availability of alternative sources of funding for parts of the plan.

No award for future care shall be made unless the adjudicator is satisfied that the Claimant has a need for treatment of the kind proposed, and a genuine desire to use the funding for that purpose. In most cases, this will be evidenced by a treatment plan and an articulated and credible determination to follow that plan.

8. Conclusion

The compensation framework is designed to provide an individual assessment of abuse suffered and its impact to generate compensation levels consistent with or more generous than court awards in each jurisdiction, using in a systematic and transparent way the factors applied by the courts. In the interests of fairness and consistency, all adjudicators must follow these instructions in applying the framework to the cases before them.

APPENDIX X: THE USE OF EXTRA-CURIAL KNOWLEDGE BY ADJUDICATORS

INTRODUCTION

A number of issues will arise concerning the ability of adjudicators to make use of information obtained or known beyond that provided by the parties in each individual case. There are several aspects to this matter:

-use of background information and/or personal knowledge, for example on

-schools
-child abuse and its impacts
-the residential school system

-carry-forward of information from hearing to hearing, for example on

-alleged perpetrators and the *modus operandi* of proven perpetrators
-conditions at a school
-credibility findings

-use of precedents from other adjudicators

-ability of adjudicators to confer

The approach to be taken to these issues is set out below, by reference to the source of the information in question.

1. Orientation Materials Provided to Adjudicators

Adjudicators will be supplied with orientation materials on the residential school system and its operations, as well as on child abuse and its impacts.

If any of the orientation materials are specifically identified as containing uncontested facts or opinions, they may be used as follows:

> Adjudicators are expected to inform themselves from this material. They may use it to question witnesses, but also to make findings of fact and to support inferences from evidence they find credible, for example to conclude that trauma of a certain kind can be expected to flow from a sexual assault on a child. These latter uses of this information are justified by the fact that representatives of all interests have agreed to its inclusion in the orientation materials for this use, and all participants in a hearing will have access to the orientation materials.
>
> Wherever possible the adjudicator should use the information at the hearing to formulate questions to any witnesses who may be able to

> comment on it, or whose testimony it may contradict, support, or help explain. Where this is not possible, the proposed use in reaching a decision should be identified to the parties at the hearing to give them a chance to comment on it in their submissions, but so doing is not a condition precedent to the proposed use.
>
> Where the material is used in coming to a finding of fact, or drawing an inference, it should be cited and its relevance and the rationale for its use set out in the decision.

Where orientation information provided to adjudicators does not represent uncontested facts or opinions, it may be used by adjudicators as follows:

> Adjudicators may use this category of orientation materials as a basis for questioning witnesses, or testing the evidence, but may not rely on it as an independent basis for their conclusions of fact or their assessment of the actual impact of abuse on an individual.

2. Personal Knowledge of Abuse and its Impacts

Some adjudicators may bring to the job an extensive background in dealing with child abuse, or may receive information on child abuse and its impacts at training sessions or continuing education programs, or through their own reading or research.

The approach to the use of this kind of information is as follows:

> Adjudicators may use their personal knowledge, training they have received, or general educational materials, as a basis for questioning witnesses, or testing the evidence, but may not rely on them as an independent basis for their conclusions of fact or their assessment of the actual impact of abuse on an individual.

3. Document Collections

Adjudicators will be provided with Canada's, and potentially a church's, document collection on each school for which they are holding hearings. This material will also be available to Claimants and their counsel.

The approach to the use of this kind of information is as follows:

> Adjudicators are expected to inform themselves from this material, which may be used as a basis for findings of fact or credibility. Where any of it is so used by adjudicators, it must be cited and its relevance and the rationale for use set out in the report.
> Because this information is specific to the school in question and is provided in advance, it is expected that adjudicators will be familiar with it

> before starting a hearing to which it is relevant. Given this, before relying on specific documents to help decide a given case, the adjudicator should seek the consent of the parties, or put the relevant extracts to any witnesses who may be able to comment on them, or whose testimony they may contradict or support. Where there are no such witnesses, or where one or more parties contest the use of the documents, the adjudicator may still use them in his or her decision, but wherever possible should advise the parties of the proposed use of the document so that they may address it in their submissions.

4. Previous findings

Adjudicators will hear evidence about, and make findings of fact about, the operations of various schools, their layouts, the conditions that pertained in them, the acts and knowledge of adult employees, and where an individual is found to have committed a number of assaults in a particular way, their *modus operandi*.

The approach to the use of this kind of information is as follows:

> Adjudicators must treat each individual's claim as a unique claim to be determined on the evidence presented, plus information expressly permitted to be used according to the guidelines agreed to for this process. They may not carry forward, much less be bound by, previous findings they have made, including findings of credibility.
>
> They may, though, use information from previous hearings to inquire about possible admissions, or failing that, to question witnesses. This ability to bring forward information from previous hearings for these specific purposes flows from the fact that this IAP is not a party-controlled adversarial process. Instead, the inquisitorial model is being used to have adjudicators inquire into what happened, using their skills and judgment to question witnesses to determine the facts.
>
> While it would not be fair to base a decision on evidence from a previous hearing, since some or all of the parties would not know its context, and would be unable to challenge its reliability, it is also not appropriate to insist that adjudicators act as if each case were their first one. Their job requires them to test evidence and determine what happened. While they cannot call witnesses, it is their duty to question them, and they must be free to pose questions and follow lines of inquiry they believe to be relevant. Whether that belief flows from common sense, instinct, or something heard at another hearing, it is appropriate as a basis of inquiry, although, in the absence of an admission, not as evidence.

