

SUPPLEMENTARY JOINT MOTION RECORD – VOLUME I

Court File No. 00-CV-192059CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHARLES BAXTER, SR. AND ELIJAH BAXTER

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

- and -

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA, THE SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE DIOCESE OF ATHABASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF CARIBOO, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE DIOCESE OF MOOSONEE, THE SYNOD OF THE DIOCESE OF WESTMINSTER, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE DIOCESE OF SASKATCHEWAN, THE SYNOD OF THE DIOCESE OF YUKON, THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE PRESBYTERIAN CHURCH IN CANADA, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN CANADA, THE UNITED CHURCH OF CANADA, THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA, THE METHODIST CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS, THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS, THE ROMAN

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

**MISSIONARY OBLATES OF THE SACRED HEART AND MARY IMMACULATE,
or LES MISSIONAIRES OBLATS DE SAINT-BONIFACE), LES SOEURS DE LA
CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (also known as SISTERS
OF CHARITY OF OTTAWA - GREY NUNS OF THE CROSS), SISTERS OF THE
HOLY NAMES OF JESUS AND MARY (also known as THE RELIGIOUS ORDER OF
JESUS AND MARY and LES SOEURS DE JESUS-MARIE), THE SISTERS OF
CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (also known as THE SISTERS
OF CHARITY OF HALIFAX), LES SOEURS DE NOTRE DAME AUXILIATRICE,
LES SOEURS DE ST. FRANCOIS D'ASSISE, SISTERS OF THE PRESENTATION
OF MARY (SOEURS DE LA PRESENTATION DE MARIE), THE BENEDICTINE
SISTERS, INSTITUT DES SOEURS DU BON CONSEIL, IMPACT NORTH
MINISTRIES, THE BAPTIST CHURCH IN CANADA**

Third Parties

Proceeding under the *Class Proceedings Act, 1992*

**SUPPLEMENTARY JOINT MOTION RECORD
(Certification, Settlement Approval and Approval of Legal Fees)
Returnable August 29-31, 2006**

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Counsel for the Catholic Entities

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TAB NO. DOCUMENT DESCRIPTION

VOLUME I

1. **Affidavit of Jonathan Ptak**
 - A. Exhibit "A" to the Affidavit of Jonathan Ptak [Order of the Honourable Justice Ball, dated August 1, 2006]
 - B. Exhibit "B" to the Affidavit of Jonathan Ptak [Revised Draft Statement of Claim]
 - C. Exhibit "C" to the Affidavit of Jonathan Ptak [Schedule M to the Settlement Agreement dated May 11, 2006]
 - D. Exhibit "D" to the Affidavit of Jonathan Ptak [Revised Draft Order Approving Settlement]
 - E. Exhibit "E" to the Affidavit of Jonathan Ptak [Fourth Report of the Standing Committee on Aboriginal Affairs and Northern Development – Study on the Effectiveness of the Government Alternative Dispute Resolution Process for the Resolution of Indian Residential Schools Claims]

2. **Affidavit of Frank Iacobucci, Q.C.**
 - A. Exhibit "A" to the Affidavit of Frank Iacobucci, Q.C. [Indian Residential Schools Settlement Agreement, dated May 8, 2006]
 - B. Exhibit "B" to the Affidavit of Frank Iacobucci, Q.C. [Agreement in Principle]
 - C. Exhibit "C" to the Affidavit of Frank Iacobucci, Q.C. [Agreement Between the Government of Canada and the Merchant Law Group Respecting the Verification of Legal Fees]
 - D. Exhibit "D" to the Affidavit of Frank Iacobucci, Q.C. [Article from The Leader-Post Newspaper, dated August 9, 2004]

3. **Affidavit of Edward Nagel**
 - A. Exhibit "A" to the Affidavit of Edward Nagel [undated document relating to files, confidentiality and disbursements]
 - B. Exhibit "B" to the Affidavit of Edward Nagel [letter from Law Society of Manitoba to Mr. Rosenbaum, dated January 4, 2005]

TAB NO. DOCUMENT DESCRIPTION

- C. Exhibit "C" to the Affidavit of Edward Nagel [letter from Merchant Law Group to Deloitte and Touche LLP, dated January 26, 2005]
- D. Exhibit "D" to the Affidavit of Edward Nagel [Memo from Peter Dent, Edward Nagel and Peter Khan to Merchant Law Group re: Laptop Security and Chain of Custody, dated January 19, 2006]
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4. **Affidavit of Ruth Anne Flear**

- A. Exhibit "A" to the Affidavit of Ruth Anne Flear [Letter to E.F. Anthony Merchant from Frank Iacobucci, Q.C.]

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- A. Exhibit "A" to the Affidavit of Father Jacques Gagné [Resolution]

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6. **Affidavit of Donald M. Outerbridge**

- A. Exhibit "A" to the Affidavit of Donald M. Outerbridge [Articles]
- B. Exhibit "B" to the Affidavit of Donald M. Outerbridge [Departmental Performance Report]
- C. Exhibit "C" to the Affidavit of Donald M. Outerbridge [Response to *Access to Information Act* request]
- D. Exhibit "D" to the Affidavit of Donald M. Outerbridge [Departmental Planned Spending Chart]
- E. Exhibit "E" to the Affidavit of Donald M. Outerbridge [Letter from Paul Vickery to Distribution List re: Residential Schools, dated December 21, 2005]

7. **Affidavit of Paul Vogel**

8. **Affidavit of Rosemarie Kuptana**

9. **Affidavit of Dana Eva Marie Francey**

10. **Affidavit of Benny Doctor**

<u>TAB NO.</u>	<u>DOCUMENT DESCRIPTION</u>
11.	Affidavit of Lucy Doctor
12.	Affidavit of Deanna Cyr
13.	Affidavit of Michelline Ammaq
14.	Affidavit of Janet Brewster
15.	Affidavit of Pauline Joan Michell

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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Plaintiffs

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Third Parties

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF JONATHAN PTAK
(sworn August 18, 2006)**

I, Jonathan Ptak, of the City of Toronto, MAKE OATH AND SAY:

1. I am a Lawyer with Koskie Minsky LLP, National Class Action Counsel, and as such have knowledge of the matters hereinafter deposed.
2. I am informed by Celeste Poltak, an associate at Koskie Minsky LLP with primary carriage of this matter, that the attached documents are relevant to the hearings of this matter and were not available on July 31, 2006, at the time that the original Joint Motion Record was filed.
3. Attached as Exhibit "A" to this my Affidavit is a copy of the Order of the Honourable Justice Ball, dated August 1, 2006. This document was not available on July 31, 2006, at the time that the original Joint Motion Record was filed.
4. Attached as Exhibit "B" to this my Affidavit is a Revised Draft Amended Statement of Claim, reflecting further changes requested by counsel and other interested parties since July 31, 2006, at the time that the original Joint Motion Record was filed.
5. Attached as Exhibit "C" to this my Affidavit is the most recent copy of Schedule "M" to the Settlement Agreement, dated May 11, 2006, as a prior and erroneous version was filed on July 31, 2006. The Settlement Agreement is located in volumes 1 and 2 of the original Joint Motion Record.

6. Attached as Exhibit "D" to this my Affidavit is a Revised Draft Order, reflecting changes to the title of proceedings since July 31, 2006, being the time the original Joint motion Record was filed.

7. Attached as Exhibit "E" to this my Affidavit is a copy of the Fourth Report of the Standing Committee on Aboriginal Affairs and Northern Development – Study on the Effectiveness of the Government Alternative Dispute Resolution Process for the Resolution of Indian Residential Schools Claims.

8. I am further informed by Celeste Poltak that the attached are true copies of the Affidavits of the following affiants:

Affidavit of Frank Iacobucci, Q.C., sworn in Court File No. 00-CV-192059CP, in the proceeding in the Province of Ontario.

Affidavit of Edward Nagel, sworn in Court File No. 00-CV-192059CP, in the proceeding in the Province of Ontario.

Affidavit of Ruth Anne Flear, sworn in Court File No. 00-CV-192059CP, in the proceeding in the Province of Ontario.

Affidavit of Father Jacques Gagné, sworn in Court File No. 00-CV-192059CP, in the proceeding in the Province of Ontario.

Affidavit of Donald M. Outerbridge, sworn in Court File No. 00-CV-192059CP, in the proceeding in the Province of Ontario.

Affidavit of Paul Vogel, sworn in Court File No. 29762, in the proceeding in the Province of Ontario.

Affidavit of Rosemarie Kuptana, sworn in Court File No. S-0001-2005 000 243, in the proceeding in the Northwest Territories.

Affidavit of Dana Eva Marie Francey, sworn in Court File No. S-0001-2005 000 243, in the proceeding in the Northwest Territories.

Affidavit of Benny Doctor, sworn in Court File No. S-0001-2005 000 243, in the proceeding in the Northwest Territories.

Affidavit of Lucy Doctor, sworn in Court File No. S-0001-2005 000 243, in the proceeding in the Northwest Territories.

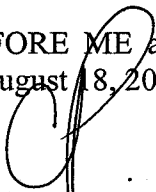
Affidavit of Deanna Cyr, sworn in Court File No. Q.B.G. No. 816 of 2005, in the proceeding in the Province of Saskatchewan.

Affidavit of Michelline Ammaq, sworn in Court File No. 08-05-401 CVC, in the proceeding in Nunavut.

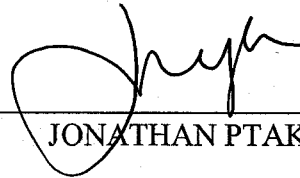
Affidavit of Janet Brewster, sworn in Court File No. 08-05-401 CVC, in the proceeding in Nunavut.

Affidavit of Pauline Joan Michell, sworn in Court File No. 08-05-401 CVC, in the proceeding in the Province of British Columbia.

SWORN BEFORE ME at the City of
Toronto, on August 18, 2006.



Commissioner for Taking Affidavits
Celeste Poltak



JONATHAN PTAK

BAXTER, ET AL V. ATTORNEY
GENERAL

V. SYNOD OF THE ANGLICAN CHURCH
OF CANADA, ET AL.

Court File No: 00-CV-192059CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF JONATHAN PTAK
(Sworn August 18, 2006)**

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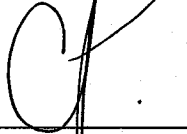
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Solicitors for the plaintiffs

00006

Exhibit "A" to the Affidavit
of Jonathan Ptak, sworn before me
at the City of Toronto, Ontario
this 18th day of August, 2006

A handwritten signature in black ink, appearing to be 'C. Poltak', written over a horizontal line.

Celeste Poltak
A Commissioner for Taking Affidavits

QUEEN'S BENCH FOR SASKATCHEWAN

Citation: 2006 SKQB 362

Date: 2006 08 01
Docket: Q.B.G. No. 816/2005
Judicial Centre: Regina

BETWEEN:

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

PLAINTIFFS

- and -

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

DEFENDANT

Counsel:

E. F. Anthony Merchant, Q.C.
and Casey R. Churko
Gary D. Young, Q.C.

for the plaintiffs

for the defendant

FIAT
August 1, 2006

BALL J.

[1] Applications for certification of this action as a class proceeding and for approval of a Settlement Agreement, including the legal fees payable to class counsel, will be heard in Regina on September 18, 19 and 20, 2006. Similar applications are

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scheduled to be heard in eight other provinces and territories between August 29, 2006 and October 17, 2006.

[2] Counsel for the plaintiffs in this action, Merchant Law Group ("MLG"), is one of the law firms applying for approval of its fees and disbursements. The defendant ("Canada") applies for the following orders:

- (a) Appointing the accounting firm Deloitte & Touche LLP, as agents of the Court for the purpose of conducting a review of the Merchant Law Group's dockets, computer records of Work in Progress, and any other evidence relevant to Merchant Law Group's claim for legal fees, and that Deloitte & Touche LLP be given access to such dockets, records and other relevant evidence as they may reasonably request for this purpose;
- (b) That the results of the review be made available to the Court, to Merchant Law Group, and to the Federal Representative, the Honourable Frank Iacobucci; and
- (c) That to the extent privilege is claimed for the dockets, records and other relevant evidence to which Deloitte & Touche LLP are to be given access, such information shall not be disclosed to the Federal Representative until the Court has reviewed it and made any redactions it considers necessary.

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- (d) Such other relief as may be requested and this Court may deem appropriate.

FACTUAL BACKGROUND

[3] For several months in 2005 Canada negotiated with interested parties for the resolution of claims arising from the legacy of Indian Residential Schools. The Honourable Frank Iacobucci, Q.C. acted as the Federal Representative leading those negotiations. On November 20, 2005 Mr. Iacobucci and Tony Merchant of MLG signed an agreement. Canada refers to it as the "Merchant Fee Verification Agreement" or "MFVA". MLG prefers to call it the "Undated Document" or "UD". For the purposes of this fiat I will use Canada's reference.

[4] The Merchant fee Verification Agreement stated:

Agreement Between the Government of Canada and the Merchant Law Group Respecting the Verification of Legal Fees

The Government of Canada and the Merchant Law Group agree that in addition to the requirement to provide an affidavit as set out in Article ■ of the Agreement in Principle, the Merchant Law Group's fees shall be subject to the following verification process.

1) The Merchant Law Group's dockets, computer records of Work in Progress and any other evidence relevant to the Merchant Law Group's claim for legal fees shall be made available for review and verification by a firm to be chosen by the Federal Representative the Honourable Frank Iacobucci.

2) The Federal Representative shall review the material from the verification process and consult with the Merchant Law Group to satisfy himself that the amount of legal fees to be paid to the Merchant Law Group is reasonable and equitable taking into consideration the amounts and basis on which fees are being paid to other lawyers in respect of this settlement, including the payment of 3 to 3.5 multiplier in respect of the

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time on class action files and the fact that the Merchant Law Group has incurred time on a combination of class action files and individual files.

3) If the Federal Representative is not satisfied as described in 2) above, he and the Merchant Law Group shall make all reasonable efforts to agree to another amount to be paid to the Merchant Law Group for legal fees.

4) If the Federal Representative and the Merchant Law Group cannot agree as described in 3) above, the amount to be paid to the Merchant Law Group for legal fees shall be determined through binding arbitration, but that amount shall in no event be more than \$40 million or less than \$25 million. The arbitration shall be by a single arbitrator who shall be a retired judge:

- (a) selected by the Federal Representative and the Merchant Law Group from a list comprising:
 - (i) John Major,
 - (ii) Peter Cory,
 - (iii) John Morden, or
 - (iv) Allan McEachern; and
- (b) if not so jointly chosen, then chosen by the Federal Representative in consultation with Tony Merchant and appointed in accordance with the *Saskatchewan Arbitration Act*, with the arbitration to take place in Saskatchewan.

"Tony Merchant"

"Frank Iacobucci"

"November 20, 2005"

"Toronto, Ontario"

Within hours after the Merchant Fee Verification Agreement was signed, an Agreement in Principle was signed by various interested parties, including Mr. Iacobucci as Federal Representative and Mr. Merchant as the representative of MLG. The Agreement in Principle was approved by the Federal Cabinet on November 22, 2005.

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[5] The Agreement in Principle provided for payment of legal fees to MLG, to a group of 19 other law firms (known as the National Consortium) and to other individual lawyers. One portion of the Agreement in Principle stated:

WHEREAS legal counsel have done very substantial work on behalf of Eligible CEP Recipients for many years, have contributed significantly to the achievement of the Agreement in Principle and have undertaken not to seek payment of legal fees in respect of the Common Experience Payment to be paid to Eligible CEP Recipients, Canada agrees to compensate legal counsel in respect of their legal fees as follows.

4. The National Consortium and the Merchant Law Group shall each be paid \$40,000,000 plus reasonable disbursements, and GST and PST, if applicable, in recognition of the substantial number of Eligible CEP Recipients each of them represents and the class action work they have done on behalf of Eligible CEP Recipients. Paragraphs 1, 2 and 3 above shall not apply to any lawyer who is a partner of, employed by or otherwise affiliated with a National Consortium member law firm or the Merchant Law Group.
5. The Federal Representative shall engage in such further verification processes with respect to the amounts payable to the Merchant Law Group and National Consortium as have been agreed to.
6. No lawyer or law firm that has taken part in these settlement negotiations or who accepts a payment for legal fees from the[sic] Canada shall charge an Eligible CEP Recipient any fees or disbursements in respect of the Common Experience Payment paid to the Eligible CEP Recipient.

[6] Further discussions took place and the Agreement in Principle was eventually finalized by a Settlement Agreement approved by the Federal Cabinet on May 10, 2006. The Settlement Agreement dealt extensively with payment of legal fees to lawyers representing residential school claimants. Section 13.08(2) of the Settlement Agreement states:

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13.08(2) The fees of the Merchant Law Group will be determined in accordance with the provisions of the Agreement in Principle executed November 20, 2005 and the Agreement between Canada and the Merchant Law Group respecting verification of legal fees dated November 20, 2005 attached hereto as Schedule "V", except that the determination described in paragraph 4 of the latter Agreement, will be made by Justice Ball, or, if he is not available, another Justice of the Court of Queen's Bench of Saskatchewan, rather than by an arbitrator.

[7] Sections 13.08(4) of the Settlement Agreement states, in part, that in the event of a disagreement over the amount payable to Merchant Law Group for reasonable disbursements incurred up to and including November 20, 2005, the Federal Representative will refer the matter to the Saskatchewan Court of Queen's Bench, or an official designated by it.

[8] Deloitte & Touche LLP ("Deloitte") was chosen by Mr. Iacobucci as his representative to review and verify material pursuant to the Merchant Fee Verification Agreement. In December of 2005 MLG began moving its residential schools files from its various offices to Regina so that a verification process might begin in mid-January. However, MLG expressed its concerns that the verification process should be carried out without violating solicitor-client privilege.

[9] From January 17, 2006, to January 24, 2006, representatives of Deloitte attended at MLG's offices in Regina to carry out the verification process. Although there is substantial disagreement about the quality and quantity of information reviewed by Deloitte, it is clear that it included (but was not confined to) photocopies of 4,823 available retainer agreements, an electronic listing of 8,560 clients with whom the

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Merchant Law Group claimed to have a solicitor-client relationship, an electronic summary listing of the law firm's work in progress and disbursements by client up to January 20, 2006, and detailed work in progress and disbursement reports for seven clients as selected by Deloitte.

[10] Edward Nagel, a senior manager in Deloitte's Forensic and Dispute Services Group, deposed that upon reviewing information provided by MLG serious concerns arose concerning the accuracy of information which had been provided by MLG during negotiations with Mr. Iacobucci. His affidavit also stated at paras. 17 and 18:

17. Deloitte requested of MLG, but did not receive, the following information/documentation, which I believe is required to complete the verification exercise:

- (a) Electronic listings of summary WIP for the *Residential Schools' class action file* from the inception of this matter through to November 20, 2005 and from November 21, 2005 to January 16, 2006.
- (b) Electronic listing of total hours billed by MLG lawyers for each year since the inception of this matter through to November 20, 2005 and from November 21, 2005 to January 16, 2006 in relation to:
 - (i) This matter; and
 - (ii) Total MLG billings.
- (c) Electronic listing of MLG lawyers with their respective level, initials, hourly rate(s), and related employee codes.
- (d) For the sample of client files included in Deloitte's request dated January 22, 2006 (*and Deloitte's revised request for information dated January 24, 2006*):
 - (i) All information/documentation that supports a substantial solicitor-client relationship.
 - (ii) A line-by-line detail of hours billed by MLG lawyers, by day, from the inception of this matter

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through to November 20, 2005 and from November 21, 2005 to January 16, 2006.

(iii) A line-by-line detail of disbursements incurred from the inception of this matter through to November 20, 2005 and from November 21, 2005 to January 16, 2006.

(e) Confirmation from MLG as to whether the following client codes relate to this matter (identified from the summary WIP listing referred to in paragraph 11 above) 479907, 569703, 539519, 409782, 480422, 465454, 471025, 470107, 460380, 469118, and 239742.

(f) Verification from Cindy Roth of MLG whether MLG's Billing System (EasyLaw) could be exported to Excel.

(g) Sample retainer agreement formats used by MLG's offices to secure clients in relation to this matter.

18. Further to the information/documentation referred to herein, additional as yet undetermined information may be required to complete the verification exercise. However, the potential need for additional information will only become known upon the resumption of the verification exercise.

[11] On January 24, 2006, a letter signed by an MLG partner, Gordon J.K. Neill, Q.C., was delivered to Deloitte's representatives. The letter stated in part:

I have been asked to write on behalf of our firm, further to a meeting which took place this morning.

For more than a decade, I have been the person designated to take the lead on issues of ethics and Law Society compliance. As a result, I have been asked to outline our firm's decision concerning the verification process.

We collectively do not think there is more information we can provide you without being in clear breach of the canons of ethics and our obligations to maintain solicitor-client confidentiality.

We can not breach solicitor-client privilege to *some degree*. It is simply not permissible. Moreover, any breach is simply impossible. There is no settlement of residential school litigation in place. Even if the common experience settlement is approved, thousands of our clients will have an

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ongoing litigation interest against your client (the federal government, under the proposed Independent Assessment Process). Some clients may also choose to reject the proposed structured settlement process, and instead will face a court trial against your client.

It is unallowable to disclose solicitor-client privileged information to a third party, and the proposed disclosure of information here is to the agents of an opposing party regarding ongoing litigation.

...
I want to note that we have already given you access to a significant amount of information. You have seen our retainer agreement. You have seen our boxes and cabinets of files which we estimate would stretch 900 feet. You have seen our pre- and post-November 20 work in progress figures. We have provided you with a list of our files which includes an indication of when they were opened. Those records are accurate and we are prepared to swear affidavits confirming the same, as is contemplated by the agreement in principle.

Although you have discussed with Evatt and Tony the possibility of being allowed to examine files, the same is simply impossible. The issues of propriety, confidentiality, and privilege prevent it.

Any client specific information you have received must be returned. Your own data is yours to retain but any information that we have provided must remain here at Merchant Law Group, and if there is any information in dispute, it should be sealed in envelopes, which I will hold in trust.

[12] Upon receiving the letter from Mr. Neill, Deloitte's representatives left the office of Merchant Law Group. This application was then filed seeking orders requiring MLG to provide Deloitte with further and better access to information relevant to MLG's claim for fees.

