

**Assembly of First Nations
Report on Canada's Dispute Resolution
Plan to Compensate for Abuses in Indian
Residential Schools**



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"To heal is to be free"
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Executive Summary

Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools

1. What is the purpose of this Report?

In November, 2003, the Government of Canada launched a Dispute Resolution (DR) plan to compensate survivors of Indian Residential Schools for abuses perpetrated on them while in attendance at the schools. The goal was to fulfill the recommendations of the Royal Commission Report on Aboriginal Peoples as well as follow through on Canada's Statement of Reconciliation to survivors made in 1998.

It has become evident that the DR plan is not meeting its goals of just and fair compensation leading to reconciliation. Indeed, there is a real fear that the present system of compensation is causing additional harms to the survivors.

After a national conference in Calgary in March 2004 where the problems with the DR were objectively identified and discussed, the AFN undertook a comprehensive study with the assistance of national and international experts to determine what practical and reasonable changes can be made to the DR plan in order to make it more acceptable and accessible to survivors to achieve the final goal of fair and just compensation with reconciliation.

2. What do the Recommendations address?

The recommendations address the current DR model and its procedures and accessibility. Its scope, legal underpinnings, structure and its relationship to the residential school context, in addition to its fairness and potential for achieving reconciliation are also addressed.

The recommendations suggest an approach which gives more choices to survivors, more expedient ways to settle claims, more accurate and reflective methods of calculating compensation leading to a result which is more just, fair and mutually beneficial for survivors, the churches and Canada.

We anticipate that there will be a much higher degree of acceptance and satisfaction for survivors which will provide greater certainty, less risk and a more defensible outcome for Canada. The recommendations are supportable in civil, constitutional, aboriginal, and international law, and public policy.

Even though the primary focus of the report is the compensation plan, we stress that compensation is only part of a holistic process aimed at reconciliation, healing and compensation combined. We therefore include recommendations for a truth-sharing, healing and reconciliation process in Part II of the report.

3. What guiding principles underpin the Report?

The Report endorses and incorporates the Guiding Principles adopted by survivors, government officials and church groups through the year-long consultative dialogue process in 1999, summarized as:

1. Be inclusive, fair, accessible and transparent.
2. Offer a holistic and comprehensive response recognizing and addressing all the harms committed in and resulting from residential schools.
3. Respect human dignity and equality and racial and gender equality.
4. Contribute towards reconciliation and healing.
5. Do no harm to survivors and their families.

4. What is problematic with the government's Compensation Plan?

The current DR framework for compensation of Indian Residential School survivors is problematic in several respects. Some of the most serious problems with it are:

1. It treats survivors unequally by compensating some up to 100% of their settlements and others only 70%;
2. It treats survivors unequally by virtue of the province in which the abuse took place. If it took place in B.C., the Yukon or Ontario, survivors receive up to \$50,000 more for the same injuries than survivors who live in the other provinces of Canada;
3. It assigns more than twice as many compensation points to abusive acts than it does to the consequences of the abuse while restricting compensation to a narrow range of acts, effectively lowering the amount of compensation payable. In comparison with Ireland which has a similar problems of state responsibility for mass abuses in residential schools, Canada is spending proportionately 25 times less than the government of Ireland on its compensation plan for residential school survivors. In fact, the architect of the Irish compensation model called the Canadian level of compensation “de minimus and grudgingly given.”
4. It fails to address or compensate for emotional abuse, loss of family life, forced labour, and the loss of language and culture;
5. It does not have provision for interim awards;
6. The process takes too long and its administration costs are disproportionately high in comparison with the amount of awards paid out;
7. The application forms are intimidating, unnecessarily complicated and confusing;

8. It does not sufficiently take into account the healing needs of the survivors and their families;
9. It does not take gender differences into account;
10. It mistakenly limits compensation by requiring that abuse be measured by the “standards of the day”;
11. It does not address the need for truth-sharing, public education and awareness for non-Aboriginal Canadian public about residential schools;
12. It incorporates legal concepts in a way which perpetuates racist stereotypes.

Despite the weaknesses and challenges of the government’s DR plan, it has some very positive elements which we believe should be retained or expanded. These include the idea of the out-of-court process to settle claims, the provision for Canada to pay a percentage of legal fees, and the provision of a commemoration fund. We find that the grid concept is acceptable but must be more flexible and context-specific.

5. What is the AFN recommending?

The AFN recommends that a two-pronged approach be taken to the DR process. One prong is fair and reasonable compensation, the other prong is truth-telling, healing and public education. Some of the key recommendations are as follows:

1. A significant lump sum award must be granted to any person who attended an Indian Residential School to compensate for the loss of language and culture, irrespective of whether they also suffered the separate harms generated by sexual, physical or emotional abuse.

We are suggesting that the lump sum consist of two parts. The first part is a base amount for loss of language and culture. Each survivor will receive the same base amount for this loss.

No hearing would be required because the payment would be calculated strictly on the basis of school records. Cheques would be issued quickly and efficiently through normal administrative processes.

In the event that at some future time the courts decide that a higher lump sum should be awarded for loss of language and culture than provided by this plan, survivors will be able to claim the difference.

2. Part two of the lump sum will be awarded for each additional year or part year of attendance at an Indian Residential School to recognize emotional harms, including the loss of family life and parental guidance, neglect, depersonalization, denial of a proper education, forced labour, inferior nutrition and health care, and growing up in a climate of fear, apprehension, and ascribed inferiority. As a rule, no adjudication should be necessary for these awards to be made.

3. In addition to the lump sum, survivors must be compensated for severe emotional abuse as well as physical and sexual abuse as defined in our Report.
4. The consequences of the abuse must be weighted more heavily than the acts of abuse in the compensation calculations.
5. All survivors must be treated equally in the calculation of compensation regardless of where their abuse took place or regardless of what religious entities operated their school.
6. Gender differences must be accounted for in the calculation of compensation for acts of abuse and consequences of the abuse.
7. The acts of abuse and the consequences of the abuse must be judged by today's standards.
8. Compensation for third party abuse should have no limitations on place, knowledge of authorities or purpose for being on the school premises.
9. Race discrimination or the appearance of race discrimination, the perpetuation of negative stereotypes, and the undervaluing of harms to survivors in the awarding of compensation is completely unacceptable and must be avoided.
10. The percentage award for aggravated damages must be increased to give adjudicators more flexibility in calculating compensation for multiple abuses committed over time.
11. No award should be subject to tax nor deducted from any source of funding or support otherwise received.
12. In calculating claims for physical, sexual and severe emotional abuse, the process must be simplified to allow for early pre-hearing settlement as described in our Report.
13. There must be two adjudicators on each claim, at least one of whom is a medical or therapeutic professional trained in the field of child abuse.
14. Survivors who are 60 years or older or who are seriously ill must have their claims expedited and have access to interim payments if they present a *prima facie* case for compensation.

15. The application forms must be simplified and shortened, and community support provided in completing the forms. Requirements for gathering statements must be more flexible and government must be proactive in sending out the forms to survivors.

16. There must be a well publicized end-date for the compensation process. The AFN is recommending the date be December 31, 2010, assuming good faith on the part of Canada.

17. The Release should be re-named an “Agreement towards Reconciliation” with acknowledgement that the healing process is ongoing and Canada’s responsibility for future care of survivors continues.

18. Qualifications for adjudicators must include Alternative Dispute Resolution skills, medical/therapeutic experience, and some education in the fields of child abuse, native studies, equality, and human rights. A law degree and/or recent experience as an adjudicator should be considered assets. Aboriginal adjudicators and non-Aboriginal female adjudicators should be aggressively recruited.

19. Training of adjudicators must include a First Nations community-based component as well as a gender differentiated emphasis on the medical, psychological, social and economic effects of child abuse in the residential school context.

20. The compensation plan must be in tandem with and part of a larger healing plan which includes a voluntary truth-sharing and reconciliation process designed to investigate the nature, causes, context and consequences of all the harms resulting from the residential schools legacy. This should include, but not be limited to, harms to individual survivors, First Nations communities, survivors’ families, the future generations, culture, spirituality, language and relationships between and among all parties involved.

21. The truth-sharing, healing and reconciliation process designed by local and regional stakeholders must be accessible to survivors and their families. Counselling support must be provided before, during, and after the DR and the truth-sharing process.

22. The healing process must be linked to the continuation of the Aboriginal Healing Foundation.

The reader is encouraged to examine the full Report where a more fulsome explanation of all aspects of the recommendations and the rationale behind them are discussed in greater detail.

6. What benefits will be realized if the AFN's recommendations are implemented?

True reconciliation and healing are possible if our recommendations are incorporated into the existing DR model. They will help to restore the trust in the process which has been lost. The fact that a First Nations perspective has been added makes it much more responsive to victims' realities and needs and will draw many more people into the settlement process instead of going to the courts. A measure of the success of the DR process is the number of people who are willing to trust that it will produce a fair and just resolution of their claims. According to that and all of the other measures described in this Report, our recommendations should be seen as a positive and desired outcome.

Without an effective alternative method of resolving disputes, the current caseload of residential school claims against Canada is estimated to take another 53 years to conclude at a cost of \$2.3 billion in 2002 dollars, *not* including the value of the actual settlement costs. To date, only 19 claims have been settled under the current DR model and the cost of administering settlements is more than triple the cost of the compensation that has been awarded.

In our proposal, a much larger percentage of the available monies would go directly to survivors or their estates and less to the administration and costs of litigation. The savings in administration, legal fees, litigation, delay and court costs should significantly, if not totally, offset the increased compensation costs. When a value is put on reconciliation and healing past harms, it clearly results in our proposal being a cost effective one.

Under the current compensation plan, many tens of thousands of residential school survivors do not qualify for compensation, while thousands of others qualify for only negligible amounts. Moreover, no survivors will receive compensation for their loss of language or culture or the loss of their family life. Our recommendations would compensate all Indian Residential School students (or their estates) with a base amount for loss of language and culture, and an additional sum awarded per each year of attendance at an Indian residential school to acknowledge the accumulation of emotional injuries.

In addition to the lump sum, we recommend compensation for individuals who experienced physical, sexual or severe emotional abuse, and consequential damage resulting from those abuses, including cost of care and loss of opportunity. Our recommendations treat all survivors equally, take race and gender differences into account, appropriately weigh the consequences of abuse more heavily than the acts of abuse, as well as allow flexibility in the methods of calculation. The result of these recommendations will be a more accurate, reasonable and fair calculation of compensation.

The pre-hearing settlement negotiation we are recommending for physical, sexual, and severe emotional abuse claims is much simpler and quicker than the current method. This brings greater certainty, less delay and huge financial savings to Canada that can be put into increased compensation for survivors.

Our recommendations provide clarity for families of deceased survivors which presently does not exist.

We have proposed a training program and a set of qualifications for adjudicators which will make the process less threatening and more reflective of equality principles.

Our proposals add the important medical perspective to the adjudication process ensuring that properly trained therapeutic experts with expertise in child abuse will evaluate the consequential harms and future care needs of survivors along with legal and other dispute resolution experts who will bring their expertise to bear on the validation of the claims.

To ensure that the adjudication perspective remains race neutral, we are recommending that Aboriginal adjudicators play a major role in the resolution of the claims.

We have made it clear that our proposals would be but a part of a holistic process with a truth-sharing component which would be created in consultation with survivors, survivors' families, secondary victims of residential school abuse, First Nation communities, religious entities, Canada and non-Aboriginal Canadians. This aspect, presently absent for the DR model, will promote healing and reconciliation.

Finally, if implemented, we believe our proposed reforms to the DR model will make it one for which Canada and Canadians can be proud. It will enhance Canada's reputation as a leader in the world for the respect of human rights at the same time increasing the stature and respect for First Peoples at home and abroad. It would also set an international standard and methodology for dealing with mass violations of human rights and will finally put behind us, in an honourable way, the most disgraceful, harmful, racist experiment ever conducted in our history.

The benefits, in point form, are as follows:

- significantly reduce delay;
- compensate survivors in an expedited way, especially for the sick and the elderly;
- provide clarity for the families of deceased survivors with respect to their eligibility to make claims;
- significantly reduce costly, traumatizing and time-consuming hearings;
- significantly reduce costs associated with the employment and training of large numbers of adjudicators;
- reduce anger and disappointment with the perceived under-compensation of survivors who did not experience sexual or physical abuse;
- achieve widespread participation from thousands of claimants who are presently in class action law suits insisting on recognition of their loss of language and culture, and deprivation of family life and parental love and guidance;
- help to restore the trust in the process which has been lost through inequities between claimants;
- lessen the risk of liability from future court decisions;

- provide a simplified process which is easily explained and executed;
- provide greater certainty for all the parties through having an end date;
- offset compensation costs by savings in administration, legal fees, litigation and court costs;
- recognize the gender differences in the harms and consequences suffered, thereby promoting gender equality and greater respect for women;
- allow survivors to tell their stories safely and have them listened to;
- enhance public awareness of the injuries and consequences of residential school abuses;
- enhance the restoration of relationships and the healing process;
- ensure such atrocities never happen again;
- enhance the reputation of Canada as a leader in the world for the respect of human rights, at the same time increasing the stature and respect for Canada's First Peoples;
- set an international standard and methodology for dealing with mass human rights violations.