5. Stare decisis

Although reasons will be issued in each case, the IAP will not operate on the basis of binding precedent. All adjudicators are of equal authority, and should not consider themselves bound by each other's previous decisions. Through conferencing, adjudicators may come to a common interpretation of certain procedural issues, but each case must be determined on its own merits.

APPENDIX XI: TRANSITION FROM LITIGATION OR ADR PROJECTS, AND PRIORITIES FOR ACCESS TO THE IAP.

All IRS Claimants who meet the criteria for this IAP may apply to it for the validation of their claim except:

1. Claimants who have settled their IRS claim, whether in the litigation stream or the existing DR, except as provided for in the transition rules established by the Class Action Judgments.
2. Claimants whose claims have been dealt with at trial.

For greater certainty, participation in unsuccessful resolution discussions with the Government or a church in an attempt to settle claims does not preclude access to the IAP. Only where one of the above conditions applies will an application to enter the new process be rejected.

Rules for Pre-existing Evidence

Where a Claimant who has given evidence in a previous IRS proceeding in a pilot project, or in a hearing under the DR Model or this IAP (where a new hearing has been ordered following a review), or in litigation proceedings (including answers to interrogatories or participation in an examination for discovery), wants to and is eligible to enter the IAP:

(i) the record of the previous evidence must be provided to the adjudicator in the IAP, who may use it as a basis to question the Claimant;

(ii) the Claimant must appear before the adjudicator to give evidence, if a hearing is held;

(iii) the Claimant may adopt their previous evidence rather than provide a narrative account at the hearing;

(iv) the Claimant is subject to questioning by the adjudicator on the same basis as other Claimants.

The fact that a case is transferred from litigation where documentary rules are different does not change the kinds of documents permitted in proceedings under the IAP. For greater certainty, the only expert assessments permitted in this IAP are those conducted by an agreed-upon expert on the order of, and under the direction of, an adjudicator.

Potential for Expediting the Transfer

To expedite transition to the new system, and reduce the burden of completing an application in circumstances where the Claimant has already given evidence, counsel for

the Government and the claimant should endeavour to develop an agreed statement of fact on some or all of the issues based on the evidence given.

Phasing of Acceptance into the IAP

In considering applications to the IAP, including applications to the DR Model which are transferred to the IAP, priority will be given, in order, to:

a) Applications from persons who submit a doctor's certificate indicating that they are in failing health such that further delay would impair their ability to participate in a hearing;
b) Applications from persons 70 years of age and over;
c) Applications from persons 60 years of age and over;
d) Persons who have completed examinations for discovery;
e) Persons who are applying as members of groups.

Among persons in categories d or e, above, the health of any alleged perpetrator who has indicated they will give evidence at a hearing may be used to establish priority.

APPENDIX XII: FORMAT FOR DECISIONS

Adjudicators must produce a decision outlining and supporting their findings in each case. To help ensure consistency, fairness and efficiency, these decisions must be prepared in a standard format.

The decisions are primarily to explain to the parties how the adjudicator's decision was reached, but they must also support and facilitate consultation among adjudicators, and review for error.

The format does not contemplate a narrative exposition of the evidence heard. Instead, it requires a focus on findings, and the rationale for those findings. A transcript of the evidence will be available for Claimants who wish a record of their testimony; it is not the purpose of the report to provide such a record. Similarly, the transcript will be available for a review; the evidence need not be summarized in the decision for those purposes.

While an arbitrary page limit will not be set, it is expected that most decisions will be in the range of 6-10 pages. The approved format is as follows:

A. Summary

1. Summary of allegations

2. Summary of conclusions

B. Decision

Where the claim was proven in whole or in part state the compensation awarded. Where the claim is not established, state that it is dismissed.

C. Analysis

1. Outline each specific allegation or linked series of allegations, and set out the findings of fact pertinent to it. Do not outline the evidence as a whole.

2. In making findings for each abuse allegation or series of linked abuse allegations:

    a. if the evidence was uncontradicted, indicate whether, and the basis on which, it was found credible or not credible, or
    b. if there was conflicting evidence, indicate which evidence was found credible and why, and
    c. having regard to the evidence found credible, outline whether, and the basis on which, the civil standard of proof was found to have been met, or not met.

3. Having regard to the proven allegations as a whole, outline the harms, impacts and aggravating factors found, or not found, to have been established on the civil standard of proof, along with the basis for those findings. For the proven harms and impacts, indicate whether, and on what evidence, the Claimant has established causation of the proven harms as required under this IAP.

4. In relation to the proven acts, and the proven and plausibly-linked harms and impacts, outline the calculation of compensation by indicating:

    a. The most serious proven acts, the applicable range, and the rationale for the points assessed within the applicable range
    b. The most serious proven harms for which causation pursuant to this IAP has been proven, the applicable range, and the rationale for the points assessed within the applicable range.
    c. The proven aggravating factors, and the rationale for the percentage found appropriate.
    d. The most serious proven opportunity loss for which causation pursuant to this IAP has been proven and the rationale for the points assessed within the relevant category.
    e. In the case of an actual income loss assessment, the evidence and caselaw relied upon for the assessment.
    f. Findings and rationale for any future care compensation assessed.

APPENDIX XIII TO THE IAP: APPOINTMENT PROCESSES AND TRANSITION PROVISIONS FOR THE OVERSIGHT COMMITTEE, THE CHIEF ADJUDICATOR AND THE ADJUDICATORS

Former IRS Student Representatives on the Oversight Committee

The AFN shall designate one former student to serve on the Oversight Committee, and another to serve as an alternate, as shall collectively the Inuit organizations which under the Settlement Agreement have a representative on the NAC.