THE AFFIDAVIT EVIDENCE

[13] Canada relied on the affidavits to Frank Iacobucci, Q.C., and Edward Nagel of Deloitte. The admissibility of those affidavits was dealt with in a fiat dated July 10, 2006 (2006 SKQB 312) and will not be the subject of further comment.

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[14] The only evidence filed by MLG on the motion was an affidavit sworn by Donald I.M. Outerbridge, the executive director of the law firm. Most of the affidavit, which contains 61 pages, 248 paragraphs and many exhibits, was said to be based on information provided to the deponent by MLG lawyers. Tony Merchant was identified as a source, or the only source, of statements made in 143 of the 248 paragraphs.

[15] Portions of the affidavit of Mr. Outerbridge advance legal arguments, offer political commentary or express the beliefs and opinions of others who are not identified. A significant portion of the affidavit contains information about discussions which took place between Mr. Merchant and Mr. Iacobucci or his colleagues during the negotiations leading up to the Merchant Fee Verification Agreement, the Agreement in Principle, and the Settlement Agreement — discussions which Mr. Merchant has contended in argument were privileged and confidential. At various times in his affidavit Mr. Outerbridge purports to express Tony Merchant's beliefs and opinions about what the various agreements were intended to mean and the obligations they were intended to impose on MLG.

[16] In his submissions counsel for Canada stated that it was improper for Merchant Law Group to attempt to advance this type of information through Mr. Outerbridge, who knows nothing about most of what was in his affidavit. Nevertheless, Canada chose not to apply for an order striking out any portions of the affidavit, or to identify portions of the affidavit it considered objectionable, or to enunciate the reasons for its objections. If Canada wishes to contest the admissibility of portions of the affidavit of Mr. Outerbridge, it should do so by way of a proper application.

[17] Rule 319 of the *Queen's Bench Rules of Court* states:

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319 Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may under special circumstances be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same; and where affidavits upon information and belief are filed which do not adequately disclose the grounds of such information and belief the court may direct that the costs of such affidavits shall be borne by the solicitor filing the same. [Emphasis added]

If there are any "special circumstances" in this situation, they are not apparent. Why Mr. Outerbridge was chosen to adduce so much information known only to Tony Merchant or other lawyers in MLG is also unclear. Counsel for Canada suggests that Mr. Outerbridge was selected as the deponent to circumvent the well established rule that a lawyer should not submit his own affidavit in proceedings in which the lawyer appears as an advocate. The rule also applies to the lawyer's partners and associates.

[18] In the absence of an application by Canada to strike portions of the affidavit of Mr. Outerbridge I will simply disregard statements that are clearly argumentative or clearly beyond the deponent's personal knowledge. One portion of the affidavit I will not disregard, however, outlines financial pressures experienced by MLG as a result of its representation of many residential school claimants. Mr. Outerbridge's responsibilities within the firm qualify him to give evidence on that subject.

SUBMISSIONS OF THE PARTIES

[19] Counsel for Canada, Mr. Young, argues that when Mr. Merchant agreed under the Merchant Fee Verification Agreement to make available MLG's dockets, computer records of work in progress and any other evidence relevant to its claim for

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legal fees, he effectively waived MLG's ability to claim privilege over that information. Mr. Young says that unless the court intercedes in the verification process now, Canada will be unable to determine the amount that should reasonably be paid to MLG. Although he acknowledges that some of the information Canada seeks may be subject to solicitor-client privilege, Mr. Young submits that if Deloitte is appointed as an agent of the court rather than as agent of the Federal Representative, the issues relating to privilege can be avoided. Finally, he argues that the court's jurisdiction to make orders granting Deloitte access to the information can be found in s. 34 of *The Queen's Bench Act, 1998*, S.S. 1998, c. Q-1.01; Rule 251 of the *Queen's Bench Rules of Court*; s. 14 of *The Class Actions Act*, S.S. 2001, c. C-12.01 or the court's inherent jurisdiction.

[20] Mr. Merchant, representing MLG, acknowledges that his law firm provided Deloitte representatives with much privileged client information before January 24, 2006. However, he says that MLG was not aware of the privilege and that it only realized its breach "in hindsight". He argues that to require MLG to disclose potentially privileged information to Deloitte at this time could seriously prejudice MLG clients advancing residential schools claims if the proposed class action is not certified, if the Settlement Agreement is not approved, or if client claims are pursued through the Independent Assessment Process. He also contends that even if the Settlement Agreement is approved, the Merchant Fee Verification Agreement is invalid and unenforceable or, if it is valid and enforceable, that it means something very different from what Canada suggests it means. He argues that in any event MLG has done everything it can do to provide verification without breaching solicitor-client privilege.

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ANALYSIS

[21] In his affidavit Mr. Outerbridge deposed that MLG has experienced severe financial pressures as a result of its representation of so many clients advancing claims from their residential school experiences. As a practical matter, that circumstance would appear to be relevant to this application.

[22] It is reasonable to assume that MLG is motivated to obtain payment of its legal fees and disbursements within the parameters set out in both the Settlement Agreement and the Merchant Fee Verification Agreement. If accurate, reliable and verifiable information can be assembled and provided by MLG to the Federal Representative without breaching solicitor-client privilege, it will be in MLG's interest to find a way to assemble and provide it. If it becomes necessary to seek informed client consent to waive solicitor-client privilege, MLG will wish to ensure that its clients are properly notified and informed. The reality is that if MLG does not satisfy the Federal Representative that its claim for fees and disbursements is reasonable and supportable, its fees and disbursements will not be paid without recourse to the court. In any event, MLG will have to support its claim for fees and disbursements.

[23] Canada acknowledges that if this application succeeds, Deloitte would gain access to information that could be subject to solicitor-client privilege. However, counsel for Canada submits that when Mr. Merchant agreed to provide all relevant information pursuant to the Merchant Fee Verification Agreement, he exercised ostensible authority to waive privilege on behalf of MLG's clients.

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[24] I do not agree. The information to which Deloitte wants access (which includes, but is not restricted to, client files and bills of account) may be protected by solicitor-client privilege. The privilege can only be waived by individual clients. Not only must each client know the purpose of the waiver, each client must intend to waive privilege.

[25] There is no indication that any client has been notified by MLG of an intention to disclose potentially privileged information, or that any client is otherwise aware of and has consented to such disclosure. The fact that MLG has already provided Deloitte's representative with privileged information does not mean that it can continue to do so without first securing informed client consent.

[26] One way of viewing this application is that Canada applies for orders requiring specific performance by MLG of the Merchant Fee Verification Agreement. Another way of it is that Canada seeks orders requiring MLG as one party to an agreement to provide pre-trial discovery of information to Canada as the other party to the agreement.

[27] If the orders sought by Canada are viewed as requiring specific performance of an agreement, the court could not make them without first assuming that the agreement is valid, enforceable and free from ambiguity. It would also be necessary to assume that MLG has not met its obligations under the agreement. Those are the very questions that will be central to the pending application to approve or establish the fees and disbursements payable to MLG.

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[28] If the application is viewed as one seeking pre-trial discovery from MLG, it is important to note that this proposed class action has not been certified, and that the Settlement Agreement and the Merchant Fee Verification Agreement have not been approved. Again, a litigation base for discovery must be established and contested issues of validity, enforceability, and interpretation must be dealt with before discovery obligations can be clarified.

[29] Canada suggests that the orders it seeks should be made pursuant to s. 34 of *The Queen's Bench Act, 1998*, which reads:

34(1) In any action or matter, a judge may call in the aid of one or more specially qualified assessors if the judge thinks it expedient to do so, and try and hear the action or matter wholly or partially with their assistance.

(2) The judge shall determine the remuneration, if any, to be paid to an assessor, and may direct payment of the remuneration by any party.

[30] The above provision is designed to give the court access to the assistance of specially qualified assessors at the trial or hearing of an action. If the application to be heard on September 18, 19 and 20, 2006, results in an order for the trial of one or more issues, and if the court is of the view that it would be expedient to have the assistance of such a person, s. 34 will allow that to happen. However, given that Deloitte currently acts as an agent for the Federal Representative, it is highly unlikely that Deloitte would be retained to assist the court in that capacity.

[31] Canada also relies on Rule 251 of the *Queen's Bench Rules* which states:

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251 The court may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken by the local registrar or other competent person, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

[32] The purpose of Rule 251 becomes more apparent from Rule 256 which reads:

256 The result of such proceedings before the local registrar or other person for making inquiries or taking accounts shall be forwarded in a concise certificate to the court. It shall not be necessary for the judge to sign such certificate and the certificate shall be deemed to be approved and adopted by the court and shall thenceforth be binding upon all parties to the proceedings unless discharged or varied upon application to the court by a motion to be made before the expiration of nine days after the filing of the certificate.

[33] Ordinarily, a reference under Rule 251 is ordered at or after trial to verify accounts from documents filed as exhibits in court or forming part of the pleadings. The inquiry usually involves matters of calculation. The referee does not determine issues on conflicting evidence. Those disputes are dealt with by a judge. I am satisfied that this is not a situation in which an order pursuant to Rule 251 would be appropriate.

[34] Canada also cites s. 14 of *The Class Actions Act* which states:

14 The court may, at any time, make any order it considers appropriate respecting the conduct of a class action to ensure a fair and expeditious determination and, for that purpose, may impose on one or more of the parties any terms it considers appropriate.

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[35] Section 14 applies only to a "class action", a term defined in s. 2 of *The Class Actions Act* as follows:

2 In this Act:

...

"class action" means an action certified as a class action pursuant to Part II.

[36] This action has not been certified as a class action. The application for certification is scheduled to be heard on September 18, 19 and 20, 2006. Until it is certified, s. 14 does not apply.

[37] Taking a broader view, the purpose of an order under s. 14 is to ensure a fair and expeditious determination of a class action. Although class actions legislation is intended to promote judicial economy and reduce the costs of litigation by aggregating similar individual actions, it is settled that the desire for an expeditious determination must be balanced with the need to ensure fairness.

[38] It would not promote the goals of judicial economy or efficiency for the court to order what amounts to specific performance of the Merchant Fee Verification Agreement before it has first heard the application for certification, decided whether it will approve the Settlement Agreement, and determined whether the Merchant Fee Verification Agreement has been incorporated into the Settlement Agreement. Similarly, it would not promote those goals for the court to make the orders requested by Canada before it has determined the obligations of each party under the Merchant Fee Verification Agreement and whether or not those obligations have been satisfied.

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[39] Finally, Canada invites the court to rely on its inherent jurisdiction to make the requested orders. A superior court's inherent jurisdiction to control its own process has been defined as the exercise of its residual power to ensure due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them. That jurisdiction is to be exercised judicially and only when the relief sought cannot reasonably and realistically be obtained by the applicant in some other lawful manner. The court's inherent jurisdiction will not be exercised in a manner that effectively renders remedial legislation redundant (See *Halstead v. Anderson* (1993), 115 Sask. R. 257 (Sask. Q.B.) per Baynton J. at para. 24).

[40] The procedure for settlement and approval of legal fees and disbursements in class actions is dealt with specifically in Rule 86 of *The Queen's Bench Rules* which provides:

86(1) An application for approval of an agreement respecting fees and disbursements must be brought after:

- (a) judgment on the common issues; or
- (b) approval of a settlement, discontinuance or abandonment of the class action.

(2) The application pursuant to subrule (1);

- (a) shall be made to the judge who presided over the trial of the common issues, or who approved the settlement, discontinuance or abandonment, as the case may be, and
- (b) shall be made on such notice to class members as is required by the court.

(3) Where, on an application pursuant to subrule (1), the court determines that the agreement ought not to be followed, the court may amend the terms of the agreement.

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[41] Pursuant to Rule 86, an application for approval of an agreement respecting fees and disbursements must be brought after approval of a settlement. That is so because only then is the court in a position to consider relevant factors which may include, in addition to the overall fairness of the fee agreement, the competing positions of the parties in the law suit, the risks and probable costs of trial, and whether the proposed settlement is fair, reasonable and in the best interests of those affected by it. The sequence in which issues are to be addressed has been prescribed by Rule 86 and the court should not alter the process. Again, this application is premature.

CONCLUSION

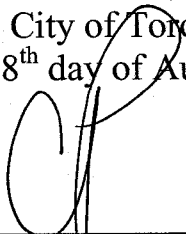
[42] Canada's application is dismissed. Either party may speak to the question of costs in conjunction with the application for approval of the Settlement Agreement, including fees and disbursements payable to counsel, scheduled to be heard on September 18, 19 and 20, 2006.



J.

D. P. Ball

Exhibit "B" to the Affidavit
of Jonathan Ptak, sworn before me
at the City of Toronto, Ontario
this 18th day of August, 2006

A handwritten signature in black ink, appearing to be 'C. Poltak', written over a horizontal line.

Celeste Poltak
A Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, MICHELLINE AMMAQ, PERCY ARCHIE, CHARLES BAXTER SR., ELIJAH BAXTER, EVELYN BAXTER, DONALD BELCOURT, NORA BERNARD, JOHN BOSUM, JANET BREWSTER, RHONDA BUFFALO, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, BRENDA CYR, DEANNA CYR, MALCOLM DAWSON, ANN DENE, BENNY DOCTOR, LUCY DOCTOR, JAMES FONTAINE in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, VINCENT BRADLEY FONTAINE, DANA EVA MARIE FRANCEY, PEGGY GOOD, FRED KELLY, ROSEMARIE KUPTANA, ELIZABETH KUSIAK, THERESA LAROCQUE, JANE McCALLUM, CORNELIUS McCOMBER, VERONICA MARTEN, JOAN MICHELL, STANLEY THOMAS NEPETAYPO, FLORA NORTHWEST, NORMAN PAUCHEY, CAMBLE QUATELL, ALVIN BARNEY SAULTEAUX, CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER, EDWARD TAPIATIC, HELEN WINDERMAN and ADRIAN YELLOWKNEE

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE UNITED CHURCH OF CANADA, THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA, ARCHDIOCESE OF VANCOUVER – THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, HÔTEL-DIEU DE NICOLET, INSITUT DES SOEURS DU BON CONSEIL, LA CORPORATION ARCHIÉPISCOPALE CATHOLIQUE ROMAINE DE ST. BONIFACE, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE D'HUSON – THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE JAMES (THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY THE CATHOLIC DIOCESE OF MOOSONEE, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, LES OBLATES DE MARIE IMMACULEE DU MANITOBA, LES OEUVRES OBLATES DE L'ONTARIO, LES PERES MONTFORTAINS, LES RÉSIDENCES OBLATES DU QUEBEC, LES SOEURS DE JESUS-MARIE, LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE L'ALBERTA, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VERGE, LES SOEURS DE LA CHARITÉ DE ST.-HYACINTHE, LES SOEURS DE LA CHARITÉ DES T.N.O, LES SOEURS DE NOTRE DAME – AUXILIATRICE, LES SOEURS DE SAINT-

JOSEPH DE SAINT-HYACINTHE, LES SOEURS DE ST. FRANCOIS D'ASSISE, MISSIONARY OBLATES - GRANDIN, OBLATES OF MARY IMMACULATE - ST. PETER'S PROVINCE, ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, ROMAN CATHOLIC DIOCESE OF WHITEHORSE, ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, SISTERS OF CHARITY (GREY NUNS) OF ALBERTA, SISTERS OF CHARITY OF OTTAWA - LES SOEURS DE LA CHARITÉ D'OTTAWA, SISTERS OF CHARITY, A BODY CORPORATE also known as SISTERS OF CHARITY OF ST. VINCENT DE PAUL, HALIFAX, also known as SISTERS OF CHARITY HALIFAX, SISTERS OF INSTRUCTION OF THE CHILD JESUS, SOEURS GRISES DE MONTRÉAL/GREY NUNS OF MONTREAL, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE BENEDICTINE SISTERS OF MT. ANGEL OREGON, THE BISHOP OF VICTORIA, CORPORATION SOLE, THE CATHOLIC EPISCOPALE CORPORATION OF MACKENZIE - FORT SMITH, EPISCOPAL CORPORATION OF SASKATOON, IMMACULATE HEART COMMUNITY OF LOS ANGELES CA, OMI LACOMBE CANADA INC., THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH THE BAPTIST CHURCH IN CANADA, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN BAY, THE CANADA IMPACT NORTH MINISTRIES, THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE GREY NUNS OF MANITOBA INC. - LES SOEURS GRISES DU MANITOBA INC., THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE INCORPORATED SYNOD OF THE DIOCESE OF ALGOMA, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS CORPORATION SOLE, THE ROMAN CATHOLIC BISHOP OF NELSON CORPORATION SOLE, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, THE SISTERS OF ST. JOSEPH OF SAULT ST. MARIE, THE SISTERS OF THE PRESENTATION, THE SYNOD OF THE ANGLICAN CHURCH OF THE DIOCESE OF QUEBEC, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLOMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF NEW WESTMINSTER, THE SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE BOARD OF HOME MISSIONS AND SOCIAL SERVICE OF THE PRESBYTERIAN CHURCH OF CANADA,

**THE ROMAN CATHOLIC EPISCOPAL CORPORATION, THE SISTERS OF
ST. ANN, LES MISSIONNAIRES OBLATES DE ST. BONIFACE and THE
WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA**
Defendants

Proceeding under the *Class Proceedings Act, 1992*

PROCEEDING UNDER the following legislation, as appropriate:

- (a) In the Province of Québec: Articles 999 – 1051 of the *Code of Civil Procedure (Québec)*;
- (b) In the Provinces of Newfoundland and Labrador, Prince Edward Island, New Brunswick, Nova Scotia and Ontario: the *Class Proceedings Act, 1992 (Ontario)* S.O. 1992, c. 6;
- (c) In the Province of Manitoba: *The Class Proceedings Act*, C.C.S.M. c. C130;
- (d) In the Province of Saskatchewan: *The Class Actions Act*, S.S. 2001, c.C-12.01;
- (e) In the Province of Alberta: the *Class Proceedings Act*, S.A. 2003, c. C-16.5;
- (f) In the Province of British Columbia: the *Class Proceedings Act*, R.S.B.C. 1996, c.50;
- (g) In the Yukon Territory: Rule 5(11) of the *Supreme Court Rules (British Columbia)* B.C. Reg. 220/90 as adopted by the Territory by operation Section 38 of the *Judicature Act (Yukon)* R.S.Y. 2002, c. 128;
- (h) In The Northwest Territories: Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg. 010-96; and
- (i) In Nunavut: Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg 010-96, as adopted by the Territory by operation of Section 29 of the *Nunavut Act*, S.C. 1993, c. 28.

AMENDED STATEMENT OF CLAIM**TO THE DEFENDANTS**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the rules of court, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the rules of court. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

DATE:

Issued by: _____

[insert court address here]

TO:	<p>THE ATTORNEY GENERAL OF CANADA Deputy Minister of Justice Justice Building 239 Wellington Street Ottawa, ON K1A 0H8</p> <p>On its own behalf and on behalf of all of the Defendants</p>
AND TO:	<p>The General Synod of the Anglican Church of Canada 80 Haydon Street Toronto, ON M4Y 3G2</p>

AND TO:	The Missionary Society of the Anglican Church of Canada 80 Haydon Street Toronto, ON M4Y 3G2
AND TO:	The Incorporated Synod of the Diocese of Algoma 619 Wellington St. East, Box 1168 Sault Ste. Marie, ON P6A 5N7 Phone: (705) 256-5061 or (705) 256-2791 Fax: (705) 946-1860
AND TO:	The Synod of the Diocese of Athabasca 9720 – 100 Avenue P.O. Box 6868 Peace River, AB T8S 1S6 Phone: (780) 624-2767 Fax: (780) 624-2365
AND TO:	The Synod of the Diocese of Brandon 341 -13 Street Box 21009 W.E.P.O. Brandon, MB R7B 3W8 Phone: (204) 727-7550 Fax: (204) 727-4135
AND TO:	The Anglican Synod of the Diocese of British Columbia 900 Vancouver St. Victoria, BC V8V 3V7 Phone: (250) 386-7781 Fax: (250) 386-4013
AND TO:	The Synod of the Diocese of Calgary Suite 560, 1207 - 11th Ave. SW Calgary, AB T3C 0M5 Phone: (403) 243-3673 Fax: (403) 243-2182
AND TO:	The Synod of the Diocese of Cariboo 1505 Fifth Avenue Prince George, BC V2L 3L9

AND TO:	The Incorporated Synod of the Diocese of Huron 190 Queens Ave. London, ON N6A 6H7 Phone: (519) 434-6893 Fax: (519) 679-4151
AND TO:	The Synod of the Diocese of Keewatin P.O. Box 567 915 Ottawa St. Keewatin, ON P0X 1C0 Phone: (807) 547-3353 Fax: (807) 547-3356
AND TO:	The Synod of the Diocese of New Westminster Suite 580, 401 West Georgia St. Vancouver, BC V6B 5A1 Phone: (604) 684-6306 Fax: (604) 684-7017
AND TO:	The Synod of the Diocese of Qu'Appelle 1501 College Ave. Regina, SK S4P 1B8 Phone: (306) 522-1608 Fax: (306) 352-6808
AND TO:	The Diocese of Saskatchewan 1308 Fifth Avenue East Prince Albert, SK S6V 2H7 Phone: (306) 763-2455 or (306) 764-1171 Fax: (306) 764-5172
AND TO:	The Synod of the Anglican Church of the Diocese of Quebec Church House, 31 Rue des Jardins Quebec City, Quebec G1R 4L8
AND TO:	The Synod of the Diocese of Yukon Box 31136 Whitehorse, YT Y1A 5P7 Phone: (867) 667-7746 Fax: (867) 667-6125

AND TO:	<p>The Company for the Propagation of the Gospel in New England (also known as the New England Company) Bower House, Clavering, Saffron Walden Essex UK CB11 4QT Phone: 20 7717 5400 Fax: 01799 550169</p>
AND TO:	<p>The Presbyterian Church in Canada 50 Wynford Drive Don Mills, ON M3C 1J7 Phone: (416) 441-1111 or Toll Free: (800) 619-7301 Fax: (416) 441-2825</p>
AND TO:	<p>The Trustee Board of the Presbyterian Church in Canada 50 Wynford Drive Don Mills, ON M3C 1J7 Phone: (416) 441-1111 or Toll Free: (800) 619-7301 Fax: (416) 441-2825</p>
AND TO:	<p>The Foreign Mission of the Presbyterian Church in Canada 50 Wynford Drive Don Mills, ON M3C 1J7 Phone: (416) 441-1111 or Toll Free: (800) 619-7301 Fax: (416) 441-2825</p>
AND TO:	<p>Board of Home Missions and Social Services of the Presbyterian Church in Canada 50 Wynford Drive Don Mills, ON M3C 1J7 Phone: (416) 441-1111 or Toll Free: (800) 619-7301 Fax: (416) 441-2825</p>
AND TO:	<p>The Women's Missionary Society of the Presbyterian Church in Canada 50 Wynford Drive Don Mills, ON M3C 1J7 Phone: (416) 441-1111 or Toll Free: (800) 619-7301 Fax: (416) 441-2825</p>

AND TO:	The United Church of Canada General Council Officer, Residential Schools Steering Committee 300 - 3250 Bloor Street West Toronto, ON M8X 2Y4 Telephone: (416) 231-5931 Voice Mail: (416) 231-7680 Fax: (416) 231-3103
AND TO:	The Board of Home Missions of the United Church of Canada General Council Officer, Residential Schools Steering Committee 300 - 3250 Bloor Street West Toronto, ON M8X 2Y4 Telephone: (416) 231-5931 Voice Mail: (416) 231-7680 Fax: (416) 231-3103
AND TO:	The Women's Missionary Society of the United Church of Canada General Council Officer, Residential Schools Steering Committee 300 - 3250 Bloor Street West Toronto, ON M8X 2Y4 Telephone: (416) 231-5931 Voice Mail: (416) 231-7680 Fax: (416) 231-3103
AND TO:	The Methodist Church of Canada
AND TO:	The Missionary Society of the Methodist Church of Canada (also known as the Methodist Missionary Society of Canada)
AND TO:	The Roman Catholic Episcopal Corporation
AND TO:	The Sisters of Saint Anne 1550 Begbie Street Victoria, BC V8R 1K8 Phone: (604) 592-3133/721-0888 Fax: (604) 592-0234

AND TO:	The Daughters of the Heart of Mary (also known as La Societe des Filles du Coeur de Marie and the Daughters of the Immaculate Heart of Mary) 4122, avenue de Lorimier Montréal, QC H2K 3X7 Phone: (514) 522-9447/593-6434 Fax: (514) 593-9513
AND TO:	Missionary Oblate Sisters of Saint-Boniface (also known as Missionary Oblates of the Sacred Heart and Mary Immaculate, or Les Missionnaires Oblats de Saint-Boniface) 601, rue Aulneau Winnipeg, MB R2H 2V5 Phone: (204) 233-7287/237-8802 Fax: (204) 233-7844
AND TO:	Impact North Ministries 1 Irwin Drive P.O. Box 315 Red Lake, ON P0V 2M0 Phone: (807) 727-2291 Fax: (807) 727-2141

CLAIM

A. OVERVIEW OF THIS CLAIM

1. This claim is an amalgamation of approximately nineteen (19) different putative class action statements of claim brought in various jurisdictions across Canada. This claim represents the distillation of all issues related to Residential Schools' attendance which the parties to this proceeding seek to address, in substantially identical format, in each of the Forums.