Assembly of First Nations

Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools

Introduction

In March 2004, the University of Calgary, in partnership with the Assembly of First Nations (AFN), hosted the National Residential Schools Legacy Conference. The goal of the conference was to objectively and thoroughly examine Canada's dispute resolution model to determine whether it was fair, just, and acceptable to survivors such that it would ultimately lead to reconciliation and resolution. Recognized experts in law, sociology, anthropology, history, Aboriginal issues, reconciliation and restorative justice, psychology, religious studies, native studies, and political science attended the conference. Many survivors participated, including elders and others who had participated in settlements in their own communities, in the dialogue process, or in regional survivor support groups. Aboriginal political leaders attended, including the National Chief, Phil Fontaine, himself a survivor. Representatives from government also participated, notably the senior staff of the office of Residential School Resolution, including the Minister responsible, Denis Coderre and the Deputy Minister, Mario Dion. Church representatives also attended, as did lawyers representing survivors.

Amongst the approximately 200 people in attendance at the conference, there was virtual unanimity that the DR model in its present form is inadequate to meet either the government's stated goals of reconciliation or the AFN's desire for a just and fair settlement for residential school survivors. Deputy Minister Mario Dion acknowledged at the conference that there were flaws with the current DR model.

National Chief Phil Fontaine proposed to the Deputy Minister that the AFN, with the support of the Office for Residential School Resolution, strike a Task Force of nationally and internationally recognized experts to examine the current DR model in light of the findings of the March conference and develop appropriate, practical, reasonable, and fair recommendations that would lead to its wider acceptance by survivors. Mr. Dion agreed. The AFN appreciated this opportunity and through this Report has become fully involved in the discussions involving appropriate remedies for the residential school survivors.

Historical Background

In 1996, the Royal Commission on Aboriginal Peoples recommended a public inquiry to investigate and document the origins and effects of residential school policies and abuses.¹ The Federal Government responded to the Royal Commission in 1998 with a

¹ Indian Residential Schools Resolution Canada online IRSRC: <http://www-irsr-rqpi.gc.ca/english/>; Also see Royal Commission on Aboriginal Peoples. 1996. Final Report. Ottawa: Supply and Services Canada. http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html (accessed on June 6, 2004).

Statement of Reconciliation in which the Government acknowledged and expressed regret for the harms caused in and through residential schools.²

In 1999, a series of nine dialogues were held with survivors, government representatives, and church representatives, who together formulated a set of guiding principles for alternative processes to address compensation for residential school abuses.³ A report was produced and submitted to the government for action. Following the dialogues, 12 pilot ADR projects were undertaken. The firm of Kaufman, Thomas and Associates was engaged by the Federal Government to review the work of these pilot processes.⁴ This review produced a number of recommendations to assist with the design of future dispute resolution (DR) processes.

In March 2000, the Law Commission of Canada, acting by request of then Minister of Justice, the Honourable Anne McLellan, to advise the Justice Minister on the most appropriate ways to address institutional child abuse, released the report *Restoring Dignity, Responding to Child Abuse in Canadian Institutions*. This report included recommendations on how to deal with Indian residential school abuse. In addition to setting out principles to inform the compensation plan for the abuse done to individual survivors, the report called for a public inquiry into residential schools in Canada.⁵ The Law Commission also recommended that all attempts to address these needs should be grounded in respect, engagement, and informed choice.⁶

In September 2000, the government decided that the importance of the issue required that a Deputy Prime Minister be given the responsibility of coordinating residential school initiatives on behalf of the Government of Canada. To this end, the residential school file was moved from Indian and Northern Affairs Canada to a new department, Indian Residential Schools Resolution Canada. This new department was created on June 4, 2001 to centralize federal resources and efforts dedicated to addressing the legacy of Indian Residential Schools.

On October 29, 2001, the Government of Canada announced an expedited settlement process for claims in which a church organization is also involved.

² Indian Residential Schools Resolution Canada “Statement of Reconciliation” online IRSRC: <<http://www-irsr-rqpi.gc.ca/reconciliation.html>> ; Also see Minister of Indian Affairs and Northern Development, “Gathering Strength – Canada’s Aboriginal Action Plan” Ottawa: 1997. http://www.ainc-inac.gc.ca/gs/chg_e.html#reconciliation See also: Resolution Framework. Ottawa: Minister of Public Works and Government Services Canada. <http://www-irsr-rqpa.gc.ca/english/dispute_resolution_resolution_framework.html>

³ “Guiding Principles for Working Together to Build Restoration and Reconciliation” is taken from *Reconciliation and Healing: Alternative Resolution Strategies for Dealing with Residential School Claims*, pages 107-116, published under the authority of the Minister of Indian Affairs and Northern Development, Ottawa, 2000

⁴ Indian Residential Schools Resolution Canada, Kaufman, Thomas and Associates, “Review of Indian Residential Schools Dispute Resolution Process”, Final Report, Executive Summary, online IRSRC: <http://www-irsr-rqpi.gc.ca/english/pdf/Final_Report_Executive_Summary.pdf>

⁵ Law Commission of Canada *Restoring Dignity: Responding to Child Abuse in Canadian Institutions* online LCC: <<http://www.lcc.gc.ca/en/themes/mr/ica/2000/pdf/execsum.pdf>>

⁶ Law Commission of Canada, *ibid*.

In August 2002, the Honorable Ralph Goodale, Minister of Public Works and Government Services Canada and also Federal Interlocutor for Metis and Non-Status Indians, assumed responsibility for Indian Residential Schools Resolution Canada.⁷

In 2003, the Government of Canada signed agreements with the Presbyterian Church of Canada and the Anglican Church of Canada outlining how each church will participate in sharing the cost of compensating valid claims of sexual and physical abuse.⁸ As a result, survivors with claims against these churches were paid 100% of their settlement amounts by Canada whereas other survivors whose claims were against other religious entities were paid only 70% of their claims.

The DR settlement model was implemented in November 2003 and 19 claims have been settled to date. Over 700 applications have been filed and are waiting for a hearing and/or adjudication. Five hundred of these claims are under the Class A category of claims and 186 are under the Class B category of claims.⁹ The government is currently appealing at least one of the Class B claims awarded in the DR process under an adjudicative decision.¹⁰

There are approximately 18,000 tort claims and several class action suits that have been filed to date.¹¹ This caseload, without an alternative method of resolution to the courts is estimated to take another 53 years to conclude at a cost of \$2.3 billion in 2002 dollars, not including the value of the actual settlement costs.¹² The costs of administering settlements awarded to date are more than triple the amount of the compensation that has been paid.¹³

The Task Force of Experts

An expert group was assembled in May and June 2004. Several meetings, research projects, and discussions were conducted over the ensuing three months within the group. An extensive review of the relevant case law, historical literature, government documents, reports, and estimates was undertaken as well as a review of many legislated and non-legislated compensation schemes for damages caused by mass torts and mass human rights violations in Canada and internationally. A careful review of application forms under various compensation schemes was undertaken as well as numerous discussions held with experts in human rights, child abuse, survivor groups, litigators, church representatives, judges, academics, psychiatrists, psychologists and counsellors.

⁷ Indian Residential Schools Resolution Canada “Statistics to Sept. 1, 2004” online IRSRC: <http://www.irsr-rqpi.gc.ca/english/2001-2002_DPR_IRSRC.htm>

⁸ Indian Residential Schools Resolution Canada “Statistics to Sept. 1, 2004” online IRSRC: <<http://www.irsr-rqpi.gc.ca/english/questions.html>>

⁹ Indian Residential Schools Resolution Canada “Statistics to Sept. 1, 2004” online: IRSRC <<http://www.irsr-rqpi.gc.ca/english/statistics.asp>>

¹⁰ CanWest News Service, National Post, “Ottawa wants senior’s \$1500 award: Residential school case”, 2004.09.14, News Section, Page A3, By-line: Richard Foot (Note: Flora Merrick, age 88)

¹¹ *infra*, note 32.

¹² *infra*, note 33.

¹³ *Supra*.

Relevant case law was examined from Canada, Ireland, the United States and the United Kingdom. Two members of the expert group undertook a fact-finding mission to Ireland and England for a ten-day period in July. Throughout the period between March and September, the Task Force compiled its views, distilled its findings and research, and drafted recommendations with a view to producing a comprehensive report to the AFN by mid-September 2004. This Report is the culmination of their work.

The members of the expert group are:

Phil Fontaine, survivor and National Chief of the AFN;
Charlene Belleau, survivor and Co-ordinator, AFN Residential School Unit;
Kathleen Mahoney, Professor of Law, University of Calgary, Project Director
Dr. Sheilah Martin, Professor of Law, University of Calgary, lawyer, Code Hunter LLP;
Bruce Feldthusen, Dean of Law, University of Ottawa;
Dr. Greg Hagen, Professor of Law, University of Calgary;
Dr. Ken Cooper-Stephenson, Professor of Law, University of Saskatchewan;
Jennifer Llewellyn, Professor of Law, Dalhousie University;
Lorena Fontaine, Professor of Indigenous Studies, First Nations University;
Justice Earl Johnson, Nunavut Court of Justice;
Former Chief Justice Barry Stuart, Yukon Territorial Court;
Art Miki, Former President, National Association of Japanese Canadians;
Richard Devlin Professor of Law, Dalhousie University;
Bob Watts, Chief of Staff of the AFN;
Ken Young, survivor and political advisor, AFN;
Dr. Sharon Williams, Professor of Law, Osgoode Hall; former judge of the War Crimes Tribunal for the former Yugoslavia;
Dr. William Schabas, Professor of Law, University of Quebec, Director, Irish Center for Human Rights, member, Truth Commission for Sierra Leone;
Dr. Rita Aggarwala, former Professor of Mathematics, University of Calgary, and law student;
Student researchers Erika Carrasco, Alice Chen, Ben Gabriel, Megan Reid, and Kim Reinhart.

Short biographies are attached as **Appendix “A”**.

Part I

Compensation for Residential School Abuses

Objective

The objective of the project is to examine Canada's dispute resolution model for Indian Residential School claims to determine what practical and reasonable changes can be made to it in order to make it more acceptable and accessible to survivors with the final goal of achieving fair and just compensation with reconciliation.

The main goal of the Task Force is to create, in a timely way, a comprehensive, credible report, which will thoroughly examine all of the relevant compensation issues and provide concrete advice and recommendations. The recommendations will specifically address the current DR model, its procedures, substantive scope, legal underpinnings, structure, relationship to the residential school context, and fairness. Recommendations will give choices to survivors, suggest a process that will allow for more timely settlements, create a substantive framework that will incorporate the residential school context and achieve a just, fair, and mutually beneficial outcome for survivors and Canada. Recommendations will be legally supportable in civil, constitutional, aboriginal, and international law and consistent with Canadian public policy.

Even though the primary focus of this report is the compensation plan, we acknowledge that it needs to be but a part of a holistic process aimed at reconciliation, healing and compensation combined. We therefore have included recommendations for a truth sharing and reconciliation process in Part II of the report.

The residential schools policy and operation involved the commission of numerous torts, violations of human rights, breaches of the *Criminal Code*, breaches of trust, and violations of treaty rights of several generations of First Nations peoples. Numerous, cumulative and complex harms were caused that have yet to be properly remedied through compensation or reparation. Canada has acknowledged responsibility in the current dispute resolution model, but only for a narrow band of personal injuries caused by physical and sexual abuse and wrongful confinement. We believe that an important opportunity still exists for the AFN to work together with Canada to make the needed reforms so that proper acknowledgement of the magnitude of the injuries to First Nations occurs and appropriate remedies are provided.

With the recommended changes to both the substance and process of the DR model and the addition of a truth sharing and reconciliation aspect, we believe that there will be a much higher degree of acceptance and satisfaction for survivors and greater certainty, less risk and a more fair, just, and defensible outcome for Canada than the current model currently provides.

Guiding Principles

As a starting point, the expert group endorsed and incorporated the Guiding Principles adopted by survivors, government officials and church groups during the year-long consultative process that took place in 1999.