Default

In the event that the designations are not made, the NCC (once established, the NAC) shall make the appointment or appointments, following consultations with representative aboriginal organizations.

Plaintiff Counsel Representatives on the Oversight Committee

The plaintiffs' counsel bodies represented on the NCC shall designate the first two plaintiffs' counsel to serve on the Oversight Committee, plus one alternate, with subsequent designations being made by the plaintiffs' counsel bodies represented on the NAC.

In the event that the designations are not made, the NCC (once established, the NAC) shall make the appointments.

Church Representatives on the Oversight Committee

The denominations which are a party to the Settlement Agreement shall collectively designate two representatives, plus one alternate, to serve on the Oversight Committee.

In the event that the designations are not made, the NCC (once established, the NAC) shall make the appointments.

Government of Canada Representatives on the Oversight Committee

The government shall designate two representatives plus one alternate to serve on the Oversight Committee.

Neutral Chair of the Oversight Committee

The first chair shall be a person nominated by the Hon. Frank Iacobucci and approved by at least 6 members of the NCC. Subsequent chairs shall be a person nominated by the outgoing chair and approved by at least 6 members of the NAC. If a chair dies or is incapacitated before making a nomination, the nomination shall be made by majority vote of the Oversight Committee.

Chief Adjudicator and Adjudicators

The government shall issue RFPs for the positions of Chief Adjudicator and Adjudicators for the IAP, following the applicable recruitment processes for positions of this kind. For the first recruitment process, the terms of the RFPs shall be substantially the same as the terms used to recruit similar positions under the DR Model. Any proposed changes from those terms shall be discussed with the NCC before being adopted. For subsequent recruitments, the RFPs shall be on terms which are substantially the same as the terms of the first RFPs, with any proposed changes being discussed with the NAC.

Chief Adjudicator

The Chief Adjudicator shall be chosen by the unanimous agreement of a selection board composed of one representative of each of former students, plaintiffs' counsel, church entities, and government. These members of the selection board shall be appointed by the representatives of those interests serving on the Oversight Committee when the appointment is to be made.

Adjudicators

The adjudicators, other than adjudicators previously appointed for the DR Model, shall be chosen by the unanimous agreement of a selection board composed of one representative of each of former students, plaintiffs' counsel, church entities, and government. These members of the selection board shall be appointed by the representatives of those interests serving on the Oversight Committee when the appointment is to be made. The selection board shall conduct its interviews and make its selections with the non-voting participation of the Chief Adjudicator or his or her designate. More than one selection board may be appointed to operate concurrently.

Transition

Until the conclusion of the above competitions, the Chief Adjudicator under the DR Model and any of the Process A adjudicators designated for the purpose by the Chief Adjudicator shall discharge the corresponding functions under the IAP. For greater certainty, existing DR Model adjudicators must compete for ongoing appointments under the IAP, but may continue to hear DR matters until the expiry of their appointments thereunder.

Adjudicators appointed for the DR Model who apply to become IAP adjudicators shall be chosen by a selection board composed of one representative of each of former students, plaintiffs' counsel, church entities, and government. These members of the selection board shall be appointed by the representatives of those interests serving on the Oversight Committee when the appointment is to be made. More than one selection board may be appointed to operate concurrently.

The selection board shall conduct its interviews and make its selections with the non-voting participation of the Chief Adjudicator or his or her designate. If a decision cannot

be reached by consensus, the Chief Adjudicator or designate may vote, with four affirmative votes being required for the selection of a candidate.

Designations of representatives for the Oversight Committee shall be made, and the neutral chair shall be selected, within 60 days of the date of the last of the Approval Orders.

The Chief Adjudicator Reference Group established for the DR Model shall act as the Oversight Committee until the latter is established

Click here if you would like to see a draft of the IAP Application Form.

The IAP Application From is a DRAFT only and cannot be printed; a final version for the form will be made available following the approval and implementation of the Settlement Agreement.

THIS IS EXHIBIT " F " REFERRED TO IN THE
AFFIDAVIT OF Peter Grant
SWORN BEFORE ME AT Vancouver
THIS 8 DAY OF November, 2019

A Commissioner for taking Affidavits within
British Columbia

Rosalind M. Campbell
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No.CI-05-01-43585

IN THE COURT OF QUEEN'S BENCH OF MANITOBA
WINNIPEG CENTRE

BETWEEN:

LARRY PHILIP FONTAINE et al

PLAINTIFFS

AND:

THE ATTORNEY GENERAL OF CANADA et al

Brought under the *Class Proceedings Act*, C.C.S.M. c.C130

DEFENDANTS

DIRECTION / ORDER

BEFORE	THE HONOURABLE JUSTICE P. SCHULMAN	4/June/2014

ON THE APPLICATION of the Chief Adjudicator of the Independent Assessment Process ["IAP"], coming on for hearing on 25/April/2014 and on hearing the submissions of the Chief Adjudicator, the Court Monitor, the Attorney General of Canada, Independent Counsel, the Assembly of First Nations, John Michaels, Kenneth Carroll, and upon reviewing the written submissions of the Merchant Law Group;

THIS COURT ORDERS:

General

1. All "Service Contracts", "Assignment Agreements", "Directions to Pay" and other agreements or contracts requiring IAP claimants to pay contingency fees to Form Fillers or Form Filling Agencies are null and void.