2. The amalgamation of the various claims, which has been achieved by consent, and the desire to address them in a uniform fashion on behalf of all Class Members, has arisen out of an extraordinary and unprecedented negotiation to address the unique issues related to Residential Schools.

3. In addition to the class actions, approximately 14,000 individual actions have been commenced against the Defendants in various jurisdictions across Canada, representing a significantly greater number of individual claims and claimants, which has placed an extraordinary burden on Canada's judicial systems and resources.

4. Amalgamation of the various claims, and the effort to subsume essentially all existing claims into a single, standard class action claim to be brought forward in each of the Forums represents an efficient yet regionally sensitive method of fully and fairly addressing the concerns of the Plaintiffs and the proposed Classes.

5. Accordingly, the Plaintiffs, with the consent of the Defendants, are filing this amended claim in substantially identical form in each of the Forums with a view to seeking and obtaining certification in each of the Forums on identical terms.

DEFINITIONS

6. The following definitions apply for the purposes of this Claim:

- (a) "Aboriginal", "Aboriginal People(s)" or "Aboriginal Person(s)" means a person whose rights are recognized and affirmed by the *Constitution Act*, 1982, s. 35, being Schedule B to the *Canada Act* 1982 (UK), 1982. c. 11;
- (b) "Aboriginal Right(s)" means rights recognized and affirmed by the *Constitution Act*, 1982, s. 35, being Schedule B to the *Canada Act* 1982 (UK), 1982. c. 11;
- (c) "Act" means the Indian Act, R.S.C. 1985, c. I-5;
- (d) "AFN" means the National Indian Brotherhood and the Assembly of First Nations;
- (e) "Agents" mean the servants, contractors, agents, officers and employees of Canada and the operators, managers, administrators and teachers and staff of each of the Residential Schools;
- (f) "Canada" means the Defendant, the Government of Canada as represented in this proceeding by the Attorney General of Canada;
- (g) "Churches" mean the religious entity or religious organization Defendants, enumerated at Schedule "A" attached hereto;
- (h) "Claim" means this Fresh as Amended Statement of Claim;
- (i) "Class" or "Class Members" means all members of the Survivor Class, the Deceased Class and the Family Class;
- (j) "Class Period" means January 1, 1920 to December 31, 1997;
- (k) "Class Proceedings Legislation" or "CPL" means:
 - (i) in respect of the Alberta Court of Queen's Bench, the *Class Proceedings Act*, S.A. 2003, c. C-16.5;
 - (ii) in respect of the British Columbia Supreme Court, the *Class Proceedings Act*, R.S.B.C. 1996, c.50;
 - (iii) in respect of the Manitoba Court of Queen's Bench, the *Class Proceedings Act*, C.C.S.M. c. C130;
 - (iv) in respect of the Supreme Court of the Northwest Territories, Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg. 010-96;

- (v) in respect of the Nunavut Court of Justice: Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg 010-96, as adopted by the Territory by operation of Section 29 of the *Nunavut Act*, S.C. 1993, c. 28;
 - (vi) in respect of the Ontario Superior Court of Justice, the Class Proceedings Act, 1992 (Ontario) S.O. 1992, c. 6;
 - (vii) the Province of Québec, Articles 999–1051 of the *Civil Code of Procedure (Québec)*;
 - (viii) in respect of the Saskatchewan Court of Queen's Bench, the *Class Actions Act*, S.S. 2001, c.C-12.01;
 - (ix) in respect of Supreme Court of the Yukon Territory: Rule 5(11) of the *Supreme Court Rules (British Columbia)* B.C. Reg. 220/90 as adopted by the Territory by operation Section 38 of the *Judicature Act (Yukon)* R.S.Y. 2002, c. 128;
- (l) "Cultural, Linguistic and Social Damage" means the damage or harm caused by the creation and implementation of Residential Schools and Residential Schools Policy to the cultural, linguistic, spiritual and social customs, practices and way of life and to community and individual security and well being of Aboriginal Persons;
- (m) "Deceased Class" means all persons who resided at a Residential School in Canada between 1920 and 1997, who died before May 30, 2005, and who were, at their date of death, residents of
- (i) Alberta, for the purposes of the Alberta Court of Queen's Bench;
 - (ii) British Columbia, for the purposes of the British Columbia Supreme Court;
 - (iii) Manitoba, for the purposes of the Manitoba Court of Queen's Bench;
 - (iv) the Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;
 - (v) Nunavut, for the Nunavut Court of Justice;
 - (vi) Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;
 - (vii) Québec, for the purposes of the Quebec Superior Court;
 - (viii) Saskatchewan, for the purposes of the Saskatchewan Court of Queen's Bench;

(ix) Yukon, for the purposes of the Supreme Court of the Yukon Territory;
but excepting Excluded Persons.

(n) "Excluded Persons" means all persons who attended the Mohawk Institute Residential School in Brantford, Ontario, between 1922 and 1969, and their parents, siblings, spouses and children;

(o) "Family Class" means:

- (i) the spouse, child, grandchild, parent, grandparent or sibling of a Survivor Class Member;
- (ii) the spouse of a child, grandchild, parent, grandparent or sibling of a Survivor Class Member;
- (iii) a former spouse of a Survivor Class Member;
- (iv) a child or other lineal descendent of a grandchild of a Survivor Class Member;
- (v) a person of the same or opposite sex to a Survivor Class Member who cohabited for a period of at least one year with that Survivor Class Member immediately before his or her death;
- (vi) a person of the same or opposite sex to a Survivor Class Member who was cohabiting with that Survivor Class Member at the date of his or her death and to whom that Survivor Class Member was providing support or was under a legal obligation to provide support on the date of his or her death;
- (vii) any other person to whom a Survivor Class Member was providing support for a period of at least three years immediately prior to his or her death; and,
- (viii) such other persons as the Court recognizes or directs,

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

- (i) Alberta, for the purposes of the Alberta Court of Queen's Bench;
- (ii) British Columbia, for the purposes of the British Columbia Supreme Court;
- (iii) Manitoba, for the purposes of the Manitoba Court of Queen's Bench;
- (iv) Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;
- (v) Nunavut, for the purposes of the Nunavut Court of Justice; and

- (vi) Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;
 - (vii) Québec, for the purposes of the Quebec Superior Court;
 - (viii) Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan;
 - (ix) Yukon, for the purposes of Supreme Court of the Yukon Territory;
- but excepting Excluded Persons.
- (p) "Forum" means the Alberta Court of Queen's Bench, the British Columbia Supreme Court, the Manitoba Court of Queen's Bench, the Supreme Court of the Northwest Territories, the Nunavut Court of Justice, the Ontario Superior Court of Justice, the Quebec Superior Court, the Court of Queen's Bench for Saskatchewan and the Supreme Court of the Yukon Territory, and "Fora" refers to them all;
 - (q) "Representative Plaintiffs" means those Plaintiffs referred to in the title of proceedings of the Amended Statement of Claim;
 - (r) "Residential School(s)" means the following:
 - (i) institutions listed on List "A" to OIRSRC's Dispute Resolution Process attached to the Agreement as Schedule "E";
 - (ii) institutions listed in Schedule "F" of the Agreement ("Additional Residential Schools") which may be expanded from time to time in accordance with Article 12.01 of the Agreement; and
 - (iii) any institution which is determined to meet the criteria set out in Sections 12.01(2) and (3) of the Agreement;
 - (s) "Residential Schools Policy" means the policy of Canada with respect to Residential Schools;
 - (t) "Survivor Class" means:

All persons who resided at a Residential School in Canada between January 1, 1920 and December 31, 1997, who are living, or who were living as of May 30, 2005, and who, as of the date hereof, or who, at the date of death resided in:

 - (i) Alberta, for the purposes of the Alberta Court of Queen's Bench;
 - (ii) British Columbia, for the purposes of the British Columbia Supreme Court;
 - (iii) Manitoba, for the purposes of the Manitoba Court of Queen's Bench;

- (iv) Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;
- (v) Nunavut, for the purposes of the Nunavut Court of Justice; and
- (vi) Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;
- (vii) Québec, for the purposes of the Quebec Superior Court;
- (viii) Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan;
- (ix) Yukon, for the purposes of Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

- (u) "Treaty Obligations" means those recognized and codified by the *United Nations Convention on the Rights of the Child, the United Nations Genocide Convention, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, Convention Against Torture and Other Civil, Inhuman or Degrading Treatment or Punishment, and Treaties Numbers 1 through 11, including the James Bay Treaty, Peace and Friendship Treaties, Upper Canada Treaties, Robinson-Superior Treaty, Robinson-Huron Treaty, the Manitoulin Treaty, Vancouver Island Treaties and the Williams Treaties.*

B. RELIEF SOUGHT BY THE PLAINTIFFS AGAINST CANADA

The Survivor Class

7. The Representative Plaintiffs, on their own behalf, and on behalf of the members of the Survivor Class, claim:

- (a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPL and appointing them as Representative Plaintiffs for the Survivor Class and any appropriate subgroup thereof;
- (b) a Declaration that Canada owed and was in breach of non-delegable, fiduciary, statutory and common law duties to the Plaintiffs and the other Survivor Class Members in relation to the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the Indian Residential School system and the Residential Schools throughout Canada;
- (c) a Declaration that Canada was negligent in the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class

Members to, obligatory attendance of Survivor Class Members at and support of the Residential Schools throughout Canada;

- (d) a Declaration that Canada was or is in breach of its statutory duties pursuant to the Act and its Treaty obligations to the Plaintiffs and the other Survivor Class Members as a consequence of its establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the Residential Schools throughout Canada;
- (e) a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Survivor Class;
- (f) a Declaration that Canada is liable to the Plaintiffs and other Survivor Class Members for the damages caused by its breach of non delegable, fiduciary, statutory and common law duties and for negligence in relation to the establishment, funding, operation, supervision, control maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the Residential Schools throughout Canada;
- (g) non-pecuniary general damages for negligence, loss of language and culture, breach of non-delegable, fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (h) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, breach of non delegable fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (i) exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (j) prejudgment and post-judgment interest pursuant to the provisions of the CJA, sections 128 and 129 as amended, and its equivalent statutes, if any, in other provinces and territories in Canada; and
- (k) the costs of this action on a substantial indemnity scale.

The Family Class

8. The Representative Plaintiffs, on their own behalf and on behalf of the members of the Family Class, claim:

- (a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPL and appointing them as representative Plaintiffs for the Family Class and any appropriate subgroup thereof;
- (b) a Declaration that Canada owed and was in breach of non-delegable, fiduciary, statutory and common law duties to the Plaintiffs and the other Family Class Members in relation to the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members and Deceased Class Members to, obligatory attendance of Survivor Class Members and Deceased Class Members at and support of the Residential Schools throughout Canada;
- (c) a Declaration that Canada was negligent in the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members and Deceased Class Members to, obligatory attendance of Survivor Class Members and Deceased Class members at and support of the Residential Schools throughout Canada;
- (d) a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Family Class;
- (e) a Declaration that Canada was or is in breach of its statutory duties pursuant to the Act and its Treaty obligations to the Plaintiffs and the other Family Class Members as a consequence of its establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members and Deceased Class Members to, obligatory attendance of Survivor Class Members and Deceased Class Members at and support of the Residential Schools throughout Canada;
- (f) a Declaration that Canada is liable to the Plaintiffs and other Family Class Members for the damages caused by its breach of non-delegable, fiduciary, statutory and common law duties and for negligence in relation to the establishment, funding, operation, supervision, control maintenance, confinement in, transport of Survivor Class Members and Deceased Class Members to, obligatory attendance of Survivor Class Members and Deceased Class Members at and support of the Residential Schools throughout Canada;
- (g) pecuniary general damages and special damages for negligence, loss of language and culture, breach of non delegable fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (h) exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (i) damages in the amount of four billion dollars (\$4,000,000,000.00), or such other sum as this Honourable Court finds appropriate, pursuant to the FLA, section 61,

as amended, and its predecessors, and the equivalent statutes, if any, in other provinces and territories in Canada;

- (j) prejudgment and postjudgment interest pursuant to the provisions of the CJA, sections 128 and 129 as amended, and its equivalent statutes, if any, in other provinces and territories in Canada; and,
- (k) the costs of this action on a substantial indemnity scale.

The Deceased Class

9. The Representative Plaintiffs, on behalf of the members of the Deceased Class who died before May 30, 2005, claim:

- (a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPL and appointing them as representative Plaintiffs for the Deceased Class and any appropriate subgroup thereof;
- (b) a Declaration that Canada owed and was in breach of non delegable, fiduciary, statutory and common law duties to the Plaintiffs and the other Deceased Class Members in relation to the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Deceased Class Members to, obligatory attendance of Deceased Class Members at and support of the Residential Schools throughout Canada;
- (c) a Declaration that Canada was negligent in the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Deceased Class Members to, obligatory attendance of Deceased Class Members at and support of the Residential Schools throughout Canada;
- (d) a Declaration that the Residential Schools Policy and the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Deceased Class;
- (e) a Declaration that Canada was or is in breach of its statutory duties pursuant to the Act and its Treaty obligations to the Plaintiffs and the other Deceased Class Members as a consequence of its establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members and Deceased Class Members at and support of the Residential Schools throughout Canada;
- (f) a Declaration that Canada is liable to the Plaintiffs and other Deceased Class Members for the damages caused by its breach of non delegable, fiduciary, statutory and common law duties and for negligence in relation to the establishment, funding, operation, supervision, control maintenance, confinement in, transport of Deceased Class Members to, obligatory attendance of Deceased Class Members at and support of the Residential Schools throughout Canada;

- (g) non-pecuniary general damages for negligence, loss of language and culture, breach of non delegable, fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (h) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, breach of non delegable fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (i) exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (j) prejudgment and postjudgment interest pursuant to the provisions of the CJA, sections 128 and 129 as amended, and its equivalent statutes, if any, in other provinces and territories in Canada; and,
- (k) costs of this action on a substantial indemnity scale.

C. RELIEF SOUGHT BY THE PLAINTIFFS AGAINST THE CHURCHES

The Survivor Class

10. The Representative Plaintiffs, on their own behalf and on behalf of the members of the Survivor Class, claim:

- (a) as Order certifying this proceeding as a Class Proceeding pursuant to the CPL and appointing them representative Plaintiffs for the Survivor Class and any appropriate subgroup thereof;
- (b) a Declaration that the Churches owed and were in breach of non-delegable, fiduciary and common law duties to the Plaintiffs and the other Survivor Class Members in relation to the operation, supervision, maintenance and administration of the Residential Schools throughout Canada;
- (c) a Declaration that the Churches were negligent in the operation, and administration in the transport of Survivor Class Members to obligatory attendance of Survivor Class Members at and support of the Residential Schools throughout Canada;
- (d) a Declaration that the Churches are liable to the Plaintiffs and other Survivor Class Members for the damages caused by its breach of non-delegable, fiduciary, statutory and common law duties and for negligence in relation to the operation, supervision, maintenance, administration and confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the Residential Schools throughout Canada;

- (e) non-pecuniary general damages for negligence, breach of non delegable, fiduciary and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (f) pecuniary general damages and special damages for negligence, breach of non delegable fiduciary and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (g) exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (h) prejudgment and postjudgment interest pursuant to the provisions of the CJA, sections 128 and 129 as amended, and its equivalent statutes, if any, in other provinces and territories in Canada; and,
- (i) the costs of this action on a substantial indemnity scale.

The Family Class

11. The Representative Plaintiffs, on their own behalf and on behalf of the members of the Family Class, claim:

- (a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPL and appointing them as representative Plaintiffs for the Family Class and any appropriate subgroup thereof;
- (b) a Declaration that the Churches owed and were in breach of non-delegable, fiduciary and common law duties to the Plaintiffs and the other Family Class Members in relation to the funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members and Deceased Class Members to attendance of Survivor Class Members and Deceased Class Members at and support of the Residential Schools throughout Canada;
- (c) a Declaration that the Churches were negligent in the funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members and Deceased Class Members to attendance of Survivor Class Members and Deceased Class members at and support of the Residential Schools throughout Canada;
- (d) a Declaration that the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Family Class;
- (e) a Declaration that the Churches are liable to the Plaintiffs and other Family Class Members for the damages caused by its breach of non-delegable, fiduciary and common law duties and for negligence in relation to the funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class

Members and Deceased Class Members to, attendance of Survivor Class Members and Deceased Class Members at and support of the Residential Schools throughout Canada;

- (f) pecuniary general damages and special damages for negligence, loss of language and culture, breach of non delegable fiduciary and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (g) exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (h) damages in the amount of four billion dollars (\$4,000,000,000.00), or such other sum as this Honourable Court finds appropriate, pursuant to the FLA, section 61, as amended, and its predecessors, and the equivalent statutes, if any, in other provinces and territories in Canada
- (i) prejudgment and postjudgment interest pursuant to the provisions of the CJA sections 128 and 129 as amended, and its equivalent statutes, if any, in other provinces and territories in Canada; and,
- (j) the costs of this action on a substantial indemnity scale.

The Deceased Class

12. The Representative Plaintiffs, on behalf of the members of the Deceased Class who died before May 30, 2005, claim:

- (a) an Order certifying this proceeding as a Class Proceeding pursuant to the CPL and appointing them as representative Plaintiffs for the Deceased Class and any appropriate subgroup thereof;
- (b) a Declaration the Churches owed and were in breach of non-delegable, fiduciary and common law duties to the Plaintiffs and the other Deceased Class Members in relation to the funding, operation, supervision, control, maintenance, confinement in, transport of Deceased Class Members to attendance of Deceased Class Members at and support of the Residential Schools throughout Canada;
- (c) a Declaration that the Churches were negligent in the funding, operation, supervision, control, maintenance, confinement in, transport of Deceased Class Members to, attendance of Deceased Class Members at and support of the Residential Schools throughout Canada;
- (d) a Declaration that the Residential Schools caused Cultural, Linguistic and Social Damage and irreparable harm to the Deceased Class;
- (e) a Declaration that the Churches are liable to the Plaintiffs and other Deceased Class Members for the damages caused by its breach of non-delegable, fiduciary

and common law duties and for negligence in relation to the funding, operation, supervision, control maintenance, confinement in, transport of Deceased Class Members to attendance of Deceased Class Members at and support of the Residential Schools throughout Canada;

- (f) non-pecuniary general damages for negligence, loss of language and culture, breach of non delegable, fiduciary and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (g) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, breach of non delegable fiduciary, statutory, treaty and common law duties in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as this Honourable Court finds appropriate;
- (h) exemplary and punitive damages in the amount of twelve billion dollars (\$12,000,000,000.00) or such other sum as the Honourable Court finds appropriate;
- (i) prejudgment and postjudgment interest pursuant to the provisions of the CJA, sections 128 and 129 as amended, and its equivalent statutes, if any, in other provinces and territories in Canada; and,
- (j) the costs of this action on a substantial indemnity scale.

D. THE PLAINTIFFS

13. The Plaintiff, Chief Larry Philip Fontaine ("Chief Fontaine"), is the National Chief of the Assembly of First Nations, the national organization representing First Nations citizens in Canada, which includes approximately 700,000 citizens living in 633 First Nations communities. He was born on September 20, 1944. Chief Fontaine is a member of the Sagkeeng First Nation and is an Indian as defined in section 6 of the Act. Chief Fontaine resides in Ottawa, Ontario. Chief Fontaine was taken from his family when he was 6 years old and resided at the Fort Alexander Residential School in Fort Alexander, Manitoba from 1951 to 1958. Chief Fontaine's experience at Residential School involved, but was not limited to, being removed from the care of his parents, family, and community, being actively discouraged from speaking his native language, Ojibway, being repeatedly sexually and physically abused by being made to disrobe and bathe in the presence of the priest, being slapped, strapped and poked, being repeatedly told

by nuns and priests that he, and his peers were, "savages" and "evil", being repeatedly made to eat food off the floor in the presence of his peers, while being taunted by the nun, and being given inadequate food, health care, and education.