At that time, the dialogues began in traditional ceremonial fashion to ensure that the process would proceed on the basis of mutual trust, respect, and honesty. It is crucial to the credibility of the DR process that these agreed-upon principles be honoured. We have summarized the detailed guiding principles into five underlying foundational commitments that now must guide the federal government's responses to residential school abuses in the settlement processes and in these negotiations. They are:

- 1. To be inclusive, fair, accessible and transparent;**
- 2. To offer a holistic and comprehensive response recognizing and addressing all the harms committed in and resulting from residential schools;**
- 3. To respect human dignity and racial and gender equality;**
- 4. To contribute towards reconciliation and healing;**
- 5. To do no harm to survivors and their families.**

There are aspects of the current DR model, which reflect the guiding principles of the Dialogues that we are recommending be retained. There are other aspects that do not reflect the principles and as a result, have not been well accepted by survivors and have caused many to reject the current model. In some cases we have rejected them as well, others we have modified.

We believe our recommendations address the need for a fair, just and comprehensive approach towards reconciliation for survivors, First Nations and Canada. Fundamentally, such a comprehensive approach requires that the DR model contain a broader range of categories of compensable harms in order to be acceptable to survivors as well as an ability to heal damaged relationships. Otherwise, there is a very real danger that new harms in the relationship between First Nations, non-Aboriginal peoples, and government will be created in addition to the profound harms that have already occurred. If that is the result, reconciliation will become impossible for the indefinite future.

The Current DR Model: Its Strengths and Weaknesses

The government's DR model is a voluntary process that seeks to resolve legal claims of physical abuse, sexual abuse and wrongful confinement at Indian Residential Schools by providing compensation.¹⁴ It creates two modes of settlement. Category "A" applies to persons with claims for physical abuse with injuries lasting more than six weeks or who required hospitalization or serious medical treatment and sexual abuse or both. They can choose to move through the process either individually or as part of a group, but each

¹⁴ Indian Residential Schools Resolution Canada, 2004. "Statement of Reconciliation." [cited June 6, 2004]. Online IRSRC: <<http://www.irsr-rqpa.gc.ca/english/dispute-resolution-commeration.html>>

individual must appear at two separate hearings before a decision-maker. If the abuse took place in British Columbia, the Yukon or Ontario, the total compensation is capped at \$245,000. If the abuse took place in any of the other provinces or territories, the total compensation is capped at \$195,000. The cost of future care is capped at \$25,000.

Category “B” applies to claims of physical abuse that did not result in injury lasting more than six weeks or that required hospitalization or serious medical treatment and to claims of wrongful confinement. The maximum amount of compensation for Category “B” physical abuse and wrongful confinement is \$1,500. Where aggravating factors are present, the award may reach \$3,500 maximum. This cap applies regardless of the severity of the effects of the abuse on the survivor or the frequency and duration of the physical abuse. It also ignores the effects of the residential schools on loss of language, culture, family life, parenting and secondary harms to spouses and descendants. There is no provision to recognize or compensate for emotional and spiritual abuse, neglect, forced labour or educational deficits, or their consequences.

In category “A”, cases of “serious” physical and sexual abuse, compensation is calculated on a point system where points are awarded for the severity of the injuries and the severity of the consequences of the injuries. The greater the number of points, the greater the amount of compensation awarded.

Under the current DR model, the adjudicator can award up to 60 compensation points for acts of sexual abuse and 25 points for acts of physical abuse. There are up to 25 compensation points available for consequences of the sexual or physical abuse and up to 15 points available for loss of opportunity. The compensation can be increased up to 15% of the points if aggravating circumstances are present. Future care costs are compensated in the form of awards for future counselling if the damage is severe, capped at \$25,000.

The points are translated into dollar figures under a range of financial awards that depend first upon the total compensation points; second upon the location of where the abuse occurred; and third, whether the abuse was committed by a person whose religious group has entered into an indemnity or cost-sharing agreement with Canada.

This point-based framework and financial grid is problematic in several respects, but three of the most egregious problems with it are:

1. It treats survivors unequally;
2. It assigns too many points to the injuries and not enough points to the consequences of the injuries;
3. It is too rigid and narrow in its categories and descriptions of abuses and harms.

The inequality arises because of the two different levels of compensation depending on the location where the abuse took place – one grid for survivors whose abuse took place in British Columbia, the Yukon or Ontario, and a lower grid for those whose injuries occurred in the rest of Canada.

A further inequality occurs because the model treats survivors differently based on unequal application of the vicarious liability principle. If a member of a religious organisation that has not entered into an indemnity abused a survivor or contribution agreement with Canada, then the survivor is only awarded 70% of the compensation he or she is entitled to under the model. If a survivor was injured by a member of a religious entity that has entered into an indemnity agreement with Canada, he or she is awarded 100% of their compensation.

The current weighting of compensation points is problematic because it gives a marked priority to the act of abuse suffered and less overall points to the consequences of abuse suffered and the loss of opportunity. This is especially problematic because the definition of physical acts of abuse is unduly restrictive and excludes the abuse experienced by many survivors.

Overall, the current DR plan provides a compensation package that is based on tort law principles, narrowly interpreted. The standard adopted for the amount of compensation awarded for abuses is at the low end of the spectrum of damages awarded in Canadian courts for ordinary sexual and physical abuse. The First Nations perspective is largely absent from the descriptive framework of the injuries and consequences, financial grid or scope of coverage. As a result, the contextual elements are missing and in some cases, race and gender inequities occur.

On the positive side, the concept of providing an out-of-court settlement process is a very good one. Claimants who recover compensation under the current process, for the most part, are compensated faster and with less stress and expense than through litigation. The DR process also benefits survivors in that it reduces the risk that deserving claimants will receive little or nothing in the lottery of civil litigation. The model further benefits survivors because it incorporates a more flexible process and standard of proof that is less stressful and less harsh than the normal discovery process. The current model attempts to validate claims for sexual and physical abuse in a non-adversarial, sensitive way. The current DR process also provides access to commemoration. Commemorative activities pay tribute to Indian Residential School survivors and acknowledge the experience of survivors and the larger impacts of the residential school system. These aspects are very important and should be retained and encouraged.

Notwithstanding the positive elements of the DR model, it has not been well received in First Nation communities across the country or by a large number of residential school survivors. In addition to the criticisms cited above, survivors have forcefully indicated that the current model under-values or ignores their personal injuries and does not take into account the context of residential schools. They say in order to be just, fair, and reasonable, the compensation plan must consider and account for their personal losses more accurately and comprehensively as well as compensate for group-based systemic abuse and the consequences that flowed from that abuse.

More specifically, the most common criticisms expressed by survivors of the current DR model in addition to those identified above, are as follows:

- The current model does not address emotional abuse, neglect, forced labour, loss of family life and parental guidance and their consequences.
- The present measure of compensation does not consider the injuries and consequences associated with racism, forced assimilation, and destruction of culture.
- The provisions for compensating survivors from abuse by other students are too limited.
- Survivors, regardless of health or age status, cannot access interim awards.
- The application form is complicated, confusing, and intimidating.
- The process takes too long.
- The model does not take into account the healing needs of survivors, their families, and their communities.
- The model does not take gender differences into account, neither for the gender-specific injuries inflicted nor for the gender-specific consequences of the injuries.
- The model errs in its evaluation of abuse by referring to the standards of the time it was administered.
- The model does not address the need for truth sharing, public education, or awareness of the Canadian public about residential schools.

We are of the opinion that many, if not all of the criticisms can be resolved. Our recommendations build on the time, resources, and expertise already invested by Canada by working from the positive elements in the current model and extending them to cover the unique harms caused by the residential school experience in a more contextual, sensitive manner, and by including a healing component.

Our recommendations will increase the amount of compensation available for survivors, while significantly decreasing administration, procedural and litigation costs for both Church entities and Canada. In addition, our recommendations, if implemented, will benefit Canada and all Canadians because they will help lead to reconciliation and the healing of broken relationships that have undermined the health of the nation over generations. A cost/benefit analysis that puts a value on reconciliation and the positive health and social consequences that would follow a reconciliatory result, far outweigh the costs required to achieve them. The costs of not achieving reconciliation are immense.¹⁵

Assessing Damages: The Goals of Compensation

Compensation is a general term that can have different goals, purposes and levels. What compensation means depends on whether the context is litigation in a court, negotiations designed primarily to settle an outstanding case, monies paid pursuant to a social welfare

¹⁵ A. Bowlus *et al.*, [The Economic Costs and Consequences of Child Abuse in Canada](http://www.lcc.gc.ca/en/themes/mr/ica/mckenna/mckenna.pdf) (March 2003), online: Law Commission of Canada, < <http://www.lcc.gc.ca/en/themes/mr/ica/mckenna/mckenna.pdf> >

scheme or awards agreed to in a dispute resolution process intended to redress acknowledged wrongs and facilitate healing and reconciliation. With that understanding, we are not seeking full tort law damages in an alternative dispute process. However, our recommendations do support fair and just redress for the full range of injuries suffered and we encourage the federal government to restore the dignity of survivors by responding with generosity, compassion and speed.¹⁶ The amount of compensation should recognize that people were harmed, provide solace for their injuries, assist in repairing the emotional, physical and psychological damage caused by residential schools, and provide funds for the reconstruction of survivor's lives.

Our recommendations are as follows:

Recommendations

1.0 To ensure that the full range of harms are redressed, we recommend that a lump sum award be granted to any person who attended an Indian Residential School, irrespective of whether they suffered separate harms generated by acts of sexual, physical or severe emotional abuse.

The Indian Residential School Policy was based on racial identity. It forced students to attend designated schools and removed them from their families and communities. The Policy has been criticized extensively.¹⁷ The consequences of this policy were devastating to individuals and communities alike, and they have been well documented¹⁸. The distinctive and unique forms of harm that were a direct consequence of this government policy include reduced self-esteem, isolation from family, loss of language, loss of culture, spiritual harm, loss of a reasonable quality of education, and loss of kinship, community and traditional ways. These symptoms are now commonly understood to be "Residential School Syndrome." Everyone who attended residential schools can be assumed to have suffered such direct harms and is entitled to a lump sum payment based upon the following:

1.1 A global award of sufficient significance to each person who attended Indian Residential Schools such that it will provide solace for the above losses and

¹⁶ The comments of Mr. Tom Boland, Deputy Minister formerly in charge of the Irish Compensation Plan for Industrial School Survivors in Ireland are indicative of the Irish perception of the Canadian model not being generous when he stated the Canadian compensation for Indian Residential Schools was "*de minimus* and grudgingly given." See *infra*, note 34.

¹⁷ Miller, J.R. 1996. *Shingwauk's Vision: A History of Native Residential Schools*. Toronto: University of Toronto Press., Miller, J.R. 2003. *Troubled Legacy: A History of Native Residential Schools*. Sask. L. Rev. 66: 357-382., Quewezance, Basil and Joe Nolan. 2004. *Indian Residential Schools: A Background Report*. Unpublished: Assembly of First Nations; Bowlus, *Supra*; Jason Wuttunee, *Issues in the Settlement of Residential School Claims*; Jennifer Koshan, "*Does the DR Model Violate the Charter?*"; and Greg Hagen, *The DR Model: Fair Treatment or Re-Victimization?*, In *The Residential School Legacy: Is Reconciliation Possible?*, Kathleen Mahoney, ed. (unpublished.)

¹⁸ Rosalyn Ing, *Dealing with Shame and Unresolved Trauma: Residential School and Its Impact On The 2nd and 3rd Generation Adults* (PhD Thesis, Department of Educational Studies, University of British Columbia, 2000) [unpublished].

would signify and compensate for the seriousness of the injuries inflicted and the life-long harms caused.

- 1.2 An additional amount per each additional year or part of a year of attendance at an Indian Residential School to recognize the duration and accumulation of harms, including the denial of affection, loss of family life and parental guidance, neglect, depersonalization, denial of a proper education, forced labour, inferior nutrition and health care, and growing up in a climate of fear, apprehension, and ascribed inferiority.¹⁹

As attendance at residential school is the basis for recovery, a simple administrative process of verification is all that is required to make the payments as the government is in possession of the relevant documentation.

2.0 To ensure that all survivors are fairly and justly compensated for the harms caused by attendance at residential schools, we recommend that in addition to the compensation for injuries covered by the lump sum claim, affected survivors have the choice to claim compensation for acts of additional physical, sexual and severe emotional abuse and personal injuries flowing from them.

- 2.1 The definition of abuse in the current DR model is too limited to cover the abuses suffered by residential school students. The definition for abuse should be the same as that in the Irish compensation model that is as follows: “abuse” of a child means-

- (a) The wilful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child;
- (b) The use of the child by a person for sexual arousal or sexual gratification of that person or another person;
- (c) Failure to care for the child which results in serious impairment of the physical or mental health of the child or serious adverse effects on his or her behaviour or welfare, or
- (d) Any other act or omission towards the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare.

- 2.2 The definition of “injury” must be made explicit to include physical or psychological injury and injury that has occurred in the past or currently exists. Compensation should be payable in respect of any injury which is consistent with any abuse suffered by the survivors while he or she was in an institution.

