

C.A. No. 1411, 2007

IN THE COURT OF APPEAL FOR SASKATCHEWAN
C A N A D A
PROVINCE OF SASKATCHEWAN

BETWEEN:

**KENNETH SPARVIER, DENNIS SMOKEYDAY, RHONDA BUFFALO, JOHN
DOE I, JANE DOE I, JOHN DOE II, JANE DOE II, JOHN DOE III, JANE DOE III,
JOHN DOE IV, JANE DOE IV, JOHN DOE V, JANE DOE V, JOHN DOE VI,
JANE DOE VI, JOHN DOE VII, JANE DOE VII, JOHN DOE VIII, JANE DOE VII,
JOHN DOE IX, JANE DOE IX, JOHN DOE X, JANE DOE X, JOHN DOE XI,
JANE DOE XI, JOHN DOE XII, JANE DOE XII, JOHN DOE XIII, JANE DOE
XIII and other John and Jane Does Individuals and Entities to be added**

RESPONDENTS/APPELLANTS
BY CROSS APPEAL

- and -

**ATTORNEY GENERAL OF CANADA
and other James and Janet Does Individuals and Entities to be added**

APPELLANTS/RESPONDENTS
BY CROSS APPEAL

NOTICE OF MOTION

**APPLICATION OF THE ATTORNEY GENERAL OF CANADA TO LIFT
THE STAY OF EXECUTION**

TAKE NOTICE:

1. THAT the Appellant, Attorney General of Canada, intends to apply to the Presiding Judge in Chambers at the Court House, 2425 Victoria Avenue, Regina, on Wednesday the 14th day of March, 2007 at 10:00 a.m. for the following relief:

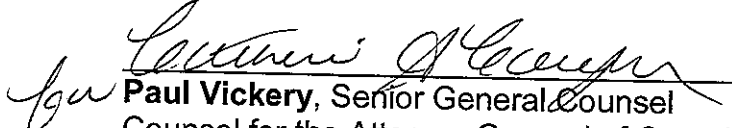
(a) an Order, pursuant to Rule 15 of *The Court of Appeal Rules*, lifting the stay of execution, with the exception of those provisions relating to the payment of Merchant Law Group legal fees, of the anticipated Approval Order of the Honourable Mr. Justice D. Ball approving, *inter alia*, the Indian Residential School Settlement Agreement and directing its implementation according to its terms, to be issued prior to the hearing of this motion flowing from his reasons issued the 15th day of December, 2006; and

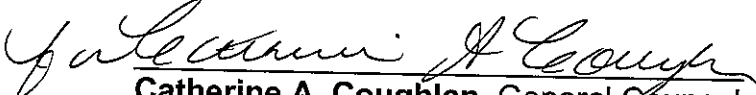
(b) an Order, pursuant to Rule 13 of *The Court of Appeal Rules*, granting the Appellant, Attorney General of Canada, leave to amend its Notice of Appeal, upon the issuance of the anticipated Approval Order.

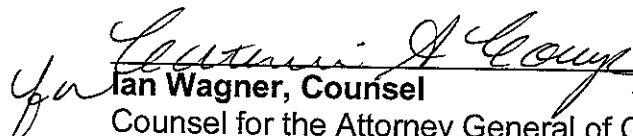
2. THAT the following material will be filed in support of this application:

- (a) This Notice of Motion with proof of service;
- (b) The Affidavit of Jeannette Waters;
- (c) The formal Order from which the Appellant desires to appeal;
- (d) The Decision of the Honourable Mr. Justice D. Ball upon which the Order is based;
- (e) A Draft Order of the relief sought; and
- (f) A Memorandum specifying the basis for seeking a lift of the stay.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 6th day of February, A.D. 2007.


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Counsel for the Attorney General of Canada


Catherine A. Coughlan, General Counsel
Counsel for the Attorney General of Canada


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Counsel for the Attorney General of Canada

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**APELLANTS/RESPONDENTS
BY CROSS APPEAL**

**BEFORE THE HONOURABLE) ON
MR./MADAM JUSTICE)
IN CHAMBERS)**

DRAFT ORDER

UPON THE APPLICATION of the Appellant, Attorney General of Canada, and having read the Notion of Motion with proof of service, the Affidavit of Jeannette Waters, the formal Approval Order and the Decision of the Honourable Mr. Justice D. Ball, together with such other material as was filed in support of the application, and having regard for the submissions of counsel:

IT IS HEREBY ORDERED:

1. THAT the stay of execution imposed pursuant to Rule 15 of *The Court of Appeal Rules* is lifted, with the exception of those provisions relating to the payment of legal fees to Merchant Law Group.
2. THAT the Appellant, Attorney General of Canada is granted leave to amend its Notice of Appeal, the amended Notice of Appeal to be filed and served by [date] _____, pursuant to Rule 13 of *The Court of Appeal Rules*.

ISSUED at _____, Saskatchewan, this _____ of _____, A.D. 2007.

Registrar, Court of Appeal

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AFFIDAVIT OF JEANNETTE WATERS
IN SUPPORT OF NOTICE OF MOTION REQUESTING A
LIFTING OF STAY IN ACCORDANCE WITH
RULE 15, RULES OF COURT OF APPEAL OF SASKATCHEWAN

I, Jeannette Waters, Advisor for the Department of Indian Residential
Schools Resolution Canada, of Ottawa, Ontario, **MAKE OATH AND SAY
THAT:**

1. I am the Special Advisor on the implementation of the Settlement
Agreement for the Department of Indian Residential Schools Resolution

Canada and as such have personal knowledge of the matters attested herein and, where stated to be on information and belief, believe the same to be true.

2. I make this affidavit in support of an application by the Appellant, Attorney General of Canada ("Canada") for

(a) an Order lifting the stay of execution of the anticipated Approval Order of the Honourable Mr. Justice D. Ball, approving, *inter alia*, the Indian Residential School Settlement Agreement and directing its implementation according to its terms, to be issued prior to the hearing of this motion flowing from his reasons issued December 15, 2006; and

(b) an Order granting the Appellant, Canada, leave to amend its Notice of Appeal, upon the issuance of the (anticipated) Approval Orders,

pursuant to Rules 15 and 13 of *The Court of Appeal Rules*, respectively.

Background: Applications for certification and settlement approval

3. On September 18 – 21, 2006, the Honourable Mr. Justice Ball of the Court of Queen's Bench of Saskatchewan heard the parties' consent application for certification of this action as class proceedings and approval of a proposed Settlement Agreement for the purpose of achieving a fair, comprehensive and lasting resolution of Indian Residential School claims in Canada (the "Approval Hearing").

4. Attached to my affidavit and marked as Exhibit "A" is a copy of the Settlement Agreement, without its Schedules, referred to in the above paragraph.

5. To achieve this pan-Canadian settlement, Approval Hearings also took place in the provincial superior courts of eight other jurisdictions as follows:

Ontario	August 29-31, 2006
Quebec	September 8, 2006
Saskatchewan	September 18-21, 2006
Northwest Territories:	October 3-4, 2006
Manitoba	October 5-6, 2006
Nunavut:	October 10-11, 2006
British Columbia:	October 10-12, 23, 2006
Alberta:	October 12-13, 2006
Yukon:	October 16-17, 2006

6. On December 15, 2006, seven of the nine courts released their reasons: the British Columbia Supreme Court ("BCSC"); the Alberta Court of Queen's Bench ("ABQB"); the Saskatchewan Court of Queen's Bench ("SKQB"); the Manitoba Court of Queen's Bench ("MANQB"); the Ontario Superior Court of Justice ("ONSCJ"); the Quebec Superior Court ("QUESC"); and the Yukon Supreme Court ("YUKSC").

7. On December 19, 2006 and January 15, 2007, the Nunavut Court of Justice ("NUCJ") and the Northwest Territories Supreme Court ("NWTSC") released their decisions, respectively.

8. Of the nine, the Manitoba, Yukon, Northwest Territories and Nunavut Courts certified their respective actions as class actions and approved the Settlement Agreement unconditionally.

9. The British Columbia, Alberta, Saskatchewan, Ontario and Quebec Courts certified their respective actions as class actions, and directed that the

Settlement Agreement would receive their respective approvals upon the parties addressing administrative concerns outlined by those Courts.

10. It is a term of the settlement that it does not become effective unless and until it is approved by all of the nine Courts. (See sections 2.02 and 16.01 at pages 22 and 79, respectively, of Exhibit "A").

11. Jaxine Oltean, one of the counsel for Canada in this matter, advises me and I believe that the parties anticipate that all nine Courts will be in a position to grant the Approval Orders by approximately mid-March, 2007, as it is expected that their concerns will have been satisfactorily addressed by counsel.

12. Ms. Oltean advises and I believe that once all of the Approval Orders are granted, the next step toward implementation of the settlement would be to have Phase II of the Notice Plan approved by all 9 Courts. Thirty-five days after receiving these approvals, Phase II of the Notice Plan and the running of the 150 day Opt-Out period would commence. The Phase II "Claims/Opt-Out Notice" serves to (1) announce the settlement's approval; (2) outline its benefits; (3) describe how and when various legal rights, such as the right to opt-out, must be exercised; and (4) explain how to apply for the claims processes.

Demographics of former IRS students

13. I have reviewed the affidavit of Richard Courtis, sworn July 27, 2006, which was part of the common evidentiary record before all 9 Courts during the Approval Hearings. Attached to my affidavit and marked as Exhibit "B" is a copy of the relevant excerpts from the affidavit of Richard Courtis.

14. At paragraph 121, Mr. Courtis deposes that during the settlement negotiations, work was done on class size and resulted in a December 2005 report prepared by Siggner & Associates, which is attached as an exhibit to Mr. Courtis' affidavit.

15. I have reviewed this report and it estimates that the

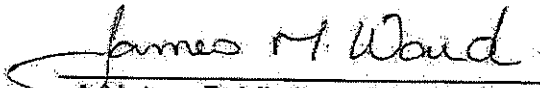
"...former Residential School Attendee population in 2001 who were aged 15 and over and are still alive is 83,695. Due to mortality of this already-born and aging population, their numbers are expected to decline to 80,012 by 2005, and to 78,994 by 2006..." (See page 5 of the Executive Summary of the Report).

16. According to the report, an estimated 1018 former Residential School Attendees will have died in the interval between 2005 and 2006. Attached to my affidavit and marked as Exhibit "C" is a copy of the December 2005 Siggner & Associates Inc. report entitled "Estimating the Residential School Attendee Population For the Years 2001, 2005 and 2006".

17. The report also estimates the total Aboriginal Residential School Attendee population aged 65 years and older in 2005 and 2006. In 2005, the total RSA age group of 65 years and older was projected to be 14,032 and down to 13,396 by 2006. (See page 23 of the report).

18. If the stay is not lifted, then Phase II of the Notice Program and the running of the Opt-Out Period cannot commence and, therefore, implementation of the settlement will be delayed. In light of the aging population and reported mortality rates of the prospective class members, there will be considerable injustice and incurable prejudice if the stay is not lifted.

SWORN before me at the City of
Ottawa, in the Province of Ontario, this
6th day of February, 2007.


A Notary Public in and for the Province
of Ontario *British Columbia*.

James M. Ward
Barrister & Solicitor
Department of Justice
90 Sparks Street
Ottawa, ON
K1A 0H8
(613) 996-0140


Jeannette Waters

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**

This is Exhibit "A"
to the Affidavit of
Jeannette Waters
Sworn before me in the
Province of Ontario the
6th day of February, 2007.

James M. Ward.

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 LAP 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 or 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	Troniak Law Office
Richard W. Courtis Law Office	Koskie Minsky LLP
Field LLP	Leslie R. Meiklejohn Law Office
David Paterson Law Corp.	Huck Birchard
Docken & Company	Ruston Marshall
Arnold, Pizzo, McKiggan	Rath & Company
Cohen Highley LLP	Levene Tadman Gutkin Golub

White, Ottenheimer & Baker
Thompson Dorfman Sweatman
Ahlstrom Wright Oliver & Cooper

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

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

INUVIALUIT REGIONAL CORPORATION

By: _____
Hugo Prud'homme

NATIONAL CONSORTIUM

By: _____
Craig Brown

COHEN HIGHLY LLP

By: _____
Russell Raikes

THE UNITED CHURCH OF CANADA

By: _____
Alexander D. Pettingill

NUNAVUT TUNNGAVIK INC.

By: _____
Janice Payne

MAKIVIK CORPORATION

By: _____
Gilles Gagne

MERCHANT LAW GROUP

By: _____
E.F. Anthony Merchant, Q.C.

THE PRESBYTERIAN CHURCH IN CANADA

By: _____
S. John Page

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA

By: _____
S. John Page

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: _____
William Sammon

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 CATHOLIC EPISCOPALE
CORPORATION OF MACKENZIE

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

F. J. SCOTT HALL LAW
CORPORATION

By: _____
Scott Hall

By: _____
Kevin Simcoe
HEATHER SADLER JENKINS

By: _____
Sandra Staats

HUTCHINS GRANT & ASSOCIATES

By: _____
Peter Grant

DUBOFF EDWARDS HAIGHT &
SCHACHTER

By: _____
Harley Schachter

By: _____
Brian O'Reilly

MACDERMID LAMARSH
GORSALITZ

By: _____
Robert Emigh

MACPHERSON LESLIE &
TYERMAN LLP

By: _____
Maurice Laprairie, Q.C.