14. The Plaintiff Michelline Ammaq ("Ammaq"), was born on August 30, 1957 and is an Inuk. Ammaq presently lives in Igloolik, Nunavut. Ammaq was taken from her family when she was seven (7) years old and attended Sir Joseph Bernier Federal Day School in Chesterfield Inlet and resided in Turquetil Hall from 1964 to 1969. Ammaq's experience at Residential School involved, but was not limited to, being removed from the care of her parents, family and community, not being allowed to speak her native language, Inuktitut, being sexually, physically and emotionally abused, being given inadequate food, health care and education.

15. The Plaintiff, Percy Archie ("Archie"), resides in Kamloops, British Columbia. Archie is a member of the Canum Lake Band and is an Indian as defined in the Act. Archie was born on May 22, 1950 and attended the St. Joseph's Indian Residential School in Williams Lake, British Columbia between 1963 and 1965.

16. The Plaintiff, Charles Baxter Senior ("Baxter Snr."), was born on November 24, 1950, and is a member of the Marten Falls First Nation, Ogoki Post, and is an Indian as defined in section 6 of the Act. Baxter Snr. is now a member of, and presently lives on the Constance Lake First Nation near Calstock, Ontario, where he is employed as the Residential School Coordinator. He resided at the Pelican Falls Residential School near Sioux Lookout from 1958 to 1966, and the Shingwauk Hall Residential School in Sault Ste. Marie from 1966 to 1968. Baxter Snr.'s experiences at these Residential Schools involved, but was not limited to, being removed from the care of his parents, family and community, having his hair cut off, being required to do physical labour in a barn, being physically abused, often for speaking his native language,

Ojibway, being given inadequate food and supplies, being provided with a sub-standard education and being repeatedly sexually molested by dormitory supervisors, other staff at Pelican Falls and other students.

17. The Plaintiff, Elijah Baxter ("Baxter"), was born on January 27, 1923 and is a member of the Marten Falls First Nation, Ogoki Post, and is an Indian as defined in section 6 of the Act. Baxter presently lives in the Town of Geraldton in the Province of Ontario and is father to eleven (11) children. He resided at the Pelican Falls Residential School near Sioux Lookout from approximately 1933 to 1936. Baxter's experience at the Residential School included, but was not limited to, being removed from the care of his parents, family and community, being required to do physical labour on a farm, being inadequately educated resulting in illiteracy, being physically abused, often for speaking his native language and being sodomized on more than one occasion by a member of the staff at Pelican Falls while on school property. Even after having to endure such an experience, Baxter was forced to send his own children to Residential Schools where they were also physically, emotionally and sexually abused.

18. The Plaintiff Evelyn Baxter ("E. Baxter") resides in Thunder Bay, Ontario. E. Baxter is a member of the Marten Falls First Nation. E. Baxter was born on April 12, 1967 and her mother attended the Pelican Falls Indian Residential School and Shingwauk Residential School. E. Baxter's grandparents, uncle, Elijah Baxter, and her cousin, Charles Baxter Snr., also attended Indian Residential School. E. Baxter is a proposed representative plaintiff for the Family Class.

19. The Plaintiff Donald Belcourt ("Belcourt") resides in Swan Hills, Alberta. Belcourt is a member of the Sucker Creek First Nation and is an Indian as defined in the Act. Belcourt was born on September 26, 1939, and attended the St. Bruno's Residential School in Alberta from 1946 to 1954.

20. The Plaintiff Nora Bernard ("Bernard") resides at the Millbrook First Nation Reserve, in Nova Scotia. Bernard is a Mi'kmaq and a Status Indian. Bernard was born on September 22, 1935 and attended the Shubencadie Indian Residential School in the 1940s.
21. The Plaintiff John Bosum ("Bosum") resides in the City of Montreal, Quebec. Bosum is a Cree and a Status Indian. Bosum attended the La Tuque Indian Residential School in Quebec between 1962 and 1973.
22. The Plaintiff Janet Brewster ("Brewster") resides in Igalut, Nunavut. Brewster is an Inuk enrolled under the Nunavut Land Claims Agreement. Brewster's mother attended the Akaitcho Hall Indian residential School in Yellowknife between 1964 and 1969. Brewster is a proposed representative plaintiff for the Family Class.
23. The Plaintiff Rhonda Buffalo ("Buffalo") resides in the City of Regina, Saskatchewan. Buffalo is a member of the Day Star First Nation and is an Indian as defined in the Act. Buffalo resided at the Gordon's Residential School in Punnichy, Saskatchewan from 1971 to 1980.
24. The Plaintiff Ernestine Caibaiosai-Gidmark ("Gidmark") resides in Wiwkemikeng, Ontario. Gidmark is a member of the Sagamok First Nation and is an Indian as defined in the Act. Gidmark attended the Spanish Hills Residential School in Ontario between 1961 and 1962.
25. The Plaintiff Michael Carpan ("Carpan") resides in Edmonton, Alberta. Carpan is a member of the Slave Lak First Nation and is an Indian as defined in the Act. Carpan attended St. Mary's Residential School in Alberta between 1964 and 1976.
26. The Plaintiff Brenda Cyr ("Cyr") resides in Regina, Saskatchewan. Cyr is a member of the Gordon's First Nation and is an Indian as defined in the Act. Cyr attended the Lebret Indian Residential School between 1966 and 1969 and the Muscowequan Indian Residential School

between 1969 and 1975. The Plaintiff Deanna Cyr ("Deanna") resides in Regina, Saskatchewan and is the daughter of Cyr who attended the Lebret Indian Residential School. Deanna is a proposed representative for the Family Class.

27. The Plaintiff Dawson ("Dawson") resides in Whitehorse in the Yukon. Dawson is a member of Kwanlin Dun First Nation and is an Indian as defined in the Act. Dawson was born on January 1, 1942 and attended the Whitehorse Baptist Mission School, in the Yukon between 1946 and 1955.

28. The Plaintiff Ann Dene ("Dene") resides in Huntington, Quebec. Dene is a member of the Mikisew Cree First Nation and is an Indian as defined in the Act. Dene attended the Holy Angels Residential School in Alberta between 1968 and 1972. The Plaintiff Benny Doctor ("Doctor") resides in the Northwest Territories. Doctor is a member of the Tulita Dene First Nation and is an Indian as defined in the Act. Doctor attended the Grollier Hall Residential School in Inuvik, Northwest Territories between 1964 and 1969. The Plaintiff Lucy Doctor ("Lucy") also resides in the Northwest Territories and is an Indian as defined in the Act. Lucy's four children, two sons and two daughters, all attended the Grollier Hall Residential School. Lucy is a proposed representative for the Family Class.

29. The Plaintiff, Vincent Bradley Fontaine ("Bradley") was born on October 11, 1960, and is the son of James Fontaine. Bradley is a member of the Sagkeeng First Nation and is an Indian as defined in section 6 of the Act. Bradley resides on the Sagkeeng Reserve in Manitoba and resided at the Fort Alexander Residential School in Manitoba from 1965 to 1969.

30. The Plaintiff, James Fontaine ("Fontaine") was born on August 15, 1930. He is a member of the Sagkeeng First Nation, and is an Indian as defined in section 6 of the Act. Fontaine

presently lives on the Sagkeeng Reserve in Manitoba. Fontaine was taken from his family when he was six (6) years old and resided at the Fort Alexander Residential School in Manitoba from 1936 to 1944. Fontaine's experience at the Residential School involved, but was not limited to, being removed from the care of his parents, family, and community, being actively discouraged from speaking his native language, being physically abused by being slapped and strapped, and by being given inadequate food, health care, and education.

31. The Plaintiff Agnes Mary Fontaine (nee Spence) ("Spence") was born on June 28, 1912 and died on August 10, 1988. Spence was a member of the Sagkeeng First Nation and was an Indian as defined in section 6 of the Act. Spence was taken from her family when she was seven (7) years old and resided at the Fort Alexander Residential School in Manitoba from 1919 to 1928. Spence's experience at the Residential School included being removed from the care of her parents, family, and community, not being allowed to speak her native language, or practice traditional spiritual ways, being sexually, physically and emotionally abused by Canada's Agents, being given inadequate food, health care, and education.

32. The Plaintiff Dana Eva Marie Francey ("Francey") resides in Inuvik, Northwest Territories. Francey is a member of the Inuvialuit Society and a beneficiary of the Inuvialuit Final Agreement, 1985. Francey's mother attended the Sir Alexander MacKenzie Indian Residential School between kindergarten and grade six, and then resided in Stringer Hall, in Inuvik between 1962 and 1971. Francey is a proposed representative plaintiff for the Family Class.

33. The Plaintiff Peggy Good ("Good") resides in Victoria, British Columbia. Good is a member of the Nanaimo First Nation and is an Indian as defined in the Act. Good attended the Port Alberni Residential School in British Columbia between 1954 and 1964.

34. The Plaintiff, Fred Kelly ("Kelly") was born on April 13, 1942. Kelly is a member of the Ojibways of Onigaming First Nation and is an Indian as defined in section 6 of the Act. Kelly resides in Winnipeg, Manitoba. Kelly was taken from his family when he was five (5) years old and resided at the St. Mary's Indian Residential School in Kenora, Ontario from 1947 to 1956 and again from 1958 to 1959. Kelly also resided at the St. Paul's Residential High School in Lebret, Saskatchewan from 1956 to 1958.

35. The Plaintiff Rosemarie Kuptana ("Kuptana"), was born on March 24, 1954 and is Inuvialuit. Kuptana presently lives in Inuvik, Northwest Territories. She was taken from her family when she approximately seven (7) years old and attended Sir Alexander Mackenzie School and Samuel Hearne Secondary School while residing at Stringer Hall from approximately 1961 to 1971. Kuptana's experience at Residential School involved, but was not limited to, being removed from the care of her parents, family and community, not being allowed to speak her native language, Inuinaktun, or practice traditional spiritual ways, being sexually, physically and emotionally abused, being given inadequate food, health care and education.

36. The Plaintiff Elizabeth Kusiak ("Kusiak") resides in Edmonton, Alberta. Kusiak is a member of the Athabasca Chipewyan First Nation and is an Indian as defined in the Act. Kusiak was born on October 10, 1941 and attended the Holy Angels Residential School in Fort Chipewyan, Alberta from 1950 to 1958.

37. The Plaintiff Theresa Larocque ("Larocque") resides in Edmonton, Alberta. Larocque is Cree, a Statue Indian and a member of the Bigstone Cree First Nation. Larocque was born on December 19, 1953 and attended the St. Martin's Mission in Desmaris, Alberta from 1959 to 1969.

38. The Plaintiff Jane McCallum ("McCallum") resides in Prince Albert, Saskatchewan. McCallum is a member of the Peter Ballantyne First Nation and is an Indian as defined in the Act. McCallum attended the Guy Hill Residential School in Manitoba between 1949 and 1958.

39. The Plaintiff Cornelius McComber ("McComber") resides in Kahnawake, Quebec. McComber is a member of the Mohawk First Nation and is an Indian as defined in the Act. McComber resided at the St. Charles Garnier Residential School in Quebec between 1946 and 1952.

40. The Plaintiff Veronica Marten ("Marten") resides in Edmonton, Alberta. Marten is a member of the Mikisaw Cree First Nation. Marten was born on February 9, 1972 and her mother attended the Holy Angels Indian Residential School in Fort Chipewyan, Alberta between 1951 and 1967. Marten's uncles and aunt also attended Indian Residential School. Marten is a proposed representative plaintiff for the Family Class. The Plaintiff Joan Michell ("Michell") resides in British Columbia and is a member of the Kanaka Bar First Nation. Michell's husband, parents and eight of her siblings attended the St. George's Indian Residential School in British Columbia between the 1940's and the 1970's. Michell is a proposed representative plaintiff on behalf of the Family Class.

41. The Plaintiff Stanley Thomas Nepetaypo ("Nepetaypo") resides in Thompson, Manitoba. Nepetaypo is a member of the Fox Lake First Nation and is an Indian as defined in the Act. Nepetaypo attended the Norway House Gordon's Residential School in Saskatchewan between 1954 and 1959.

42. The Plaintiff Flora Northwest ("Northwest") resides in Hobbema, Alberta. Northwest is a member of the Samson First Nation and is an Indian as defined in the Act. Northwest attended the Hobbema/Ermineskin Residential School in Alberta between 1951 and 1961.

43. The Plaintiff Norman Pauchay ("Pauchay") resides in the City of Yorkton, Saskatchewan and is forty-three (43) years old. Pauchay is a member of the Yellow Quill First Nation and is an Indian as defined in section 6 of the Act. Pauchay attended Gordon's Residential School near Punnichy, Saskatchewan between 1971 and 1973.

44. The Plaintiff Camble Quatell ("Quatell") resides in Campbell River, British Columbia. Quatell is a member of the Campbell River Indian Band First Nation and is an Indian as defined in the Act. Quatell attended the St. Michael's Residential School in British Columbia, between 1952 and 1962.

45. The Plaintiff, Alvin Barney Saulteaux ("Saulteaux"), resides in the City of Indian Head, Saskatchewan and is thirty-seven (37) years old. Saulteaux is a member of the Carry the Kettle First Nation and is an Indian as defined in section 6 of the Act. Saulteaux resided at the Lebret Indian Residential School near Lebret, Saskatchewan between 1983 and 1986.

46. The Plaintiff Christine Semple ("Semple") resides in Watson Lake, in the Yukon. Semple is a member of the Grand Rapids First Nation and is an Indian as defined in the Act. Semple attended the Mackay Residential School in Manitoba between 1957 and 1962.

47. The Plaintiff Dennis Smokeyday ("Smokeyday") resides in Kinistin, Saskatchewan. Smokeyday is a member of the Kinistin First Nation and is an Indian as defined in the Act. Smokeyday resided at the Muscowegan Residential School in Saskatchewan between 1970 and 1978.

48. The Plaintiff Kenneth Sparvier ("Sparvier") resides in the City of Regina, Saskatchewan. Sparvier is a member of the Cowessess First Nation and is an Indian as defined in the Indian Act. Sparvier resided at the Marievel Residential School in Saskatchewan and the Lebret Residential School from 1949 to 1958 and 1958 and 1961, respectively.

49. The Plaintiff Edward Tapiatic ("Tapiatic") resides in the City of Chisasibi, Quebec. Tapiatic is a member of the Cree Nation of Chisasibi and is an Indian as defined in the Act. Tapiatic was born on February 21, 1951 and attended the St. Phillips Indian Residential School in Quebec between 1956 and 1966 and La Tuque Residential School between 1967 and 1968.

50. The Plaintiff Helen Winderman ("Winderman") resides in Fort Nelson, British Columbia. Winderman is a member of the Fort Nelson First Nation and is an Indian as defined in the Act. Winderman attended the Lower Post Residential School in British Columbia between 1963 and 1968.

51. The Plaintiff Adrian Yellowknee ("Yellowknee") resides in Wabasca, Alberta. Yellowknee is a member of the Bigstion Cree First Nation and is an Indian as defined in the Act. Yellowknee attended the St. Martin and St. Bruno's Residential Schools between 1953 and 1963 and 1963 and 1964, respectively.

E. THE DEFENDANTS

52. The Defendant, the Federal Government of Canada, is being represented in this proceeding by the Attorney General of Canada.

53. The General Synod of the Anglican Church of Canada ("the General Synod") is a corporation originally incorporated under the name "The General Synod of the Church of England in Canada" by *An Act to Incorporate the General Synod of the Church of England in*

Canada, S.C. 1921, c. 82. In 1956, the name of the General Synod was changed to "The General Synod of The Anglican Church of Canada" by S.C. 1956, c.57.

54. The Missionary Society of the Anglican Church of Canada ("the Missionary Society") is a corporation under the laws of Canada. It was originally incorporated under the name "The Missionary Society of the Church of England in Canada" by *An Act to Incorporate the Missionary Society of the Church of England in Canada*, S.C. 1903, c. 155. In 1956, the name of the Missionary Society was changed to "The Missionary Society of the Anglican Church of Canada" by S.C. 1956, c.57.

55. From 1902 to 1969, the Missionary Society was established to undertake the general missionary work of the General Synod and overseas.

56. The Dioceses of the Anglican Church of Canada listed in Schedule "A" to this Statement of Claim were involved in the operation of Indian Residential Schools up to and including 1969.

57. The United Church of Canada was founded pursuant to a covenant formed between the members of its founding churches, and was incorporated between 1924 and 1926 by the Parliament of Canada and the Legislatures of the various provinces. The statutes adopted the said covenant and were and are each known as *The United Church of Canada Act*.

58. The Methodist Church of Canada was one of the founding churches of The United Church of Canada, and was described in *The United Church of Canada Act* as including "the body corporate known as the Methodist Church and all bodies corporate established or created by The Methodist Church or any Conference thereof under the provisions of any statute of the Parliament of Canada, or the Legislature of any Province thereof ... and all Methodist congregations separately incorporated under any statute of any Province of the Dominion of

Canada". Pursuant to *The United Church of Canada Act*, the several corporations described as "The Methodist Church" merged in the corporation of The United Church of Canada.

59. The Board of Home Missions of the United Church of Canada was established in 1925 as an unincorporated internal administrative division of The United Church of Canada. The Board of Home Missions had responsibility for supervision and administration of all the missionary work of The United Church within Canada, including work with First Nations' people and Indian Residential Schools. In an internal restructuring of The United Church of Canada in 1971, the mandate and work of the Board of Home Missions was merged into the Division of Mission in Canada.

60. The Women's Missionary Society of The United Church of Canada came into existence in 1925 as an unincorporated internal organization for women within The United Church of Canada. Its mandate included the appointing of missionaries and associate workers in Canada, recruiting and training women church workers, producing missionary periodicals, carrying through mission education programs for all ages in the church, and fund-raising for all its mission activities. In 1962, the Women's Missionary Society joined with the Women's Society of The United Church of Canada to form the United Church Women.

61. The Missionary Society of the Methodist Church of Canada existed as part of the Methodist Church of Canada, formed in 1874, and the Methodist Church (Canada), formed in 1884. The objects of the Society were the support of domestic, Aboriginal, immigrant, new Canadian, French Canadian, and other missions carried on under the direction of a central committee and board, and later also under the Conferences. The work covered the entire mission field including work with Aboriginal People in Ontario, Quebec and Western Canada. In 1925,

pursuant to *The United Church of Canada Act*, the body corporate of which the Missionary Society was part merged in the corporation of The United Church of Canada.

62. During the period referenced in the Statement of Claim, the General Synod consisted of the Primate and Bishops of the Anglican Church of Canada, and of members chosen from clergy and laity elected by the several dioceses of the Anglican Church of Canada in accordance with the Constitution of the General Synod.

63. The Defendant, The Presbyterian Church in Canada (the "PCC"), is an unincorporated association which includes congregations, members and adherents of The Presbyterian Church in Canada who did not become part of the United Church of Canada on June 10, 1925, together with persons who have since that date joined The Presbyterian Church in Canada as members or adherents. The PCC was referred to in *An Act to Incorporate The Trustee Board of The Presbyterian Church in Canada*, S.C. 1939, c. 64 and *An Act respecting the United Church in Canada*, S.C. 1939, c. 65.

64. The Defendant, The Trustee Board of The Presbyterian Church in Canada (the "Trustee Board"), is a body corporate. The Trustee Board was incorporated by a Special Act of Parliament entitled *An Act to Incorporate The Trustee Board of The Presbyterian Church in Canada* S.C. 1939, c. 64 and was recognized by the Ontario Legislature in *An Act respecting the Trustee Board of The Presbyterian Church in Canada*, S.O. 1939, c. 69.

65. The Defendant, The Foreign Mission of The Presbyterian Church in Canada entered into agreements dated April 1, 1911 with His Majesty the King, represented by the Superintendent General of Indian Affairs of Canada, for the operation of the Cicilia Jeffrey Boarding School and

the Birtle Boarding School and reported annually to The General Assembly of The Presbyterian Church in Canada and had oversight of, inter alia, missionary work to aboriginal peoples.

66. The Defendant, The Women's Missionary Society of The Presbyterian Church in Canada, entered into agreements dated May 22, 1962, with Her Majesty the Queen in Right of Canada, for the operation of the Cecilia Jeffrey Indian Residential School and the Birtle Indian Residential School and reported annually to The General Assembly of The Presbyterian Church.

67. The balance of the Defendants are listed and described at Schedule "A" of this Claim.

F. THE RESIDENTIAL SCHOOL SYSTEM AND SYSTEMIC CHILD ABUSE, NEGLECT AND MALTREATMENT

68. Residential Schools were established by Canada as early as 1874, for the education of Aboriginal children. These children were taken from their homes and their communities and transported to Residential Schools where they were confined and deprived of their heritage, their support networks and their way of life, forced to adopt a foreign language and a culture alien to them.

69. Commencing in 1911, Canada entered into formal agreements with the Churches for the operation of such Schools. Pursuant to these agreements, Canada controlled, regulated, supervised and directed all aspects of the operation of the Residential Schools. The Churches assumed the day-to-day operation of the Residential Schools under the control, supervision and direction of Canada, for which the Canada paid the Churches a per capita grant calculated to cover part of the cost of the Residential School operation.

70. As of 1920, the Residential School Policy included compulsory attendance at Residential Schools for all Aboriginal children aged 7 (seven) to 15 (fifteen).

71. This approach to the control and operation of the Residential Schools system continued throughout the Class Period until April 1, 1969, at which time Canada assumed the sole operation and administration of the Residential Schools from the Churches, excepting certain cases where Churches continued to act as agents of Canada until the end of the Class Period.

72. Canada removed Aboriginal Persons, usually young children, from their homes and Aboriginal communities and transported them to Residential Schools which were often long distances away. Canada controlled all aspects of the admission of Aboriginal Persons to the Residential Schools including arrangements for the care of such persons over holiday periods and the methods of transporting children to and from Residential Schools.

73. Aboriginal Persons were often taken from their families without the consent of their parents or guardians. While the stated purpose of the Residential Schools from their inception was the education of Aboriginal children, their true purpose was the complete integration and assimilation of Aboriginal children into mainstream Canadian society and the obliteration of their traditional language, culture and religion.