¹⁹ The expert group is concerned that the acceptance of the concept of the lump sum and its method of calculation based on a functional approach be a priority and that the amount of the lump sum be the subject of future negotiation. However, the sum the group sees as being reasonable and fair that should serve as a reference point is \$10,000 for every student who attended an Indian Residential School plus an additional \$3,000 for every year attended.

2.3 The form of compensation must include the long-term psychological damage to survivors who might not be able to prove physical or sexual abuse, but still suffered severe emotional harm through various forms of emotional and psychological abuse. This can be emotional damage that is more complete and severe, a lasting effect from actual harm and not just a consequence.

3.0 To ensure that acts of abuse and their consequences more accurately compensate the survivors, we recommend that the severity of consequence resulting from the abuse be measured similar to the approach adopted by the Irish government under which the severity of the acts of abuse constitute up to 25 points of the evaluation, while the severity of the consequences of the abuse is weighted at up to 75 points.

3.1 In assessing consequences, 1-25 points should be given towards the severity of the abuse; 1-30 points should be assigned to physical and mental injuries, 1-30 points to psycho-social harms and 1-15 points for loss of opportunity.

3.2 These four separate weightings produce an overall assessment of the severity of the abuse and the injurious consequences suffered by the survivor. When they are added together, the total assessment is then put on a scale of dollar amounts.

3.3 Adjudicators should have the discretion to award compensation over and above the scale where the acts of abuse and the injuries arising from the abuse are exceptional.

4.0 To ensure that all the acts of abuse and their injurious consequences are taken into consideration and given the proper weight, we recommend that descriptions of the acts of physical, sexual and severe emotional abuse and their consequences be made more flexible and context-sensitive, including to the context of race and gender.

4.1 The compensation plan must have sufficient flexibility to make it capable of addressing individual claims but at the same time, certain enough to provide assistance to the adjudicators in determining awards, help applicants present their cases and enable reasonable predictions as to the likely outcome of applications. We therefore recommend that the plan continue to have a mathematical component which calculates compensation by reference to a weighting system whereby a particular case can be located on a point based scale and then the amount can be fixed.

4.2 While the current approach captures the likely range of abusive conduct and provides guidance through its narrative, (except see the comments on gender-specific injuries and harms below) the descriptions are too restrictive and the levels are too rigid. For example, the current DR model defines physical abuse and forced confinement in unduly narrow ways. Survivors should not have their

experience denied or demeaned by overly rigid de-contextualized descriptions in a hierarchy of abuse.

- 4.3 The severity of the acts of physical, sexual or emotional abuse and injurious consequences should take into account not just the severity of the act itself, but also the period of time over which the abuse and the abusive atmosphere lasted, as well as the number of times it occurred. For example, one incident of sexual intercourse should not be given more weight than numerous instances of fondling over a period of several years.
- 4.4 Women and men must be considered separately in the descriptions of acts of abuse and consequences of the abuses in the point-based system of calculation. For example, consequences experienced as a result of sexual or physical abuse on girls can be different than those suffered by male victims of abuse. Unless there is sensitivity to these differences, some behaviour that abused and injured female children may not be recognized as such.
- 4.5 In addition, the social, psychological and physical consequences of physical or sexual abuses may be different for women than for men. For example, physical abuse may subject a female residential school survivor's vulnerability to greater racism and sexism, subsequent physical and sexual abuse by others, divorce, and lost economic opportunities than men in some cases. Infertility, fear or avoidance of sexual activity, chronic abdominal pain, exposure to miscarriages and abortions, unwanted pregnancies and other forms of gender-specific harms are omitted in the present model. Other physical consequences of sexual abuse such as difficulty in child bearing or conception fall through the cracks unless a gender-specific approach is taken to survivors' claims.
- 4.6 There is no reason why sexual abuse, as a category, should carry a maximum of 60 points, while the most extreme form of physical abuse has a maximum of 25 points. Adjudicators should have more flexibility to address severe physical and sexual abuses through awarding more points for one or the other, or cumulatively together, as circumstances require. For example, a student may have suffered a physical beating in residential school that resulted in a miscarriage; or a rape, which resulted in a pregnancy; or a pregnancy that resulted in a forced abortion. These entire circumstances raise questions about the adequacy of the maximum level of points as well the rigid distinction between physical and sexual abuses. We would be pleased to work with Canada to refine the assessment measures for severity of abuses and severity of injurious consequences.
- 4.7 In order to specify the acts of abuse and the harmful consequences in detail, women survivors must be more extensively consulted in the design of the DR model as well as medical, psychiatric and psychological experts specializing in gender-based harms.

5.0 To achieve a non-discriminatory compensation model for the cumulative harms of residential schools, we recommend that physical and psychological punishment and serious emotional abuse must be judged by the standards of today, not the standards when the abuse occurred.

5.1 To require that physical and emotional punishment be judged by the standards at the time the abuse occurred considers only the perspective of non-Aboriginal people and what they thought was reasonable at the time, incorporating a race bias into the calculation of compensation. The reasoning that supports use of the accepted standard of the time defeats the whole purpose of reconciliation for it could be similarly argued that it was also considered reasonable at the time to assimilate First Nations children by means of residential schools.

5.2 To adopt the standard at the time the abuse occurred attempts to avoid liability and fault on a narrow, de-contextualized and abstract basis. Physical and psychological punishment should be evaluated in the broader, residential school context. For example, children were physically punished for speaking their language, this context would not have existed in non-Indian schools, nor would the general context of racial degradation and humiliation for the purpose of assimilation. These elements alone would put the punishments suffered by Indian Residential School students outside standards of the time.

5.3 If the evidence discloses consequential harms which are real and recognizable by today's medical standards, it should be irrelevant that some of the punishment meted out to survivors may have been acceptable at the time, especially if the survivors are still experiencing the consequential harms accumulated over time. This is particularly important in the context of a compensation model focused on compensating for harms caused rather than a compensation model based on fault.

5.4 In a compensation model with reconciliation as its goal, ignoring the accumulation of the harms over time and the sensibilities held by survivors and their families in favour of an undefined "standards of the time" limitation undermines the whole purpose of the DR project.

6.0 To achieve a more accurate and fair assessment of the consequences of the physical, sexual and severe emotional abuses experienced by survivors, we recommend that medical or therapeutic professionals sit as one of two adjudicators on each claim.

6.1 The nature of the harms of residential school abuse is physical, emotional and psychological – also known as the Residential School Syndrome. In a settlement resolution process where expert witnesses will not necessarily be called to explain medical reports and the symptoms and severity of the harms,²⁰ it is essential that at least one of the adjudicators have the education and experience to

²⁰ See recommendation 22.3 *infra*.

evaluate, understand, and explain the medical nature of the claims, the physical, social and psychological consequences and the future care needs of the survivors.

7.0 We recommend that compensation awards include an amount for the cost of reasonable medical treatment (including psychiatric treatment) for past injuries and/or the cost of reasonable medical treatment for future care. The award for medical expenses should take the form of an additional award.

7.1 It is of paramount concern to the law that plaintiffs who have suffered damages receive proper future care.²¹ This recommendation should be linked to ongoing activities of the Healing Foundation. The principle of compensation for past and future care should apply equally to residential school survivors.

8.0 We recommend that to achieve equality and consistency in the compensation awards, the DR model have a national compensation standard that is uniform across jurisdictions.

8.1 The compensation amounts should not be differentiated according to the province in which the student attended residential school. The rationale offered for this variable standard is that different provinces award different amounts in court cases for sexual or physical abuse. This imposed geographic disparity is intuitively unfair, arbitrary and punitive.

8.2 The lack of uniformity violates tort principles articulated by the Supreme Court of Canada in the *Andrews v. Grand and Toy*,²² which states, “variation should be made for what a particular individual has lost in the way of amenities and enjoyment of life, and for what will function to make up for his loss, but variations should not be made merely for the province in which he happens to live.”

8.3 A national standard should be based on the current dollar figures awarded in British Columbia, Ontario and the Yukon as those jurisdictions have decided the most cases to date and the weight of the jurisprudence is from these areas.

9.0 We recommend that to avoid race discrimination, the appearance of race discrimination or the perpetuation of race discrimination, Canada ensure that global awards under the DR process are comparable to awards being won in similar cases outside the residential school context and that the use of racial stereotypes is avoided.

9.1 While we agree that compensation should be personalized it is important to compare awards for sexual abuse being awarded by the courts in other cases outside the residential school context to avoid discrimination or any appearance

²¹ *Andrews v. Grand and Toy* [1978] 2 S.C.R. 229; 83 D.L.R. (3rd) 452 at 477 (SCC).

²² *Supra*, note 3.

of discrimination, especially if the latter are higher. In *J.R.S. v. Glendinning*,²³ for example, three non-Aboriginal plaintiffs who were sexually abused by a priest outside of a residential school setting were awarded \$400,000 each. This is far greater than the existing cap under the DR program of either \$195,000 or \$245,000.

9.2 It has been noted that there are three arguments that are generally made for reducing awards made for Aboriginal Canadians compared to non-Aboriginals.²⁴ They areas follows:

1. Aboriginal plaintiffs suffer less injury because their health or material prospects are, in any event, diminished by reason of physical or socio-economic factors related to their race;
2. Individual prospects are typically measured against the culturally dominant standard of the market from which Aboriginal individuals are largely excluded;
3. Statistical indicators are used to prove that life prospects were not favourable (when measured against the market yardstick) and therefore, their economic loss due to the abuse was not great.

To justify or attempt to justify lower awards based on any of these grounds would merely perpetuate discrimination embedded within statistical tables and inequities in treatment based upon race and defeat the reconciliatory purpose of the DR program.²⁵

10.0 In the interests of fair compensation, healing, reconciliation, and accepting full responsibility for past wrongs, we recommend that Canada expressly acknowledge its responsibility and accept fault for both the physical and sexual abuses of First Nations students and Canada’s assimilation policy which created the context for the abuse to occur.

10.1 When Canada fails to acknowledge its responsibility for creating the harmful context within which the direct injuries of physical and sexual abuse occurred, (as it does in the current DR model) it minimizes its role in creating the harm to students. Canada should not argue (as it did in the *Blackwater* case) that the ill effects suffered from physical and sexual abuse – such as the inability to hold a job or function well within a family context – would have happened

²³ *J.R.S. v. Glendinning*, [2002] J. No. 285.

²⁴ See Cassels, “(In)equality and the law of Tort” at 190—191, cited in B.C. Law Institute, 2001. *Report on Civil Remedies for Sexual Assault*, online BCLI:
<<http://www.bcli.org/pages/projects/sexual/CivilRemReport.html>>

²⁵ See discussion following Recommendation 10 below.

anyway because the residential school setting was highly harmful.²⁶ Given the racist nature of the Indian Residential School experiment, it is inappropriate to apply the “crumbling skull” doctrine to limit compensation under the DR process. Moreover, the adjudicators at this stage cannot determine whether there was a measurable risk that a pre-existing condition would result in harm to survivors in any event.²⁷

10.2 The Supreme Court of Canada decision in *Athey v. Leonati*²⁸ is the appropriate approach. In that decision, the Court held that “[o]nce it is proven that the defendant’s negligence was a cause of the injury, there is no reduction of the award to reflect the existence of non-tortious background causes.”²⁹

10.3 The British Columbia Law Institute clearly cautions against improper applications of the “crumbling skull” doctrine where intentional torts are committed when it cites *Athey* for the proposition that: “an intentional tortfeasor who takes advantage of a pre-existing condition for his own personal gain should not then be permitted to argue that the existence of this condition relieves him of full responsibility for paying damages.”³⁰

10.4 The Institute further points out that the “thin skull doctrine” is the more appropriate doctrine, saying not only does the defendant take the victim as he finds him or her, but where the plaintiff’s prior condition was already vulnerable, he actually exploits the plaintiff’s pre-existing condition of vulnerability.³¹

11.0 We recommend that to achieve greater accuracy in awarding compensation, the 15% available add-on for aggravated damages in the present DR model be significantly increased.

11.1 We support the general approach to aggravated damages in the current DR model, but believe the maximum percentage should be 25 to 30%, rather than 15%.

11.2 Under the current DR model an individual receives compensation only for the most serious act of abuse even though other lesser-valued forms of abuse may have occurred. When this approach is taken, the aggravated damages mechanism is the only way to account and compensate for different types, levels, frequency and egregiousness of other sexual or physical abuses. A

²⁶ This was the underlying argument of the Crown in *Blackwater v. Plint*, 2003 BCCA 671, where the Crown argued that the trial judge did not consider whether there were any contributing causes which would have led to the plaintiff’s harms in any event.

²⁷ *Supra*.

²⁸ *Athey v. Leonati*, [1996] 3 S.C.R. 458 at s.5; reiterated in *K.L.B. v. British Columbia* 2003 SCC 51.