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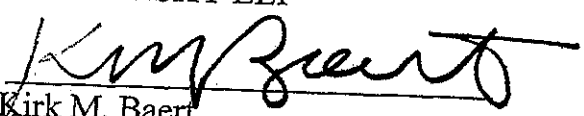
JOHN A. TAMMING LAW OFFICE

DINNING HUNTER LAMBERT &
JACKSON

By: _____
John A. Tamming

By: _____
Eric Wagner

KOSKIE MINSKY LLP

By: 
Kirk M. Baert

SIGNATURES RECEIVED

Received		
June 15/06	ON BEHALF OF HER MAJESTY THE QUEEN IN RIGHT OF CANADA	The Honourable Jim Prentice
June 15/06	THE FEDERAL REPRESENTATIVE	The Honourable Frank Iacobucci
June 14/06	ASSEMBLY OF FIRST NATIONS	Phil Fontaine, National Chief Kathleen Mahoney
June 1/06	NUNAVUT TUNNGAVIK INC.	Janice Payne
June 6/06	INUVIALUIT REGIONAL CORPORATION	Hugo Prud'homme
May 31/06	MAKIVIK CORPORATION	Gilles Gagne
May 31/06	NATIONAL CONSORTIUM	Craig Brown
June 20/06	MERCHANT LAW GROUP	E.F. Anthony Merchant, Q.C.
June 9/06	COHEN HIGHLY LLP	Russell Raikes
June 6/06	THE PRESBYTERIAN CHURCH IN CANADA	Stephen Kendall, Principal Clerk
June 20/06	THE UNITED CHURCH OF CANADA	Jim Sinclair-General Secretary Cynthia Gunn-Legal/Judicial Counsel
July 17/06	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	W. Roderick Donlevy
July 17/06	CORPORATION 101084347 SASKATCHEWAN INC.	Pierre L. Baribeau W. Roderick Donlevy
June 20/06	THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA	Peter C.H. Blachford Treasurer, General Synod

July 17/06	THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX	W. Roderick Donlevy
July 17/06	LES SOEURS DE NOTRE DAME- AUXILIATRICE	Pierre L. Baribeau
July 17/06	LES SOEURS DE ST. FRANCOIS D'ASSISE	Pierre L. Baribeau
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July 17/06	LES SOEURS DE L'ASSOMPTION DE LA SAINTE VERGE	Pierre L. Baribeau
July 17/06	LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE L'ALBERTA	Pierre L. Baribeau
July 17/06	LES SOEURS DE LA CHARITÉ DE ST.-HYACINTHE	Pierre L. Baribeau
July 17/06	LES OEUVRES OBLATES DE L'ONTARIO	W. Roderick Donlevy
July 17/06	LES RÉSIDENCES OBLATES DU QUÉBEC	W. Roderick Donlevy
July 17/06	LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE JAMES (The Roman Catholic Episcopal Corporation of James Bay) THE CATHOLIC DIOCESE OF MOOSONEE	W. Roderick Donlevy
July 17/06	SOEURS GRISES DE MONTREAL/GREY NUNS OF MONTREAL	Pierre L. Baribeau

July 17/06	SISTERS OF CHARITY (GREY NUNS) OF ALBERTA	W. Roderick Donlevy
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July 17/06	HÔTEL-DIEU DE NICOLET (HDN)	W. Roderick Donlevy
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July 17/06	LA CORPORATION EPISCOPAL CATHOLIQUE ROMAINE DE LA BAIE D' HUDSON THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY	W. Roderick Donlevy
July 17/06	MISSIONARY OBLATES-GRANDIN	W. Roderick Donlevy
July 17/06	LES OBLATS DE MARIE IMMACULÉE DU MANITOBA	W. Roderick Donlevy
July 17/06	THE ARCHIEPISCOPAL CORPORATION OF REGINA	W. Roderick Donlevy
July 17/06	THE SISTERS OF THE PRESENTATION	Mitchell Holash
July 17/06	THE SISTERS OF ST. JOSEPH OF SAULT ST. MARIE	W. Roderick Donlevy
July 17/06	LES SOEURS DE LA CHARITÉ D'OTTAWA - SISTERS OF CHARITY OF OTTAWA	W. Roderick Donlevy
May 31/06	OBLATES OF MARY IMMACULATE-ST. PETER'S PROVINCE	Gilbert J.S. - Mason, OMI Jan Rademaker, OMI
July 17/06	THE SISTERS OF SAINT ANN	W. Roderick Donlevy
July 17/06	SISTERS OF INSTRUCTION OF THE CHILD JESUS	W. Roderick Donlevy

July 17/06	THE BENEDICTINE SISTERS OF MT. ANGEL OREGON	W. Roderick Donlevy
July 17/06	LES PERES MONTFORTAINS	W. Roderick Donlevy
July 17/06	THE ROMAN CATHOLIC BISHOP OF KAMLOOPS CORPORATION SOLE	W. Roderick Donlevy
July 17/06	THE BISHOP OF VICTORIA, CORPORATION SOLE	Frank D. Corbett
July 17/06	THE ROMAN CATHOLIC BISHOP OF NELSON CORPORATION SOLE	W. Roderick Donlevy
July 17/06	ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA	W. Roderick Donlevy
July 17/06	THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA	W. Roderick Donlevy
July 17/06	LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD	Rev. Charles Lavoie, Vicar General
July 17/06	ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN	W. Roderick Donlevy
July 17/06	LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE ST. BONIFACE	W. Roderick Donlevy
July 17/06	LES MISSIONNAIRES OBLATES DE ST. BONIFACE THE MISSIONARY OBLATES SISTERS OF ST. BONIFACE	W. Roderick Donlevy
July 17/06	ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG	W. Roderick Donlevy

July 17/06	LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT	Mitchell Holash
July 17/06	THE ROMAN CATHOLIC BISHOP OF THUNDER BAY	W. Roderick Donlevy
July 17/06	IMMACULATE HEART COMMUNITY OF LOS ANGELES CA	W. Roderick Donlevy
July 17/06	ARCHDIOCESE OF VANCOUVER THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER	W. Roderick Donlevy
July 17/06	ROMAN CATHOLIC DIOCESE OF WHITEHORSE	W. Roderick Donlevy
	THE CATHOLIC EPISCOPALE CORPORATION OF MACKENZIE- FORT SMITH	Archbishop of MacKenzie
July 17/06	THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT	W. Roderick Donlevy.
	DIOCESE OF SASKATOON	W. Roderick Donlevy
	OMI LACOMBE AND CORPORATION	W. Roderick Donlevy
June 1/06	FULTON & COMPANY	Len Marchand, P. Eng.
May 24/06	ROSE A. KEITH, LLP	Rose A. Keith
June 6/06	LACKOWICZ, SHIER & HOFFMAN	Dan Shier
May 29/06	CABOTT & CABOTT	Laura I. Cabott
June 6/06	KESHEN MAJOR	Greg Rickford
June 7/07	BILKEY, QUINN	David Bilkey Kevin Simcoe
May 31/06	F. J. SCOTT HALL LAW CORPORATION	Scott Hall


May 30/06	HEATHER SADLER JENKINS	Sandra Staats
May 29/06	HUTCHINS GRANT & ASSOCIATES	Peter Grant Brian O'Reilly
June 7/06	DUBOFF EDWARDS HAIGHT & SCHACHTER	Harley Schachter
May 31/06	MACDERMID LAMARSH GORSALITZ (Fort McMurray)	Robert Emigh
May 31/06	MACDERMID LAMARSH (Saskatoon)	Robert Emigh
May 31/06	MACPHERSON LESLIE & TYERMAN LLP	Maurice Laprairie, Q.C.
May 30/06	JOHN A. TAMMING LAW OFFICE	John A. Tamming
June 5/06	DINNING HUNTER LAMBERT & JACKSON	Eric Wagner
June 8/06	KOSKIE MINSKY LLP	Kirk M. Baert
June 8/06	WALLBRIDGE, WALLBRIDGE	Kathleen Erin Cullin
May 31/06	GILLES GAGNÉ	Gilles Gagné
July 6/06	GREY MUNDAY LLP	Leighton B. U. Grey
	CRYSTAL MCLEOD LAW FIRM	Crystal McLeod


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 15 day of June, 2006.

ON BEHALF OF HER MAJESTY THE
QUEEN IN RIGHT OF CANADA

The Honourable Tim Prentice

THE FEDERAL REPRESENTATIVE
By: 
The Honourable Frank Iacobucci

ASSEMBLY OF FIRST NATIONS

By: *Phil Bontaine*
Phil Bontaine, National Chief

By: *Kathleen Mahoney*
Kathleen Mahoney

NUNAVUT TUNNGAVIK INC.

By: _____
Janice Payne

INUVIALUIT 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: _____
S. John Page

THE UNITED CHURCH OF
CANADA

By: _____
Alexander D. Pettingill

THE GENERAL SYNOD OF THE
ANGLICAN CHURCH OF
CANADA

By: _____
S. John Page

ASSEMBLY OF FIRST NATIONS

By: _____
Phil Fontaine, National Chief

By: _____
Kathleen Mahoney

INUVIALUIT CORPORATION

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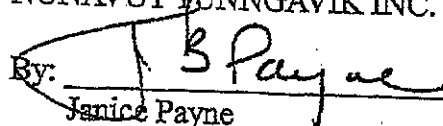
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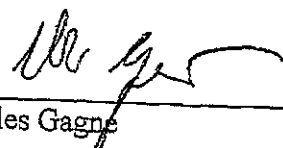
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By: S. John Page

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA

By: S. John Page

This is Exhibit "B" to the Affidavit of Jeannette Waters sworn before me in the Province of Ontario the 14th day of February 2007.

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Court File No. 00-CV-192059CP

James M. Ward

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CHARLES BAXTER, SR. AND ELIJAH BAXTER

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

- and -

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA, THE SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE DIOCESE OF ATHABASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF CARIBOO, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE DIOCESE OF MOOSONEE, THE SYNOD OF THE DIOCESE OF WESTMINSTER, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE DIOCESE OF SASKATCHEWAN, THE SYNOD OF THE DIOCESE OF YUKON, THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), 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 (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS, THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, THE ROMAN CATHOLIC BISHOP OF VICTORIA, THE ROMAN CATHOLIC BISHOP OF NELSON, THE CATHOLIC

EPISCOPAL CORPORATION OF WHITEHORSE, LA CORPORATION
EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD - McLENNAN, THE
CATHOLIC ARCHDIOCESE OF EDMONTON, LA DIOCESE DE SAINT-PAUL,
THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF MACKENZIE, THE
ARCHIEPISCOPAL CORPORATION OF REGINA, THE ROMAN CATHOLIC
EPISCOPAL CORPORATION OF KEEWATIN, THE ROMAN CATHOLIC
ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA CORPORATION
ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT-BONIFACE, THE
ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF SAULT
STE. MARIE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES
BAY, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, THE
ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, LA
CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT,
THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT,
THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE
OF BRITISH COLUMBIA, THE MISSIONARY OBLATES OF MARY
IMMACULATE - GRANDIN PROVINCE LES PERES MONTFORTAINS (also
known as THE COMPANY OF MARY), JESUIT FATHERS OF UPPER CANADA,
THE MISSIONARY OBLATES OF MARY IMMACULATE - PROVINCE OF ST.
JOSEPH, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (also known as
LES REVERENDS PERES OBLATS DE L'IMMACULEE CONCEPTION DE
MARIE), THE OBLATES OF MARY IMMACULATE, ST. PETER'S PROVINCE,
LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES TERRITOIRES
DU NORD OUEST, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE
(PROVINCE U CANADA - EST), THE SISTERS OF SAINT ANNE, THE SISTERS
OF INSTRUCTION OF THE CHILD JESUS (also known as THE SISTERS OF THE
CHILD JESUS), THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN
CANADA, THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERT (also
known as THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERTA), THE
SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES,
THE SISTERS OF CHARITY (GREY NUNS) OF MONTREAL (also known as LES
SOEURS DE LA CHARITE (SOEURS GRISES) DE L'HOPITAL GENERAL DE
MONTREAL), THE GREY SISTERS NICOLET, THE GREY NUNS OF MANITOBA
INC. (also known as LES SOEURS GRISES DU MANITOBA INC.), THE SISTERS
OF ST. JOSEPH OF SAULT STE. MARIE, LES SOEURS DE SAINT-JOSEPH DE
ST-HYACINTHE and INSTITUT DES SOEURS DE SAINT-JOSEPH DE SAINT-
HYACINTHE LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE (also
known as LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE) DE
NICOLET AND THE SISTERS OF ASSUMPTION, LES SOEURS DE
L'ASSOMPTION DE LA SAINTE VIERGE DE L'ALBERTA, THE DAUGHTERS OF
THE HEART OF MARY (also known as LA SOCIETE DES FILLES DU COEUR DE
MARIE and THE DAUGHTERS OF THE IMMACULATE HEART OF MARY),
MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (also known as
MISSIONARY OBLATES OF THE SACRED HEART AND MARY IMMACULATE,
or LES MISSIONAIRES OBLATS DE SAINT-BONIFACE), LES SOEURS DE LA
CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (also known as SISTERS

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OF CHARITY OF OTTAWA - GREY NUNS OF THE CROSS), SISTERS OF THE HOLY NAMES OF JESUS AND MARY (also known as THE RELIGIOUS ORDER OF JESUS AND MARY and LES SOEURS DE JESUS-MARIE), THE SISTERS OF CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (also known as THE SISTERS OF CHARITY OF HALIFAX), LES SOEURS DE NOTRE DAME AUXILIATRICE, LES SOEURS DE ST. FRANCOIS D'ASSISE, SISTERS OF THE PRESENTATION OF MARY (SOEURS DE LA PRESENTATION DE MARIE), THE BENEDICTINE SISTERS, INSTITUT DES SOEURS DU BON CONSEIL, IMPACT NORTH MINISTRIES, THE BAPTIST CHURCH IN CANADA

Third Parties

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF RICHARD COURTIS
(sworn July 27, 2006)

I, RICHARD COURTIS, Barrister and Solicitor, of the City of Thunder Bay, MAKE OATH AND SAY:

1. I am co-counsel of record for the plaintiffs in *Baxter et al. v. Canada* (Ontario Court File No. 00-CV-192059CP ("*Baxter*")). I previously swore an affidavit on July 25, 2003 that was filed in support of the *Baxter* motion for certification.