2. All "Service Contracts", "Assignment Agreements", "Directions to Pay" and other agreements or contracts requiring IAP claimants to pay fees to Form Fillers or Form Filling Agencies for legal services are null and void.

FILED
QUEEN'S BENCH
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LAW COURTS
WINNIPEG

3. Unless a Form Filler or Form Filling Agency demonstrates on application to this court that a further order should not issue, such application to be brought within thirty (30) days of the issuance of this Direction, a further order shall issue, to the effect that IAP claimants are under no obligation to pay any fees in relation to the processing of their IAP claims, other than legal fees approved by adjudicators following their IAP hearing or Negotiated Settlement Process.

4. At the conclusion of each IAP hearing or Negotiated Settlement Process interview involving a self-represented IAP claimant, the adjudicator shall inquire into any and all financial arrangements between the self-represented claimant and Form Fillers or Form Filling Agencies.

Kenneth Carroll/Carroll Firm

5. Until further order of this court, all settlement proceeds in relation to IAP claimants represented by Kenneth Carroll and/or the Carroll Firm shall be paid to the Court Monitor, for distribution to the respective IAP claimants.

Lawyers and Law Firms Served with the RFD[1]

6. All lawyers and law firms served with the RFD shall, at the conclusion of IAP hearings or Negotiated Settlement Process interviews, as the case may be, disclose to adjudicators:

   (i) Whether Form Fillers or Form Filling Agencies have performed services in connection with the particular IAP claimant's file, and if so, the nature and extent of such services; and

   (ii) All financial arrangements between counsel and a Form Filler or Form Filling Agency with respect to the fees charged to and/or payable by an IAP claimant.

7. Within thirty (30) days of the issuance of this Direction, all lawyers and law firms served with the RFD shall provide to the Court Monitor solemn declarations containing the following with respect to each IAP claimant they represent or have represented:

   (i) All retainer and fee agreements between the lawyers and/or law firms and IAP claimants and all correspondence to and from IAP claimants regarding disbursement of compensation proceeds and fee arrangements;

   (ii) Any and all knowledge those lawyers and/or law firms have as to any arrangements whereby IAP claimants have paid or have agreed to pay fees to Form Fillers or Form Filling Agencies in addition to legal fees, together with any financial or banking details and documents surrounding such arrangements, including trust account records; and

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[1] Including Mr. Carroll, the Carroll Firm and the lawyers and law firms listed in note 5 of the court's reasons.

(iii) Current contact information in relation to each IAP claimant represented by the lawyer and/or law firm.

8. The Court Monitor shall have access to information and records held by the office of the Chief Adjudicator and the Indian Residential Schools Adjudication Secretariat with respect to such IAP claimants.

9. Within thirty (30) days of receiving the information described in paragraph 7 above, the Court Monitor shall report to the court through Court Counsel respecting the information provided by lawyers and law firms served with the RFD and the Court Monitor may seek further directions from the court.

10. If the Court Monitor advises that a lawyer and/or law firm described in paragraph 7 has failed to comply fully with the Order set out in that paragraph within the time stipulated, that lawyer and/or law firm shall without further Order be suspended from all further participation in the IAP pending compliance as determined by the court. The Court Monitor and lawyer and/or law firm may seek further directions from the court.

Form Fillers and Form Filling Agencies Served with the RFD[2]

11. Within thirty (30) days of the issuance of this Direction, all Form Fillers and Form Filling Agencies served with the RFD ["Served Form Fillers"] shall provide, to the Court Monitor, solemn declarations containing the following with respect to each IAP claimant whom they have assisted in the IAP:

(i) Any and all retainer and fee agreements between the Form Fillers or Form Filling Agencies and the IAP claimants;

(ii) Any and all agreements between Form Fillers and lawyers and law firms representing IAP claimants;

(iii) Any and all correspondence to and from IAP claimants and/or to or from lawyers or law firms in respect of fees charged to IAP claimants by the Form Fillers or Form Filling Agencies;

(iv) Any and all financial or banking details and/or documents surrounding any monies charged to or collected from IAP claimants; and

(v) The most current contact information that the Form Fillers and Form Filling Agencies have in respect of each IAP claimant.

Court Monitor

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[2] Including FNRSSI, Mr. Knight, Mr. Bokhari and the Form Fillers and Form Filling Agencies listed in note 4 of the court's reasons.

12. The Court Monitor shall investigate the extent to which Form Fillers and Form Filling Agencies, including but not limited to those served with the RFD:

(i) Purported to charge contingency fees for assisting IAP claimants;

(ii) Purported to provide legal services in assisting IAP claimants; and

(iii) Caused IAP claimants to enter into unconscionable contracts for services associated with the IAP.

13. In conducting the investigation described in paragraph 12, the Court Monitor shall have the discretion to involve an independent special advisor.

14. Within four months of the issuance of this Direction, the Court Monitor shall report to the nine Supervising Judges under the Settlement Agreement, care of Court Counsel, setting out its findings in relation to the investigation and proposing a means by which IAP claimants can appropriately recover monies paid to Form Fillers and/or Form Filling Agencies.

Court Counsel

15. Court Counsel is directed to take all reasonable steps to bring this Direction to the attention of all parties served with the Chief Adjudicator's RFD as soon as possible following issuance of this Direction.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:

Signature of

☐ Party

☒ Lawyer for the Chief Adjudicator, IAP

Charles V. Hofley

Signature of

☐ Party

☒ Lawyer for the Court Monitor

Louis Zivot

Signature of

12. The Court Monitor shall investigate the extent to which Form Fillers and Form Filling Agencies, including but not limited to those served with the RFD:

(i) Purported to charge contingency fees for assisting IAP claimants;

(ii) Purported to provide legal services in assisting IAP claimants; and

(iii) Caused IAP claimants to enter into unconscionable contracts for services associated with the IAP.