²⁹ *Ibid.* s.IV B5

³⁰ *Ibid*

³¹ B.C. Law Institute. *Report on Civil Remedies for Sexual Assault*. Online BCLI: <<http://www.bcli.org/pages/projects/sexual/CivilRemReport.html>>

higher ceiling for aggravated damages gives the adjudicator more flexibility to assess all the acts of abuse and consequential harms as well as account for more injurious or egregious methods of inflicting the harm.

11.3 An exception to this approach would be humiliation. The very nature of sexual harms is its humiliation of the victim. Therefore, humiliation is to be assumed and be considered a part of the seriousness of every sexual abuse and injury. It should not need to be proven as an aggravating factor.

12.0 We recommend that for greater clarity, the presumption of fault and causation be made express to both adjudicators and survivors.

12.1 Once the claimant proves acts of sexual or physical abuse and their injurious consequences, he or she should receive compensation. Fault and legal causation should be non-rebuttable presumptions and stated to be so in the mandate of the adjudicators as well as in the application form for survivors.

13.0 To achieve fairness and equality in the treatment of survivors and to be consistent with well-understood legal principles, we recommend that Canada assume 100% liability for all harms that occurred to survivors.

13.1 Our recommendation is consistent with the modern tort law perspective that recognizes that more than one party may be at fault in the commission of torts and, in such cases, that liability should be apportioned among the faulty parties.³² Thus, where two parties caused or contributed to the abuse of a residential school student, both will be found at fault and liability will be apportioned in accordance with their degree of fault. Generally speaking, if there are two faulty parties, they will be found jointly and severally liable for the entire amount of any damages.³³ Thus an injured party can sue either faulty party for 100% of the losses suffered. Failure to reach an agreement with some churches is not a justifiable reason for Canada to forego or delay paying full compensation to survivors and recovering contributions from other liable parties as and when they can. There are many good reasons why the religious entities ought to assume their own responsibility and one can sympathize with Canada's desire to ensure they do so. However, the goal of sharing liability ought not to be pursued to the disadvantage of survivors.

13.2 Under the current model, some survivors are receiving 100% of their compensation because their abusers were members of a church that has negotiated an indemnity or contribution agreement with the federal government regarding joint and several liability. In British Columbia, survivors are receiving 100% of their damages because of the decision in the *Blackwater*³⁴ case that held that in the residential school context, the federal

³² For example, the *Contributory Negligence Act* (Alberta) Chapter C-27, s. 1(1).

³³ *Ibid.*, s. 2(2).

³⁴ *Blackwater v. Plint*, 2003 BCCA 671.

government was 100% liable for the acts of its employees and the church was not liable at all. Other survivors are receiving only 70% of their awards because someone whose church or religious entity has not entered into such an agreement abused them or they live in provinces other than British Columbia. This unfair and inequitable treatment causes dissention, frustration and anger amongst the survivors and violates fundamental principles of fairness and equality and arguably violates the *Canadian Charter of Rights and Freedoms*.³⁵

14.0 To achieve greater fairness and accountability in the compensation process for the harms suffered, we recommend that Canada accept 100% vicarious liability for the physical, sexual or severe emotional abuse of a residential school survivor by a third party permitted on the school premises for any reason.

14.1 The current DR process allows the government to escape liability for sexual assault perpetrated by an adult who was permitted on the premises for some purpose other than “contact with children.” This distinction between being on the premises for the purposes of contact with children and being there for another purpose is an artificial one that should not be made. In the context of residential schools where hundreds of children resided on a permanent basis, it is foreseeable that a visitor would have had contact with children regardless of his or her precise purpose for being there.

14.2 A DR process predicated on a desire to achieve reconciliation and closure ought not to import this limitation into the agreement, as it is a fault-based rationale to escape liability in what is purported to be a no-fault process.

15.0 In the interests of taking responsibility and effecting reconciliation and closure, we recommend that the government assume 100% responsibility for any student-on-student sexual or physical assaults, on or off the school premises, whether or not there was actual knowledge of the assaults by the school authorities.

15.1 Canada allowed the creation of violent and sexualized environments at Indian Residential Schools. By doing so, it materially and foreseeably increased the risk of abuse of the students in its care and it ought to take responsibility for doing so whether or not it possessed actual knowledge of the abuses.

15.2 Actual knowledge of school staff of particular patterns of sexual abuse will be impossible to prove in most cases. Moreover, requiring such proof is inconsistent with accepted legal standards.

³⁵ See: Jason Wuttunee, *Issues in the Settlement of Residential School Claims*; Jennifer Koshan, “Does the DR Model Violate the Charter?; and Greg Hagen, *The DR Model: Fair Treatment or Re-Victimization?*, In The Residential School Legacy: Is Reconciliation Possible?, Kathleen Mahoney, ed. (unpublished.)

15.3 The requirement that in order to be compensable, the abuse must have occurred on school premises should be removed. Wherever the abuse occurred, the likelihood of its occurrence would have been foreseeable to school authorities, given the level of sexual and physical abuse, off and on school premises by figures in positions of authority.

16.0 In the interests of demonstrating good will and compassion for survivors' needs, interim awards and an expedited procedure should be made available to survivors, especially for the elderly and the sick.

16.1 If an interim award is sought, it should be awarded if a *prima facie* case is presented which would indicate that the survivor would get at least the amount of the lump sum award. Applications by the sick and elderly should be given priority and considered within a defined time period once the application for an expedited process is received.

16.2 Given the shorter life expectancy rates for First Nations residential school survivors, the age for interim awards for the elderly should be 60 years and above.

17.0 We recommend that the awards not be taxable or deductible from any other source of funding or support the survivors may be receiving.

17.1 Given the nature of these monies they should not attract tax and they should in no way be taken into account or in any way prejudicially affect benefits, including social benefits or insurance that survivors may be entitled to receive.

18.0 We recommend that the Application Form and Guide be simplified and access to it improved.

18.1 The current application form for the DR process is causing distress among survivors. They report that it is confusing, intimidating and very difficult, especially for older survivors, to understand. They also feel it is impersonal and reduces their experiences at residential school to a bureaucratic exercise. Many do not know how to obtain forms or how to fill them out if they do obtain them.

18.2 There should be two forms, one for living survivors and one for a deceased survivor's spouse and children.

18.3 There should be two guides with the application forms – a shorter, more sensitive guide specifically for survivors and a more detailed guide geared for claimant's representatives or lawyers or those would wish to have such information. The forms will reference the appropriate sections of the guides for ease in locating explanations.

- 18.4 Appropriate local community members, such as court workers, social workers or counsellors should be employed to assist and support survivors to fill out the application forms. These local community members know their communities and understand the context of their survivors. As such, they are in a better position than outsiders to develop comfort and trust. These community members should also be available as long-term support resources for claimants. The utilization of local community workers provides the added benefit of being a practical and relatively inexpensive method of building up capacity within the community and enhancing community resources.
- 18.5 A 1-800 helpline for survivors should be connected to independent First Nations organizations such as the AFN rather than an office connected to government. This will engender greater trust in the process. Having an independent First Nations person at the other end of a helpline will alleviate discomfort of talking with a government employee or someone perceived to be a government employee. The helpline should be equipped to answer basic questions and be able to direct survivors to professional services such as psychiatrists, psychologists, counsellors or lawyers who can assist them with advancing their claims.
- 18.6 Survivors should have access to the assistance of a counsellor paid for by Canada to support them in the preparation of their statements, during their hearings and after their hearings for as long as counselling is needed.

19.0 We recommend that Canada be more proactive in ensuring that all residential school survivors have access to the DR process.

- 19.1 Canada should send application forms and explanatory guides to all living residential school survivors without the necessity of a request. Canada is in the best position to initiate the process as it has all the records and contact information. By Canada taking a proactive approach, a significant burden is removed from survivors, many of whom are elderly and sick and live in remote, rural locations. Such an approach is also consistent with affirming Canada's stated desire to compensate injured survivors, to reconcile and seek forgiveness, to help- re-establish trust, and to fulfill its fiduciary obligation to act in the survivor's best interests.
- 19.2 Canada should provide all relevant documents, including medical reports that it has a right to possess or are under its control or in its possession.
- 19.3 Canada should facilitate the acquisition of documents within provincial government control.
- 19.4 Canada should pay for all expert reports or advice required to prove a claim, including medical reports.

19.5 Upon request of the claimant, the Adjudicators should be given the power to order production of documents from other sources, such as religious entities, to complete the claimant's application.

20.0 In the interest of addressing survivors' claims more quickly and efficiently, we recommend lump sum applications be paid out administratively without requiring hearings or personal statements where records indicate attendance at an Indian Residential School.

20.1 To access the lump sum, the application form should ask for proof of the survivor's identity, address, the name of the residential school attended and the number of years attended. If the survivor is claiming damages in addition to the lump sum, then additional information will need to be provided as discussed below.

20.2 When Canada's representatives receive the form, they should provide all the necessary documents from their files to verify attendance so the survivors will be relieved of this sometimes onerous and time-consuming task.

20.3 Adjudicators should not be required for the assessment of lump sum applications unless there is some complication with respect to the documentary evidence. Otherwise, the assessment of the claim and the payment of compensation should be a purely administrative function.

20.4 In the case of intestate deceased survivors, the lump sum award should be awarded to surviving family members or community programs in the name of the deceased if there are no surviving family members. Proof requirements are the same as if the survivor was living.

21.0 In claims for physical, sexual and serious emotional abuse, we recommend that the application form allow for more flexibility in the method of acquiring the statements and supporting evidence.

21.1 To obtain compensation for sexual, physical and serious emotional abuse, survivors should provide detailed descriptions of the acts of abuse and the consequences of the abuse.

21.2 Survivors should have the option of writing their story on the space provided on the form, providing written statement in their own words attached to the form, or providing a video or audio-recorded statement in the manner they deem appropriate.

21.3 The statements should be supported by medical and other documentary evidence but it should not be fatal to the claims if there is no past medical evidence. This is important because many survivors have never told anyone, including counsellors or doctors about the details of their abuse.

22.0 In the interests of resolving survivors' claims more quickly and efficiently, we recommend that in claims for physical, sexual or serious emotional abuse, all efforts be made to simplify the process and settle the claims without a hearing, in the following manner:

22.1 To access compensation for serious physical, sexual, or serious emotional abuse the claimant will apply using the same form that is required for a lump sum claim. The difference between the two types of claims will be the additional information required of the claimant for sexual, physical or serious emotional abuse and any documentary evidence available verifying the acts of abuse and their consequences.

22.2 The pre-hearings should be conducted on the basis of the application form, proof of identity, school(s) attended, length of stay in the school, and medical evidence. At the pre-hearing, the adjudicators, (one medical and one other) Canada's representative and counsel for the survivor will negotiate the claim. The survivor may attend the pre-hearing but would not be required to do so.

22.3 Either no offer or a without prejudice settlement offer will be made to the survivor immediately following the meeting through his or her legal counsel, with reasons. If the offer is refused or no offer is made, the survivor will then have two mutually exclusive options:

1. The option of filing a statement of claim and going to court. If this option is chosen, the action would proceed in the normal course through the courts.
2. The option of having a hearing before adjudicators to tell his or her story under oath or affirmation. Medical experts could be called to testify. A decision on an offer will be made within ten days of the hearing. If the offer is refused again or no offer is made, there will be opportunity to appeal to another, sole adjudicator. The decision of the second adjudicator will be final. No appeal to the courts would be available.

23.0 In the interests of consistency, fairness and equity, we recommend that Canada clarify and facilitate the access to the DR process by heirs of deceased survivors.

23.1 Canada should proactively send application forms and guides to spouses and children of deceased survivors to put them on notice that they are eligible to apply for compensation as well as to facilitate the process for the same reasons as are stated above.

23.2 If the spouse or child of a deceased survivor wishes to make a claim for physical, sexual or severe emotional abuse, the claim should be supported by the same documentary evidence as if the survivor was living.

23.3 Although it is preferable, it should not be necessary that the deceased had provided a sworn statement as to acts of abuse and their consequences. Videotaped evidence or an unsworn statement should be acceptable.

23.4 The settlement award will be received by the executors of deceased's estate and divided in the context of any existing will. If a survivor or spouse or child is elderly or sick and making a claim the process must be expedited and abbreviated.

23.5 Resources must be provided to the community and the claimant to facilitate the expedited process.

24.0 We recommend that the Release be re-named to “An Agreement Towards Reconciliation.”

24.1 The present Release is one-sided in favour of Canada. It connotes that once the settlement monies are paid, Canada's responsibilities are complete and reconciliation is achieved. We believe that the name, “Agreement Towards Reconciliation” is a more accurate reflection of the reality that reconciliation will be an ongoing process.

25.0 In the interests of reconciliation and in recognition of the ongoing harms of residential schools to survivors and their families, we recommend that the Agreement Towards Reconciliation include a commitment by Canada to recognize and deal with the ongoing needs of survivors and their communities arising from the harms caused by residential schools.