74. In addition to the inherent cruelty of the Residential School Policy itself, many children attending Residential Schools were also subject to repeated and extreme physical, sexual and emotional abuse, all of which continued until the year 1997, when the last Federally operated Residential School was closed.

75. There were in excess of one hundred (100) Residential Schools in operation in Canada in every Province and Territory except New Brunswick and Prince Edward Island during the Class Period, with a peak of 74 schools in operation in 1920. Canada has estimated that, as of 2005,

there were approximately eighty-five thousand (85,000) survivors of Residential Schools in Canada, representing the potential size of the Survivor Class.

76. During the Class Period, children were subjected to systemic child abuse, neglect and maltreatment. They were forcibly confined in Residential Schools and were systematically deprived of the essential components of a healthy childhood. They were subjected to physical, emotional, psychological, cultural, spiritual and sexual abuse by those who were responsible for their well being.

77. Their accommodation was crowded, cold, and sub-standard. They were underfed and ill nourished. They were forbidden to speak their native languages and to practice the customs and traditions of their culture. They were deprived of love and affection from their families and of the support that a child would normally expect to have from those in positions of trust and authority. They were subjected to corporal punishment, assaults, including physical and sexual, and systematic child abuse.

78. Canada has a fiduciary relationship with Aboriginal People in Canada and owed and owes fiduciary duties to the Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated all Residential Schools in Canada during the Class Period.

79. Furthermore, Canada was responsible for the operation and administration of each Residential School during the Class Period. Prior to April 1, 1969, Canada paid the Churches to carry out this operation and administration on its behalf and under its guidance, supervision and control. Canada carried out that operation and administration directly after April 1, 1969. These

operative and administrative responsibilities, carried out on behalf of Canada by its Agents or the Churches and its Agents, included:

- (a) the operation and maintenance of Residential Schools during the Class Period;
- (b) the care and supervision of all members of the Survivor Class, and for supplying all the necessaries of life to Survivor Class members *in loco parentis*;
- (c) the provision of educational and recreational services to the Survivor Class while in attendance at Residential Schools and control over all persons allowed to enter Residential School premises at all material times;
- (d) the selection, supply and supervision of teaching and non-teaching staff at the Residential Schools and reasonable investigation into the character, background and psychological profile of all individuals employed to teach or supervise the Class;
- (e) inspection and supervision of Residential Schools and all activities taking place therein, and for full and frank reporting to Canada respecting conditions in the Residential Schools and all activities taking place therein;
- (f) transportation of Survivor Class members to and from Residential Schools; and
- (g) communication with and reporting to the Family Class respecting the activities and experiences of Survivor Class members while attending Residential Schools.

80. Attempts to provide educational opportunities to children confined to Residential Schools were ill-conceived and poorly executed by inadequately trained teaching staff. The result was to effectively deprive the children of any useful or appropriate education. Very few survivors of Residential Schools went on to any form of higher education.

81. The conditions and abuses in the Residential Schools during the Class Period were well-known to Canada. Information about the misconduct of the persons operating and employed at the Residential Schools was suppressed and covered up.

82. Canada began to close schools and by 1979 only twelve (12) schools remained with a total resident population of one thousand, eight hundred and ninety nine (1,899) students.

G. CANADA'S STATEMENT OF RECONCILIATION

83. In fact, in January of 1998, Canada issued a Statement of Reconciliation acknowledging and apologizing for the failures of the Residential School Policy. Moreover, Canada admitted that the Residential School system was wrongly and inappropriately designed to assimilate Aboriginal Persons. The Plaintiffs plead that the Statement of Reconciliation by Canada is an admission by Canada of the facts and duties set out in paragraphs * and * and the allegations set out in paragraphs * and * herein and is relevant to the Plaintiffs' claim for damages, particularly punitive damages. The Statement of Reconciliation stated, in part, as follows:

Sadly, our history with respect to the treatment of Aboriginal people is not something to which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self sustaining nations that were desegregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the *Indian Act*. We must acknowledge that the results of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.

Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the Federal Government which have contributed to these difficult pages in the history of our relationship together.

One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School System. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continued to reverberate in Aboriginal communities to this date. Tragically, some children were the victims of physical and sexual abuse.

The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at Residential Schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you

experienced was not your fault and should never have happened. To those of you who suffered this tragedy at Residential Schools, we are deeply sorry. In dealing with the legacies of the Residential School program, the Government of Canada proposes to work with First Nations, Inuit, Metis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of the sad era of our history...

Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong community...

H. CANADA'S BREACH OF DUTIES TO THE CLASS MEMBERS

84. The Defendant Canada, as represented by the Attorney General of Canada, has a fiduciary relationship with Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated all Residential Schools in Canada during the Class Period.

85. Canada, the Churches and their respective servants and agents compelled members of the Survivor Class to leave their homes, families and communities, and forced members of the Survivor Class to attend and live in Residential Schools, all without lawful authority or the permission and consent of Survivor Class members or that of their parents. Such confinement was wrongful, arbitrary and for improper purposes.

86. Survivor Class members were systematically subjected to the institutional conditions, regime and discipline of Residential School without the permission and consent of Survivor Class members or that of their parents, and were also subjected to wrongful acts at the hands of Canada and the Churches while confined therein.

87. All Aboriginal Persons who attended Residential Schools did so as Wards of Canada, with Canada as their guardian, and were persons to whom Canada owed the highest non

delegable, fiduciary, moral, statutory and common law duties, which included, but were not limited to, the duty to ensure that reasonable care was taken of the Survivor Class while at Residential School, the duty to protect the Survivor Class while at Residential School, the duty to protect the Survivor Class from intentional torts perpetrated on them while at a Residential School. These non delegable and fiduciary duties were performed negligently and tortuously by Canada, in breach of its special responsibility to ensure the safety of the Survivor Class while at a Residential School. Canada was responsible for:

- (a) the administration of the Act and its predecessor statutes as well as any other statutes relating to Aboriginal Persons and all Regulations promulgated under these Acts and their predecessors during the Class Period;
- (b) the promotion of the health, safety and well being of Aboriginal Persons in Canada during the Class Period;
- (c) the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments during the Class Period;
- (d) decisions, procedures, regulations promulgated, operations and actions taken by the Department of Indian Affairs and Northern Development, its employees, servants, officers and Agents in Canada and their predecessors during the Class Period;
- (e) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of Residential Schools in Canada and for the creation, design and implementation of the program of education for Aboriginal Persons confined therein during the Class Period;
- (f) the selection, control, training, supervision and regulation of the designated operators, including the Church Defendants listed in Schedule "B" hereto and other Religious organizations, and their employees, servants, officers and agents, and for the care and education, control and well being of Aboriginal Persons confined in Residential Schools in Canada during the Class Period;
- (g) the provision of all educational services and opportunities to Aboriginal Persons in Canada, including Survivor Class members, pursuant to the provisions of the Act and any other statutes relating to Aboriginal Persons during the Class Period;
- (h) transportation of Survivor Class Members and Deceased Class Members to and from Residential Schools and to and from their homes while attending Residential Schools during the Class Period;

- (i) complying with the various treaties outlined below, where applicable, and for providing an appropriate education and educational environment in compliance with the various treaties;
- (j) preserving, promoting, maintaining and not interfering with Aboriginal Rights, including the right to retain and practice their culture, spirituality, language and traditions and the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities;
- (k) the care and supervision of all members of the Survivor Class while they were in attendance at Residential Schools during the Class Period and for the supply of all the necessities of life to Survivor Class Members, *in loco parentis*, during the Class Period;
- (l) the provision of educational and recreational services to the Survivor Class while in attendance at Residential Schools during the Class Period;
- (m) inspection and supervision of Residential Schools and all activities that took place therein during the Class Period and for full and frank reporting to Canada and to the Family Class Members with respect to conditions in the Residential Schools and all activities that took place therein during the Class Period; and
- (n) communication with and reporting to the Family Class with respect to the activities and experiences of Survivor Class Members while attending Residential Schools during the Class Period.

88. During the Class Period, male and female Aboriginal children were subjected to gender specific, as well as non-gender specific, systematic child abuse, neglect and maltreatment. They were forcibly confined in Residential Schools and were systematically deprived of the essential components of a healthy childhood. They were subjected to physical, emotional, psychological, cultural, spiritual and sexual abuse by those who were responsible for their well being. Their accommodation was crowded, cold, and sub-standard. They were underfed and malnourished. They were forbidden to speak their native language and to practice the customs and traditions of their culture. They were deprived of love and affection from their families and of the support that a child would normally expect to have from those in positions of trust and authority. They were subjected to corporal punishment, assaults, including physical and sexual assault. Canada's Residential School Policy was in breach of the *United Nations Genocide Convention*, ratified by Canada in September 1952, and in particular Article 2(b), (c) and (e) of that convention. The

forced removal of Aboriginal children from their homes, residences and communities was a violation of this convention.

89. In contravention of the Treaties between the Government and First Nations and in contravention of the *United Nations Genocide Convention*, particularly Article 2(e) thereof to which the Government is a signatory, the Plaintiffs and other children of First Nations heritage were to be systemically assimilated into white society. In pursuance of that plan, they were forced to attend Residential Schools and contact with their families was restricted. Their cultures and languages were taken from them with sadistic punishment and practices.

90. Further, at all material times, Canada was bound by the rules of customary international law reflected and codified in the *Geneva Declaration of the Rights of the Child*, adopted by the League of Nations in 1924, including, but not limited to, the following:

- (a) the child must be provided with the means necessary for his/her normal development, both materially and spiritually;
- (b) the child must be put in a position to earn a livelihood and must be protected against every form of exploitation.

91. The effects from the Residential School policy further violated the *International Covenant on Civil and Political Rights*, in particular Articles 1 and 27 of that convention, ratified by Canada in May, 1976.

92. The effects from the forced integration and assimilation of the Aboriginal Persons has caused a profound and permanent cultural, psychological, emotional and physical injury and is in breach of the *United Nations Genocide Convention* in particular Article 2(b), (c) and (e) of the convention, ratified by Canada in September, 1952. The effects from the Residential School policy also violates the *International Covenant on Civil and Political Rights*, in particular Articles 1 and 27 of the convention, ratified by Canada in May, 1976, because it has interfered

with the Survivor Class Members' and the Family Class Members' rights including but not limited to: the right to retain and practice their culture, spirituality, language and traditions, the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities and the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities

93. Breached the *International Covenant on Civil and Political Rights*, in particular Articles 1 and 27 of the convention, ratified by Canada in May 1976, by interfering with the class, or one or more sub-class's rights to:

- (i) retain and practice their culture, spirituality, language and traditions;
- (ii) fully learn their culture, spirituality, language and traditions from their families, extended families and communities;
- (iii) teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities;

94. The systemic child abuse, neglect and maltreatment sustained by the children at Residential Schools during the Class Period, the effect and impact of which is still being felt by Survivor Class Members and Family Class Members, was in violation of the rights of children, specifically, but not limited to, the following rights set out in the *United Nations Convention on the Rights of the Child*, adopted by the United Nations in 1989, and ratified by Canada in December of 1991:

- (a) Freedom from discrimination – Canada breached its duties to protect children from any form of discrimination or punishment based on Family's status, activities or beliefs;
- (b) Best interest of child – Canada breached its duty to ensure the establishment of institutional standards for the care and protection of children and breached its duty to have considered the best interest of the child in all legal and administrative decisions;

- (c) Respect for parental responsibility – Canada breached its duty to protect the rights of parents or guardians to provide direction to their children in the exercise of their rights;
- (d) Survival and development – Canada breached its duty to ensure the survival and maximum development of the child;
- (e) Name and nationality – Canada breached its duty to recognize the right to a name and to acquire a nationality and the right to know and be cared for by parents;
- (f) Preservation of identity – Canada breached its duty to recognize the right to preserve or re-establish the child's identity (name, nationality and family ties);
- (g) Parental care and non-separation – Canada breached its duty to recognize the right to live with parents and maintain contact with both parents unless these are deemed incompatible with the child's best interests;
- (h) Free expression of opinion – Canada breached its duty to recognize the child's right to express an opinion in matters affecting the child and to have that opinion heard;
- (i) Freedom of thought, conscience and religion – Canada breached its duty to recognize the right to determine and practice any belief and ought to have respected the rights of parents or guardians to provide direction and the exercise of this right;
- (j) Freedom of association – Canada breached its duty to recognize the right to freedom of association and freedom of peaceful assembly;
- (k) Protection of privacy – Canada breached its duty to recognize the right to protection from arbitrary or unlawful interference with privacy, family, home, or corresponding attacks on honour and reputation;
- (l) Parental responsibilities – Canada breached its duty to recognize the principle that both parents are responsible for the upbringing of their children and that parents or guardians have primary responsibility;
- (m) Abuse and neglect – Canada breached its duty to protect children from all forms of abuse, neglect and exploitation by parents or others and ought to have undertaken preventative and treatment programs in this regard;
- (n) Health care – Canada breached its duty to recognize the right to the highest attainable standards of health and access to medical services and breached its duty to attempt to diminish infant and child mortality, combat disease and malnutrition, ensure health care for expectant mothers, provide access to health education, develop preventative health care and abolish harmful traditional practices;

- (o) Periodic review – Canada breached its duty to recognize the right of children placed by Canada for reasons of care, protection or treatment to have all aspects of that placement reviewed regularly;
- (p) Education – Canada breached its duty to recognize the right to education by providing free and compulsory primary education, ensuring equal access to secondary and higher education and ensuring that school discipline does not threaten the child's human dignity;
- (q) Aims of education – Canada breached its duty to direct education at developing the child's personality and talents, preparing the child for a responsible life in a free society and developing respect for the child's parents, basic human rights, the natural environment and the child's own cultural and national values and those of others;
- (r) Children of minorities – Canada breached its duty to recognize the right of children of minority communities and indigenous populations to enjoy their own culture, practice their own religion and use their own language;
- (s) Leisure and recreation – Canada breached its duty to recognize the right to leisure, play and participation in cultural and artistic activities;
- (t) Child labour – Canada breached its duty to protect children from economic exploitation and from engaging in work that constitutes a threat to health, education and development;
- (u) Sexual exploitation – Canada breached its duty to protect children from sexual exploitation and abuse;
- (v) Other exploitation – Canada breached its duty to protect children from all other forms of exploitation; and,
- (w) Torture, capital punishment and deprivation of liberty – Canada breached its duty to protect children from torture or other cruel, inhumane or degrading treatment.

95. Through its servants, officers, employees and agents, Canada was negligent and in breach of its non-delegable fiduciary, moral, statutory, and common law duties of care to the Survivor Class, the Family Class and the Deceased Class during the Class Period. Particulars of the negligence and breach of duty of Canada include the following:

- (a) it systematically, negligently, unlawfully and wrongfully delegated its fiduciary and other responsibility and duties regarding the education of and care for Aboriginal children to others, including the Churches and other Religious organizations;

- (b) it systematically, negligently, unlawfully and wrongfully admitted and confined Aboriginal children to Residential Schools;
- (c) it acted without lawful authority and not in accordance with any statutory authority pursuant to or as contemplated by the provisions of the Act or any other statutes relating to Aboriginal Persons as:
 - (i) said provisions are and were *ultra vires* the Parliament of Canada and of no force and effect in law;
 - (ii) The conduct of Canada in placing the Aboriginal children in Residential Schools, confining them therein, and treating or permitting them to be treated there as set forth herein was in breach of Canada's fiduciary obligations to the Survivor Class and Family Class Members, which was not authorized or permitted by any applicable legislation and was, to the extent such legislation purported to authorize such fiduciary breach, of no force and effect and/or *ultra vires* the Parliament of Canada; and
 - (iii) Canada routinely and systematically failed to act in accordance with its own laws, regulations, policies and procedures with respect to the confinement of Aboriginal children in Residential Schools, which confinement was wrongful.
- (d) it delegated to and contracted with the Churches and other Religious organizations to implement its program of forced integration, confinement and abuse;
- (e) it failed to adequately screen and select the organizations and individuals to which it delegated the implementation of its Residential School program;
- (f) it failed to adequately supervise and control Residential Schools and its agents operating same under its jurisdiction in Canada;
- (g) it deliberately and chronically deprived the Survivor Class Members of the education they were entitled to or were led to expect from the Residential Schools or of any adequate education;
- (h) it designed, constructed, maintained and operated Residential School buildings which were sub-standard, inadequate to the purpose for which they were intended and detrimental to the emotional, psychological and physical health of the Survivor Class;
- (i) it failed to provide funding for the operation of Residential Schools that was sufficient or adequate to supply the necessities of life to Aboriginal children confined to them;
- (j) it failed to respond appropriately or at all to disclosure of abuses in the Residential Schools during the Class Period;

- (k) it conspired with the operators of the schools to suppress information about abuses taking place in the Residential Schools during the Class Period;
- (l) it assaulted and battered the Survivor Class Members and permitted them to be assaulted and battered during the Class Period;
- (m) it permitted an environment to which permitted and allowed student-upon-student abuse;
- (n) it forcibly confined the Survivor Class Members and permitted them to be forcibly confined during the Class Period;
- (o) it was in breach of its fiduciary duty to its Wards the Survivor Class Members by reason of the misfeasances, malfeasances and omissions set out above;
- (p) it failed to inspect or audit the Residential Schools adequately or at all;
- (q) it failed to implement an adequate system of evaluation, monitoring and control of teachers, administrators and non-teaching staff of the Residential Schools during the Class Period;
- (r) (it failed to periodically reassess its regulations, procedures and guidelines for Residential Schools when it knew or ought to have known of serious systemic failures in the Residential Schools during the Class Period;
- (s) it failed to close the Residential Schools in Canada and otherwise protect and care for those persons confined therein when it knew or ought to have known that it was appropriate and essential to do so in order to preserve the health, welfare and well being of the Survivor Class Members;
- (t) it delegated, attempted to delegate, continued to delegate and improperly delegated its non delegable duties and responsibility for the Survivor Class when it was incapable to do so and when it knew or ought to have known that these duties and responsibilities were not being met;
- (u) it failed to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed;
- (v) (it conspired with various Religious organizations including the Churches to eradicate Aboriginal culture in Canada through the implementation of a Residential Schools program in Canada;
- (w) it undertook a systematic program of forced integration and assimilation of the Aboriginal Persons through the institution of Residential Schools when it knew or ought to have known that doing so would cause profound and permanent cultural, psychological, emotional and physical injury to the members of the Survivor Class during and following the Class Period;

- (x) the effects from the forced integration and assimilation of the Aboriginal Persons violated the *International Covenant on Civil and Political Rights*, in particular Articles 1 and 27 of the convention, ratified by Canada in May, 1976, because it has interfered with the Survivor Class Members', the Family Class Members' and the Deceased Class Members' rights, including, but not limited to:
- (i) the right to retain and practice their culture, spirituality, language and traditions;
 - (ii) the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities; and,
 - (iii) the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities.
- (y) it was in breach of its obligations to the Survivor Class Members, Family Class Members and Deceased Class Members as set out in the Act and its Treaties with various First Nations providing a right to education at a school to be established and maintained by Canada and which implicitly included the right to education in a safe environment free from abuse and the right to an education which would recognize Aboriginal beliefs, traditions, culture, language and way of life in a way that would not denigrate or eliminate these beliefs, traditions, culture, language and way of life. The Treaties relied on by the Plaintiffs include, but are not limited to, the following Treaties referred to below and the excerpts from these Treaties also provided below, but not limited to the excerpted portions provided:
- (i) Treaty No. 1 – “And further, Her Majesty agrees to maintain a school on each reserves hereby made, whenever the Indians of the reserve should desire it.”;
 - (ii) Treaty No. 2 – “And further, Her Majesty agrees to maintain a school in each reserves hereby made, whenever the Indians of the reserves shall desire it.”;
 - (iii) Treaty No. 3 – “And further, Her Majesty agrees to maintain the schools for instruction in such reserves hereby made as Her Government of Her Dominion of Canada may seem advisable whenever the Indians of the reserves shall desire it.”;
 - (iv) Treaty No. 4 – “And further Her Majesty agrees to maintain a school in the reserves allotted to each band as soon as they settle on said reserve and are prepared for a teacher.”;
 - (v) Treaty No. 5 – “And Further Her Majesty agrees to maintain the schools for instruction in such reserves hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it.”;

- (vi) Treaty No. 6 – “And Further, Her Majesty agrees to maintain the schools for instruction in such reserves hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserves shall desire it.”;
- (vii) Treaty No. 7 – “Further, Her Majesty agrees to pay the salary of such teachers to instruct the children of said Indians as to Her Government of Canada may seem advisable, when said Indians are settled on their Reserves and shall desire teachers.”;
- (viii) Treaty No. 8 – “Further, Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as to Her Majesty’s Government of Canada may seem advisable.”;
- (ix) Treaty No. 9 (The James Bay Treaty) – “Further, His Majesty agrees to pay such salaries of teachers to instruct the children of said Indians, and also to provide such school buildings and educational equipment as may seem advisable to His Majesty’s Government of Canada.”;
- (x) Treaty No. 10 – “Further His Majesty agrees to make such provision as made from time to time be deemed advisable for the education for the Indian children.”; and,
- (xi) Treaty No. 11 “Further, His Majesty agrees to pay the salaries of teachers to instruct the children of said Indians in such manner as His Majesty’s Government may deem advisable.”