Definitions

2. For the purposes of this affidavit, I will use the following terms:

"AIP" means the Agreement in Principle signed November 20, 2005;

"Churches" or "Churches 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" of the Settlement Agreement, 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" of the Settlement Agreement.

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"Class Members" means those persons who are members of the classes set out in the proposed Amended Statement of Claim;

"Common Experience Payment" means the lump sum payment described herein;

"Designated Amount" means \$1,900,000,000.00;

"DR Model" means the dispute resolution model offered by Canada since November 2003;

"Eligible CEP Recipient" means all former students who resided at Indian Residential Schools;

"Eligible IAP Claimant" means all Eligible CEP Recipients and claimants who, while under the age of 21, were permitted by an adult employee to be on the premises of an Indian Residential School to take part in authorized school activities;

"Federal Representative": means the Honourable Frank Iacobucci;

"Settlement Agreement" (SA): means the Indian Residential Schools Settlement Agreement entered into by the parties on May 10, 2006.

"Independent Assessment Process" ("IAP") means the process for the determination of individual abuse claims attached as Schedule "D" to the Settlement Agreement (SA).

"Indian Residential Schools" means the following:

1. Institutions listed in Schedule "E" to the Settlement Agreement (SA);
2. Institutions listed in Schedule "F" to the Settlement Agreement (SA) ("Additional Residential Schools") which may be amended from time to time; and,
3. any institution which is determined to meet the following criteria:
 - (a) The child was placed in a residence away from the family home by or under the authority of the federal government for the purposes of education;
 - (b) The federal government was jointly or solely responsible for the operation of the residence and care of the children resident there; and
 - (c) Indicators that the residence was federal in nature include, but are not limited to, whether:

- (i) The institution was federally owned;
- (ii) The federal government stood as the parent to the child;
- (iii) The federal government was at least partially responsible for the administration of the institution;
- (iv) The federal government inspected or had a right to inspect the institution;
- (v) The federal government did or did not stipulate that the institution was an IRS.

"NAC" means the national administration committee as described in the Settlement Agreement (SA).

Introduction

3. I practice civil and criminal litigation across north-western Ontario. In the course of my practice I have acted for victims of institutional child abuse and have represented hundreds of Aboriginal persons, many of whom are survivors of the Residential School system. I travel regularly to reserves in Aboriginal communities across northern Ontario and, in the course of doing so, have spoken with hundreds of Indian Residential School survivors. As part of my work as Counsel in the Baxter Class Action I read the affidavit of Robert Robson which was filed by the Plaintiffs as part of the Class Certification Motion materials. The Robson affidavit sets out a detailed history of Indian Residential Schools in Canada and describes the experiences of aboriginal students in Residential Schools across Canada and the harms that resulted from those experiences. I have also reviewed the report of the Royal Commission on Aboriginal Peoples and, in particular, Chapter 10 entitled "Residential Schools". I have also reviewed the Law Commission of Canada's report entitled "Restoring Dignity—Responding to Child Abuse in Canadian Institutions".

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4. I have reviewed affidavits filed in support of the various motions filed across Canada, in either sworn or final draft form. I have also spoken frequently and at length with legal counsel across Canada regarding this action and the proposed settlement of Indian Residential Schools litigation in Canada.
5. I have been involved in the prosecution of *Baxter*, including participating in the settlement negotiations and the drafting of the certification, settlement and settlement approval material.
6. As such, I have personal knowledge of the matters deposed to below, except where those matters are stated to be based on information and belief, and where so stated, I believe them to be true.
7. This affidavit is sworn in support of the motion to approve the settlement described hereafter on the basis that it is fair, reasonable and in the best interests of all class members and to approve the legal fees and disbursements to be paid to legal counsel.
8. This affidavit provides an overview of the steps taken in the *Baxter* action, describes the settlement negotiations, the terms of the settlement and the rationale for legal counsel's recommendation that the settlement be approved.

Background

9. The claim against the defendants arises out of the damages incurred by class members while attending Indian Residential Schools.

10. I am informed by and accept as accurate the following extract from the preamble to Chapter 10 of the Royal Commission on Aboriginal Peoples ("RCAP") entitled "Residential Schools", wherein the RCAP states:

Put simply, the Residential School system was an attempt by successive governments to determine the fate of Aboriginal people in Canada by appropriating and reshaping their future in the form of thousands of children who were removed from their homes and communities and placed in the care of strangers. Those strangers, the teachers and staff, were, according to Hayter Reed, a senior member of the department in the 1890s, to employ "every effort...against anything calculated to keep fresh in the memories of the children habits and associations which it is one of the main objects of industrial education to obliterate." Marching out from the schools, the children, effectively re-socialized, imbued with the values of European culture, would be the vanguard of a magnificent metamorphosis: the 'savage' was to made 'civilized', made fit to take up the privileges and responsibilities of citizenship.

Tragically, the future that was created is now a lamentable heritage for those children and the generations that came after, for Aboriginal communities and, indeed, for all Canadians. The school system's concerted campaign "to obliterate" those "habits and associations", Aboriginal languages, traditions and beliefs, and its vision of radical re-socialization, were compounded by mismanagement and underfunding, the provision of inferior educational services and the woeful mistreatment, neglect and abuse of many children—facts that were known to the department and the churches throughout the history of the school system."

11. I agree with these statements.
12. I believe that Canada has previously publicly acknowledged the national scope of the Indian Residential School system and its legacy by issuing a "Statement of Reconciliation" on January 7, 1998. Attached as exhibit "A" to this affidavit is a copy of the aforementioned Statement of Reconciliation issued January 7, 1998.

The history of Indian Residential Schools

13. A more detailed discussion of the history, purpose, operation and management of Indian Residential Schools in Canada is included in the affidavit sworn by Robert Robson for this settlement motion and dated July 9, 2006. I have reviewed that affidavit and agree with its contents. A brief discussion of the history of Indian Residential Schools follows.

14. Indian Residential Schools predate Confederation. Canada operated nearly every school as a joint venture with various religious organizations, including the Churches. The schools were located in every province and territory except Newfoundland, New Brunswick and Prince Edward Island.

15. Approximately 130 schools existed over time, and while most Indian Residential Schools ceased to operate by the mid-1970's, the last federally-run school in Canada closed in 1996.

16. The RCAP brought the trauma experienced by some students in Indian Residential Schools to national attention. In RCAP's 178 days of public hearings in 96 communities, many Indian Residential School survivors had the courage to tell their stories of physical and sexual abuse, bringing attention to this tragic legacy. Indian Residential Schools issues became a significant part of the RCAP Report, which was released in 1996.

17. In 1998, Canada issued a Statement of Reconciliation including an apology to those people who were sexually or physically abused while attending Indian Residential Schools and established the Aboriginal Healing Foundation (the "AHF"). The AHF was provided with \$350 million to fund community-based healing projects focussing on addressing the

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legacy of Indian Residential Schools. In Budget year 2005, Canada committed an additional \$40 million to continue to support the important work of the AHF.

The National Consortium and Class Counsel

18. Class Counsel were assisted by the law firms listed at exhibit "B" of this affidavit who are members of the National Consortium. Contact information for each law firm is provided.
19. National Consortium members practice in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland, Nunavut and the Northwest Territories and have been retained by approximately 8,000 Indian residential school survivors from across Canada.
20. Collectively, National Consortium members were and are experienced in areas relevant to this class proceeding such as class action litigation, aboriginal law and personal injury litigation. In addition, members have extensive specific experience in Indian Residential School litigation.
21. I believe that Class Counsel and the National Consortium have sufficient resources and expertise to effectively prosecute this class proceeding and to advance it to the settlement approval stage and, if necessary, to trial.
22. A more extensive description of the National Consortium is set out in the affidavit of Darcy Merkur, filed on this motion.

Steps in the Litigation

23. The plaintiffs commenced the Baxter class action on behalf of all Residential School Survivors and their families by issuance of a statement of claim on June 13, 2000.

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24. A number of amendments were made to the Baxter claim (in October, 2002; March 2003 and December 2004) and in its final form the 'Amended Fresh as Amended Statement of Claim', filed December 14, 2004, is attached as exhibit "C". The claim defines two classes – the 'Survivor Class' and the 'Family Class'. The Claim alleges causes of action and claims against the defendant Canada in paragraphs 19 and 20.
25. On March 10, 2003, Canada filed a statement of defence. This defence was amended by Order dated February 16, 2005. The main defences asserted by Canada to the allegations made by the plaintiffs are pleaded in paragraphs 30, 31 and 32. Canada also pleads Limitation defences at paragraph 46. A copy of the aforementioned Order attaching the Amended Statement of Defence is attached as exhibit "D".
26. On April 24, 2003, Canada brought a third party claim against the Churches. The main basis for the third party claim was Canada's assertion that the Churches were responsible for the day to day operations of the Residential Schools which they operated and as a result were liable to indemnify Canada in respect of any consequences to the plaintiffs resulting from the operation of the schools through the class period. The third party claim was also amended by Order dated February 16, 2005. A copy of this Order attaching the Amended Third Party Claim is attached as exhibit "E".
27. More than 85 religious entities were named as third parties by Canada. Based on their position taken in litigation filed elsewhere in Canada, and in particular in the *Cloud* class action, the Churches will raise defences including a denial that breaches of duty took place, a denial that damage or injury occurred to the plaintiffs and various Limitation defences, including laches.

Steps leading to the proposed settlement of this action

28. While the pleadings were being completed, the parties attended numerous case conferences with Mr. Justice Warren K. Winkler of the Ontario Superior Court of Justice.
29. Case conferences were held on the following dates: April 15, 2002; October 24, 2002; January 7, 2003; February 24, 2003; May 22, 2003; June 17, 2003; September 9, 2003; October 21, 2003 and November 27, 2003.
30. Attached as exhibits "F" are copies of the minutes of the case conferences referred to above (save for the conferences of October 21, 2003 and November 27, 2003 when no Minutes were taken).
31. The case conference minutes make clear that this was, and is, extremely complex litigation.
32. While the *Baxter* action was pending, the proceedings in *Cloud v. The Attorney General of Canada* ("*Cloud*") were being pursued in this court by members of the National Consortium.
33. The plaintiffs in *Cloud* were former students at Mohawk Institute Residential School in Brantford, Ontario and their families. They moved for certification of the action as a class proceeding. Haines J. dismissed the motion. The plaintiffs appealed to the Divisional Court. The majority of the Divisional Court (Valin and Gravelly JJ.) dismissed the appeal. Cullity J. dissented and delivered lengthy reasons. He would have allowed the appeal and certified the action as a class proceeding.

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34. The plaintiffs appealed to the Court of Appeal from the Order of the Divisional court pursuant to leave granted on October 10, 2003 (McMurtry C.J.O., Goudge and Simmons J.A.).
35. On December 3, 2004, the Ontario Court of Appeal released its reasons in *Cloud*, certifying that action as a class proceeding. Leave to appeal to the Supreme Court of Canada was denied on May 12, 2005.
36. Both Cullity J. and the Court of Appeal found that a failure to certify would result in a failure of access to justice. They referred to the poverty of the former students, their inability to afford the cost of individual actions and the effect such proceedings would have on the continuing emotional problems from which the former students suffer, and continue to suffer, as a result of their experiences at the Mohawk Institute.
37. On December 14, 2004, the parties to the Baxter action attended another case conference with Mr. Justice Winkler. A schedule for the certification motion in *Baxter* was set at the case conference, with the certification motion hearing date set down for May 2005. Copies of the minutes of the December 14, 2004 case conference are attached as exhibit "G" to this affidavit.
38. Further case conferences with Mr. Justice Winkler were held throughout the rest of 2005. Several important issues arose in early 2005 including the extent to which the third parties could bring rule 21 motions prior to certification and the extent to which they could or would be allowed to participate in the certification motion. A motion resulted. An adverse decision for the plaintiffs would have delayed the resolution of *Baxter* for years.