25.1 We believe the release would lead to greater satisfaction and reconciliation on the part of the survivors if, in return for accepting the settlement offer, the “Agreement Towards Reconciliation” included a commitment by the government, in addition to paying the settlement amount, to:

1. Commit to providing adequate therapeutic resources for individuals and communities in recognition of the ongoing therapeutic needs through the activities of the Aboriginal Healing Foundation as well as through other means; and
2. Pay the difference between the lump sum payment awarded and any future award the courts may give for the loss of language and culture.

25.2 The Agreement Towards Reconciliation would still have the standard provisions with respect to promise to pay in return for a promise not to sue whether as a new cause of action or a new category of damages.

25.3 The provisions in the current model with regard to government supported legal advice for survivors on the implications of signing the release are appropriate and should be retained.

26.0 In the interests certainty and efficiency and in light of the aging population of residential school survivors, we recommend that a date be set for the completion of the settlement process.

26.1 The compensation process should have a well-publicised deadline.

26.2 We suggest December 31, 2010 as the wind-up date for the settlement process. The deadline for the receipt of applications would be June 30, 2010.

26.3 These suggested dates are based on the assumption that the government acts on these suggestions prior to the end of 2004 in good faith with the necessary speed required to meet the deadline in a way that would do no harm to survivors.

26.4 Any completion date would be firm enough to allow for certainty, but have sufficient flexibility to allow for late applications in exceptional circumstances.

27.0 In the interests of fairness and for the appearance of fairness in the adjudicative process we recommend that the qualifications for adjudicators be re-visited to place greater emphasis on ADR skills, medical/therapeutic experience and education, Aboriginality, gender, and knowledge and familiarity with equality jurisprudence, child abuse, native studies and human rights standards.

27.1 To qualify as an adjudicator, it should be mandatory for applicants to have Alternative Dispute Resolution training. Given that there are many different training programs of varying quality, criteria would need to be developed in consultation with experts in this field to assess the qualifications of applicants.

27.2 Half of the adjudicators should be required to have a medical or therapeutic background with specialized knowledge in the fields of psychology or psychiatry with particular knowledge and understanding of child abuse. The other half of the adjudicators should be drawn from a pool of men and women with ADR training, who preferably have had some adjudication experience within the past five years and/or legal or legally-relevant education, especially in the fields of equality, human rights, and native studies. These qualifications should be relevant but not considered essential.

- 27.3 The unique contributions that Aboriginal adjudicators can bring to the ADR process should be acknowledged, and Aboriginal adjudicators should be aggressively recruited whether in the medical category or otherwise.³⁶
- 27.4 Proactive measures should be taken to bring adjudication positions to the attention of women with expertise in equality, gender and race issues.
- 27.5 The process that currently allows claimants to choose between male or female adjudicators is appropriate and should be retained, but in addition, survivors should have the option of choosing Aboriginal adjudicators. This makes it all the more important to ensure that there are sufficient numbers of female and Aboriginal adjudicators in order to provide a meaningful choice.
- 27.6 If a claimant does not want an adjudicator provided by Canada, he or she should be able to name adjudicators of their own choosing. If Canada objects to the survivor's choice, a three-member panel of adjudicators, including at least one Aboriginal adjudicator, would review the named adjudicator. A veto by two of the three panel members would disqualify the proposed adjudicator. This change to the current recruitment process would provide a list of approved adjudicators in addition to the pool, as well as save costs.
- 27.7 Adjudicators should determine what reasonable expenses would be reimbursed by Canada.
- 27.8 Adjudicators should have the power to determine stipends for non-lawyer claimant representation, based on government fee and expense schedules.

28.0 In light of their past history within the Canadian justice system and in the interests of achieving fair and unbiased decision-making in this process, we recommend that the training of adjudicators and other participants in the ADR process be much more context-specific to Indian Residential Schools.

³⁶ It may be that there is a latent if not manifest feeling that Aboriginal adjudicators might be "biased". The test for bias in adjudication is whether a right thinking member of the public would perceive that the decision maker was predisposed to the outcome in a particular matter. Arguments that Aboriginal persons are predisposed to hold all Aboriginal claimants eligible or predisposed to award more than the person was "objectively" entitled are racist. There is no reason to suppose that a false claim, for example, would be any more attractive to an Aboriginal adjudicator who had attended residential school than to a white male who had not. Absent some reason to perceive a particular bias against or towards a particular claimant, there is no reason why any otherwise qualified Aboriginal person ought not to be an adjudicator in the claims process. On the other hand, numerous studies have shown that the justice system, dominated by white males and almost completely devoid of Aboriginal peoples, has consistently and systematically discriminated against Aboriginal peoples.

28.1 All adjudicators, therapists, lawyers, and others involved in the process of settling survivors' claims should be required to take a training program and a form of certification should be provided on its successful completion.

28.2 Training materials should be simplified and clearly reflect in their contents that the DR process is not a court process but an alternative to the court system.

28.3 The training program should require trainees to spend time living with a First Nations family on a reserve for a few days. During that time, they would visit institutions such as the local educational, recreational, church, and health and welfare facilities, meet with social workers, teachers, elders, children, parents, survivors and other appropriate persons with the objective of understanding the effects of residential schools on individuals and communities.

28.4 The community-based training should be augmented by a training program conducted by appropriate professionals and survivors on the medical, psychological, social and economic effects of sexual and physical abuse committed in the specific context of Indian Residential Schools.

28.5 Materials should be gender differentiated and the impacts of race, gender and class issues and their intersections highlighted.

28.6 Training of adjudicators and others involved in the settlement process should be delivered by an Aboriginal agency.

29.0 We recommend that the proposals in this report be field-tested with a representative sample of survivors, male and female, with claims in both the lump sum category as well as in the sexual, physical and emotional abuse category. We also recommend that the adjudicators and legal counsel undergo the community-based training program as part of the field test. The field test should be organized and overseen by the AFN with the participation of government and survivor's groups.

30.0 We recommend that the Aboriginal Healing Foundation continue and be provided with the necessary funding to sustain its activities.

Part II

Truth-Sharing, Healing and Reconciliation

Introduction

In order to achieve reconciliation between Canada, the churches, and survivors and to facilitate healing among the survivors and the First Nation communities, it is fundamental principle that the harms done be addressed in a holistic manner. The design and execution of the mechanism required to achieve this purpose on a national scale is beyond the scope of this Report but Canada and the religious entities should acknowledge the need and commit to its adequate funding and support and participate in its design with survivors and survivor's groups. The national mechanism could be connected to community-based processes but the design of the truth telling process would ultimately be that of the stakeholders.

It must be emphasized that the development of this process would be in tandem with the refinement of the DR model and that it would not slow down the compensation process and its reforms.

The purpose of this comprehensive truth telling mechanism is five-fold:

1. To create a space for the survivors to tell their stories and have them understood.
2. To create public awareness and a public record of what happened and the consequences.
3. To create a plan or recommendations for future for the restoration and healing of relationships.
4. To ensure that another state-committed atrocity does not take place again.
5. To acknowledge and support the need for the healing of relationships between families and communities, survivors and their families and communities, and all other people who were adversely affected by residential schools.

Recommendations

1.0 We recommend that a truth-sharing and reconciliation process be a component in this national, holistic mechanism complementary to the DR process and survivor participation should be voluntary.

1.1 Whereas the DR process focuses on compensation for individual harms, this mechanism would focus on understanding the nature, causes, context, and consequences of all the harms resulting from residential schools legacy including but not limited to harms to the individual survivors, the communities, the survivors' families, the future generations, culture, spirituality, language, and the relationships between and among all parties involved.

2.0 We recommend that the structure and design of a truth-sharing mechanism should be based on restorative justice principles and the 17 principles that emerged from the Exploratory Dialogues³⁷ so that it is culturally appropriate and responsive to the context of residential schools legacy.

3.0 We recommend that the truth-sharing mechanism must be inclusive of all the parties that are involved and affected, ensuring they have equal say—the survivors, the Aboriginal communities, the churches, the government of Canada, and the Canadian society.

3.1 It is crucial that the national truth-sharing mechanism be accessible and user-friendly to survivors and their families.

3.2 Counseling support must be provided before, during, and after the process.

3.3 Additional support for the elders should be provided, incorporating other culturally appropriate treatment or responses as needs require.

4.0 We recommend that follow-up providing community support, reconciliation, and rebuilding of relationships be considered essential.

4.1 Claimants should be linked to resources in their community for financial advice, therapy, support groups, and other such services. Access to these services is important for the healing of the individuals, their communities and their nations.

4.2 Survivor's groups and First Nations communities should be encouraged to seek opportunities to collectively share in the funding of truth-sharing processes.

³⁷ Canada, Ministry of Indian Affairs, *Reconciliation and Healing: Alternative Resolution Strategies for Healing with Residential School Claims*, 2000, <<http://www.inac.gc.ca>>

4.3 Current resources and existing programs dedicated to responding to the residential schools legacy should be evaluated in order to assess how they might be best utilized, or modified to complement this process.

4.4 Linkages should be made with the Aboriginal Healing Foundation and other programs already in place or being developed under its mandate.

5.0 We recommend that secondary victims (parents, siblings, spouses and children of survivors) be ensured access to benefits and community programs for harms caused by persons as a result of their attendance at residential school.

5.1 A truth-sharing process should be designed to specifically consider the harms to secondary victims and to communities caused by residential school.

5.2 In exceptional cases the government should consider compensating individuals in the survivor's immediate family for harm inflicted by the residential school survivor.

Part III

Feasibility and Costs

It is clear that Canada's primary motivation in devising the DR program was to resolve the approximately 18,000 tort claims³⁸ and several class actions that have been filed against it.³⁹ Without an alternative method of resolving disputes, the current caseload is estimated to take another 53 years to conclude at a cost of \$2.3 billion in 2002 dollars, *not* including the value of the actual settlement costs.⁴⁰ To date, only 19 claims have been settled under the current DR model. The cost of administering settlements to date is more than triple the cost of the compensation that has been awarded.

In our proposal, a much larger percentage of the available monies would go directly to survivors or their estates and less to the administration and costs of litigation. Although the compensation amounts are considerably more in our plan than in the current DR model, all former residential school students would be compensated, if they choose to apply. We believe the savings in administration, legal fees, litigation, delay and court costs should significantly, if not totally, offset the increased compensation costs.

Administratively, we are confident our proposal will settle claims much faster and that a closure date of December 31, 2010 is feasible. For example, all of the claimants for the lump sum will receive their compensation without the need for a hearing. Moreover, we expect that the majority of claimants for sexual, physical or severe emotional abuse will opt for payment without a hearing through a pre-settlement negotiation process attended by medical and legal adjudicators and representatives of the claimants. We have no reason to believe that the experience in Ireland would not be replicated here, where 75% or more of the survivors of industrial schools claiming compensation for physical, sexual and/or emotional abuse are settling their claims in this manner.

There have been reconciliation programs for breaches of human rights in other countries, and it is important for Canada, when considering costs, to compare itself to these other programs, especially considering its reputation as a champion for human rights and fairness. For example, the Irish industrial schools compensation model, which is about two-fifths the size of the Canadian disaster, is expected to cost approximately 1 billion euros; inflating by a factor of 2.5 for fair comparison, this is 2.5 billion euro. This cost is borne by a population approximately 1/10th the size of Canada's population, so the

³⁸ Treasury Board of Canada Secretariat. *Indian Residential Schools Resolution Canada Performance Report for the Period ending March 31, 2003*. Ottawa: Supply and Services Canada [cited June 6, 2004]. Over 1,150 claimants have reached a settlement with the government. This number includes 165 settlements reached under a variety of alternative dispute resolution projects.

³⁹ Notice of Class Actions: http://www.irsr-rqpa.gc.ca/english/dispute_resolution_class_action_notice.html. Baxter Cloud is an Ontario class action claiming loss of language and culture for \$76 billion. *Supra*, note 16.

⁴⁰ Treasury Board of Canada Secretariat. 2003. *Department of Justice Canada Performance Report for the Period Ending March 31, 2003*. Ottawa: Supply and Services Canada [cited June 6, 2004]. As of May, 2004, 17 judgments have been issued.

comparable figure in Canada if it was compensating at the same level as the Irish government would be \$25 billion. Considering that the sum that has been estimated for the Canadian DR model is \$1.7 billion, the gap of compensation is too large to be explained in any other terms than attitudinal ones.⁴¹

We urge Canada to consider our proposal as a long-term investment for the country, the people of Canada and for the well-being of First Nations. If a value is put on reconciliation and healing past harms, it will certainly result in our proposal being a cost effective one. Statistically, healthy communities are self-sufficient and economically viable ones, resulting in further cost savings. We would invite government officials to work with us to determine an equitable, fair and just lump sum and further refine the cost estimates.