96. Through its servants, officers, contractors, agents and employees, for those conduct and breaches it is in law responsible, Canada was negligent and in breach of its non delegable, fiduciary, statutory, moral and common law duties to the Survivor Class, the Deceased Class and the Family Class during the Class Period. Particulars of the negligence and breach of duty (including breach of non-delegable duties) of Canada are as follows:

- (a) the selection and employment of incompetent and immoral persons as teaching and non-teaching staff in Residential Schools during the Class Period;
- (b) the failure to adequately train or supervise teaching and non-teaching staff employed at Residential Schools;
- (c) the failure to report to the proper authorities the physical, psychological, emotional, cultural and sexual abuses to which children in their care were being subjected at Residential Schools during the Class Period;

- (d) the failure to provide the necessities of life to Survivor Class Members in their care in Residential Schools during the Class Period;
- (e) the knowing cover up of the existence of systematic and widespread abuse of Aboriginal Persons at Residential Schools during the Class Period;
- (f) the deprivation of Survivor Class Members in their care of their languages, as well as their religious and cultural beliefs and practices;
- (g) the failure to provide Survivor Class Members with an adequate or useful education;
- (h) the deprivation of Survivor Class members of contact with their families and of the essential elements of a healthy childhood;
- (i) the conspiracy to eradicate aboriginal culture through the Residential School System;
- (j) the failure to adequately or properly administer, manage and operate the Residential Schools;
- (k) the assault and battery of Survivor Class Members during the Class Period;
- (l) the breach of its fiduciary duties to the Survivor Class members and Family Class members by reason of the misfeasances, malfeasances and omissions set out above;
- (m) the failure to inspect or audit the Residential Schools adequately or at all;
- (n) the failure to implement an adequate system of evaluation, monitoring and control of teachers, administrators and non-teaching staff of the Residential Schools during the Class Period;
- (o) the failure to periodically reassess their procedures and guidelines for Residential Schools when they knew or ought to have known of serious systemic failures in the Residential Schools during the Class Period;
- (p) the deprivation and reduction of the Class' capacity to parent and maintain normal marital and family ties;
- (q) the making of agreements with its agents to suppress information about abuses occurring in the Residential Schools; and
- (r) the failure to advance claims against Canada for compensation on behalf of infant Aboriginal persons or deceased Aboriginal persons in a timely manner, or at all.

97. Canada, through its employees, agents or representatives breached its duty of care to protect the Class from sexual abuse by the student perpetrators while those particular Plaintiffs

and the Class were attending and residing at the school in the care of a particular Defendant with the result that the student perpetrators did in fact commit sexual abuse upon certain Plaintiffs and the Class.

98. Canada breached its fiduciary duties to the Plaintiffs and the Class and their families by failing to take the steps set out in the preceding paragraph to protect the Class from sexual abuse.

99. In breach of its ongoing fiduciary duty to the Class, Canada failed and continues to fail, to adequately remediate the damage caused by its failures and omissions set out herein. In particular, Canada has failed to take adequate measures to ameliorate the cultural, linguistic and social damage suffered by the class, and further has failed to provide compensation for the physical, sexual and emotional abuse suffered by the Class.

I. CHURCHES' BREACH OF DUTIES TO THE CLASS MEMBERS

100. From the inception of the Residential School system, and until 1969, many Residential Schools throughout Canada were controlled and operated by the Churches. The Churches were responsible for the day-to-day operation and administration of the Residential Schools, including, but not limited to:

- (a) admission and transportation of Class Members to the Residential Schools;
- (b) the living conditions within the Residential Schools;
- (c) the selection, hiring, supervision, discipline and dismissal of staff employed at the Residential Schools;
- (d) academic, religious and moral teaching of the Survivor Class Members and the Deceased Class Members;
- (e) school curriculum at the Residential Schools; and
- (f) the supervision, day to day care, guidance and discipline of the Survivor Class Members and the Deceased Class Members.

101. The Plaintiffs plead and rely upon the allegations contained in paragraphs * through * above with respect to the liability of the Churches.

102. In particular, the Churches:

- (a) breached their duties in *loco parentis*;
- (b) breached their fiduciary duties by,
 - (i) permitting unqualified individuals to hire servants, agents and employees to administer and operate the residential school;
 - (ii) failing to properly supervise and train their servants, agents and employees to administer and operate the residential school;
 - (iii) failing to have a policy or guidelines, or periodically reassess their procedures and guidelines, for residential schools;
 - (iv) failing to establish procedures governing the care, custody, control and supervision by their servants, agents and employees over the Plaintiffs;
 - (v) failing to adequately observe the gross misconduct of agents, servants or employees of the residential school;
 - (vi) employing incompetent and immoral servants, agents and employees ;
 - (vii) failing to protect the Class Members from harm;
 - (viii) depriving the Class Members of contact with their families and the necessities of life;
 - (ix) failing to protect the Class Members from physical, psychological, emotional and sexual abuses;
 - (x) failure in general to take proper and reasonable steps to prevent injury to the Plaintiffs physical health and mental well being and moral safety while at the residential schools;
 - (xi) failing to educate the Class Members in even the most basic of academic skills;
 - (xii) using the Class Members for manual labour;
 - (xiii) conspiring with the Crown to remove the Class Members entirely from their aboriginal cultural;
 - (xiv) failing to adequately inspect or audit the residential schools;

- (xv) failing to monitor, supervise, detect or report abuse or, alternatively, suppressed information concerning abuse;
- (xvi) breached the Aboriginal Rights and Treaty Rights of the Class Members; and
- (xvii) breached their duties of trust they owed to the Class Members.

J. DAMAGES

103. As a consequence of the negligence and breach of duty and breach of a non-delegable or fiduciary duty and intentional infliction of harm by Canada and its agents, for whom Canada is vicariously liable, and the Churches for whom Canada is in law responsible, the Survivor Class Members and the Deceased Class Members, including the Representative Plaintiffs, suffered injury and damages including:

- (a) isolation from family and community;
- (b) prohibition of the use of Aboriginal language and the practice of Aboriginal religion and culture and the consequential loss of facility and familiarity with Aboriginal language, religion and culture;
- (c) forced confinement;
- (d) assault and battery;
- (e) sexual abuse;
- (f) emotional abuse;
- (g) psychological abuse;
- (h) deprivation of the fundamental elements of an education;
- (i) an impairment of mental and emotional health amounting to a severe and permanent disability;
- (j) an impaired ability to trust other people or to form or sustain intimate relationships;
- (k) a propensity to addiction;
- (l) an impaired ability to participate in normal family life;
- (m) an impaired ability to control anger and rage;

- (n) alienation from family, spouses and children;
- (o) an impaired ability to enjoy and participate in recreational, social, athletic and employment activities;
- (p) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
- (q) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the Residential School experience;
- (r) sexual dysfunction;
- (s) depression, anxiety and emotional dysfunction;
- (t) suicidal ideation;
- (u) pain and suffering;
- (v) deprivation of the love and guidance of parents and siblings;
- (w) loss of self-esteem and feelings of degradation;
- (x) sense of shame, fear and loneliness;
- (y) nightmares, flashbacks and sleeping problems;
- (z) fear, humiliation and embarrassment as a child and adult, and sexual confusion and disorientation as a child and young adult;
- (aa) impaired ability to express emotions in a normal and healthy manner;
- (bb) loss of ability fulfill cultural duties;
- (cc) loss of ability to live in community; and
- (dd) constant and intense emotional, psychological pain and suffering.

104. As a consequence of the negligence and breach of duty and breach of a non-delegable or fiduciary duty and intentional infliction of harm by Canada and its agents, for whom Canada is vicariously liable, and the Churches and their agents, for whom Canada is in law responsible, the Family Class Members, including the Representative Plaintiffs, suffered injury and damages including:

- (a) they were separated and alienated from Survivor Class Members and the Deceased Class Members for the duration of their confinement in Residential Schools;
- (b) their relationships with Survivor Class Members and Deceased Class Members were impaired, damaged and distorted as the result of the experiences of Survivor Class members and the Deceased Class Members in Residential Schools;
- (c) they suffered abuse from Survivor Class members and Deceased Class members as a direct consequence of their Residential School experience;
- (d) they were unable to resume normal family life and experience with Survivor Class Members and Deceased Class Members after their return from Residential Schools;
- (e) they were deprived of pecuniary support from Survivor Class Members and Deceased Class Members as the direct and indirect consequence of impairments caused by the Residential School experience;
- (f) they incurred special and out-of-pocket expenses in their care of Survivor Class Members and Deceased Class Members and were required to provide support and medical care to Survivor Class Members and Deceased Class Members as a direct or indirect consequence of the Residential School experience; and,
- (g) their culture and language was undermined and in some cases eradicated by, amongst other things, as pleaded herein, the forced assimilation of Survivor Class Members and Deceased Class Members into non-aboriginal culture through the Residential Schools.

K. VICARIOUS LIABILITY

105. The Plaintiffs state that the Canada and the Churches are vicariously liable for the negligence, malfeasances and misfeasances of their servants, contractors, agents, officers and employees.

L. LIABILITY FOR BREACH OF TREATIES

106. The Plaintiffs plead that Canada was in breach of its various treaty obligations set out above through the Residential School System and experience and is liable for such breaches.

M. GROUNDS FOR PUNITIVE & EXEMPLARY DAMAGES

107. The Plaintiffs plead that Canada and the Churches, including their senior officers, directors, bureaucrats, ministers and executives, had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses of Survivor Class Members which were occurring at Residential Schools during the Class Period. Despite this knowledge, Canada and the Churches continued to operate the schools and permit the perpetration of grievous harm to the Survivor Class Members.

108. In addition, Canada and the Churches deliberately planned the eradication of the language, religion and culture of Survivor Class Members and Family Class Members. Their actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

N. CONSTITUTIONALITY OF SECTIONS OF THE INDIAN ACT

109. The Plaintiffs plead that any section of the Act and its predecessors and any Regulation passed there under and any other statutes relating to Aboriginal Persons that provides or purports to provide the statutory authority for the forcible removal of the Survivor Class Members and Deceased Class Members from their families and communities or for the obligated attendance of the Survivor Class at Residential Schools is, in addition to the reasons set out in paragraph * above, in violation of sections 1 and 2 of the *Canadian Bill of Rights*, R.S.C. 1985, as well as sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* and should therefore be treated as having no force and effect. In particular, the Plaintiffs challenge the constitutionality of sections 9 and 10 of the Act and superseded by subsequent legislation, and any Regulations past pursuant to section 113 through 118 of the Act and sections 114 through 122 of the Act.

O. APPROPRIATENESS OF A CLASS PROCEEDING

110. As described *supra*, the claims of the Class Members disclose reasonable causes of action against Canada and the Churches. Moreover, their collective claims raise a number of common issues, including, but not limited to:

- (a) by their operation or management of Residential Schools during the Class Period, did the Defendants breach a duty of care they owed to the Survivor Class and the Deceased Class to protect them from actionable physical or mental harm?
- (b) by their purpose, operation or management of Residential Schools during the Class Period, did the Defendants breach a fiduciary duty they owed to the Survivor Class and the Deceased Class or the aboriginal or treaty rights of the Survivor Class and the Deceased Class to protect them from actionable physical or mental harm?
- (c) by their purpose, operation or management of Residential Schools during the Class Period, did the Defendants breach a fiduciary duty they owed to the Family Class?
- (d) if the answer to any of these common issues is yes, can the Court make an aggregate assessment of the damages suffered by all Class members of each class as part of the common trial?

111. Further, a class proceeding is a preferable procedure for the resolution of the common issues as in the vast majority of cases, it would be prohibitively expensive for individual members of the Class to be required to bring separate actions.

112. As there are thousands of Class Members, individual litigation would be repetitive for the parties, especially for Canada and the Churches. Individual litigation would also place an unworkable burden on the judicial system.

113. A class proceeding will greatly increase efficiency for the Class Members, Canada, the Churches and the court, since, in this way, the common issues can be determined in one proceeding in a court-managed setting with all relevant expert witnesses being required to attend and testify once as opposed to each plaintiff having to prove liability through the calling of experts in multiple actions. The enormous cost savings of proceeding by way of a class

proceeding are obvious. Further, the prosecution of several separate individual actions would create the risk of inconsistent or varying adjudications.

114. The claims pursued within this class proceeding are of such a nature that, in the absence of a class proceeding, it is likely that most Class Members would not have access to justice in any meaningful way. It is anticipated that many would not bring their claims forward because of the risks, costs, delays and, in many cases, the amount of damages involved. Moreover, in this case, the Class Members, are by definition, vulnerable and disadvantaged individuals, which further hampers their individual ability pursue their claims on case by case basis.

115. The proposed representatives, who reside in every jurisdiction in which a Residential School operated during the Class Period, and who were subjected to a vast variety of actionable breaches by Canada and the Churches, can fairly and adequately represent the Class and do not have an interest in conflict with the interests of the other Class Members. Their claims are typical of the class as a whole.

116. The Plaintiffs plead and rely upon the following:

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, ss. 3, 21, 22, and 23;

Canadian Charter of Rights and Freedoms, ss. 7, 15 and 24;

Constitution Act, 1982, s. 35(1), being Schedule "B" to the *Canada Act, 1982 (U.K.)*, c. 11.

The Family Law Act (Ontario), R.S.O. 1990, c. F. 3, s. 61;

Fatal Accidents Act (Manitoba), C.C.S.M., c. F50, s.2;

Fatal Accidents Act (Saskatchewan), R.S.S. 1978, c F-11, ss. 3 and 4;

Fatal Accidents Act (Alberta), R.S.A. 2000, c. F-8, ss. 2 and 3;

Family Compensation Act (British Columbia), R.S.B.C. 1996, c. 126, ss. 2 and 3;

- Fatal Accidents Act (Yukon)*, R.S.Y. 2002, c. 86, ss. 2 and 3;
- Fatal Accidents Act (Northwest Territories and Nunavut)*, R.S.N.W.T. 1988, c. F-3, ss. 2 and 3;
- Civil Code of Québec*, Articles 1457, 1607 and 1611 C.C.Q.;
- The Negligence Act (Ontario)*, R.S.O. 1990, c. N. 1;
- The Tortfeasors and Contributory Negligence Act (Manitoba)*, C.C.S.M. c. T90;
- Contributory Negligence Act (Saskatchewan)*, R.S.S. 1978, c. C-31;
- Contributory Negligence Act (Alberta)*, R.S.A. 2000, c. C-27;
- Negligence Act (British Columbia)*, R.S.B.C. 1996, c. 333;
- Contributory Negligence Act (Yukon)*, R.S.Y. 2002, c. 42;
- Contributory Negligence Act (Northwest Territories and Nunavut)*, R.S.N.W.T. 1988, c. C-18;
- The Canadian Bill of Rights*, R.S.C. 1985, App. III, Preamble, ss. 1 and 2;
- Code of Civil Procedure (Québec)*, R.S.Q. c. C-25, Articles 999-1051;
- Class Proceedings Act, (Ontario)*, S.O. 1992, c. 6;
- The Class Proceedings Act (Manitoba)*, C.C.S.M., c. C130;
- The Class Actions Act (Saskatchewan)*, S.S. 2001, c. C-12.01;
- Class Proceedings Act (Alberta)*, S.A. 2003, c. C-16.5;
- Class Proceedings Act (British Columbia)*, R.S.B.C. 1996, c. 50;
- Judicature Act (Yukon)*, R.S.Y. 2002, c. 128, s. 38;
- Court Rules Act (British Columbia)*, R.S.B.C. 1996, C.80; *Supreme Court Rules*, B.C. Reg. 221/90, Rule 5(11);
- Judicature Act (Northwest Territories)*, R.S.N.W.T. 1998, c. J-1; *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg. 010-96; and
- Nunavut Act (Canada)*, S.C. 1993, c. 28, s. 29.
- The Indian Act*, S.C. 1951, c. 29, ss. 113-118;
- The Indian Act*, R.S.C. 1927, c. 98, ss. 9-10; and,

The Indian Act, R.S.C. 1985, ss. 2(1), 3, 18(2), 114-122.

International Treaties:

Convention on the Prevention and Punishment of the Crime of Genocide, Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 *entry into force* 12 January 1951, in accordance with article XIII;

Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 *entry into force* 2 September 1990, in accordance with article 49; and,

International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, *entry into force* 23 March 1976, in accordance with Article 49.

Numbered Treaties in Canada

- Treaty No. 1 – August 1871 (*Post-Confederation*)
- Treaty No. 2 – August 1871 (*Post-Confederation*)
- Treaty No. 3 – October 1873 (*Post-Confederation*)
- Treaty No. 4 – September 1874 (*Post-Confederation*)
- Treaty No. 5 – September 1875 (*Post-Confederation*)
- Treaty No. 6 – August-September 1876 (*Post-Confederation*)
- Treaty No. 7 – September 1877 (*Post-Confederation*)
- Treaty No. 8 – June 1899 (*Post-Confederation*)
- Treaty No. 9 – James Bay Treaty – July 1905 (*Post-Confederation*)
- Treaty No. 10 – August 1906 (*Post-Confederation*)
- Treaty No. 11 – June 1921 (*Post-Confederation*)

Named Treaties in Canada

- Peace and Friendship Treaties (1725-1779) (*Pre-Confederation*)
- Upper Canada Treaties (1764-1836) (*Pre-Confederation*)
- Robinson-Superior Treaty, 1850 (*Pre-Confederation*)
- Robinson-Huron Treaty, 1850 (*Pre-Confederation*)
- The Manitoulin Treaty, 1862 (*Pre-Confederation*)
- Vancouver Island Treaties (1850-1854 the Douglas Treaties) (*Pre-Confederation*)
- The Williams Treaties (1923): The Chippewa Indians and The Mississauga Indians (*Post-Confederation*)

Place of Trial

117. The Plaintiffs propose that this action be tried at the City of Toronto, in the Province of Ontario.

July 31, 2006

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SCHEDULE "A"

ANGLICAN CHURCH ENTITIES

1. THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA		
Schools and Dates of Involvement:		
Metlakatla	Metlakatla, BC	1891-1962
St. George's	Lytton, BC	1901-1969
St. Michael's	Alert Bay, BC	1878-1962
Yale (All Hallows Boarding School)	Yale Station, Fraser River, BC	1884-1920
Lesser Slave Lake (St. Peter's)	Lesser Slave Lake, AB	1900-1932
Old Sun (Blackfoot IRS)	Gleichen, Blackfoot Reserve, AB	1929-1971
Sarcee Boarding School	Sarcee Junction, AB	1894-1930
St. Cyprian	Brocket, Peigan Reserve, AB	1892-1961
St. Paul's Boarding School (Blood)	Blood Reserve, AB	1880-1975
Wabasca (St. John's IRS)	Wabasca, AB	1895-1966
Whitefish Lake, (St. Andrew's IRS)	St. Andrew's Mission, AB	1895-1950
Battleford Industrial School	Battleford, SK	1883-1943
Emmanuel College	Prince Albert, SK	1865-1923
Gordon's Residential School	Gordon's Reserve, SK	1889-1975
Lac la Ronge (Prince Albert)	La Ronge, SK	1914-1969
Onion Lake (St. Barnabas, Prince Albert)	Makao's Reserve, SK	1893-1951
Prince Albert (All Saints/St. Alban's)	Prince Albert, SK	1951-1964
Elkhorn (Washakada)	Elkhorn, MB	1889-1949
Mackay (Dauphin)	The Pas Reserve, MB Dauphin, MB	1915-1933 1957-1988
Montreal Lake	Montreal Lake, SK	

Chapleau (St. Joseph's, St. John's)	Chapleau, ON	1907-1950
Mohawk Institute	Brantford, ON	1850-1969
Moose Factory (Horden Hall, Moose Fort)	Moose Island, ON	1907-1963
Pelican Lake	Sioux Lookout, ON	1927-1973

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA

Schools and Dates of Involvement:

Shingwauk	Sault Ste. Marie, ON	1877-1971
Fort George	Fort George, QC	1934-1979
La Tuque	La Tuque, QC	1962-1980
Carcross, Chooultla IRS	Carcross, YT	1911-1969
St. Paul's Hostel	Dawson, YT	1920-1943
Yukon Hostel	Whitehorse, YT	1959-1986
All Saints (Aklavik IRS)	Aklavik, NT	1936-1959
Fort MacPherson Residence	Fort MacPherson, NT	1898-1970
Fort Simpson Hostel/Bompass Hall	Fort Simpson, NT	1920-1970
Hay River	Hay River – Treaty 8, NT	1898-1949
Stringer Hall	Inuvik, NT	
Coppermine Hostel	Coppermine, NU	

Schools and Dates of Involvement:

The General Synod of the Anglican Church of Canada was incorporated in or about 1921 as an organization of members operating for the common purpose of practising and promoting the Anglican religious faith in Canada. Its members include the various Dioceses described below, and the Missionary Society of the Anglican Church of Canada. Its members operated and managed the schools described above, often pursuant to written agreements with Crown. Its members also provided principals, teachers, and domestic staff and religious and academic training to students. These activities were performed under the direction and supervision of the General Synod of the Anglican Church of Canada, for the purposes of the General Synod of the Anglican Church of Canada in promoting the Anglican faith in Canada.

2. THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA

Schools and Dates of Involvement:

Metlakatla	Metlakatla, BC	1891-1962
St. George's	Lytton, BC	1901-1969
St. Michael's	Alert Bay, BC	1878-1962
Yale (All Hallows Boarding School)	Yale Station, Fraser River, BC	1884-1920
Lesser Slave Lake (St. Peter's)	Lesser Slave Lake, AB	1900-1932

THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA

Schools and Dates of Involvement:

Old Sun (Blackfoot IRS)	Gleichen, Blackfoot Reserve, AB	1929-1971
Sarcee Boarding School	Sarcee Junction, AB	1894-1930
St. Cyprian	Brocket, Peigan Reserve, AB	1892-1961
St. Paul's Boarding School (Blood)	Blood Reserve, AB	1880-1975
Wabasca (St. John's IRS)	Wabasca, AB	1895-1966
Whitefish Lake, (St. Andrew's IRS)	St. Andrew's Mission, AB	1895-1950
Battleford Industrial School	Battleford, SK	1883-1943
Emmanuel College	Prince Albert, SK	1865-1923
Gordon's Residential School	Gordon's Reserve, SK	1889-1975
Lac la Ronge (Prince Albert)	La Ronge, SK	1914-1969
Onion Lake (St. Barnabas, Prince Albert)	Makao's Reserve, SK	1893-1951
Prince Albert (All Saints/St. Alban's)	Prince Albert, SK	1951-1964
Elkhorn (Washakada)	Elkhorn, MB	1889-1949
Mackay (Dauphin)	The Pas Reserve, MB Dauphin, MB	1915-1933 1957-1988
Montreal Lake	Montreal Lake, SK	
Chapleau (St. Joseph's, St. John's)	Chapleau, ON	1907-1950

Mohawk Institute	Brantford, ON	1850-1969
Moose Factory (Horden Hall, Moose Fort)	Moose Island, ON	1907-1963
Pelican Lake	Sioux Lookout, ON	1927-1973
Shingwauk	Sioux Lookout, ON	1927-1973
Fort George	Sault Ste. Marie, ON	1877-1971
	Fort George, QC	1934-1979
La Tuque	La Tuque, QC	1962-1980
Carcross, Chooultla IRS	Carcross, YT	1911-1969
St. Paul's Hostel	Dawson, YT	1920-1943
Yukon Hostel	Whitehorse, YT	1959-1986
All Saints (Aklavik IRS)	Aklavik, NT	1936-1959
Fort MacPherson Residence	Fort MacPherson, NT	1898-1970

THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA

Schools and Dates of Involvement:

Fort Simpson Hostel/Bompass Hall	Fort Simpson, NT	1920-1970
Hay River	Hay River – Treaty 8, NT	1898-1949
Stringer Hall	Inuvik, NT	
Coppermine Hostel	Coppermine, NU	

Particulars of Involvement:

The Missionary Society of the Anglican Church of Canada was incorporated in or about 1903 as an organization of all members of the General Synod of the Anglican Church of Canada. It was the corporate vehicle through which missionary work of the General Synod of the Anglican Church of Canada was undertaken from at least 1903 to at least 1969. This missionary work included the management and operation of the schools described above, often pursuant to written agreements with the Crown.