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39. On May 30, 2005, Justice Winkler released his reasons staying the various motions brought by the third parties and directing that the certification motion be heard first. This opened the way to a scheduling Order that would likely have seen the Baxter Certification motion heard before the end of 2005. A copy of Justice Winkler's May 30, 2005 reasons are attached as exhibit "H" to this affidavit. Leave to appeal was sought by certain of the third parties but the motion was subsequently abandoned. Leave being granted would have further delayed these proceedings.
40. On May 30, 2005, Canada appointed The Honourable Frank Iacobucci to negotiate with the key stakeholders to develop an agreement for a fair and lasting resolution of the legacy of Indian Residential Schools.
41. The dates, issues discussed and resolutions are to be detailed in the affidavit of the Honourable Frank Iacobucci filed in support of the within motion.
42. As will be detailed in the Iacobucci Affidavit, the parties engaged in settlement negotiations from June 2005 to November 20, 2005. Other details of the negotiations are provided in the Affidavit of Darcy Merkur filed on this motion. I have reviewed the Merkur Affidavit and agree with its contents.
43. Settlement negotiations resulted in the parties agreeing upon the form of an Agreement in Principle dated November 20, 2005.
44. The settlement was ultimately formalized in the Settlement Agreement, a process which took many months of further negotiations between the parties. The Settlement Agreement (the "SA") including all schedules thereto has been filed with this Court.

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45. As a term of the SA, the parties agreed that a uniform omnibus Statement of Claim would be delivered which merges all the claims being advanced in class action and representative action litigation across Canada and also names the Churches as party defendants. A copy of the proposed Amended Statement of Claim is attached as exhibit "I" to this affidavit.

The proposed settlement is fair, reasonable and in the best interests of class members

46. Class Counsel's opinion is that the Settlement is fair, reasonable and in the best interests of class members for the reasons set out in the following paragraphs.

A) The Common Experience Payment

47. Canada will make a Common Experience Payment to every Eligible CEP Recipient who was alive on May 30, 2005.

48. The amount of the Common Experience Payment will be:

- (a) \$10,000 to every Eligible CEP Recipient who attended an Indian Residential School for one school year or part thereof;
- (b) an additional \$3,000 for each school year (or part thereof) thereafter that an Eligible CEP Recipient attended a Residential School;
- (c) less the amount of any advance payment on the CEP received.

49. To effectuate the distribution of the Common Experience Payments, Canada will transfer the Designated Amount (\$1.9 billion) to the Trustee as defined in the Settlement Agreement (incumbent Ministers responsible for Indian Residential Schools Resolution Canada) pursuant to the Trust Agreement attached to the Settlement Agreement (SA) as Schedule "F". Service Canada, a Federal Government department with 20,000 employees and 320 offices across Canada, will act as the operating agency for the Trustee. Applications for

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the CEP will be submitted to Service Canada. The parties have developed application procedures for Eligible CEP Recipients that reflect the need for simplicity of form, expedition of payments, and an appropriate form of audit verification in consultation with key stakeholders. A copy of the proposed application form to be completed by Eligible CEP Recipients is attached as exhibit "J" to this affidavit. Service Canada will be responsible for carrying out the duties of the Trustee as set out in Article 10 of the SA, including:

- (a) Developing, installing and implementing systems and procedures necessary to meet its obligations under the Trust Agreement;
- (b) Developing, installing and implementing systems and procedures for paying out compensation for validated CEP Applications;
- (c) Reporting to the NAC and the Courts respecting CEP payments received and being administered and compensation paid; and,
- (d) Providing trained personnel in such reasonable numbers as are required for the performance of its duties.

All amounts, including the Designated Amount, held by Service Canada in Trust will bear interest as provided in Order in Council P.C. 1970-300 of February 17, 1970. All interest earned will be added to the Designated Amount.

50. In the event that the Designated Amount is insufficient to pay all Eligible CEP Recipients the Common Experience Payments to which they are entitled, Canada has agreed to add a sufficient amount to remedy any deficiency in this respect. This is a key component of the Settlement.

51. In the event the Designated Amount proves to be in excess by more than \$40,000,000 of the total amount required to pay all Eligible CEP Recipients their Common Experience Payments, Canada has agreed to cause Service Canada to credit each Eligible CEP Recipient, *pro rata*, with an amount up to \$3,000 in the form of Personal Credits (the "Personal Credits") which may be redeemed for personal or group educational services from a list of educational

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entities or groups jointly approved by Canada and the AFN pursuant to terms and conditions to be developed by Canada and the AFN with input from key stakeholders.

52. Personal Credits may be transferred by the CEP recipient to a Family Class member or may be combined with the Personal Credits of other individuals.

53. A similar set of terms and conditions has been developed by Canada and Inuit organizations for Eligible CEP Recipients who are Inuit.

54. If the excess after payment of the Common Experience Payments is less than \$40,000,000, such lesser amount will be paid to the National Indian Brotherhood Trust Fund (NIBTF) and to the Inuvialuit Education Foundation (IEF).

55. In the further event that the Designated Amount proves to be in excess of the amount required to pay the maximum Personal Credits, Canada has agreed that Service Canada will transfer any such excess to the NIBTF and the IEF. Any amounts remaining in the Designated Amount Fund on January 1, 2015 will be paid to the NIBTF and the IEF.

B) Verification and Administration

56. It has been agreed that Canada will assume the costs of verifying claims for the Common Experience Payments and administrative expenses relating to their distribution.

C) The Individual Assessment Process ("IAP")

57. The parties have agreed that the IRS claims which may be pursued by former students of Indian Residential Schools and the compensation to be paid for such claims when proven, are as set out at pages 2-6 of the IAP attached as Schedule "D" to the SA.

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58. The parties also agreed that the Instructions for Adjudicators set out at pages 31-38 of the IAP are approved, subject to minor wording changes consistent with the intended meaning.
59. The parties further agreed that the remaining standards for the IAP shall be substantially as set out in Schedule "D" to the SA.
60. No limitations defence will be advanced in any continuing claim diverted by the Chief Adjudicator to the courts. Canada will rely on Crown immunity in such claims where applicable.
61. Plaintiffs' counsel insisted and Canada ultimately agreed that Canada will provide sufficient resources to permit, after a 6 month lead-in period, the resolution of no fewer than 2,500 continuing claims per year, and to maintain the current standard of offering an IAP hearing, or to resolve an IAP claim, within nine months of an application having been screened in, provided the delay is not the responsibility of the claimant.
62. Where these goals are not achieved, the NAC may request that the government provide additional resources for claims processing, or may apply to the court for an order making changes to the IAP process sufficient to permit the realization of these goals.
63. Further details about the IAP, setting out improvements to the process negotiated as part of the overall settlement agreement, are set out below in paragraphs 85 through 101.
- D) Truth and Reconciliation and Commemoration**
64. A Truth and Reconciliation process will be established substantially as set out in the Mandate attached as Schedule "N" to the SA. Funding for the Truth and Reconciliation

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process will be provided by Canada in the amount of \$60,000,000, for the establishment and work of the Commission. The statement of Principles contained in the Commission's Mandate includes the objective of "rebuilding and renewing Aboriginal relationships and the relationship between Aboriginal and non-aboriginal Canadians". The goals of the Commission include the mandate to "provide a holistic, culturally appropriate and safe setting for former students, their families and communities as they come forward to the Commission". The programmes of the Commission will benefit survivors, their families and communities.

65. The Crown will provide funding for commemoration initiatives, events, projects and memorials with respect to Indian Residential Schools at both the national and community level in accordance with the "Commemoration Policy Directive" that forms Schedule "J" to the SA. Such funding will total \$20 million covering both national commemorative and community-based activities and projects including funding already authorized. These commemorative events will benefit survivors, their families and communities.

66. In addition to the foregoing, the various church entities that are parties to the SA will provide up to \$102.8 million, through cash and in-kind services to develop new programmes designed to assist with healing and reconciliation for the Survivor Class members, the Family Class members and their communities.

E) Healing

67. Canada will provide \$125,000,000 as a grant to the AHF to fund healing programmes over a five year period to address the legacy of harms including the physical and sexual abuse suffered in Indian Residential Schools. The Terms and Conditions of the grant are set out in

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the Funding Agreement between the Crown and the AHF which is attached to the SA as Schedule "M". In particular the criteria for eligible projects state that they "shall address healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools" and "focus on prevention and early detection of the effects of the Legacy of Indian Residential Schools, including the intergenerational impacts on all generations". These projects will benefit survivors, their families and their communities.

68. In the fourth year after the court orders approving the Settlement, Canada has agreed to have an evaluation of the healing initiatives and programmes undertaken by the AHF to determine the efficacy of such initiatives and programmes and to recommend whether and to what extent funding should continue.

69. I believe that the programs described above, which are being funded as part of the overall settlement of IRS claims across Canada, will be of significant benefit to Family Class members in their struggle to deal with the intergenerational effects of the Residential School legacy.

F) Eligibility Issues

70. Article 14 of the SA confirms that all First Nations, Inuit, Inuvialuit and Metis students who attended institutions listed on Schedule "E" or Schedule "F" to the SA while such schools operated as Residential Schools are eligible for the CEP and will have access to the IAP in accordance with its terms.

71. Article 12 of the SA sets out a process for an individual to request that additional institutions be added to the list of Schools set out in Schedule "F" to the SA. The Article lists criteria to be applied to the decision by Canada as to whether a particular institution is a

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Residential School for the purposes of the SA. The Article also provides that Canada's decision will be communicated, with reasons, to the Requestor and to the NAC with recourse to the Courts by the Requestor and the NAC in the event of a dispute.

G) The Churches

72. The Churches and church entities agree that, as parties to the SA, they will:
- (a) Provide, at their own expense, assistance with witnesses and access to documents for resolution of continuing claims on terms substantially similar to the following:
 - (i) Comply with all reasonable requests from Canada for information and assistance during proceedings;
 - (ii) Provide counsel for Canada and any researchers or experts retained by it, with full access to all relevant files and databases, excepting documents with respect to which solicitor-client privilege or other lawful privilege applies and is asserted. Any information obtained from records pursuant to this section will be used exclusively for the defence of the continuing claim or claims for which the information was sought unless otherwise agreed in writing; and
 - (iii) In litigation, provide disclosure and production of relevant documents in their possession or control, provide witness statements on request, attend as appropriate at the discovery of their witnesses, and otherwise facilitate the testimony of witnesses within their employ.
73. The Churches have agreed to provide, along with Canada, all relevant documents to and for the use of the Truth and Reconciliation Commission ("TRC"), subject only to overriding concerns about the privacy interests of an individual. In such cases, researchers for the TRC shall have access to such documents, provided privacy is respected.
74. The Churches have agreed to refrain from advancing or relying upon any limitations or laches defence in any continuing claim for which the Chief Adjudicator authorizes recourse to the courts, and to pay any judgment in such claims to which they are a party and in which Canada is immune from liability, provided that Canada has agreed to indemnify the Church.

75. The SA provides that Canada may settle any continuing claims without a hearing, subject to any rights of consultation set out in an applicable Church/Canada agreement.

76. The Churches have agreed that binding financial and other commitments will be entered into with Canada concerning the resolution of the Indian Residential Schools legacy on terms substantially similar to existing letters of understanding with Canada and certain denominations and the Memorandum of Understanding between Canada and the Catholic entities.

77. Canada has confirmed its commitment to renegotiate existing church agreements to give effect to the most favoured nation clauses found within them with a view to maintaining equity among the denominations.

H) Implementation

78. As part of the negotiations that culminated in the AIP the parties agreed to a comprehensive plan and schedule for the implementation of the settlement. This plan has been incorporated into the SA as Article 4.

79. A number of Committees are created by Article 4 to assist in the implementation of the SA including a National Certification Committee (NCC) as well as one National Administration Committee and three Regional Administration Committees. The membership in these committees is composed of the major stakeholders including Canada, the Churches, Plaintiffs' Counsel, the AFN and Inuit representatives. The defendants' representatives are a minority on each of these committees. The role of each of these committees is set out in detail in Article 4 of the SA but includes assisting in the process of obtaining Court Orders approving the settlement, and assisting in the interpretation and implementation of the

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Approval Orders for the duration of the time required to disburse the CEP and conduct all necessary processes under the IAP.

80. Canada has agreed to use its best efforts to obtain agreement of provincial and territorial governments and any federal government departments to ensure that the receipt of any payments under the SA will not affect the amount, nature or duration of any social benefits or social assistance benefits available or payable to an Eligible CEP Recipient or Eligible IAP Claimant. The other parties have agreed to use their best efforts to reach similar results. By letter dated May 23, 2006 from Catherine Coughlan of the Department of Justice to Jon Faulds of Field LLP, a member of the National Consortium, Ms. Coughlan provided Mr. Faulds with an update on Canada's progress relating to this issue. Ms. Coughlan's letter dated May 23, 2006 to Mr. Faulds is attached as exhibit "K". Further information on the results of these efforts will be provided by Canada at the hearing of the settlement approval motion.