Conclusion

It was made very clear at the March 2004 conference held at the University of Calgary that reconciliation is impossible under the model as it stands. Indeed, there is a real fear that the present system of compensation is causing additional harms to the survivors.⁴²

Under the current DR model, many tens of thousands of residential school survivors will receive no compensation, while thousands of others will receive a negligible amount. This has created anger and disappointment amongst survivors and their families who have been profoundly harmed by the residential school experience. Moreover, no survivors will receive compensation for their loss of language or culture or the loss of their family life. Only those who were sexually abused, physically abused or wrongfully confined and who fit within the narrow definitions provided in the current DR model will receive compensation at the low end of the compensation scale according to court decisions.

Our proposed model compensates all Indian Residential School students (or their estates) with a base amount as the starting point, and an additional sum awarded per each year of attendance at an Indian residential school to acknowledge the accumulation of injuries and the extent of harms suffered. The lump sum payment recognizes loss of language and culture, as well as compensates for harms experienced by all residents by virtue of attendance such as loss of family, spiritual abuse, assigned inferiority, and living in a general climate of apprehension and fear.

It is expected that many claimants will elect to file claims for the lump sum in lieu of pursuing other claims because this process relieves them from having to tell their stories,

⁴¹ Mr. Tom Boland, Deputy Minister and architect of the Irish DR model, described the Canadian DR compensation proposal to the researchers, during the fact finding mission to Ireland, as “*de minimus*” and “being given grudgingly”.

⁴² In its 2003 Report, the Treasury Board of Canada presciently foresaw that, in attempting to resolve these claims, “the government of Canada risks re-victimizing claimants during the validation process.” *Supra*, note 18. See also, National Post, September 14, 2004 cited at note 10, *supra*.

which many find too painful to do. This will benefit both the claimants and Canada because the claimants will receive their compensation sooner with fewer traumas and the government will save considerable costs in administration and expanded damages.

In addition to the lump sum, our proposal compensates individuals who experienced physical, sexual or severe emotional abuse, and consequential damage resulting from those abuses, including cost of care and loss of opportunity. It takes race and gender differences into account as well as allows flexibility in the methods of calculation to more accurately compensate survivors whose abuses manifest themselves in many different ways. The consequences of the abuse will be more heavily weighted than the acts of abuse, thus allowing for more compensation for what often amounts to life-long detrimental consequences of the abuse.

The pre-hearing settlement negotiation we are recommending for physical, sexual, and severe emotional abuse claims will be much simpler and quicker than the hearings that are currently conducted. December 31, 2010 is the recommended closing date of the compensation process. We are also recommending that the process allow for interim payments and an expedited process for elderly and seriously ill survivors. These recommendations would bring greater certainty and less delay to the process and thereby benefit Canada as well.

We have removed elements of the DR model that have the potential to promote racial stereotypes and perpetuate inferiority and replaced them with gender and race sensitive proposals. The model we propose provides clarity for the families of deceased survivors with respect to their eligibility to make claims.

We have proposed a training program and a set of qualifications for adjudicators which will make the process less threatening and more likely to reflect equality principles than the present model does. Additionally, our proposals add the medical perspective to the adjudication process, ensuring that properly trained therapeutic experts with expertise in child abuse will evaluate the consequential harms and future care needs of survivors along with legal and other dispute resolution experts who will bring their expertise to bear on the validation of the claims. Finally, we are recommending that recruitment policies be put in place that will ensure that Aboriginal adjudicators play a major role in the resolution of the claims.

We have made it clear that our proposals would be but a part of a holistic process with a truth-sharing component which would be created in consultation with survivors, survivor's families, secondary victims of residential school abuse, First Nation communities, religious entities, Canada and non-Aboriginal Canadians.

We believe that true reconciliation and healing are possible if our recommendations are incorporated into the existing DR model. They will help to restore the trust in the process that has been lost. The fact that a First Nations perspective has been added to the process makes it much more responsive to victims' realities and needs and will draw many more people into the settlement process instead of going to the courts. We also believe that a

measure of the success of the DR process is the number of people who are willing to trust that it will produce a fair and just resolution of their claims. According to that and all of the other measures described in this Report, our recommendations should be seen as a positive and desired outcome.

Finally, if implemented, we believe our proposed reforms to the DR model will make it one for which Canada and Canadians can be proud. It will enhance Canada's reputation as a leader in the world for the respect of human rights at the same time increasing the stature and respect for First Peoples at home and abroad. It would also set an international standard and methodology for dealing with mass violations of human rights and will finally put behind us, in an honourable way, the most disgraceful, harmful, racist experiment ever conducted in our history.

APPENDIX A: BIOGRAPHIES

Dr. Rita Aggarwala, B.Sc. (Stats & Actuarial Sci), M.Math, Ph.D(Math)

Dr. Aggarwala's career as an academic and industrial statistician has been recognized widely in the media (100 Canadians to Watch, Maclean's Magazine, 2000), in the statistical profession (she has co-authored a book and several papers and has received a variety of grants and fellowships), and by the general scientific community (she was the recipient of the Alberta Science and Technology Leaders of Tomorrow Award in 2000). Currently studying law at the University of Calgary, she continues to apply her statistical and actuarial expertise in the legal realm, both through her consulting company (Sigma Statistical Solutions Inc.) and through academic projects.

Charlene Belleau

Charlene Belleau is a member of the Secwepemc Nation. The Esketemc First Nation (Alkali Lake) has provided leadership in addictions recovery for the past 30 years. Innovation and creativity are required to end the cycle of abuse and violence. Charlene has been an advocate for resolution of residential school issues and initiated various community-based justice programs to deal with intergenerational trauma. Government and criminal justice policy must be challenged to meet the needs of our communities. Aboriginal social recovery is critical to self-government and land settlement issues.

Charlene brings her experience to the Assembly of First Nations as the Director of the Indian Residential Schools Unit where one of the goals is to expedite resolution of residential schools claims and to try to achieve reconciliation with Canada and the Churches.

Dr. Ken Cooper-Stephenson, LL.B. (Lon.), LL.M. (Cambridge), LL.D. (Lon.) 2000

Dr. Cooper-Stephenson has been a member of the Faculty of Law, University of Saskatchewan, since 1971. He was previously a founding faculty member at the University of Leicester, England (1966-71). He was Assistant Dean at Saskatchewan (1981-82, 1991), and is currently Faculty Supervisor of the Saskatchewan Law Review. He was a Connought Fellow in the Legal Theory and Public Policy Program, University of Toronto (1985-86). He has taught at Bond University, Queensland, Australia (1994-95), and was Visiting Professor at James Cook University of Northern Queensland (1997-2000). His publications include a treatise on Personal Injury Damages in Canada (Carswell, 1981, 2nd ed. 1996); Charter Damages Claims (Carswell: 1990); and Tort Theory (Captus: 1993), co-editor. He has also authored articles and book chapters on tort law, constitutional damages, legal theory and reparations claims. In 2000 he was appointed Chair of the committee which reviewed the Saskatchewan no-fault auto-accident insurance plan, and in the same year was awarded an Earned Doctoral degree by the University of London.

Richard Devlin, LL.B. (Queen's Belfast), LL.M. (Queen's Kingston)

Richard Devlin is a Professor of Law at Dalhousie Law School. He has previously been a member of faculty or visiting scholar at Osgoode Hall Law School, the University of Calgary, the University of Toronto and McGill University. Professor Devlin teaches in the areas of Contracts, Jurisprudence, Legal Profession and Professional Responsibility and Graduate Studies.

Dr. Bruce Feldthusen, B.A.(Hons.) (Queen's), LL.B. (Western Ontario), LL.M. (Michigan), S.J.D. (Michigan), of the Bar of Ontario, Professor and Dean

Prior to becoming Dean of the Common Law Section in January 2000, Bruce Feldthusen taught Torts, Administrative Law, Remedies, and Human Rights, primarily in Canada, but also in the United States and Australia. He is best known for his book, *Economic Negligence*, now in its fourth edition. Dr. Feldthusen's analysis of pure economic loss has been adopted by the Supreme Court of Canada and now provides the organizing framework for all negligence actions in that field. He was one of the first legal academics in the world to study and write about civil remedies for victims of sexual assault. This multidisciplinary research includes extensive interviewing and publication of how survivors themselves experience the legal compensation processes. Dr. Feldthusen was the research director for the Ontario Law Reform Commission's 1989 study on Exemplary Damages authored which has been cited with approval and adopted in many common law jurisdictions in Canada and abroad. He has also written in the area of equality theory, and human rights law. Law and technology, and the implications of technological change for legal education have interested Dr. Feldthusen for many years. Bruce has also practised law, and litigated a number of cases of public interest on a pro bono basis. He works frequently as a litigation consultant and has had a major role in the preparation of numerous Supreme Court of Canada factums and arguments during the past decade. In recent years Dr. Feldthusen has assisted counsel in the preparation of a number of high profile class actions in tort.

Lorena Sekwan Fontaine, B.A., LL.B., LL.M.

Ms. Fontaine is Cree and Ojibway from the Sagkeeng First Nation in Manitoba. Currently, she is an assistant professor at the First Nations University of Canada. Ms. Fontaine has worked with Aboriginal political organizations for the past 15 years. The focus of her work includes advocacy for residential school survivors, and Aboriginal youth. Internationally, she has worked for the inter-American Human Rights Commission of the Organization of American States as a legal intern, and has worked on Indigenous land rights cases in the United States and Belize. Ms. Fontaine is also involved with equality rights issues as a National Legal Committee member with the Women's Legal Education and Action Fund, and as an Equality Rights Panel member for the Court Challenges Program of Canada.

Phil Fontaine, B.A., LL.D. (Brock), LL.D. (R.M.C.)

Mr. Fontaine is Anishinabe from the Sagkeeng First Nation in Manitoba. Fluent in Ojibway, he attended the Residential Schools of Sagkeeng and Assiniboia, and was the first Aboriginal leader to publicly expose the abuses that existed in secrecy within the residential school system.

He began his career as a youth activist with the Canadian Indian Youth Council and later, as Chief of his community for two consecutive terms. Under his leadership, Canada's first First Nation took control over its education system, Child & Family Services, and on-reserve Alcohol Treatment Centre. Upon completion of his mandate as Chief of Sagkeeng, he was Regional Director General for the Yukon Territory for the federal government. In 1982 he was appointed Special Advisor to the Tribal Council for the Southeast Resource Development Council which was followed by his election to the position of Manitoba's Vice Chief for the Assembly of First Nations. In 1991, he was elected Grand Chief of the Assembly of Manitoba Chiefs and served for three consecutive terms, being instrumental in the defeat of the Meech Lake Accord, the development of Manitoba's Framework Agreement Initiative, and the signing of an Employment Equity Agreement with 39 federal agencies.

In 1997 he was elected National Chief of the Assembly of First Nations where he was instrumental in the negotiation of the Federal Government's Statement of Reconciliation, the Clarity Bill, the Declaration of Kinship and Cooperation of the Indigenous and First Nations of North America, and was the first Native Leader to address the Organization of American States.

Following his term as National Chief of the Assembly of First Nations, he was appointed Chief Commissioner of the Indian Claims Commission. Under his leadership, the Kahkewistihaw First Nation's outstanding 1907 land claim was resolved, resulting in a \$94.6 million agreement for the Saskatchewan Band.

In July 2003, he was re-elected National Chief of the Assembly of First Nations. He was awarded an Honorary Doctorate of Laws from Royal Military College in 1999 and an Honorary Doctorate of Laws from Brock University in 2004. He was made a Member of the Order of Manitoba in 2004.

Dr. Greg Hagen, B.A., M.A. (Br. Col.), Ph.D. (Western), LL.B. (Dal.) LL.M. (Ottawa)

Assistant Professor and Member of the Law Society of British Columbia, Professor Hagen joined the University of Calgary faculty in 2003 and teaches tort law, intellectual property law and internet law. He is a graduate of Dalhousie University and of the LL.M. program at the University of Ottawa. Professor Hagen taught at the University of Ottawa (Common Law) during the 2002-2003 academic year. After being called to the Bar of British Columbia in 1999, he practiced in the areas of corporate securities and technology law at two national law firms. Prior to entering the field of law, Professor Hagen earned

his Ph.D. in philosophy at the University of Western Ontario and an M.A. in legal philosophy from the University of British Columbia.

Earl Johnson, B.A., LL.B. (NB)

Justice Johnson graduated from Bishop's University in 1968 and completed his law degree at UNB in 1971. From 1972 to 1974, he was in private practice in Fredericton and Saint John New Brunswick. In 1974, he became counsel for the Government of the Northwest Territories in Yellowknife. This was followed by private practice in Yellowknife and Fredericton between 1976 and 1997. From 1997 to 2002, he was senior legal counsel for the Government of the Northwest Territories Yellowknife and government negotiator of the Grollier-Hall residential school pilot project group claim.