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Court Counsel

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THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:

Signature of

☐ Party

☒ Lawyer for the Chief Adjudicator, IAP

Charles V. Hofley

Signature of

☐ Party

☒ Lawyer for the Court Monitor

Louis Zivot

Signature of

☐ Party

☒ Lawyer for the Attorney General of Canada

Alethea LeBlanc

Signature of

☐ Party

☒ Lawyer for Independent Counsel

Karenna Williams

Signature of

☐ Party

☒ Lawyer for the Assembly of First Nations

Stuart Wuttke

Signature of

☐ Party

☒ Lawyer for John Michaels

A. Blair Graham

Signature of

☐ Party

☒ Lawyer for the Merchant Law Group

E.F. Anthony Merchant

Signature of

☐ Party

☒ Lawyer for the respondent, Kenneth Carroll

Stephen Vincent

Signature of

☐ Party

☒ Lawyer for Independent Counsel

Karanna Williams

Signature of

☐ Party

☒ Lawyer for the Assembly of First Nations

Stuart Wuttke

Signature of

☐ Party

☒ Lawyer for John Michaels

A. Blair Graham

Signature of

☐ Party

☒ Lawyer for the Merchant Law Group

L.F. Anthony Merchant

Signature of

☐ Party

☒ Lawyer for the respondent, Kenneth Carroll

Stephen Vincent

Signature of

☐ Party

☒ Lawyer for Independent Counsel

Karenna Williams

Signature of

☐ Party

☒ Lawyer for the Assembly of First Nations

Stuart Wuttke

Signature of

☐ Party

☒ Lawyer for John Michaels

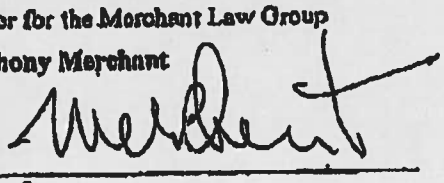
A. Blair Graham

Signature of

☐ Party

☒ Lawyer for the Merchant Law Group

E.F. Anthony Merchant



Signature of

☐ Party

☒ Lawyer for the respondent, Kenneth Carroll

Stephen Vincent

Signature of

☐ Party

☒ Lawyer for Independent Counsel

Karenna Williams

Signature of

☐ Party

☒ Lawyer for the Assembly of First Nations

Stuart Wuttke

Signature of

☐ Party

☒ Lawyer for John Michaels

A. Blair Graham

Signature of

☐ Party

☒ Lawyer for the Merchant Law Group

B.F. Anthony Merchant

Signature of

☐ Party

☒ Lawyer for the respondent, Kenneth Carroll

Stephen Vincent

By the Court

Registrar

THIS IS EXHIBIT " C1 "REFERRED TO IN THE
AFFIDAVIT OF Peter Grant
SWORN BEFORE ME AT Vancouver
THIS 8 DAY OF November, 2011

A Commissioner for taking Affidavits within
British Columbia

Rosalind M. Campbell
GRANT HUBERMAN
Barristers & Solicitors
1620-1075 W. Georgia Street
Vancouver, BC V6E 3C9
Tel: 604-685-1229 Fax: 604-685-0244

Court File No. 00-CV-192059CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE PERELL

TUESDAY, THE 14TH DAY OF JANUARY, 2014

B E T W E E N:

LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, MICHELLINE AMMAQ, PERCY ARCHIE, CHARLES BAXTER SR., ELIJAH BAXTER, EVELYN BAXTER, DONALD BELCOURT, NORA BERNARD, JOHN BOSUM, JANET BREWSTER, RHONDA BUFFALO, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, BRENDA CYR, DEANNA CYR, MALCOLM DAWSON, ANN DENE, BENNY DOCTOR, LUCY DOCTOR, JAMES FONTAINE in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, VINCENT BRADLEY FONTAINE, DANA EVA MARIE FRANCEY, PEGGY GOOD, FRED KELLY, ROSEMARIE KUPTANA, ELIZABETH KUSIAK, THERESA LAROCQUE, JANE McCULLUM, CORNELIUS McCOMBER, VERONICA MARTEN, STANLEY THOMAS NEPETAYPO, FLORA NORTHWEST, NORMAN PAUCHEY, CAMBLE QUATELL, ALVIN BARNEY SAULTEAUX, CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER, EDWARD TAPIATIC, HELEN WINDERMAN and ADRIAN YELLOWKNEE