D) Legal Fees

81. Legal counsel representing plaintiffs and claimants across Canada did very substantial work on behalf of Eligible CEP Recipients for many years. They have contributed significantly to the achievement of the AIP and SA. They have undertaken not to seek payment of legal fees from clients in respect of the Common Experience Payment to be paid to Eligible CEP Recipients. In the negotiations that lead to the AIP the issue of Legal Fees was a major point of contention between the parties. After lengthy and difficult discussions between Plaintiffs' Counsel and the Federal Representative an agreement on the payment of Legal Fees was reached and was incorporated into the AIP.

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82. These provisions were expanded and incorporated into the SA as Article 13 which deals comprehensively with all legal fee issues including payment for work done in furtherance of the settlement approval process and fees for work done on the Committees which are created by the SA for the implementation of the settlement agreement.
83. I have reviewed the affidavit of Darcy Merkur, filed on this motion, which provides extensive and detailed information on the agreement between Canada and the National Consortium concerning compensation for work done by Consortium members up to and including November 20, 2005.
84. I believe that the agreement of the parties with respect to legal fees set out in Article 13 of the SA is fair and reasonable given the risk undertaken and the success achieved by Class Counsel.
- J) Improvements to the ADR/IAP**
85. During negotiations with the Federal Representative, Class Counsel were determined to improve the old DR system. This topic occupied a significant portion of the total time spent in negotiation between June and November 2005.
86. In the final phase of those discussions Class Counsel commissioned an expert opinion from Lalive, Attorneys-at-Law in Geneva regarding the IAP. A copy of that opinion, dated November 2, 2005, is attached as exhibit "L" to this affidavit.
87. Class Counsel were able to obtain significant changes and improvements to the DR process which are now incorporated in the IAP and are summarized below.

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88. Payments under the IAP will be increased and standardized. Under the old DR system, there were different compensation grids for residents of different provinces. Residents of B.C., Yukon and Ontario received higher compensation than residents of other provinces. Under the DR system, payment of the full award was dependant on compensation from the Churches. The Catholic Church, for the most part, refused to pay a share of the compensation and the amount received by an individual was reduced by 30% reflecting this problem.
89. Under the IAP, the overall compensation grid for non-pecuniary harm has been increased (from a former high of \$245,000 to \$275,000) and other provinces have been brought up to the level of BC/Yukon/Ontario levels. All persons will receive 100% of their compensation regardless of the Church affiliation of their Residential School.
90. Compensable harms have been changed. Lower level physical abuse and wrongful confinement within the institution is no longer compensable in the IAP, although the CEP payments which we negotiated will compensate survivors for these lesser harms. But persistent abuse or other wrongful acts which have caused serious psychological consequences will now be compensable.
91. Liability for sexual and physical abuse has been extended from employees of the institution to any adult person lawfully on the premises of the Residential School. Persons eligible to make a claim have been extended from students at Residential School to persons under the age of 21 permitted by an adult employee to be on the premises to take part in authorized school activities.

92. The list of schools covered by the program has been extended by including boarding facilities to which students were dispatched to attend local schools.
93. The basis for the defendants' liability for abuse by other students has been extended from sexual to physical abuse. Where the assaults are serious sexual assaults, the onus is on Canada and the Churches to show that reasonable supervision was in place at the time.
94. In less serious student on student assaults, the claimant must show that an adult employee of Canada or the Church had or should reasonably have had knowledge that abuse of the kind alleged was occurring at the Indian Residential School in question during the time period of the alleged abuse, and did not take reasonable steps to prevent such abuse.
95. This is a broader standard than the previous test which required that the claimant prove that the assault in question was the subject of a pattern of sexual assaults which continued after the staff of the Indian Residential School had actual knowledge the sexual assaults were occurring.
96. The grid covering opportunity loss has been increased. Actual income loss, formerly not compensable, is available up to \$250,000 within the IAP proper and in excess of that amount where the Chief Adjudicator refers the matter to the Court for determination.
97. Additional aggravating factors resulting in increased compensation have been added to the list in the old DR process.
98. Provision has been made for settlement of claims without a hearing. This was not possible under the DR system. Similarly under the DR system, expert reports, which are

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required to prove certain harms and impacts, were available only after a hearing. Under the new process, the parties may consent to the obtaining of these reports prior to a hearing.

99. Timelines for resolution of individual claims have been incorporated into the process. In particular, there is a commitment that individual claims would be resolved within nine months, provided the delay is not on the part of the claimant. No fewer than 2,500 decisions per year are to be made. Where these timelines are not met, the NAC may apply to court to change the process to permit their realization.

100. Claims will no longer be vetted by Canada in advance. They will be submitted directly to the Secretariat.

101. Of enormous significance is the fact that Canada will no longer have the option of modifying the DR process unilaterally. In the IAP, this can only be done, in respect of minor changes, by the NAC, 5 of whose 7 members represent, in one fashion or another, claimants. In respect of major changes, these can only be done by the courts, and the entire implementation of the settlement, including the IAP, will ultimately be subject to judicial supervision.

K) The Value of the Settlement Agreement

102. The total value of the Settlement Agreement is difficult to quantify precisely. It consists of some elements with a specified dollar value and others whose value must be estimated.

103. The provisions with a specified value are as follows:

- The CEP to be funded to the amount of at least \$1.9 billion;

- The Truth and reconciliation Commission -- \$60 million
- The Aboriginal Healing Foundation -- \$125 million
- Commemoration and Memorialization Funding -- \$20 million
- Church contribution for healing and reconciliation -- \$102.8 million

The total value of these aspects of the settlement is just over \$2.2 billion.

104. The value of the IAP process is not stated in the SA. The DR, which was the predecessor to the IAP, was expected to cost Canada approximately \$1.7 billion, of which approximately \$950 million was allocated to compensation and \$750 million to administration.

105. The IAP is more generous than the DR in a variety of ways. It allows for higher awards as described in paragraphs 88, 89 and 96 of this affidavit. These benefits are also extended retroactively to persons whose claims have already been decided under the old DR. It extends the basis for liability as described in paragraphs 91 to 95 of this affidavit. While lower level physical abuse, which was compensable under the DR, has been eliminated as a claim under the IAP, such claims attracted a maximum compensation of only \$3,500.00. On the other hand the IAP now recognizes persistent abuse or wrongful action resulting in serious psychological harm as a compensable claim. Such claims, which would be reasonably expected to attract significant damages, were not compensable under the DR.

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106. The administration of the IAP has also been improved. The SA establishes timelines for the resolution of IAP claims as described in paragraph 99 of this affidavit and Canada has committed to providing sufficient resources to meet these timelines, which may also ultimately be enforced by the Courts.

107. As Canada has not provided any estimates of the cost of the IAP, I cannot provide an specific value for that aspect of the settlement. However I am confident in saying that with the enhancements and improvements described above the projected cost of the IAP will be substantially, by which I mean in the range of hundreds of millions of dollars, more than the projected cost of its predecessor, the DR.

108. In addition to these elements, the SA also commits Canada to the costs of the Notice Program required in connection with the settlement approval process and the costs of administering the CEP, including the processes for receiving applications and distributing funds. The costs of the other administrators and committees charged with overseeing the settlement are also to be paid by Canada.

109. Taking all of the foregoing into account I conclude that the overall value of the settlement can be fairly estimated to be between \$4 billion and \$5 billion.

The risks of proceeding with the class action and the litigation

110. As stated above, the various statements of defence (filed in this action and others) made it clear that a number of possibly valid defences existed, such as:

- (a) limitations defences under both federal and provincial statutes;

- (b) other delay-related defences that arise at both common law and in equity, such as laches, waiver, release, accord and satisfaction and acquiescence;
- (c) consent;
- (d) with respect to the claim for negligence, that the actions of the Crown were policy-driven decisions and not operational decisions and were subject to Crown immunity;
- (e) that certain, if not all, actions of Canada were authorized by statute, order-in-councils or regulation;
- (f) that there is no cause of action in law for Culture and Language claims;
- (g) that many schools were operated for some or all of their existence in accordance with the standards of the day and without any breach of applicable standards of care; and,
- (h) various damages defences.

111. In addition to the defences listed above, there was also the risk of class members dying before judgment could be obtained, with the result that their claim would be extinguished, except where preserved by statute.

112. There were additional special risks relating to the claims of the Family Class which included: the absence of a statutory foundation similar to Ontario's Family Law Act in other provinces and Territories; absence of statutory foundation in Ontario prior to 1978; compelling Limitation and laches defences without the mitigating factors that applied to the claims of survivors and significant difficulties in the assessment of damages.

113. If the defendants were successful in establishing any of the defences listed above, the plaintiffs would not succeed, at least in the entirety, at the trial of the common issues and there would be limited recovery.

114. There was also a risk that a National class proceeding (*Baxter*) would not be certified on a contested motion.

Class definition and class size

115. As set out in the proposed Amended Statement of Claim, the plaintiffs propose the following classes:

"Survivor Class" means:

All persons who attended at a Residential School in Canada between January 1, 1920 and 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:

Alberta, for the purposes of the Alberta Court of Queen's Bench;

British Columbia, for the purposes of the British Columbia Supreme Court;

Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;

Nunavut, for the purposes of the Nunavut Court of Justice; and

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;

Québec, for the purposes of the Quebec Superior Court;

Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan;

Yukon, for the purposes of Supreme Court of the Yukon Territory;

But excepting Excluded Persons:

"Family Class" means:

the spouse, child, grandchild, parent, grandparent or sibling of a Survivor Class Member;

the spouse of a child, grandchild, parent, grandparent or sibling of a Survivor Class Member;

a former spouse of a Survivor Class Member;

a child or other lineal descendant of a grandchild of a Survivor Class Member;

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;

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;

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,

such other persons as the Court recognizes or directs,

and who, as of the date hereof, are resident in:

Alberta, for the purposes of the Alberta Court of Queen's Bench;

British Columbia, for the purposes of the British Columbia Supreme Court;

Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;

Nunavut, for the purposes of the Nunavut Court of Justice; and

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;

Québec, for the purposes of the Quebec Superior Court;

Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan;

Yukon, for the purposes of Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

"Deceased Class" means:

All persons who attended at a Residential School in Canada between 1920 and 1997, who died before May 30, 2005, and who were, at their date of death, residents of:

Alberta, for the purposes of the Alberta Court of Queen's Bench;

British Columbia, for the purposes of the British Columbia Supreme Court;

Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;

Nunavut, for the purposes of the Nunavut Court of Justice; and

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;

Québec, for the purposes of the Québec Superior Court;

Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan;

Yukon, for the purposes of Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

116. The Survivor Class is comprised of all those who attended a Residential School in Canada during the material time period before the year the last Residential School closed.
117. The Family Class is comprised of all parents, grandparents, spouses, children, grandchildren and lineal descendents of Survivor Class Members.
118. The Deceased Class is comprised of all those who attended a Residential in Canada during the material time period but died prior to May 30, 2005.
119. As stated in paragraph 2 of Canada's Statement of Defence in the *Baxter* action, Canada originally estimated that there were approximately 90,600 living Survivor Class Members.
120. In June 2005, in preparation for negotiations with the Federal Representative, Counsel for the plaintiffs prepared their own estimate of the Survivor Class size based on demographic

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and schooling information obtained from the 1991 and 1996 Census data. The plaintiffs' estimate was that there were 58,526 living Survivor Class Members.

121. During the settlement negotiations, further work was done on a class size. Attached as exhibit "M" to this affidavit is a copy of a December 2005 report prepared by Siggner & Associates Inc. estimating the number of survivor class members in 2005 at 80,012 and in 2006, due to mortality, at 78,994.

122. The treatment of the Deceased Class was the subject of discussion at various stages of the negotiations and ensuing discussions. Various perspectives and considerations were raised including the following:

- A general preference that payment to living survivors took precedence over payment on account of deceased claimants;
- That in many jurisdictions claims were extinguished upon the death of the claimant;
- That in a national settlement of this sort differential treatment based upon the province of residence was undesirable (this same consideration led to the elimination of regional compensation grids in the IAP);
- The *Cloud* class members were in a somewhat different position than others by virtue of having had their claim certified and the classes defined;
- There was uncertainty whether in the context of this settlement structure the claims of deceased claimants had been uniformly preserved against provincial limitation periods;
- That Canada had raised claimants expectations by its announcement of May 30, 2005; and,
- That the death rate among survivors created urgency in arriving at a resolution.

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123. Canada's proposal, ultimately accepted by all parties, was that, other than in *Cloud* where the class had already been judicially defined, the Survivor Class consist of all persons alive as of the appointment of the Federal Representative on May 30, 2005.

The Baxter Litigation Plan

124. Attached as exhibit "N" to this affidavit is the Plaintiff's Litigation Plan (the "Plan"). This Plan, and in particular the Individual Damage Assessment Process, was designed by Class Counsel after a careful review of the model for individual claim assessment adopted by the Irish government for compensation of victims of Institutional Child Abuse in the *Residential Institutions Redress Act, 2002* and a review of Canada's draft National Residential School Framework. In addition, I travelled to Ireland to meet with the proponents of the Irish Legislation.

125. The Plan sets out in detail the plaintiffs' proposal for dealing with the class proceeding in the event that it had proceeded on a contested basis. I have reviewed the plaintiffs' original Plan and believe that it set out a comprehensive framework for dealing with Residential School litigation in Canada that was fair, efficient and manageable. The provisions of the Settlement are consistent with the Plan in this respect.