In 2002, Earl was appointed Justice and since then has been a Justice with the Nunavut Court of Justice. His professional activities include President and Secretary of Law Society of the NWT, Appointed Queen's Counsel 1991, and President of Northern Addictions Services for five years.

Jennifer Llewellyn, M.A. (Queen's), LL.B (Queen's.), LL.M. (Harv.)

Jennifer Llewellyn is an Assistant Professor at Dalhousie Law School. She earned her Master's in Philosophy from Queen's University and her LL.B. from the University of Toronto before pursuing graduate work in law at Harvard Law School. She was law clerk to Justices Linden and MacDonald at the Federal Court of Appeal. Professor Llewellyn teaches, researches, consults and publishes in the area of restorative justice. Internationally, her work has focused on the potential of truth commissions to serve as institutions of restorative justice in the context of democratic transitions. In 1997, Professor Llewellyn worked with the South African Truth and Reconciliation Commission. She recently served as an expert witness on restorative justice for the Jamaica Commission of Enquiry and was a member of the Research Initiative on the Resolution of Ethnic Conflict based at the Kroc Institute for Peace, University of Notre Dame. Domestically, she serves as a policy advisor to the Nova Scotia Restorative Justice Program. She has also written and lectured on the potential of restorative justice responses to residential school abuse.

Kathleen Mahoney, LL.B. (Br. Col.), LL.M., (Cantab); Diploma, International Institute, Comparative Human Rights Law, (Strasbourg) F.R.S.C., Professor. Member of the British Columbia, Alberta and Ontario Bars.

Professor Mahoney specializes in Torts Law and Human Rights Law as well as Legal Theory. She has held many international lectureships and fellowships including the Sir Allan Sewell Visiting Fellowship at the Faculty of Law, Griffiths University, Brisbane, the Distinguished Visiting Scholar Fellowship at The University of Adelaide and Visiting Fellowships at The Australian National University, Canberra and The University of Western Australia in Perth. She was a Visiting Professor at The University of Chicago Law School 1994, and was a Visiting Fulbright Fellow at Harvard Law School in 1998.

Professor Mahoney has published extensively on human rights, constitutional law and women's rights, as well as on judicial education. She lectures nationally and internationally at Judicial training seminars on equality issues, and has successfully appeared as lead counsel in the Supreme Court of Canada and before Human Rights Commissions. She was lead counsel in a successful class action mediation representing 1,200 First Nation Community Health Representatives on a pay discrimination complaint. She represents several residential school survivors in their claims for residential school abuses. She was counsel and advocate on a team of international lawyers representing Bosnia and Herzegovina in the International Court of Justice, focusing particularly on the issue of systematic rape as a crime of genocide.

She has organized and participated in a variety of collaborative human rights projects in Canada, Geneva, Australia, New Zealand, Spain, Israel, China and the United Nations. She has attended at the Council of Europe as an Independent Expert and North American representative.

She is the 1997 recipient of the Law Society of Alberta and Canadian Bar Association Distinguished Service Award for Legal Scholarship and has received Woman of Distinction Awards from the YWCA and the Soroptomist Club of Canada. In 1997, she was elected to the Royal Society of Canada for her academic achievements and in 1998 was selected to be a Fulbright Scholar. In 1998 she was appointed to Chair of the Board of Directors of the International Centre for Human Rights and Democratic Development for six years. In 2000, the Canadian Bar Association presented her with the Bertha Wilson Touchstone Award in recognition of her outstanding accomplishments in the promotion of equality and in 2001 she was awarded the Governor General's Medal in Commemoration of the Person's Case.

**Dr. Sheilah Martin, Q.C., B.C.L., LL.B., (McG.), LL.M., (Alta.), S.J.D. (Tor.),
Professor, Member of the Alberta Bar**

Dr. Martin came to the University of Calgary Law Faculty in the summer of 1982. While at the University of Calgary, Dr. Martin has taught in many different areas, including Evidence, Commercial Transactions, Contracts, Evidence, Legal Profession and Ethics, Business Associations, Torts and Loss Compensation, Gender, Equality and the Charter, and Legal Process. Her research interests are varied and she now publishes in the areas of constitutional law, health care, reproductive technologies and women in the law and legal profession. She was Dean of the Faculty of Law between 1991-1996. She sits on numerous boards and committees. She is a partner with Code Hunter LLP. Sheilah Martin is currently on sabbatical from the University until June 30, 2006.

Art Miki

Past president of the National Association of Japanese Canadians, Art served from 1984 to 1992 and lead the negotiations with the Canadian government to achieve a just Redress settlement for Japanese Canadians. After years of community consultation and lobbying,

the Japanese Canadian Redress Settlement was signed by the Mulroney government in 1988. Member of Japanese Canadian Redress Foundation, 1989 to 2002. Art is a former teacher and principal, and now citizenship judge. He is the Vice-chair and current Director with the Canadian Race Relations Foundation. Art is a recipient of numerous awards and in 1991 received the Order of Canada.

Dr. William Schabas, B.A., M.A., LL.B., LL.M., LL.D.

Professor William A. Schabas is director of the Irish Centre for Human Rights at the National University of Ireland, Galway, where he also holds the chair in human rights law. Professor Schabas holds B.A. and M.A. degrees from the University of Toronto and LL.B., LL.M. and LL.D. degrees from the University of Montreal. Professor Schabas is the author of 12 books dealing in whole or in part with international human rights law, including *Introduction to the International Criminal Court* (Cambridge: Cambridge University Press, 2004 (2nd ed.)), *Genocide in International Law* (Cambridge: Cambridge University Press, 2000) and *The Abolition of the Death Penalty in International Law* (Cambridge, Cambridge University Press, 2002 (3rd ed.)). Professor Schabas is editor-in-chief of *Criminal Law Forum*, the quarterly journal of the International Society for the Reform of Criminal Law. In May 2002, the President of Sierra Leone appointed Professor Schabas to the country's Truth and Reconciliation Commission, upon the recommendation of Mary Robinson, the United Nations High Commission for Human Rights.

Barry Stuart, LL.B, LL.M, S.J.D (Mich.)

Judge Barry Stuart, recently retired from his seat on the Yukon Territorial Court bench, has studied and worked in the field of conflict resolution for over 30 years. His primary interest has been focused on finding the constructive potential within decision-making and conflict for building sustainable relationships and innovative outcomes. He has worked in the Courts, Land Claims, in Government, and in several private and public institutions. His work both internationally and nationally has been developed and adapted by others for many different conflicts.

Judge Stuart's law career began at Queen's University, from which he graduated in 1969. That year he won the silver medal for finishing second in his class. He then went on to do post graduate work at the London School of Economics and at the University of Michigan, where he studied International Law and Public Dispute Problem Solving. He has practiced law with a neighbourhood law clinic in London, England, a public interest group in Nova Scotia, and with the firm of Shrum Liddle and Hebenton in Vancouver. He has worked in Papua New Guinea, South Africa and Indonesia. In Papua New Guinea, he was involved a wide range of issues, including constitutional law, self-government, resource management and community development. From 1973 to 1977 he served as counsel for the Cabinet of the newly independent state of Papua New Guinea in their central planning office. In 1983 he returned to serve as co-commissioner of the Papua New Guinea National Law and Order Study. His work earned him the Independence Medal of Papua New Guinea.

In the Yukon, he was Chief Negotiator for the land and self-government treaties. On the bench, Stuart has been committed to the exploration of new and innovative ways to address the challenges faced by the justice system. His landmark decision in *Regina v. Moses* provided a key framework for the use of circles in sentencing offenders in Criminal Code matters. *R v. United Keno Hill Mines*, written by Judge Stuart over 20 years ago, remains a leading authority on sentencing for environmental offences. These judgments, and many others, are referred to by courts, academics, governments and organizations around the world.

He was an assistant and associate Professor of Law at Osgoode Hall and Dalhousie Law School respectively, and a visiting Professor at the University of Waterloo and at the Nova Scotia College of Art and Design and lectures nationally and internationally on such topics as conflict resolution, mediation, consensus decision making and environmental law.

He has been involved in the use of peacemaking circles for 10 years in both the public and private sectors.

Bob Watts, B.A., M.A. (Harv.)

Mr. Watts is currently Chief of Staff in the National Chief's Office for the Assembly of First Nations. His previous experience includes work as Aboriginal Co-Chair of the Aboriginal Healing and Wellness Strategy and senior government positions dealing with First Nations matters. He believes very strongly in the promotion of traditional healing and that the answer to the social, mental, emotional and spiritual problems in our communities can be found in traditional ways.

A member of Tyendinaga First Nation, Bob is a graduate of Behavioural Science at Loyalist College in Belleville and the Harvard School of Dispute Resolution. He has spent much of his professional life working for the Aboriginal community, including with the Ontario Native Council on Justice and as the Executive Director of the Union of Ontario Indians between 1988 and 1991. Between 1991 and 1994 he served as the Assistant to the Secretary for Intergovernmental Relations at the Ontario Native Affairs Secretariat. He was appointed Assistant Deputy Minister of Lands and Trusts Services in 1996 and Assistant Deputy Minister of Indian Affairs and Northern Development in 1998.

Sharon Williams, LL.B. (Exeter), LL.M., D.Jur (Osgoode), FRSC, of the Bar of Ontario

A member of the faculty of Osgoode Hall Law School since 1977, Professor Williams teaches in the Public International Law and International Criminal Law areas.

Among the books she has authored or co-authored are *The International and National Protection of Moveable Cultural Property: A Comparative Analysis*, *Canadian Criminal Law: International and Transnational Aspects*, *An Introduction to International Law*

(2nd ed.), *The International Legal System, International Criminal Law and A Practical Guide to Mooting*. Professor Williams has written several chapters and many articles dealing with international criminal law, international and national cultural property law, and international environmental law. In 1991, she was awarded the David Mundell Medal for her contribution to law and letters.

Professor Williams has prepared government reports on the extra-territorial aspects of Canadian criminal law, the denaturalization and deportation of war criminals in Canada, and crimes against humanity. She served as a member of the Permanent Court of Arbitration at the Hague from 1991 to 1997, is a consultant to the Canadian Department of Justice on extradition matters, and has acted as Special Advisor to the Canadian Delegation at several sessions of the General Assembly of the United Nations. In 1993 she was inducted as a Fellow of the Royal Society of Canada. From September 2001 until October 2003 she acted as a Judge ad litem in *The Prosecutor v. Simic et al* at the International Criminal Tribunal for the former Yugoslavia.

Kenneth B. Young, B.A. LL.B. (Man.)

Mr. Kenneth B. Young [Ken] is a citizen of the Opaskwayak Cree Nation in Manitoba, which was formerly known as The Pas Cree Nation.

Ken attended Residential School in Prince Albert, Saskatchewan and Dauphin, Manitoba. He obtained his high school diploma from Dauphin Collegiate and Technical Institute. He attended the University of Manitoba where he attained his Bachelor of Arts and Law Degree. In 1974 Ken was called to the bar and subsequently practiced law in Winnipeg for 17 years.

From 1984-1988, Mr. Young served as Chairman of the Winnipeg Council of Treaty and Status Indians. He moved on to become a member of the negotiating team which resulted in the Northern Flood Agreement for five First Nations in Northern Manitoba. In 1991, he was elected a Regional Vice-Chief of the Assembly of First Nations, representative of the Province of Manitoba. In 1992 he was re-elected for an additional three-year term; and again in November 2000.

It was in 1994 that Mr. Young resigned to work on the Framework Agreement Initiative with the Assembly of Manitoba Chiefs. In 1997 he began working with then National Chief Phil Fontaine at the Assembly of First Nations in Ottawa as a Senior Advisor to the National Chief, which is his present position. His specialty is directed toward the Residential Schools portfolio.

Student researchers:

Erika Carrasco, B.Comm (McGill)

Ms. Carrasco is currently a second-year law student at the University of Calgary. Erika first became involved as a volunteer at the March 2004 conference. She continued

through the summer as Professor Mahoney's research student. Her tenaciousness and fun-loving nature are hallmarks of her personality.

Alice Chen, B. Sci. (Hons.) (Toronto)

Alice Chen is currently a second-year law student at the University of Calgary. She was first exposed to the residential schools legacy in Professor Mahoney's Torts class, subsequently became involved as a volunteer at the March 2004 conference, and then as Professor Mahoney's summer research student.

Ben Gabriel, B.A. (Communication St.) (Calgary)

Mr. Gabriel is currently a second-year law student at the University of Calgary.

Megan Reid

Ms. Reid is currently a first-year law student at the University of Ottawa. This past summer she became involved in the project via working for Dr. Bruce Feldthusen.

Kim Reinhart, B.Mus. (Calgary)

Ms. Reinhart is a second-year law student at the University of Calgary. She became involved in the project through volunteering as a student organizer at the March 2004 conference and has continued her involvement as Professor Mahoney's research student.