Plaintiffs

-and-

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE UNITED CHURCH OF CANADA, THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH, THE BAPTIST CHURCH IN CANADA, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN BAY, THE CANADA IMPACT NORTH MINISTRIES OF THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (ALSO KNOWN AS THE METHODIST MISSIONARY SOCIETY OF CANADA), THE INCORPORATED SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE ANGLICAN CHURCH OF THE DIOCESE OF QUEBEC, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF NEW WESTMINISTER, THE 2 SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE BOARD OF HOME MISSIONS AND SOCIAL SERVICE OF THE PRESBYTERIAN CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA, SISTERS OF CHARITY, A BODY CORPORATE ALSO KNOWN AS SISTERS OF CHARITY OF ST. VINCENT DE PAUL, HALIFAX, ALSO KNOWN AS SISTERS OF CHARITY HALIFAX, ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, LES SOEURS DE NOTRE DAME-AUXILIATRICE, LES SOEURS DE ST. FRANCOIS D'ASSISE, INSITUT DES SOEURS DU BON CONSEIL, LES SOEURS DE SAINT-JOSEPH DE SAINT-HYANCITHE, LES SOEURS DE JESUSMARIE, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE, LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE L'ALBERTA, LES SOEURS DE LA CHARITE DE ST.-HYACINTHE, LES OEUVRES OBLATES DE L'ONTARIO, LES RESIDENCES OBLATES DU QUEBEC, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE JAMES (THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY), THE CATHOLIC DIOCESE OF MOOSONEE, SOEURS GRISES DE MONTRÉAL/GREY NUNS OF MONTREAL, SISTERS OF CHARITY (GREY NUNS) OF ALBERTA, LES SOEURS DE LA CHARITÉ DES T.N.O., HOTEL-DIEU DE NICOLET, THE GREY NUNS OF MANITOBA INC.-LES SOEURS GRISES DU MANITOBA INC., LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE D'HUDSON – THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, MISSIONARY OBLATES – GRANDIN PROVINCE, LES OBLATS DE MARIE IMMACULEE DU MANITOBA, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE SISTERS OF THE PRESENTATION, THE SISTERS OF ST. JOSEPH OF SAULT ST. MARIE, SISTERS OF CHARITY OF OTTAWA, OBLATES OF MARY IMMACULATE –ST. PETER'S PROVINCE, THE SISTERS OF SAINT ANN, SISTERS OF INSTRUCTION OF THE CHILD JESUS, THE BENEDICTINE SISTERS OF MT. ANGEL OREGON, LES PERES MONTFORTAINS, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS CORPORATION SOLE, THE BISHOP OF VICTORIA, CORPORATION SOLE, THE ROMAN CATHOLIC BISHOP OF NELSON, CORPORATION SOLE, ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD, ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, LA CORPORATION ARCHIÉPISCOPALE CATHOLIQUE ROMAINE DE ST. BONIFACE, LES MISSIONNAIRES OBLATES SISTERS DE ST. BONIFACE-THE MISSIONARY OBLATES SISTERS OF ST. BONIFACE, ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, IMMACULATE HEART COMMUNITY OF LOS ANGELES CA, ARCHDIOCESE OF VANCOUVER – THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, ROMAN CATHOLIC DIOCESE OF WHITEHORSE, THE CATHOLIC EPISCOPALE CORPORATION OF MACKENZIEFORT SMITH, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, EPISCOPAL CORPORATION OF SASKATOON, OMI LACOMBE CANADA INC. and MT. ANGEL ABBEY INC.

Defendants

Proceedings under the *Class Proceedings Act*, 1992, S.O. 1992. C.6

ORDER

THESE REQUESTS FOR DIRECTIONS, made by

a. the Applicants, who are 60 IAP claimants as former students of St. Anne's Indian Residential School ("St. Anne's IRS"), for a direction from the Court that the Government of Canada

("Canada") shall produce all documents currently in the possession of Canada that are relevant to sexual or physical abuse at St. Anne's IRS, shall seek and produce the documents of the non-party Ontario Provincial Police ("OPP"), shall amend the narrative and other heads of relief, in the Independent Assessment Process ("IAP") of the Indian Residential Schools Settlement Agreement ("IRSSA");

b. the Truth and Reconciliation Commission of Canada ("TRC") for a direction from the Court as to whether Canada is required to produce to the TRC records of an OPP criminal investigation concerning St. Anne's IRS, pursuant to Schedule N of the IRSSA; and,

c. the Defendant Attorney General of Canada for a direction from the Court as to whether under the IAP, Canada must seek to have the non-party OPP provide OPP documents about its investigation concerning St. Anne's Indian Residential School to the Applicants, and as to whether Canada is under a deemed undertaking with respect to OPP documents already in the possession of Canada;

were heard December 17 and 18, 2013, at Osgoode Hall, 130 Queen St. W, Toronto, ON, M5H 4G1,

ON READING the Amended Amended Request for Directions of the Applicants dated November 28, 2013, the Request for Directions of the TRC dated October 18, 2013, the Request for Directions of the Defendant Attorney General of Canada dated September 5, 2013, and the materials filed by the Applicants, the TRC, the Attorney General of Canada, the Chief Adjudicator of the Indian Residential Schools Adjudication Secretariat, the Assembly of First Nations, the OPP and Les Soeurs de la Charité d'Ottawa and on hearing the submissions of the lawyer(s) for the Applicants, the TRC, the Attorney General of Canada, the Chief Adjudicator of the Indian Residential Schools Adjudication Secretariat, the Assembly of First Nations, the OPP and Les Soeurs de la Charité d'Ottawa:

1. THIS COURT ORDERS that by April 30, 2014, the OPP produce to the TRC the documents from the criminal investigation of abuse at St. Anne's IRS (the "OPP documents"), including documents for which the OPP makes claims for privilege and/or for the privacy interests of individuals, in the same manner that Canada is obliged to produce documents to the TRC under the Indian Residential Schools Settlement Agreement ("IRSSA");

2. THIS COURT ORDERS that by April 30, 2014, Canada produce to the TRC the OPP documents, including documents for which the OPP makes claims for privilege and/or for the privacy interests of individuals, in the same manner that it is obliged to produce documents to the TRC under the IRSSA;

3. THIS COURT ORDERS that by April 30, 2014 and subject to the procedure described below, the OPP produce to Canada, for the IAP, the OPP documents in its possession or control, excluding documents protected under solicitor and client privilege and/or investigation privilege, and the OPP also provide a list of documents for which it makes claims of privilege or immunity from production;