126. I also believe that the notice program set out in the Plan would have served to appropriately and adequately notify the class members of the existence of the class action once certified. The provisions of the Settlement are consistent with the Plan in this respect.

127. I also believe that the opt out procedures and the special opt out procedures set out in the Plan would have provided appropriate and adequate opportunity for Class Members,

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including Class Members who are currently represented by counsel and/or who have ongoing civil actions, to consider and determine how to best advance their rights. The provisions of the Settlement are consistent with the Plan in this respect.

Common issues

128. The proposed original common issues are set out in Schedule B to the Baxter Litigation Plan.

129. The common issues listed in the Plan dealt with the scope of Canada's responsibility for the alleged institutional child abuse that took place at the Residential Schools.

130. A decision on these common issues would have substantially advanced this litigation. Any remaining individual issues would have been less complex and less difficult and could have been fairly and efficiently dealt with in the manner prescribed in the Plaintiffs' Litigation Plan.

131. The Settlement resolves the common issues in a manner consistent with the common issues listed in the Plan.

Preferable procedure

132. I believe that a class proceeding is the preferable procedure for the resolution of this litigation for the reasons set out below.

Judicial economy

133. I believe that the issues to be resolved through the Settlement are issues that are fundamental to each class members' claim.

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134. In the event that this action is not certified and settled, issues will be raised, tried and determined in each any every individual Residential School claim resulting in an inefficient use of judicial resources and the potential for inconsistent judicial decisions.

135. Furthermore, I understand from information published by Canada that there are at least 14,000 ongoing Residential School claims against the Canada. I also verily believe that Canada has recognized that individual proceedings are not an ideal process for resolving Residential School Claims in Canada and that it needs a system that does not clog the courts.

136. I verily believe that certification and settlement of this class action will serve to substantially reduce the Residential School litigation caseload throughout Canada.

Access to Justice

137. I verily believe that, but for a class action, tens of thousands of putative Class Members will not be able to advance claims against Canada for the reasons set out below.

138. I believe that individual litigation will prove economically prohibitive. Determinations of the issues relating to liability and causation will require extensive documentary and expert evidence, it will be costly, time consuming and inefficient to litigate these issues in each individual claim and many of the claims may not be sufficiently large to make individual lawsuits viable. It is only through a class proceeding that the fixed cost of the litigation can reasonably be shared among class members such that the litigation may be effectively pursued.

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139. I am informed by and believe the following extract from page 162 of the Law Commission of Canada's report entitled "Restoring Dignity—Responding to Child Abuse in Canadian Institutions":

Survivors are not necessarily well-informed about the claims they may have against those who abused them and against the institutions where they resided. The actual or perceived cost of consulting or retaining a lawyer may prevent some from seeking the information they need to determine whether they wish to proceed with an action. Survivors may be deterred for psychological as well as financial reasons. They may lack confidence in the legal system. They may not be prepared to open up perhaps the most sensitive and private parts of their lives for scrutiny in the adversarial setting of a courtroom. Survivors may also not know where to turn to find a lawyer who has the special legal training or experience necessary to deal effectively with a case involving institutional child abuse. These cases present particular difficulties of proof, as well as the challenge of dealing with clients who are likely to be psychologically fragile. Lawyers must also be willing to work with therapists and others who support survivors.

140. I believe that a substantial number of Class Members live on reserves and/or in remote communities and do not have ready or convenient access to lawyers or to the court system.

141. I also am informed by and believe the following extract from the following comments at page 98-99 of the Law Commission of Canada's report entitled "Restoring Dignity—Responding to Child Abuse in Canadian Institutions":

When Aboriginal children were removed from their families and placed in Residential Schools, a crucial link in the transmission of cultural values and practices was weakened. Those who were forced to speak in only English or French sometimes lost their ability to communicate effectively with their parents. These children were no longer able to learn from their parents and extended families. This situation of intergenerational disconnection has contributed to poverty, substance abuse, lack of parenting skills, spiritual and cultural alienation, psychological and emotional problems, and violence and crime in Aboriginal communities. It has also diminished the capacity of Aboriginal communities to heal those who were physically and sexually abused.

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142. I believe that a substantial number of Class Members are not in a position due to psychological impacts associated with the Indian Residential School experience, language barriers, cost concerns, substance abuse, poverty, lack of trust issues, inability to find legal representation, lack of means to retain legal representation, and other issues, to advance Residential School claims against Canada.

143. Based on the foregoing, I believe that this class proceeding will provide otherwise unattainable access to justice to persons who suffered harms as a result of attending Indian Residential Schools and their immediate family members.

Behaviour modification

144. I believe that Canada had previously refused to accept their responsibility for the full range of impacts resulting from the Indian Residential School system, despite having issued the Statement of Reconciliation referred to above.

145. Canada had previously failed to accept and act on the recommendations by both the Law Commission of Canada and the Royal Commission on Aboriginal Peoples for a public inquiry into the Indian Residential Schools system. The Truth and Reconciliation Commission created as part of this settlement will fulfill a similar function.

146. Due to the magnitude of compensation potentially available through this class proceeding including the potential for large compensatory damages awards to all Class Members, I believe that findings in favour of the plaintiffs in this class proceeding will result in a modification of Canada's behaviour in dealing with Aboriginal peoples and other disadvantaged groups.

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The *Baxter* representative plaintiffs

147. The Survivor Class in the *Baxter* class action is to be represented by Charles Baxter, Sr. I am not aware of any conflicts of interests between the interests of Mr. Charles Baxter, Sr. and the Survivor Class.

148. I verily believe that Charles Baxter, Sr. would fairly and adequately represent the interest of the Survivor Class Members.

149. The Family Class in the *Baxter* class action is to be represented by Elijah Baxter and Evelyn Baxter. I am not aware of any conflicts of interest between the interests of Elijah Baxter or Evelyn Baxter and the Family Class.

150. I verily believe that Elijah Baxter and Evelyn Baxter will fairly and adequately represent the interest of the Family Class Members.

Conclusion

151. I have reviewed the compensation proposals and the claims processes set out in the SA and the IAP and find them to be reasonable and fair, particularly in light of the fact that there are provisions for the court to exercise exclusive and continuing jurisdiction over the claims administration process to ensure that the administration and payment of claims is effective and fair.

152. I also understand that a condition of the settlement included the requirement to dismiss claims for aggravated exemplary and punitive damages. I believe that it is in the best interests of class members and their families to enter into this settlement, which provides for the full and timely payment of fair and reasonable compensation, rather than to take on the risks,

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delays and expense associated with protracted litigation which would require them to prove liability generally, as well as for aggravated, exemplary and punitive damages.

153. Our objectives in this litigation have been satisfied by this proposed settlement which combines effective court supervision of the claims administration process, and the provision of a full and complete measure of compensatory damages to class members. I believe that this settlement fully protects the interests and rights of class members.

154. Class Counsel are recommending this settlement. In so recommending, Class Counsel have been guided by our analysis of the facts and law applicable to the claims of Class Members, taking into account the expense, uncertainty and risk associated with litigation, including a vigorously contested certification motion and all possible appeals, a trial of the merits and subsequent possible appeals.

155. The proposed representative plaintiffs are also in favour of the settlement as are the class members I have spoken to.

156. The AIP was signed on November 20, 2005 and contemplated approval hearings in May 2006. As the result of a change in government during the intervening time the dates for the finalization of the settlement and scheduling of the approval hearings were delayed by several months. The AIP also contemplated notice of the approval hearings being given to class members. I understand that notice has been given.

157. In addition, the various documents relating to the settlement have been posted on the websites of IRSRC, Class Counsel and the AFN. Counsel and their staff were available to

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answer questions or concerns of class members. Numerous calls were received by Class Counsel.

158. Once court approval has been obtained, Class Counsel will continue to be actively involved in the implementation of the settlement. The implementation of the settlement is of at least equal importance to its negotiation, conclusion and court approval. The implementation will be significant in terms of the time, resources and commitment that will be required.

159. I verily believe that this class proceeding is the preferable procedure for resolution of the Common Issues and that this class proceeding will promote judicial economy, access to justice and behaviour modification.

160. I swear this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME at the City of
Thunder Bay, in the Province of
Ontario on July 27, 2006.

Josephine C. Bishop
Commissioner for Taking Affidavits

R. W. Curtis
RICHARD COURTIS

Josephine Clare Bishop, a
Commissioner, etc., Province of
Ontario, for Richard W. Curtis,
Barrister and Solicitor.
Expires November 10, 2007.

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THIS IS EXHIBIT M
TO THE AFFIDAVIT OF
RICHARD COURTIS
SWORN BEFORE ME IN
THE PROVINCE OF ONTARIO
ON JULY 27, 2006

Josephine L. Bishop

Josephine Clare Bishop, a
Commissioner, etc., Province of
Ontario, for Richard W. Curtis,
Barrister and Solicitor.
Expires November 10, 2007.

This is Exhibit "C" to the
Affidavit of Jeannette Waters
Sworn before me in the Province
of Ontario the 6th day of
February 2007.

James T. Ward

01780

**Estimating the Residential School Attendee
Population**

For the Years 2001, 2005 and 2006

Prepared By:

Siggner & Associates Inc.

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Acknowledgements

The author wishes to acknowledge those who commented on the first draft report of the RSA population estimates and methodology. Comments were received by members of the Working Group, as well as staff of the Indian Residential School Resolutions Canada Department. In addition, Stewart Clatworthy of Four Directions Project Consultants, an expert on Aboriginal demography, provided assistance in the development of the revised methodology. Mary Jane Norris of Canadian Heritage, a fellow demographer, also provided help with the revised methodology.

Executive Summary

The Alternative Dispute Resolution Process for former "Residential School Attendees" (hereafter, RSAs) involved developing a Canada level set of estimates for former RSAs who were alive in 2001 and will be alive in 2005 and 2006. Since there are no comprehensive data sources on RSAs, a variety of existing data sources were used. Accordingly, assumptions were developed to cover off the data gaps in the existing data sources used.

There are important differences in rates of residential school attendance among Aboriginal groups living in on- and off-reserve locations and these differences were taken into account. Estimates were then developed for the domestic population, for those out-of-country and for those in correctional institutions. Those in chronic care institutions were not included as no data could be found for this population in the short timeline we had for this report. RSA numbers for people in these institutions are expected to be small. The major sources of data used in the development of the RSA estimates for 2001, 2005 and 2006 were the 1991 and 2001 Aboriginal Peoples Surveys (APS), the 2001 Census, and minor other data sources described in the main report. In addition, the Aboriginal mortality rates developed for a recent set of projections for the Aboriginal population developed by Statistics Canada were also used to survive the 2001 RSAs by age group to 2005 and 2006.

Overall, the estimated Aboriginal former Residential School Attendee population in 2001 who were aged 15 and over and are still alive is 83,695. Due to mortality of this already-born and aging population, their numbers are expected to decline to 80,012 by 2005, and to 78,994 by 2006— see Table 1.

The accuracy of the estimation procedure does not sustain the RSA estimates which are calculated to the unit level – see Table 1. It is more likely that the RSA estimates would vary by plus or minus a thousand.

Table 1 – Summary of Estimated Former Residential School Attendees Alive in 2001, 2005 and 2006

RSA Component Groups	YEAR		
	2001	2005	2006
NAI On-Reserve	21,123	22,168	21,634
NAI Off-Reserve	2,745	2,475	2,240
Métis	6,392	6,274	6,468
Inuit	3,639	3,675	3,445
Aboriginal Origins Only	3,216	3,283	3,144
Inmates	877	868	834
Outside Canada	10,501	10,392	10,197
TOTAL	69,593	70,013	68,994
AGE 65+ (1)		19,322	18,996

(1) The age group data for Aboriginal inmates aged 65+ were not available to estimate the share of RSAs.

Estimating Residential School Attendees For the Years 2001, 2005 and 2006

1. Introduction

In order to estimate the Residential School Attendees (hereafter, RSAs) for 2005 and 2006, we need to establish an estimate of the living RSAs as of 2001, the base year for the estimation process. Unfortunately, no single database exists containing a comprehensive count of the RSA population.¹ This being the case, it is necessary to develop an estimated population of former RSAs still alive based on a variety of sources. In addition, it is necessary to make a number of assumptions in order to estimate the residual RSA population where no data exist. Empirical evidence will be employed using knowledge gained from existing data sources that provide useful insights and support for the assumptions made to carry out the population estimation procedures.

2. Data Sources

Three relatively large sample surveys have been conducted on the Aboriginal population in Canada. These include the 2001 Aboriginal Peoples Survey (APS), the 1991 APS, and the First Nations Regional Health Survey in 2002-2003. These surveys contained questions which asked their respondents if they had ever attended residential schools.

¹ Staff from IRSRC confirmed in a telephone conversation on September 1, 2005, that no complete database on residential school attendees exists. Archival and other historical enrolment records by school exist, but may have years of information missing, former attendees have died, had name changes, etc.

The first two surveys were post-censal surveys, which were conducted by Statistics Canada following the 1991 and 2001 Censuses of Canada.² Typically, a post-censal survey uses the census as a sampling frame to find a smaller target population, in this case the Aboriginal population. The 2001 APS selected a sample of over 100,000 Aboriginal people both on- and off-reserve across the entire country. There was an adult questionnaire for those 15 years and over. The sample size represented about 13% of the overall Aboriginal population as counted in the 2001 Census and had a very high response rate of between 84% and 88%.

However, there were some limitations with this survey. While the survey covered the off-reserve Aboriginal population quite well, there were a large number of small reserves which were not covered by this survey. The 2001 survey did cover the larger reserves (123) which represented almost 50% of the total on-reserve population. On the other hand, the 1991 APS covered many smaller sized reserves (538) compared to the 2001 APS. Therefore, the 1991 APS was used in the revised RSA estimation methodology to adjust for the sampling bias in the 2001 APS.

Both the 1991 and 2001 APS had questions dealing with residential school attendance. There were two 1991 APS RSA questions, one directed at the population aged 15-49 and the other at the population aged 50-64. By contrast, the 2001 APS question on residential school attendance was addressed to the total Aboriginal population aged 15+ years. These age differences in the coverage of the residential school population between the two surveys was also accounted for in the revised RSA estimation methodology.

For the purposes of this estimation methodology, we were unfortunately unable to use a third major survey, the First Nations Regional Health Survey (hereafter, RHS) which

² Statistics Canada, *Aboriginal Peoples Survey 2001: Concepts and Methods Guide*, Cat. No. 89-591-XIE, Ottawa, September, 2003, pp.11-14.

was conducted in 2002-2003.³ This survey was carried out by the First Nations Centre in the National Aboriginal Health Organization. It had a smaller sample size than that of the APS at just under 11,000 adults 18 years and over. It was largely an on-reserve First Nations community survey. It was hoped that we could obtain residential school attendance data from the RHS for communities which were uniquely sampled by RHS, as well as for communities overlapping with APS. Given the timeline for producing the RSA estimates, RHS data could not be acquired in time for use in this methodology. However, based on preliminary results released a few months ago from the RHS on residential school attendance, almost the same percentage for RSAs was obtained for their on-reserve population (19.3%) as was found in the APS selected reserve population (20%). This is encouraging, but the outstanding question is the overlap in the surveyed reserves covered by the two surveys.

Aboriginal age-specific mortality rates developed by Statistics Canada for a recent set of Aboriginal population projections were used for surviving the RSA population alive in 2001 to the years 2005 and 2006 in the revised estimation methodology.⁴

APS did not cover the Aboriginal inmate population in the correctional system. In order to estimate this population, we have used data from the Canadian Centre for Justice Statistics of Statistics Canada.⁵ This centre maintains counts of people in various stages of the correctional systems, both federal and provincial/territorial. Their data identify if those in the respective systems are Aboriginal, although these databases do

³ National Aboriginal Health Organization, First Nations Centre, *Regional Health Survey 2002-03: Preliminary Results (Adults)*, Sept 9, 2004 Updated Nov. 2004, p.8.
http://www.naho.ca/firstnations/english/pdf/RHS_prelim_results_nov8.pdf

⁴ Statistics Canada, Demography Division, *Projections of the Aboriginal Populations, Canada, provinces and territories, 2001 to 2017*, June 28, 2005, on-line at: http://www.statcan.ca/english/freepub/91-547-XIE/2005001/t089_en.htm?

⁵ Statistics Canada, Canadian Centre for Justice Statistics, custom tabulations.

not contain information on residential school attendance. Assumptions were made to estimate RSA attendance and these are discussed below.

Not included in the estimation procedure were estimates of Aboriginal people in chronic care institutions, as no data were found to provide a basic count, let alone a count of those who were former RSAs.

The Indian Register System (IRS) of the Department of Indian and Northern Affairs Canada (INAC)⁶ provided the estimation process with the number of Registered Indians living outside the country. It is not known how many of these persons attended residential schools. Some caution should be exercised in the use of this data source, due to problems associated with the timely reporting of both births and deaths and residency of the on- and off-reserve populations. However, it is the only source known which obtains a count of a major group of Aboriginal people living outside Canada, some of whom would have attended residential schools, and who may well come forward in a settlement process. Accordingly, assumptions were developed for the estimation process and are discussed below.

3. Estimation Methodology

As noted above, there are no complete databases which provide a count of RSAs, surviving or deceased. This report is focusing on estimating those RSAs who were still alive in 2001 and who are expected to survive to 2005 and 2006. In order to do so, it is necessary to identify areas where Aboriginal peoples are to be found and then, with either empirical data or an estimation procedure, determine how many of those were RSAs. These areas where Aboriginal people can be found include those residing on Indian reserves, in off-reserve locations, those out-of-country, and those in correctional facilities. There are also important differences in residential school attendance among

⁶ Indian and Northern Affairs Canada, Indian Registry System, custom tabulations

Aboriginal groups, as First Nations peoples (both Status Indians and Non-Status Indians), Métis and Inuit attended such schools while they were in operation.

3.1 Data Limitations and Other Caveats

There are several important data limitations and caveats that affect the methodology and data used in the estimation process. Most will be covered below when discussing the methodology for the estimation of the individual RSA components of population. However, at this point it is worth noting one general caveat. There has been speculation, largely based on anecdotal evidence, that RSAs have higher mortality rates than do non-attendees. There are no comprehensive empirical sources that can substantiate these speculations.

3.2 2001 Base Year for the Aboriginal Population

In order to develop the base year 2001 estimates of RSAs, several different components of the population need to be estimated independently. These include the following groups:

1. North American Indians who self-identified as such on the 2001 APS and were living on reserves.
2. North American Indians who self-identified as such on the 2001 APS and were living off reserves.
3. Métis people who primarily are living in non-reserve locations along with a very small population living on reserves.
4. Inuit population
5. A group of people who reported on a supplementary survey to the 2001 APS that they did not self-identify as an Aboriginal person, but did report they had Aboriginal ancestry.⁷
6. Inmates in federal and provincial/territorial correctional institutions.

⁷ This group was added to the component groups of RSAs after the first draft set RSA estimate were developed.

7. Registered Indians living outside of Canada.

Each component RSA group and the methodology in estimating their size are described below.

3.2.1 – NAI Estimate of the RSA Population Living On-Reserve in 2001

Ideally, it would have been helpful to have one source of data for the 2001 North American Indian population (hereafter, NAI) who attended residential schools. Our major data source, the 2001 APS, surveyed only selected Indian reserves with relatively large populations, thus containing a sampling bias by not covering the smaller reserves which may have different rates of residential school attendance. As a result, we used data from the 1991 Aboriginal Peoples Survey (APS) to adjust for the potential sampling bias in the 2001 APS in order to see its impact on the rates for the smaller reserves. There were also concerns that regional differences in RSA rates, especially for the on-reserve populations by region in the 2001 APS, may also have a differential affect on the estimates of the RSA population. Again, using the 1991 APS, with its broader sampling coverage of Indian reserves, allowed for this factor to be taken into account.⁸

The methodology essentially compared the 1991 APS sample reserves which were unique to that survey to those reserves which were surveyed in both the 1991 and 2001 APS. This allowed us to test the hypothesis that the smaller reserves had higher attendance rates than the larger ones. This analysis used the 1991 APS, which contained a much larger set of sampled reserves compared to the 2001 APS. The 1991 APS actually showed that the RSA rates for the smaller and larger reserves, i.e. those unique reserves in the 1991 APS and those in common with the reserves surveyed in the 2001 APS, were almost the same at the Canada level.

⁸ Stewart Clatworthy of Four Directions Project Consultants, a colleague and expert in Aboriginal demographic issues, prepared much of the estimation methodology for the on-reserve segment of the RSA population. His assistance on this is gratefully acknowledged.

A weighting procedure was used to adjust for the reserve size differences. It uses the ratio of the rates for the 1991 only to 1991/2001 common reserves and applies this ratio to the 2001 rates for the common reserves to provide a 2001 estimate for those reserve not covered in 2001. The total rate is then computed by weighting the two sets of rates (i.e. the 2001 rate for reserves covered in 2001 and the estimated 2001 rate for those not covered) according to the relative size of the populations of these two groups of reserves as identified by the 2001 census. Two age cohorts, ages 15-24 and 75+ were adjusted independently for the 2001 estimate because the 15-24 year olds in 2001 were out of scope in 1991 (i.e., they were too young to be asked the RSA question in the 1991 APS), and the 1991 APS only asked the RSA questions of those up to age 64 years old.⁹ Therefore, these rates also took into account age and regional factors.

The next step applied these adjusted rates to the 2001 base year NAI on-reserve population by region and age group. We had the good fortune of being able to use a recent set of Aboriginal population projections which were produced by the Demography Division of Statistics Canada.¹⁰ The projection's base year also was the year 2001, and the methodology made several adjustments to the base year 2001. Using the 2001 Census as their primary data source, they adjusted the Aboriginal populations for:

- incompletely enumerated Indian reserves in the Census (there were 30 reserves containing an estimated population of about 31,000);
- general undercoverage in the Census for on-reserve locations based on a special undercoverage study conducted after the Census was completed.

The resulting overall Canada level RSA rate was 20.2% for the on-reserve population, yielding an overall estimate of 44,172 – see Table 2.

⁹ A special study from Statistics Canada comparing the age characteristics of APS surveyed reserves to all reserves, using the 2001 Census data, was used for this purpose.

¹⁰ Statistics Canada, Demography Division, *Projections of the Aboriginal Populations, Canada, provinces and territories, 2001 to 2017*, June 28, 2005, on-line at: http://www.statcan.ca/english/freepub/91-547-XIE/2005001/1089_en.htm?

Table 2

2001 - Estimated Residential School Attendees (RSAs) Alive in 2001
Residing Both On and Off Reserves, Canada Level

Age Group	NAI ¹ On-Reserve BaseYr. 2001 Pop. for Proj'n's	Prop'n RSAs from APS: NAI On Selected Reserves ²	Estimated RSA On-Reserve Pop. 2001	Actual RSA Numbers from APS for NAI Off-Reserve ³
Total 15+	217,800	0.202	44,172	23,743

NOTES:

¹ NAI = North American Indians and includes both Status & Non-Status Indians;

² Proportion derived from 2001 APS residential school question based on the sum of Attendees+Non-Attendees, and excludes "Refusals" and "Not Stated" in the APS question.

³ The proportion of North American Indians (age-adjusted) who are RSAs living Off-Reserve = .081
This proportion is used later in calculation of the On and Off-Reserve RSAs in 2006 - see Table 3

Sources:

Statistics Canada, "Projections of the Aboriginal populations, Canada, provinces and territories, 2001 to 2017", Demography Division. http://www.statcan.ca/english/freepub/91-547-XIE/2005001/i089_en.htm?
Statistics Canada, 1991 and 2001 Aboriginal Peoples Survey, custom tabulations

3.2.2 - NAI Estimate of the RSA Population Living Off-Reserve in 2001

For the NAI population estimate of residential school attendees residing in off-reserve locations, we decided to use the 2001 Aboriginal Peoples Survey results. This is based on a representative random sample of the off-reserve Aboriginal population and is considered reasonably accurate when it is weighted up to represent the whole off-reserve Aboriginal population, unlike the 2001 APS on-reserve sample which was limited to the larger reserves.

We chose to use the actual count of North American Indians who stated in APS that they attended residential schools, rather than follow the procedure used for the on-reserve NAI estimate of the RSA population. As it turns out, the APS count was larger than the estimate that would be derived from the Aboriginal base year population used in the Aboriginal projections also developed by Statistics Canada. This is due to the

fact that more people living off-reserve self-identified as Aboriginal in APS, than did in the census. In addition, we adjusted the APS 2001 count for undercoverage using the 2001 Census net undercoverage rates by province and territory since the APS sample was drawn from the 2001 Census which contains a certain amount of undercoverage of the population.¹¹

However, as will be discussed later, we do use the proportion of age-adjusted RSAs (8.1 %) in the 2001 APS in estimating the 2005 and 2006 RSA populations who are North American Indians off-reserve. Thus, based on the APS, there were 23,743 NAIs living off-reserve in 2001 who reported that they attended residential schools – see Table 3.

3.2.3 Métis Estimate of the RSA Population in 2001

Like the procedure used for the NAIs residing off-reserve, the 2001 APS was used to obtain the number of Métis who reported attending residential schools. This RSA count represented 2.6% of the non-reserve Métis population in 2001. In addition, APS indicated that, among the of the Métis population aged 15+ residing on Indian reserves, 12% reported attending residential schools. Because APS did not cover all reserves, and the Statistics Canada Aboriginal projections did not produce a base year count of on-reserve Métis for 2001, the 2001 Census count of Métis on-reserve was used and the RSA rate from APS applied to it. This yielded a small additional estimate of 574 Métis who attended residential schools. This on-reserve number is added to the off-reserve 2001 RSA Métis. As with the NAI off-reserve estimate, the Métis estimate was further adjusted for Census undercoverage, which brings the total 2001 Métis RSA population estimate to 6,879 – see Table 3.