4. THIS COURT ORDERS that Canada or an Applicant can request that the court's lawyer appointed under the IRSSA, which lawyer shall have the powers of a Master under the Ontario *Rules of Civil Procedure,* review the OPP documents, and rule as to production for the IAP, with such decision subject to an appeal to an administrative judge under the IRSSA;

5. THIS COURT ORDERS that Canada shall produce all transcripts of criminal or civil proceedings in its possession or control about incidents of abuse at St. Anne's IRS and deliver such transcripts to the TRC within 20 days of the date hereof;

6. THIS COURT ORDERS that Canada shall by June 30, 2014, produce for the IAP:

(a) the OPP documents in its possession and/or received from the OPP about the sexual and/or physical abuse at St. Anne's IRS;

(b) the transcripts of criminal or civil proceedings in its possession about the sexual and/or physical abuse at St. Anne's IRS; and

(c) any other relevant and non-privileged documents in the possession of Canada to comply with the proper reading and interpretation of Canada's disclosure obligations under Appendix VIII;

7. THIS COURT ORDERS that that Canada shall by August 1, 2014 revise its Narrative and POI Reports for St. Anne's IRS;

8. THIS COURT ORDERS THAT the courts under the IRSSA have the exclusive jurisdiction to re-open settled IAP claims on a case-by-case basis;

9. THIS COURT ORDERS THAT the adjudicators of the IAP have the exclusive jurisdiction with respect to the admission of and use to be made of evidence for the IAP;

10. THIS COURT ORDERS that the Applicants and the TRC are entitled to claim costs for the legal services that identified that there was a problem associated with the operation of the IRSSA and also for the legal services associated with the RFDs designed to find a solution for the problem; and

11. THIS COURT ORDERS that if the parties cannot agree with respect to costs, including the scale of costs, they may make submissions in writing by March 31, 2014.

Powell, J

LARRY PHILIP FONTAINE et al.	and	**THE ATTORNEY GENERAL OF CANADA et al.**	Court File No: 00-CV-192059CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

SACK GOLDBLATT MITCHELL LLP
Barristers & Solicitors
30 Metcalfe Street, Suite 500
Ottawa, ON K1P 5L4

Tel: 613-235-5327
Fax: 613-235-3041

Fay Brunning LSUC#: 29200B
Ben Piper LSUC#: 58122B
Lawyer for the Applicants

THIS IS EXHIBIT "H" REFERRED TO IN THE
AFFIDAVIT OF Peter Grant
SWORN BEFORE ME AT Vancouver
THIS 8 DAY OF November, 2019

A Commissioner for taking Affidavits within
British Columbia

Rosalind M. Campbell
GRANT HUBERMAN
Barristers & Solicitors
1620-1075 W. Georgia Street
Vancouver, BC V6E 3C9
Tel: 604-685-1229 Fax: 604-685-0244

Court File No. 00-CV-192059

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	TUESDAY, THE 23rd
	)	
JUSTICE PERELL	)	DAY OF JUNE, 2015

B E T W E E N:

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, MICHELLINE AMMAQ, PERCY ARCHIE, CHARLES BAXTER SR., ELIJAH BAXTER, EVELYN BAXTER, DONALD BELCOURT, NORA BERNARD, JOHN BOSUM, JANET BREWSTER, RHONDA BUFFALO, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, BRENDA CYR, DEANNA CYR, MALCOLM DAWSON, ANN DENE, BENNY DOCTOR, LUCY DOCTOR, JAMES FONTAINE in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, VINCENT BRADLEY FONTAINE, DANA EVA MARIE FRANCEY, PEGGY GOOD, FRED KELLY, ROSEMARIE KUPTANA, ELIZABETH KUSIAK, THERESA LAROCQUE, JANE McCULLUM, CORNELIUS McCOMBER, VERONICA MARTEN, STANLEY THOMAS NEPETAYPO, FLORA NORTHWEST, NORMAN PAUCHEY, CAMBLE QUATELL, ALVIN BARNEY SAULTEAUX, CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER, EDWARD TAPIATIC, HELEN WINDERMAN and ADRIAN YELLOWKNEE

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE UNITED CHURCH OF CANADA, THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH, THE BAPTIST CHURCH IN CANADA, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN BAY, THE CANADA IMPACT NORTH MINISTRIES OF THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (ALSO KNOWN AS THE METHODIST MISSIONARY SOCIETY OF CANADA), THE INCORPORATED SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE

ANGLICAN CHURCH OF THE DIOCESE OF QUEBEC, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF NEW WESTMINISTER, THE SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE BOARD OF HOME MISSIONS AND SOCIAL SERVICE OF THE PRESBYTERIAN CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA, SISTERS OF CHARITY, A BODY CORPORATE ALSO KNOWN AS SISTERS OF CHARITY OF ST. VINCENT DE PAUL, HALIFAX, ALSO KNOWN AS SISTERS OF CHARITY HALIFAX, ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, LES SOEURS DE NOTRE DAME-AUXILIATRICE, LES SOEURS DE ST. FRANCOIS D'ASSISE, INSITUT DES SOEURS DU BON CONSEIL, LES SOEURS DE SAINT-JOSEPH DE SAINT-HYANCITHE, LES SOEURS DE JESUS-MARIE, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE, LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE L'ALBERTA, LES SOEURS DE LA CHARITE DE ST.-HYACINTHE, LES OEUVRES OBLATES DE L'ONTARIO, LES RESIDENCES OBLATES DU QUEBEC, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE JAMES (THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY), THE CATHOLIC DIOCESE OF MOOSONEE, SOEURS GRISES DE MONTREAL/GREY NUNS OF MONTREAL, SISTERS OF CHARITY (GREY NUNS) OF ALBERTA, LES SOEURS DE LA CHARITE DES T.N.O., HOTEL-DIEU DE NICOLET, THE GREY NUNS OF MANITOBA INC.-LES SOEURS GRISES DU MANITOBA INC., LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE D'HUDSON – THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, MISSIONARY OBLATES – GRANDIN PROVINCE, LES OBLATS DE MARIE IMMACULEE DU MANITOBA, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE SISTERS OF THE PRESENTATION, THE SISTERS OF ST. JOSEPH OF SAULT ST. MARIE, SISTERS OF CHARITY OF OTTAWA, OBLATES OF MARY IMMACULATE –ST. PETER'S PROVINCE, THE SISTERS OF SAINT ANN, SISTERS OF INSTRUCTION OF THE CHILD JESUS, THE BENEDICTINE SISTERS OF MT. ANGEL OREGON, LES PERES MONTFORTAINS, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS CORPORATION SOLE, THE BISHOP OF VICTORIA, CORPORATION SOLE, THE ROMAN CATHOLIC BISHOP OF NELSON, CORPORATION SOLE, ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD, ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, LA CORPORATION ARCHIÉPISCOPALE CATHOLIQUE ROMAINE DE ST. BONIFACE, LES MISSIONNAIRES OBLATES SISTERS DE ST. BONIFACE-THE MISSIONARY OBLATES SISTERS OF ST. BONIFACE, ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, IMMACULATE HEART COMMUNITY OF LOS ANGELES CA, ARCHDIOCESE OF VANCOUVER – THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, ROMAN CATHOLIC DIOCESE OF WHITEHORSE, THE CATHOLIC EPISCOPALE CORPORATION OF MACKENZIE-FORT SMITH, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, EPISCOPAL CORPORATION OF SASKATOON, OMI LACOMBE CANADA INC. and MT. ANGEL ABBEY INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

ON THE REQUEST FOR DIRECTIONS, ALSO KNOWN AS THE RETURN OF THE REQUEST FOR DIRECTIONS REGARDING ST. ANNE'S INDIAN RESIDENTIAL SCHOOL, made by approximately 50 Independent Assessment Process ("IAP") claimants who are former students of St. Anne's Indian Residential School ("St. Anne's IRS") or Bishop Horden Hall Indian Residential School ("Bishop Horden IRS") (the "Applicants"), heard on June 9, 2015, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

ON READING the records (including "Questions on Written Cross-Examination on Affidavit" and the transcript of the cross-examination of Neil Shamsuzzoha) and factums filed by the Applicants, the respondent the Attorney General of Canada ("Canada") and the Assembly of First Nations ("AFN").

AND ON HEARING the submissions of counsel for the Applicants, Canada and the AFN, and of Edmund Metatawabin on behalf of the St. Anne's Survivors' Association.

1. THIS COURT ORDERS that Canada shall revise each of the following reports required by the Indian Residential Schools Settlement Agreement ("IRSSA"), Schedule "D", Appendix VIII, namely, the reports summarizing documents about St. Anne's IRS (the "**School Narrative**"), and the reports about the persons named in claimants' IAP application forms for St. Anne's IRS as having abused a claimant (the "**POI Reports**"), by including in each report a chart comprised of the following two columns:

a) a column, organized in chronological order with relevant dates indicated, that summarizes all available information as to alleged physical or sexual assaults or other wrongful acts (including available information as to who was involved, what occurred, and when and where it occurred), that

   i. in the case of a School Narrative, were alleged to have occurred at St. Anne's IRS, or

   ii. in the case of a POI Report, were allegedly committed by a person identified in that POI Report while the person was an employee or student of St. Anne's IRS; and

b) a corresponding column that lists in chronological order with relevant dates indicated, all documents identifying, describing or otherwise relating to sexual or physical assaults or other wrongful acts that,

   i. in the case of the School Narrative, were alleged to have occurred at St. Anne's IRS, or

   ii. in the case of a POI Report, were allegedly committed by a person identified in that POI Report while the person was an employee or student of St. Anne's IRS.

2. THIS COURT FURTHER ORDERS that for inclusion in the evidentiary packages or supplemental evidentiary packages or the IAP Decisions Database for IAP claims not yet resolved, Canada shall provide to the Indian Residential Schools Adjudication Secretariat (the "Secretariat") unredacted copies of court records (including, but not limited to transcripts and pleadings) that

a) relate to criminal offences that were alleged to have occurred at either St. Anne's IRS or Bishop Horden IRS, and

b) were previously made available to the Secretariat in redacted form.

3. THIS COURT FURTHER ORDERS that the Applicants' request for an order that Canada provide the Secretariat with unredacted copies of all source documents for hearings involving St. Anne's IRS or Bishop Horden IRS is dismissed.

4. THIS COURT FURTHER ORDERS that Canada shall pay costs to the Applicants and the AFN in the sum that is fixed by the Court following receipt of submissions from the parties beginning with the submissions of the Applicants and AFN within 20 days of today's date followed by Canada's submissions within a further 20 days.

Perell, J.

JUSTICE PERELL

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 2 0 2015

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:

LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, et al.

and

THE ATTORNEY GENERAL OF CANADA et al.

Court File No: 00-CV-192059CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

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