3.2.4 Inuit Estimate of the RSA Population in 2001

¹¹ Statistics Canada: Table 5.1 - Estimated 2001 Census Population Net Undercoverage and Standard Errors, Various Characteristics, 2001 Reverse Record Check, http://www12.statcan.ca/english/census01/Products/Reference/tech_rep/coverage/tab5-1.cfm

The 2001 APS was used to obtain the number of Inuit who reported attending residential schools. The RSA Inuit rate was 12.35%. This rate was applied to the 2001 base year population from the Aboriginal projection series of Statistics Canada. Because the Inuit is a small population not evenly distributed across Canada, their numbers were suppressed in the APS in several regions. This meant that we could not apply the census undercoverage rates directly to the APS Inuit population, as was done for the Métis and NAI off-reserve estimates. On the other hand, the base year count for the Inuit from the Statistics Canada projection series was adjusted for census undercoverage. The resulting Inuit RSA estimate for 2001 is 3,619 – see Table 3.

3.2.5 - RSA Estimates for Those Who Report Aboriginal Ancestry, But Who Do Not Self-identify as Aboriginal

Unlike the 1991 Aboriginal Peoples Survey, the 2001 APS surveyed a group of people who reported on their Census forms that they had an Aboriginal ancestor but they themselves did not self-identify as an Aboriginal person. Most had mixed Aboriginal and non-Aboriginal ancestries. A small portion of this population indicated on APS that they had attended residential schools. Most were located off-reserve, but a very small number were also living on-reserve (216). After adjusting this population for census undercoverage, a total of 3,346 attendees were added to the RSA population estimates – see Table 3.

3.2.6 - RSA Estimate for Aboriginal Persons in Correctional Institutions

APS did not cover the Aboriginal population in correctional institutions. Census, while obtaining counts of the overall population in correctional institutions, did not specifically

identify Aboriginal people in those institutions. It was assumed that there would be residential school attendee populations among the Aboriginal Inmate population. For the institutionalized Aboriginal population, data were obtained from the Canadian Centre for Justice Statistics of Statistics Canada. They provided an estimated one-day count of Aboriginal people in federal and provincial/territorial correctional institutions for 2001. The assumption used to estimate the RSA population within the correctional system was to apply the age-specific RSA rates at the Canada level to the Aboriginal inmate population.¹² Those percentages were applied to the CCJS estimate of overall Aboriginal admissions to correctional institutions to get the RSA estimate for this group (877) – see Table 3.

3.2.7 - RSA Estimate for Registered Indians Living Outside of Canada

While no reliable data could be found for all Aboriginal people, as a whole, residing outside of Canada, Indian and Northern Affairs Canada does maintain a count of registered or status Indians outside Canada. Data by age group for the 2001 figure was obtained for this population. Using the NAI off-reserve age-specific rates of those who attended residential schools, an estimated 1,059 were considered as RSAs – see Table 3.

¹² A separate study by Trevethan et al of Aboriginal inmates in Prairie institutions provided an estimate of the percentage of Aboriginal inmates (20%) who reported attending residential schools. However, it was decided not to use this information since the numbers were very small and the age distribution of those reporting residential school attendance was skewed to the youngest age group (18-24) for whom the vast majority of residential schools would have been closed when they were old enough to enter school.

3.2.8 - Summary of the 2001 RSA Estimates

Our total revised estimate of RSAs for 2001 is 83,695. This estimate seems to be in line with the overall estimated range of 80,000-90,000 that has been used for the last several years, supported by the Aboriginal Healing Foundation and Statistics Canada.¹³

Table 3 – Estimated Former Residential School Attendees Alive in 2001

RSA Group Components	Base Year 2001
NAI On-Reserve	22,127
NAI Off-Reserve	16,192
Métis	23,567
Inuit	16,922
Aboriginal Origins Only	15,052
Inmates	1,500
Outside Canada	150
TOTAL	83,695

Notes: ¹ NAI = North American Indians and includes both Status & Non-Status Indians; and 2001 base year population adjusted for net census undercount and incompletely enumerated reserves.

² Métis estimate of RSAs includes an estimate for Métis RSAs living on-reserve in 2001.

Sources:

Statistics Canada, "Projections of the Aboriginal populations, Canada, provinces and territories, 2001 to 2017", Demography Division, http://www.statcan.ca/english/freepub/91-547-XIE/2005001/089_en.htm?
 Statistics Canada, 2001 Aboriginal Peoples Survey, custom tabulations
 Statistics Canada, Canadian Centre for Justice Statistics, "Adult Correctional Services Survey" 2000/01 to 2002/03;
 Indian and Northern Affairs Canada, Custom tabulation, "Registered Indians Outside Canada - Dec. 31, 2001", Indian Registry System.

¹³ Statistics Canada, Aboriginal Peoples Survey 2001- Initial findings: Well-being of the non-reserve Aboriginal population (89-589-XIE), released on-line September 24, 2003: <http://www.statcan.ca/Daily/English/030924/d030924b.htm>

4. Surviving the RSA Population to Years 2005 and 2006

The next step in the estimation process was to survive the 2001 estimates of RSA forward to 2005 and 2006. An additional request was made to provide an estimate of those former attendees who will be 65 years of age and over. As the new methodology used age-specific survival rates in the forecast, it was possible to estimate this particular age group. It should be noted, however, that Aboriginal inmates age 65+ in correctional institutions were not estimated, given the lack of appropriate age data for this population in 2001. The numbers are expected to be extremely small.

4.1 - Estimating the On-Reserve North American Indian RSA Population in 2005 and 2006.

As was noted above in the RSA estimates for the North American Indian population on-reserve, the estimates took into account regional age-specific differences in the RSA rates. Consequently, when we were surviving the RSA population to 2005 and 2006, a consistent approach was used regionally and age-specifically.

The Statistics Canada Aboriginal projection model developed mortality rate assumptions for each Aboriginal group by place of residence. As our RSA population was already born and at least 15 years old in 2001, it should only decrease over time due to mortality. Thus, fertility was not included in our use of these population projections. As mortality changes very slowly over a five year period, only one assumption was used:

"We developed just one assumption for the future trend in Aboriginal mortality for our projection model. Based on past experience, it seems unlikely that the trend in mortality would undergo significant changes over the relatively short projection period of 16 years, making the choice of just one scenario a reasonable decision."¹⁴

¹⁴ Ibid. Mortality Assumptions section.

The mortality rates were then converted to survival rates for forecasting purposes. They were applied to the estimated RSA North American Indian population on-reserve in 2001 to obtain the survived RSA population in both 2005 and 2006. It should be noted that in surviving the RSA on-reserve population age 15+ from 2001 to 2005 and 2006 they will be four and five years older, i.e. aged 19+ and 20+ years old, respectively. This is because the population who is 15-18 in 2005, was only 11-14 years old in 2001, and that age group was "out of scope" for residential school attendance in 2001. They were too young and, therefore, not asked the residential school question on APS.

Although several projection scenarios were built by the Statistics Canada model, the major differences were driven by different fertility assumptions. As we are dealing with an already-born population for the RSA group, the medium growth scenario from the Statistics Canada projections, Scenario B, was used for the base year population estimates by age group and region. The RSA estimates in 2001 by age group and region were survived independently, using the NAI on-reserve mortality schedule, to 2005 and 2006. The resulting RSA population in 2005 when rolled up to the Canada level turned out to be 42,188 in 2005 and 41,641 in 2006 – see Table 4.

4.2 - Estimating the North American Indian RSA Population Off-Reserve in 2005 and 2006

To estimate the NAI population residing off-reserve who attended residential schools in 2005 and 2006, the 2001 APS estimate of RSAs by age group at the Canada level was used. The 2001 estimates were survived based on the mortality schedule from the Statistics Canada projection model for NAIs residing off reserves.¹⁵ The total RSA population for NAIs off-reserve is projected to be 22,747 in 2005 and down to 22,470 by 2006 – see Table 4.

¹⁵ As the survival rates for the NAIs living off-reserves from the Aboriginal projection model were developed originally on a regional and place of residence specific basis, they were subsequently modified by S. Clatworthy to get a Canada level NAI off-reserve set of survival rates. Note this adjustment was also done for the other Aboriginal groups, Métis and Inuit.

Table 4 - Projected Former Residential School Attendees Alive in 2005 and 2006

RSA Group Components	RSA Population Projected to 2005	RSA Population Projected to 2006
NAI On-Reserve ¹	1,188	1,164
NAI Off-Reserve ¹	2,222	2,158
Métis	6,552	6,464
Inuit	2,438	2,438
Aboriginal Origins Only	10,400	10,258
Inmates	2,500	2,500
Outside Canada	997	997
TOTAL	20,005	19,919
AGE 65+²	12,432	12,396

NOTES:

¹ NAI = North American Indians and includes both Status & Non-Status Indians.

² The age group data for Aboriginal inmates aged 65+ were not available to estimate the share of RSAs.

Sources:

Statistics Canada, "Projections of the Aboriginal populations, Canada, provinces and territories, 2001 to 2017", Demography Division, http://www.statcan.ca/english/freepub/91-547-XIE/2005001/009_en.htm?

Statistics Canada, 2001 Aboriginal Peoples Survey, custom tabulations

4.3 - Estimating the Métis RSA Population for 2006

Like the procedure used for the NAIs residing off reserves, the 2001 APS estimate of Métis RSAs by age group at the Canada level was used. The 2001 estimates were survived based on the mortality schedule from the Statistics Canada projection model for the Métis. The RSA population is projected to be 6,552 in 2005 and down to 6,464 by 2006 – see Table 4.

4.4 - Estimating the Inuit RSA Population in 2005 and 2006

The 2001 APS estimate of Inuit RSAs by age group at the Canada level was used. The 2001 estimates were survived based on the mortality schedule from the Statistics Canada projection model for the Inuit. This total RSA population is projected to be 3,486 in 2005 and down to 3,448 by 2006 – see Table 4.

4.5 - Estimating the RSA Population of Those Who Report Aboriginal Ancestry, But Who Do Not Self-identify as Aboriginal in 2005 and 2006

The 2001 APS estimate of RSAs for the Aboriginal ancestry/no Aboriginal identity group was used. Because this population is predominantly of mixed ancestry, the age distribution of the Métis RSA population was applied to the total 2001 estimate for this group in order to survive the group by age to 2005 and 2006. The 2001 estimates were survived based on the mortality schedule for the Métis from the Statistics Canada projection model. This total RSA population is projected to be 3,187 in 2005 and down to 3,144 by 2006 – see Table 4.

4.6 - Estimating the RSA Population of Aboriginal Inmates in 2005 and 2006

The 2001 APS estimate of RSAs for the Aboriginal inmate population was used. In the absence of Aboriginal group specific data, we assumed the RSA age rates of the on-reserve NAI population. These rates were then applied to the 2001 estimate of inmates by age group in order to survive the group by age to 2005 and 2006. The 2001 estimates were survived based on the mortality schedule for the NAIs on-reserve from the Statistics Canada projection model. This total RSA population is projected to be 860 in 2005 and down to 855 by 2006 – see Table 4.

4.7 - Estimating the RSA Population Outside of Canada in 2005 and 2006

The estimated RSA population by age group based on the Indian Register data from 2001 for registered Indians living outside Canada was used. The 2001 estimate was survived based on the mortality schedule for the on-reserve NAI attendees from the Statistics Canada projection model. This total RSA population is projected to be 992 in 2005 and down to 973 by 2006 – see Table 4.

4.8 - Estimating the RSA Population Aged 65+ in 2005 and 2006

As all the RSA component groups were survived by age group independently, these data were rolled up to get the total Aboriginal RSA population aged 65 years and older in 2005 and 2006. This total RSA age group is projected to be 14,032 in 2005 and down to 13,396 by 2006 – see Table 4.

References:

- Statistics Canada, "Projections of the Aboriginal populations, Canada, provinces and territories, 2001 to 2017", Demography Division, http://www.statcan.ca/english/freepub/91-547-XIE/2005001/089_en.htm?
- Statistics Canada, 2001 Aboriginal Peoples Survey, custom tabulations.
- Statistics Canada, Canadian Centre for Justice Statistics, "Adult Correctional Services Survey", 2000/01 to 2003: Integrated Correctional Services Survey
- Trevathan, S., et al., "The Effect of Family Disruption on Aboriginal & Non-Aboriginal Inmates", Sept. 2001, http://www.csc-ccc.gc.ca/text/rsch/reports/r113/r113_e.pdf; custom tabulations from the Research Branch, Correctional Service Canada.
- Indian and Northern Affairs Canada, Custom tabulation, "Registered Indians Outside Canada - Dec. 31, 2001", Indian Registry System

APPENDIX A

Custom tabulations were run on the 2001 and 1991 APS databases to retrieve the population cross-tabulated by Aboriginal group, 10-year age groups, and residential school attendance status, based on the following questions.

In the 2001 APS:

Part 2, A.35: "Were you ever a student at a federal residential school or industrial school? Answer:

- Yes
- No

Refused

In the 1991 APS:

Section F, Qu. F2b asked of adults aged 15-49 for both elementary school and secondary school attendance: "Who were you living with when you went to school? Was it..." Answer:

- | | Yes | No | Don't remember |
|---------------------------------|-----------------------|-----------------------|-----------------------|
| • With your family? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| • At a residential school? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| • With a non-Aboriginal family? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| • With an Aboriginal family? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| • With someone else? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Section F, Qu. F17 asked of adults aged 50-64 only: "When you went to school, did you go to a residential school?"

Answer:

- Yes
- No
- Never went to school