3. THE INCORPORATED SYNOD OF THE DIOCESE OF ALGOMA

Schools and Dates of Involvement:

Shingwauk	Sault Ste. Marie, ON	1877-1971
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Particulars of Involvement:

This Diocese was responsible for the management, operation, and staffing of the school described above, at times in conjunction with the Missionary Society of the Anglican Church of Canada. The Incorporated Synod of the Diocese of Algoma, through the Bishop of Algoma, entered into an agreement with the Crown in 1911 to support, maintain and educate Indian children at the school.

4. THE SYNOD OF THE DIOCESE OF ATHABASCA**Schools and Dates of Involvement:**

Lesser Slave Lake	Lesser Slave Lake, AB	1900-1932
St. John's (Wabasca)	Wabasca, AB	1895-1966
St. Andrew's (Whitefish Lake)	St. Andrew's Mission, AB	1895-1950
Fort Simpson	Fort Simpson, NT	1920-1970

THE SYNOD OF THE DIOCESE OF ATHABASCA**Particulars of Involvement:**

This Diocese, through the Bishop of Athabasca, entered into agreements with the Crown in 1911 to support, maintain and educate Indian children at least at St. John's and St. Andrew's schools. Prior to January 1, 1923, and after March 31, 1969, this Diocese was responsible for the management, operation and staffing of all of the above-described schools. In the intervening years, this responsibility rested with the Missionary Society of the Anglican Church of Canada.

5. THE ANGLICAN SYNOD OF THE DIOCESE OF BRANDON**Schools and Dates of Involvement:**

Elkhorn	Elkhorn, MB	1889-1949
Mackay (Dauphin)	The Pas Reserve, MB Dauphin, MB	1915-1933 1957-1988

Particulars of Involvement:

This Diocese was established in or about 1913 and incorporated in or about 1925. It was responsible for the management, operation and staffing of the above-described schools, at times in conjunction with the Missionary Society of the Anglican Church of Canada.

6. THE SYNOD OF THE DIOCESE BRITISH COLUMBIA**Schools and Dates of Involvement:**

St. Michael's	Alert Bay, BC	1891-1962
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Particulars of Involvement:

This Diocese was responsible for the management, operation and staffing of the above-described school, at times in conjunction with the Missionary Society of the Anglican Church of Canada. This Diocese, through the Bishop of Columbia, entered into an agreement with the Crown in 1911 to support, maintain and educate Indian children at the school. The Anglican Synod of the Diocese of British Columbia provided childcare workers, teachers and cooks to staff the school.

7. THE SYNOD OF THE DIOCESE OF CALGARY

Schools and Dates of Involvement:

Old Sun	Gleichen, Blackfoot Reserve, AB	1929-1971
Sarcee Boarding School	Sarcee Junction, AB	1894-1930
St. Cyprian	Brocket, Peigan Reserve, AB	1892-1961
St. Paul's Boarding School (Blood)	Blood Reserve, AB	1880-1975

Particulars of Involvement:

This Diocese, through the Bishop of Calgary, entered into agreements with the Crown in or about 1912 to support, maintain and educate Indian children at least at Old Sun, Sarcee and St. Paul's (Blood) schools. Prior to 1919, and after March 31, 1969, this Diocese provided chaplaincy and other services to some of the above-described schools. In the intervening years, the responsibility for the schools rested with the Missionary Society of the Anglican Church of Canada.

8. THE SYNOD OF THE DIOCESE OF CARIBOO

Schools and Dates of Involvement:

St. George's	Lytton, BC	1915-1969
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Particulars of Involvement:

This Diocese was responsible for or involved in the management, operation and staffing of the above-described school.

9. THE INCORPORATED SYNOD OF THE DIOCESE OF HURON

Particulars of Involvement:

This Diocese was responsible for the religious works of the General Synod of the Anglican Church of Canada in the district where the above-described school was located. This included responsibility for religious activities carried on at the school and the religious instruction of the students. The Incorporated Synod of the Diocese of Huron oversaw the management, operation and staffing of the school, through the principal, who was an Anglican clergyman, and through

an advisory committee.

10. THE SYNOD OF THE DIOCESE OF KEEWATIN

Schools and Dates of Involvement:

Pelican Lake	Sioux Lookout, ON	1927-1973
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Particulars of Involvement:

This Diocese, through the Bishop of Keewatin, proposed the establishment of the above-described school. It was responsible for the religious works of the General Synod of the Anglican Church of Canada in the district where the school was located, which included the religious activities which were carried on at the school. It was responsible for or involved in the management, operation and staffing of the school, at times in conjunction with the Missionary Society of the Anglican Church of Canada.

11. THE DIOCESE OF MOOSONEE

Schools and Dates of Involvement:

Moose Factory (Bishop Horden)	Moose Island, ON	1907-1963
Fort George	Fort George, QC	1934-1979
Chapleau	Chapleau, ON	1907-1950

Particulars of Involvement:

This Diocese, through the Bishop of Moosonee, entered into agreements with the Crown in or about 1911 to support, maintain, and educate Indian Children at least at Moose Factory and Chapleau schools. It was responsible for the management, operation and staffing of the above-described schools, at times in conjunction with the Missionary Society of the Anglican Church of Canada.

12. THE SYNOD OF THE DIOCESE OF NEW WESTMINSTER

Schools and Dates of Involvement:

Yale (All Hallows)	Yale, BC	1884-1920
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Particulars of Involvement:

This Diocese, through the Bishop of New Westminister, entered into an agreement with the Crown in or about 1911 to support, maintain and educate Indian children at the above-described school.

13. THE SYNOD OF THE DIOCESE OF QU'APPELLE

Schools and Dates of Involvement:

Gordon's Residential School	Gordon's Reserve, SK	1889-1969
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Particulars of Involvement:

This Diocese, through the Bishop of Qu'Appelle, entered into an agreement with the Crown in or about 1911 to support, maintain and educate Indian children at the above-described school. It was responsible for the management, operation and staffing of the school, at times in conjunction with the Missionary Society of the Anglican Church of Canada.

14. THE DIOCESE OF SASKATCHEWAN**Schools and Dates of Involvement:**

Battleford Industrial School	Battleford, SK	1883-1943
Lac la Ronge	La Ronge, SK	1914-1947
Onion Lake	Makao's Reserve, SK	1893-1951
Prince Albert (All Saints/St. Alban's)	Prince Albert, SK	1951-1964

Particulars of Involvement:

This Diocese, through the Bishop of Saskatchewan, entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at least at Lac la Ronge and Onion Lake schools. This Diocese was responsible for the management, operation and staffing of the above-described schools, at times in conjunction with the Missionary Society of the Anglican Church of Canada.

15. THE SYNOD OF THE DIOCESE OF YUKON**Schools and Dates of Involvement:**

Carcross	Carcross, YT	1911-1969
St. Paul's Hostel	Dawson, YT	1920-1943
Hay River	Hay River, NT	1898-1949

THE SYNOD OF THE DIOCESE OF YUKON**Particulars of Involvement:**

This Diocese, through the Bishop of Yukon, entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at least at Carcross and Hay River schools. The Synod of the Diocese of Yukon was responsible for the management, operation and staffing of the above-described schools, at times in conjunction with the Missionary Society of the

Anglican Church of Canada.

16. THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (ALSO KNOWN AS THE NEW ENGLAND COMPANY)

Schools and Dates of Involvement:

St. George's	Lytton, BC	1901-1979
Mohawk Institute	Brantford, ON	1828-1969

Particulars of Involvement:

This corporation established and operated the above-described schools, at least until 1922. It entered into an agreement with the Crown in 1911 to support, maintain and educate Indian children at least at Mohawk school. It owned the lands and school buildings and entered into lease agreements with the Crown in respect of the schools in 1922 and 1947. It maintained influence over the management, operation and religious education at the schools.

PRESBYTERIAN CHURCH ENTITIES

17. THE PRESBYTERIAN CHURCH IN CANADA

Schools and Dates of Involvement:

Ahousaht	Ahousaht, BC	1901-1925
Alberni	Port Alberni, BC	1920-1925
Stoney Plain	AB	
Crowstand	Kamsack, SK	
File Hills	Balcarres, SK	1889-1925
Muscowepetung	SK	
Regina	Regina, SK	
Round Lake	Stockholm, SK	1886-1925
Birtle	Birtle, MB	1889-1970
Portage la Prairie	Portage la Prairie, MB	1895-1925
Cecilia Jeffrey	Kenora, ON	1900-1962

Particulars of Involvement:

The Presbyterian Church in Canada is an unincorporated association of members operating for

the common purpose of practising and promoting the Presbyterian faith in Canada. Its members include the Trustee Board and the Board of Home Missions of the Presbyterian Church in Canada, which operated the above-described schools under the supervision of the Presbyterian Church in Canada and for the purposes of the Presbyterian Church in Canada in promoting the Presbyterian faith in Canada.

18. THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA

Schools and Dates of Involvement:

same as above

Particulars of Involvement:

The Trustee Board of the Presbyterian Church in Canada is a corporation incorporated in 1939. It operated the above-described schools on behalf of the Presbyterian Church in Canada. It was responsible for the management, operation and staffing of the schools.

19. THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA

Schools and Dates of Involvement:

same as above

Particulars of Involvement:

The Foreign Mission of the Presbyterian Church in Canada was responsible for missionary work of the Presbyterian Church in Canada to aboriginal peoples. It reported to the General Assembly of the Presbyterian Church in Canada. The Foreign Mission entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at least at Alberni, Birtle, Cecilia Jeffrey, Crowstand, File Hills and Round Lake schools.

20. BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN CANADA

Schools and Dates of Involvement:

same as above

Particulars of Involvement:

The Board of Home Missions and Social Services of the Presbyterian Church in Canada operated some of the above-described schools on behalf of the Presbyterian Church in Canada.

21. THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN CANADA

Schools and Dates of Involvement:

Birtle

Birtle, MB

1962-1970

Cecilia Jeffrey	Kenora, ON	1962-1966
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Particulars of Involvement:

The Women's Missionary Society of the Presbyterian Church in Canada entered into agreement with the Crown in or about 1962 to operate the above-described schools. The Women's Missionary Society of the Presbyterian Church in Canada reported to the General Assembly of the Presbyterian Church in Canada.

UNITED CHURCH ENTITIES

22. THE UNITED CHURCH OF CANADA

Schools and Dates of Involvement:

Ahousaht	Ahousaht, BC	1925-1950
Alberni	Port Alberni, BC	1925-1973
Coqualeetza	Chilliwack, BC	1925-1937
Kitimaat	Kitimaat, BC	
Edmonton	Edmonton, AB	1925-1968
Morley	Morley, AB	1925-1969
File Hills	Balcarres, SK	1925-1949
Round Lake	Stockholm, SK	1925-1950
Brandon	Brandon, MB	1925-1972
Norway House	Norway House, MB	1925-1967
Portage la Prairie	Portage la Prairie, MB	1925-1975
Mount Elgin	Muncey Town, ON	1925-1946

Particulars of Involvement:

The United Church of Canada was incorporated in or about 1924. In 1925 it assumed responsibility for the above-described schools, which had previously been managed or operated by the Presbyterian Church in Canada or the Methodist Church of Canada. The United Church of Canada was responsible for the management, operation and staffing of the schools, often through local home missions committees run by presbyteries and conferences. The United Church of Canada entered into agreements with the Crown in or about 1962 to manage and operate some of the above-described schools, including Alberni and Brandon.

23. THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA

Schools and Dates of Involvement:

same as above

THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA

Particulars of Involvement:

The Board of Home Missions is the administrative division of the United Church of Canada with responsibility for social and religious work of the United Church, including the supervision and administration of missionary work. The Board of Home Missions was responsible for the operation of the above-described schools, under the by-laws of the United Church of Canada.

24. THE METHODIST CHURCH OF CANADA

Schools and Dates of Involvement:

Coqualeetza	Chilliwack, BC	1886-1925
Kitimaat	Kitimaat, BC	1883-1925
Port Simpson	Port Simpson, BC	1863-1925
Edmonton	Edmonton, AB	1924-1925
Morley	Morley, AB	1886-1925
Brandon	Brandon, MB	1892-1925
Norway House	Norway House, MB	1900-1925
Mount Elgin	Muncey Town, ON	1848-1925

Particulars of Involvement:

The Methodist Church of Canada was responsible for the management, operation and staffing of the above-described schools until 1925, when the Methodist Church of Canada merged with certain congregations of the Presbyterian Church to form the United Church of Canada. Thereafter, the United Church of Canada was responsible for the schools. The Methodist Church of Canada operated the schools through its Missionary Society, described below.

25. THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA

Schools and Dates of Involvement:

File Hills	Balcarres, SK	1925-1949
Portage la Prairie	Portage la Prairie, MB	1926-1961

THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA

Particulars of Involvement:

The Women's Missionary Society of the United Church of Canada was responsible for the management, operation and staffing of the above-noted schools.

26. THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA

(ALSO KNOWN AS THE METHODIST MISSIONARY SOCIETY OF CANADA)**Schools and Dates of Involvement:**

same as above

Particulars of Involvement:

The Missionary Society of the Methodist Church of Canada was the division of the Methodist Church of Canada responsible for the operation of the above-described schools. The Missionary Society entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at least at Mount Elgin, Kitimaat, Port Simpson and Norway House schools.

ROMAN CATHOLIC CHURCH ENTITIES**BISHOPS, DIOCESES, AND EPISCOPAL CORPORATIONS****27. THE ROMAN CATHOLIC BISHOP OF KAMLOOPS****Schools and Dates of Involvement:**

Kamloops	Kamloops, BC	1947-1978
Cariboo	Williams Lake, BC	Post-1947

Particulars of Involvement:

The Roman Catholic Bishop of Kamloops is a corporation sole incorporated in or about 1947. The Bishop of Kamloops was responsible for the management and operations of the above-described schools, and oversaw the staff.

28. THE ROMAN CATHOLIC BISHOP OF THUNDER BAY**Schools and Dates of Involvement:**

St. Mary's	Kenora, ON	1953-1962
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Particulars of Involvement:

The Roman Catholic Bishop of Thunder Bay is a corporation sole, which prior to 1970 was known as the Roman Catholic Bishop of Fort William. The Bishop was responsible for the management and operation of the above-described school, and oversaw the staff after 1953. Prior to then, the school was managed and operated by the Archbishop of St. Boniface.

29. THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER**Schools and Dates of Involvement:**

Cariboo	Williams Lake, BC	1909-1947
Kamloops	Kamloops, BC	1909-1947
St. Mary's	Mission City, BC	1911-1984
St. Paul's	North Vancouver, BC	1898-1959
Sechelt	Sechelt, BC	1909-1975
St. Eugene's	Cranbrook, BC	1909-1937

THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER

Particulars of Involvement:

The Roman Catholic Archbishop of Vancouver is a corporation sole. The Archbishop was responsible for the management, operation and staff of the above-described schools. The Archbishop entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at St. Mary's, St. Paul's and Sechelt schools.

30. THE ROMAN CATHOLIC BISHOP OF VICTORIA

Schools and Dates of Involvement:

Christie	Tofino, BC	1900-1983
Kuper Island	Chemainus, BC	1891-1974

Particulars of Involvement:

The Roman Catholic Bishop of Victoria was responsible for the management, operation and staff of the above-described schools.

31. THE ROMAN CATHOLIC BISHOP OF NELSON

Schools and Dates of Involvement:

St. Eugene's	Cranbrook, BC	1937-1970
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Particulars of Involvement:

The Roman Catholic Bishop of Nelson was responsible for the management, operation and staff of the above-described schools.

32. THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE

Schools and Dates of Involvement:

Coudert Hall	Whitehorse, YT	1962-1970
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THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE

Particulars of Involvement:

The Catholic Episcopal Corporation of Whitehorse was incorporated in or about 1945 and was responsible for the management, operation and staff of the above-described schools.

33. LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD

Schools and Dates of Involvement:

Assumption	Hay Lakes Reserve, AB	1949-1965
Ft. Vermilion	Fort Vermilion, AB	1890-1961
Grouard	Grouard, AB	1894-1961
Joussard	Joussard, AB	1913-1969
St. Martin	Wabasca, AB	1901-1973
Sturgeon Lake	Sturgeon Lake, AB	1907-1957

Particulars of Involvement:

La Corporation Episcopale Catholique Romaine de Grouard was responsible for the management, operation and staff of the above-described schools. The Bishop of Athabaska, a predecessor to the Corporation Episcopale, entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at St. Martin and Sturgeon Lake schools. La Corporation Episcopale contracted with the Crown to construct school buildings and manage finances at Assumption and Grouard schools, at least until 1956.

34. THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF MACKENZIE - FORT SMITH

Schools and Dates of Involvement:

Fort Chipewyan	Fort Chipewyan, AB	1902-1974
Fort Resolution	Fort Resolution, NT	1902-1958
Fort Providence	Fort Providence, NT	1867-1953
Fort Simpson (La Pointe Hall)	Fort Simpson, NT	1960-1970
Immaculate Conception (Aklarik)	Aklarik, NT	1926-1958

Particulars of Involvement:

The Episcopal Corporation of Mackenzie-Fort Smith was incorporated in or about 1913, and was responsible for the management, operation and staff of the above-described schools. The Vicarate of Mackenzie, a predecessor to the Episcopal Corporation, entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at Fort Resolution and Fort Providence schools. The Bishop of Athabaska entered into an agreement with the Crown in or about 1911 to support, maintain and educate Indian children at Fort Chipewyan school.

35. THE ARCHIEPISCOPAL CORPORATION OF REGINA

Schools and Dates of Involvement:

Lebret	Lebret, SK	1884-1975
Marieval	Grayson, SK	1899-1969
Muscowequan	Lestock, SK	1895-1969

Particulars of Involvement:

The Archiepiscopal Corporation of Regina, through the Archbishop of Regina, was responsible for the management, operation and staff of the above-described schools.

36. THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN

Schools and Dates of Involvement:

Beauval	Lac la Plonge, SK	1906-1970
Sturgeon Landing	Sturgeon Landing, SK	1926-1958
Cross Lake	Cross Lake, MB	1915-1969
Guy Hill	The Pas, MB	1958-1974

Particulars of Involvement:

The Roman Catholic Episcopal Corporation of Keewatin is a corporation sole incorporated in 1912 and consisting of the Archbishop of Keewatin-Le Pas and each of his successors. The Episcopal Corporation, through the Archbishop, was responsible for the management, operation and staff of the above-described schools. The Vicar Apostolic of the Diocese of Keewatin, a predecessor to the Episcopal Corporation, entered into an agreement with the Crown in or about 1911 to support, maintain and educate Indian children at Beauval school.

37. THE ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG

Schools and Dates of Involvement:

Assiniboia	Winnipeg, MB	1957-1973
Brandon	Brandon, MB	1970-1972
Pine Creek	Pine Creek, MB	1915-1969
Sandy Bay	Sandy Bay, MB	1915-1970

THE ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG

Particulars of Involvement:

The Archiepiscopal Corporation of Winnipeg is a corporation sole incorporated in 1917 and consisting of the Archbishop of Winnipeg and each of his successors. The Archiepiscopal Corporation of Winnipeg, through the Archbishop, assumed responsibility for the management, operation and staff of the above-described schools after 1915, when the Archdiocese of

Winnipeg was carved out of the Archdiocese of St. Boniface.

38. LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT-BONIFACE

Schools and Dates of Involvement:

Fort Alexander	Fort Alexander, MB	1906-1970
Pine Creek	Pine Creek, MB	1891-1971
Sandy Bay	Sandy Bay, MB	1905-1970
St. Mary's	Kenora, ON	1935-1953
Fort Frances	Fort Frances, ON	1902-1974
St. Philip's	Kamsack, SK	1899-1914 1928-1969
Marieval (Cowesses)	Grayson, SK	1899-1969

Particulars of Involvement:

La Corporation Archiepiscopale Catholique de Saint-Boniface is a corporation sole consisting of the Archbishop of St. Boniface and each of his successors in the Archdiocese of St. Boniface. It was incorporated in 1871 in Manitoba, and in 1911 in Ontario. La Corporation Archiepiscopale, through the Archbishop, was responsible for the management, operation and staff of the above-described schools. The Archbishop of St. Boniface entered into agreements with the Crown in or about 1911 to support, maintain and educate Indian children at all of the above-described schools.

39. THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF SAULT STE. MARIE

Schools and Dates of Involvement:

Spanish Boys	Spanish, ON	1883-1965
Spanish Girls	Spanish, ON	1883-1965
St. Joseph's (Fort William)	Thunder Bay, ON	1873-1970

THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF
THE DIOCESE OF SAULT STE. MARIE

Particulars of Involvement:

The Episcopal Corporation of Hudson's Bay is a corporation sole incorporated in or about 1938, consisting of the Bishop of Churchill-Hudson Bay. The Episcopal Corporation, through the Bishop, was responsible for the management, operation and staff of the above-described school.

40. THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY

Schools and Dates of Involvement:

St. Anne's	Fort Albany, ON	1936-1964
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Particulars of Involvement:

The Episcopal Corporation of James Bay is a corporation sole incorporated in or about 1940, which consists of the Bishop of Moosonee and each of his successors. The Episcopal Corporation, through the Bishop, was responsible for the management, operation and staff of the above-described school.

41. THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX

Schools and Dates of Involvement:

Shubenacadie	Shubenacadie, NS	1930-1956
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Particulars of Involvement:

The Episcopal Corporation of Halifax, through the Archbishop of Halifax, was responsible for the management, operation and staff of the above-described school.

42. THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY

Schools and Dates of Involvement:

Chesterfield Inlet	Chesterfield, NU	1929-1970
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THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY

Particulars of Involvement:

The Episcopal Corporation of Hudson's Bay is a corporation sole incorporated in or about 1938, consisting of the Bishop of Churchill-Hudson Bay. The Episcopal Corporation, through the Bishop, was responsible for the management, operation and staff of the above-described school.

43. LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT

Schools and Dates of Involvement:

Duck Lake (St. Michael's)	Duck Lake, SK	1892-1969
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Particulars of Involvement:

La Corporation Episcopale Catholique Romaine de Prince Albert, through the Bishop of Prince Albert, was responsible for the management, operation and staff of the above-described school.

44. THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT

Schools and Dates of Involvement:

Lejac	Fraser Lake, BC	1924-1976
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Particulars of Involvement:

The Roman Catholic Episcopal Corporation of Prince Rupert was incorporated in 1924. Through the Bishop of Prince George, it was responsible for the management, operation and staff of the above-described school.

ORDERS – MALE

45. THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA

Schools and Dates of Involvement:

Cariboo	Williams Lake, BC	1891-1981
Christie	Tofino, BC	1938-1976
Cranbrook	Cranbrook, BC	1890-1970
Kamloops	Kamloops, BC	1890-1978
Kuper Island	Chemainus, BC	1957-1975
Lejac	Fraser Lake, BC	1910-1976
Lower Post	Watson Lake, YT	1941-1975
St. Mary's	Mission City, BC	1861-1984
St. Paul's	North Vancouver, BC	1898-1959
Sechelt	Sechelt, BC	1924-1975

Particulars of Involvement:

The Oblates of Mary Immaculate in the Province of British Columbia supplied the principals, teachers, and residence workers and managed the day-to-day operations of the above-described schools under the authority of the Bishops or Archbishops of the local dioceses.

46. THE MISSIONARY OBLATES OF MARY IMMACULATE – GRANDIN PROVINCE

Schools and Dates of Involvement:

Assumption	Hay Lakes Reserve, AB	1951-1970
Blue Quills	Blue Quills, AB	1931-1970

Crowfoot	Blackfoot Reserve, AB	1934-1968
Ermineskin	Ermineskin Reserve, AB	1916-1973
Fort Chipewyan	Fort Chipewyan, AB	1902-1974
Fort Vermilion	Fort Vermilion, AB	1890-1961
Grouard	Grouard, AB	1923-1962
Joussard	Joussard, AB	1913-1956

THE MISSIONARY OBLATES OF MARY IMMACULATE – GRANDIN PROVINCE

Schools and Dates of Involvement:

Sacred Heart	Peigan Reserve, AB	1895-1961
St. Albert's	Sturgeon River, AB	1876-1948
St. Anthony's	Onion Lake, SK	1934-1958
St. Martin's	Wabasca, AB	1901-1973
St. Mary's	Blood Reserve, AB	1926-1970
Sturgeon Lake	Sturgeon Lake, AB	1907-1957
Fort Providence	Fort Providence, NT	1867-1960
Fort Resolution	Fort Resolution, NT	1902-1958
Fort Simpson (La Pointe Hall)	Fort Simpson, NT	1960-1970
Fort Smith (Breynat Hall)	Fort Smith, NT	1958-1970
Grollier Hall	Inuvik, NT	1959-1987
Immaculate Conception	Aklavik, NT	1926-1959

Particulars of Involvement:

The Oblates of Mary Immaculate – Grandin Province supplied the principals, teachers, and residence workers and managed the day-to-day operations of the above-described schools under the authority of the Bishops or Archbishops of the local dioceses.

47. LES OBLATS DE MARIE IMMACULEE DU MANITOBA OR THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF MANITOBA

Schools and Dates of Involvement:

Beauval	Lac la Plonge, SK	1906-1970
Lebret	Lebret, SK	1884-1974
Marieval	Grayson, SK	1899-1969
Muscovequan	Lestock, SK	1895-1969
St. Philip's	Kamsack, SK	1899-1914

Sturgeon Landing	Sturgeon Landing, SK	1926-1958
Thunderchild	Delmas, SK	1901-1948
Assiniboia	Winnipeg, MB	1957-1979
Brandon	Brandon, MB	1970-1975
Cross Lake	Cross Lake, MB	1915-1942

LES OBLATS DE MARIE IMMACULEE DU MANITOBA OR THE OBLATES OF MARY
IMMACULATE IN THE PROVINCE OF MANITOBA

Schools and Dates of Involvement:

Fort Alexander	Fort Alexander, MB	1906-1970
Guy Hill	The Pas, MB	1958-1974
Norway House	Norway House, MB	1900-1967
Pine Creek	Pine Creek, MB	1891-1971
Sandy Bay	Sandy Bay, MB	1905-1970
Fort Frances	Fort Frances, ON	1902-1974
McIntosh	McIntosh, ON	1924-1969
St. Mary's	Kenora, ON	1894-1962

Particulars of Involvement:

The Oblates of Mary Immaculate in the Province of Manitoba were incorporated in or about 1873. Prior to 1985 they were known as Les Révérends Pères Oblats. The Oblates supplied the principals, teachers and residence workers and managed the day-to-day operations of the above-described schools, under the authority of the Bishops and Archbishops of the local dioceses.

48. LES PERES MONTFORTAINS (ALSO KNOWN AS THE COMPANY OF MARY)

Schools and Dates of Involvement:

Kuper Island	Chemainus, BC	Pre-1957
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Particulars of Involvement:

Les Pères Montfortains (known as The Company of Mary after 1964) supplied principals, teachers and residence workers and managed the operation of the above-described school, under the authority of the local Bishop, until 1957. After that date, the operation of the school was assumed by the Order of the Oblates of Mary Immaculate in the Province of British Columbia.

49. THE MISSIONARY OBLATES OF MARY IMMACULATE - PROVINCE OF ST.
JOSEPH

Schools and Dates of Involvement:

St. Anne's Fort Albany, ON 1936-1964

Particulars of Involvement:

The Oblates of Mary Immaculate-Province of St. Joseph supplied the principals, teachers and residence workers and managed the day-to-day operations of the above-described school, under the authority of the local Bishop.

50. LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (LES REVERENDS PERES OBLATS DE L'IMMACULEE CONCEPTION DE MARIE)

Schools and Dates of Involvement:

St. Mary's Kenora, ON 1894-1962

Particulars of Involvement:

Les Missionaires Oblats de Marie Immaculee is a federally incorporated entity, which was incorporated in 1849 and which was known as Les Révérends Pères Oblats de l'Immaculée Conception de Marie until 1956. Les Missionaires Oblats owned the lands on which the school was built. Les Missionaires Oblats established the above-described school and supplied principals, teachers and residence workers and managed the day-to-day operations of the school.

51. THE OBLATES OF MARY IMMACULATE, ST. PETER'S PROVINCE

Schools and Dates of Involvement:

Shubenacadie Shubenacadie, NS 1956-1967

Particulars of Involvement:

The Oblates supplied principals, teachers and residence workers and managed the day-to-day operations of the above-described school, under the authority of the local Archbishop.

52. LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES TERRITOIRES DU NORD OUEST

Schools and Dates of Involvement:

Duck Lake (St. Michael's) Duck Lake, SK 1892-1964

Particulars of Involvement:

Les Révérends Pères Oblats de Marie Immaculee des Territoires du Nord Ouest was incorporated in 1883. Les Révérends Pères was responsible for the day-to-day operations of the above-described school. Les Révérends Pères entered into an agreement with the Crown in or about 1911 to support, maintain and educate Indian children at the school.

53. LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (PROVINCE DU CANADA - EST)

Schools and Dates of Involvement:

Amos	Amos, PQ
Sept-Iles	Sept-Iles, PQ

Particulars of Involvement:

Les Missionnaires Oblats supplied the principals, teachers, and residence workers and managed the day-to-day operations of the above-described schools.

ORDERS – FEMALE

54. THE SISTERS OF ST. ANN

Schools and Dates of Involvement:

Kamloops	Kamloops, BC	1890-1970
Kuper Island	Chemainus, BC	1891-1974
St. Mary's	Mission City, BC	1861-1984
Lower Post	Watson Lake, YT	1941-1975

Particulars of Involvement:

The Sisters of St. Ann provided teachers, dormitory supervisors and domestic staff for the above-described schools.

55. THE SISTERS OF INSTRUCTION OF THE CHILD JESUS (ALSO KNOWN AS SISTERS OF THE CHILD JESUS)

Schools and Dates of Involvement:

Cariboo	Williams Lake, BC	1896-1981
St. Paul's	North Vancouver, BC	1898-1959
Sechelt	Sechelt, BC	1904-1975
Lejac	Fraser Lake, BC	1917-1964

Particulars of Involvement:

The Sisters of Instruction of the Child Jesus were incorporated in 1913. They provided teachers, dormitory supervisors and childcare workers for the above-described schools.

56. THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA

Schools and Dates of Involvement:

Assumption	Hay Lakes, AB	1951-1970
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Crowfoot	Blackfoot Reserve, AB	1899-1968
Fort Vermilion	Fort Vermilion, AB	1908-1968
Grouard	Grouard, AB	1902-1961
Joussard	Joussard, AB	1913-1969
St. Martin's	Wabasca, AB	1901-1973

THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA

Schools and Dates of Involvement:

St. Mary's	Blood Reserve, AB	1884-1975
Sturgeon Lake	Sturgeon Lake, AB	1907-1961

Particulars of Involvement:

The Sisters of Charity of Providence of Western Canada provided teachers, dormitory supervisors and domestic staff for the above-described schools.

57. THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERT (ALSO KNOWN AS THE SISTERS OF CHARITY (GREY NUNS) OF ALBERTA

Schools and Dates of Involvement:

Blue Quills	Blue Quills, AB	1862-1970
Crowfoot	Blackfoot Reserve, AB	1909-1968
Fort Chipewyan	Fort Chipewyan, AB	1902-1974
Sacred Heart	Peigan Reserve, AB	1957-1965
St. Albert's	Sturgeon River, AB	1876-1948
St. Mary's	Blood Reserve, AB	1926-1970

Particulars of Involvement:

The Sisters of Charity (Grey Nuns) of St. Albert is a province of The Sisters of Charity (Grey Nuns) of Montreal, which carried on missionary work in the province of Alberta. The Sisters of Charity (Grey Nuns) of St. Albert provided teachers, dormitory supervisors and domestic staff for the above-described schools.

58. THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES

Schools and Dates of Involvement:

Blue Quills	Blue Quills, AB	1862-1970
Crowfoot	Blackfoot Reserve, AB	1909-1968

Sacred Heart	Peigan Reserve, AB	1895-1957
St. Albert's	Sturgeon River, AB	1876-1948
St. Mary's	Blood Reserve, AB	1926-1970

THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES

Particulars of Involvement:

The Sisters of Charity (Grey Nuns) of the Northwest Territories provided teachers, dormitory supervisors and domestic staff for the above-described schools.

59. THE SISTERS OF CHARITY (GREY NUNS) OF MONTREAL (LES SOEURS DE LA CHARITÉ (SOEURS GRISES) DE L'HÔPITAL GÉNÉRAL DE MONTREAL)

Schools and Dates of Involvement:

Blue Quills	Blue Quills, AB	1890-1931
Fort Chipewyan	Fort Chipewyan, AB	1902-1974
Sacred Heart	Peigan Reserve, AB	1895-1965
St. Albert's	Sturgeon River, AB	1941-1948
St. Mary's	Blood Reserve, AB	1926-1970
Beauval	Lac la Plonge, SK	1906-1970
Lebret	Lebret, SK	1884-1969
Fort Frances	Fort Frances, ON	1902-1974
Fort Providence	Fort Providence, NT	1867-1960
Fort Resolution	Fort Resolution, NT	1902-1958
Fort Simpson (La Pointe Hall)	Fort Simpson, NT	1958-1970
Fort Smith (Breynat Hall)	Fort Smith, NT	1958-1970
Grolier Hall	Inuvik, NT	1959-1987
Immaculate Conception	Aklavik, NT	1926-1959
Chesterfield Inlet	Chesterfield Inlet, NU	1929-1967

Particulars of Involvement:

The Sisters of Charity (Grey Nuns) of Montreal entered into contracts with Oblate orders to work at residential schools, primarily in the area of elementary instruction. The Sisters of Charity (Grey Nuns) of Montreal oversaw the operations and activities of affiliated provinces of Grey

Nuns, including the Grey Nuns of St. Boniface (Manitoba) and St. Albert.

60. THE GREY SISTERS NICOLET (ALSO KNOWN AS THE SISTERS OF THE GREY NUNS OF NICOLET)

Schools and Dates of Involvement:

St. Mary's	Blood Reserve, AB	Pre-1942
Sacred Heart	Peigan Reserve, AB	1895-1965

Particulars of Involvement:

The Grey Sisters Nicolet provided teachers, dormitory supervisors and domestic staff for the above-described schools.

61. THE GREY NUNS OF MANITOBA INC. (LES SOEURS GRISES DU MANITOBA INC.)

Schools and Dates of Involvement:

Lebret	Lebret, SK	1884-1975
Muscowequan	Lestock, SK	1889-1932
Assiniboia	Winnipeg, MB	1957-1979
Fort Frances	Fort Frances, ON	1902-1974
St. Mary's	Kenora, ON	Pre-1930

Particulars of Involvement:

The Grey Nuns of Manitoba Inc. were originally incorporated in 1872 as Les Soeurs de la Charité de l'Hopital Generale de St. Boniface. The Grey Nuns of Manitoba provided teaching services at the above-described schools under the administration of male Oblate orders.

62. THE SISTERS OF ST. JOSEPH OF SAULT STE. MARIE

Schools and Dates of Involvement:

St. Joseph's	Fort William, ON	1873-1970
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Particulars of Involvement:

The Sisters of St. Joseph of Sault Ste. Marie managed and operated the above-described school. The Sisters accepted aboriginal children in residence at the school, with funding from the Crown.

63. LES SOEURS DE SAINT-JOSEPH DE ST-HYACINTHE AND INSTITUT DES

SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE

Schools and Dates of Involvement:

Marieval	Grayson, SK	1899-1969
Sturgeon Landing	Sturgeon Landing, SK	1926-1958
Guy Hill	The Pas, MB	1955-1979
Sandy Bay	Sandy Bay, MB	1905-1970
St. Mary's	Kenora, ON	1930-1972

Particulars of Involvement:

Les Soeurs de Saint-Joseph de St-Hyacinthe was founded in 1877 and incorporated in Quebec in 1881. The Institut des Soeurs was incorporated under Manitoba law in 1944. Les Soeurs provided teachers and domestic staff for the above-described schools, at the request and under the authority of the local Bishops or Archbishops, or in some cases under the administration of male Oblate orders.

64. LES SOEURS DE L'ASSOMPTION DE LA SAINTE VERGE (ALSO KNOWN AS LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE DE NICOLET AND THE SISTERS OF ASSUMPTION)

Schools and Dates of Involvement:

Ermineskin	Ermineskin, AB	1916-1973
St. Anthony's	Onion Lake, SK	1894-1958
St. Philip's	Kamsack, SK	1899-1914
Thunderchild	Delmas, SK	1901-1948

Particulars of Involvement:

Les Soeurs de l'Assomption de la Sainte Vierge was incorporated in 1916. Les Soeurs de l'Assomption provided teachers, dormitory supervisors and domestic staff for the above-described schools, usually with the co-operation of male Oblate orders.

65. LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE DE L'ALBERTA

Schools and Dates of Involvement:

Ermineskin	Ermineskin, AB	1916-1973
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Particulars of Involvement:

Les Seours de l'Assomption provided teachers, dormitory supervisors and domestic staff for the above-described staff.

66. THE DAUGHTERS OF THE HEART OF MARY (ALSO KNOWN AS LA SOCIETE DES FILLES DU COEUR DE MARIE AND THE DAUGHTERS OF THE IMMACULATE HEART OF MARY)

Schools and Dates of Involvement:

Spanish Girls	Spanish, ON	1919-1962
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Particulars of Involvement:

The Daughters of the Heart of Mary owned and operated the above-described school (which was also known as St. Joseph's school) from 1919 to 1930. Beginning in 1931, the Daughters owned and operated the school through a non-profit corporation. The Daughters made admissions decisions and employed staff at the school.

67. MISSIONARY OBLATE SISTERS OF ST. BONIFACE (ALSO KNOWN AS MISSIONARY OBLATES OF THE SACRED HEART AND MARY IMMACULATE, OR LES MISSIONNAIRES OBLATES DE ST. BONIFACE)

Schools and Dates of Involvement:

Muscowequan	Lestock, SK	1932-1977
Cross Lake	Cross Lake, MB	1916-1969
Fort Alexander	Fort Alexander, MB	1906-1970
Pine Creek	Pine Creek, MB	1891-1969
Fort Frances	Fort Frances, ON	1902-1974
McIntosh	McIntosh, ON	1924-1969

MISSIONARY OBLATE SISTERS OF SAINT - BONIFACE (ALSO KNOWN AS MISSIONARY OBLATES OF THE SACRED HEART AND MARY IMMACULATE, OR LES MISSIONNAIRES OBLATS DE SAINT-BONIFACE)

Particulars of Involvement:

The Missionary Oblate Sisters of Saint-Boniface was originally incorporated in 1909. The Sisters provided teaching services for the above-described schools, under the administration of male Oblate orders.

68. LES SOEURS DE LA CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX)
(ALSO KNOWN AS SISTERS OF CHARITY OF OTTAWA - GREY NUNS OF THE
CROSS)

Schools and Dates of Involvement:

St. Anne's	Fort Albany, ON	1936-1964
Fort George	Fort George, PQ	

Particulars of Involvement:

Les Soeurs de la Charité d'Ottawa provided teachers and domestic staff for the above-described schools.

69. SISTERS OF THE HOLY NAMES OF JESUS AND MARY (ALSO KNOWN AS THE
RELIGIOUS ORDER OF JESUS AND MARY AND LES SOEURS DE JESUS-
MARIE)

Schools and Dates of Involvement:

Norway House	Norway House, MB	1900-1967
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Particulars of Involvement:

The Sisters of the Holy Names of Jesus and Mary was incorporated in 1879, and provided teachers and domestic staff for the above-described school.

70. THE SISTERS OF CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (ALSO
KNOWN AS THE SISTERS OF CHARITY OF HALIFAX)

Schools and Dates of Involvement:

Shubenacadie	Shubenacadie, NS	1930-1967
St. Eugene's (Cranbrook)	Cranbrook, BC	1936-1970

THE SISTERS OF CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (ALSO KNOWN
AS THE SISTERS OF CHARITY OF HALIFAX)

Particulars of Involvement:

The Sisters provided services as teachers and dormitory supervisors at the above-described schools.

71. LES SOEURS DE NOTRE DAME AUXILIATRICE

Schools and Dates of Involvement:

Sept-Iles

Sept-Iles, PQ

Particulars of Involvement:

Les Soeurs de Notre Dame Auxiliatrice provided teachers, dormitory supervisors and domestic staff for the above-described school.

72. LES SOEURS DE ST. FRANÇOIS D'ASSISE

Schools and Dates of Involvement:

Amos

Amos, PQ

Particulars of Involvement:

Les Soeurs de St. François d'Assise provided teachers, dormitory supervisors and domestic staff for the above-described school.

73. SISTERS OF THE PRESENTATION OF MARY (SOEURS DE LA PRESENTATION DE MARIE)

Schools and Dates of Involvement:

Duck Lake (St. Michael's)

Duck Lake, SK

1892-1969

Particulars of Involvement:

The Sisters of the Presentation of Mary provided teachers for the above-described school after 1903.

74. THE BENEDICTINE SISTERS

Schools and Dates of Involvement:

Christie

Tofino, BC

1900-1960

Particulars of Involvement:

The Benedictine Sisters provided teachers and domestic staff for the above-described school.

75. INSTITUT DES SOEURS DU BON CONSEIL

Schools and Dates of Involvement:

Pointe Bleue

Pointe Bleue, PQ

1956-1965

Particulars of Involvement:

Les Soeurs du Bon Conseil provided teachers, dormitory supervisors and domestic staff for the above-described school.

OTHER RELIGIOUS ENTITIES

76. IMPACT NORTH MINISTRIES

Schools and Dates of Involvement:

Poplar Hill	Poplar Hill, ON	1962-1989
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Particulars of Involvement:

Impact North Ministries is a charitable corporation incorporated pursuant to the laws of Ontario. Prior to 1992, it was known as Northern Light Gospel Missions. It operated a private day school in Poplar Hill until 1962, when it began accepting aboriginal children in residence with funding from the Crown. Thereafter, it operated as a residential school until 1989. Impact North Ministries is affiliated with the Mennonite Church of Canada and the Mennonite faith.

77. THE BAPTIST CHURCH IN CANADA

Schools and Dates of Involvement:

Baptist Mission (Ridgeview)	Whitehorse, YT	1900-1968
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Particulars of Involvement:

78. LES SOEURS DE LA CHARITÉ DE ST.-HYACINTHE

79. LES OEUVRES OBLATES DE L'ONTARIO

80. LES RÉSIDENCES OBLATES DU QUÉBEC

81. HÔTEL-DIEU DE NICOLET

82. THE BENEDICTINE SISTERS OF MT. ANGEL OREGON

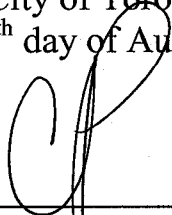
83. ROMAN CATHOLIC DIOCESE OF WHITEHORSE

84. IMMACULATE HEART COMMUNITY OF LOS ANGELES CA

85. THE EPISCOPAL CORPORATION OF SASKATOON

86. OMI LACOMBE CANADA INC.

Exhibit "C" to the Affidavit
of Jonathan Ptak, sworn before me
at the City of Toronto, Ontario
this 18th day of August, 2006

A handwritten signature in black ink, appearing to be 'C. Poltak', written over a horizontal line.

Celeste Poltak
A Commissioner for Taking Affidavits

FUNDING AGREEMENT

Aboriginal Healing Foundation

- and -

**HER MAJESTY THE QUEEN IN
RIGHT OF CANADA, AS REPRESENTED
BY THE MINISTER OF CANADIAN HERITAGE AND STATUS OF WOMEN**

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FUNDING AGREEMENT

THIS AGREEMENT made as of the day of , 2006.

BETWEEN:

ABORIGINAL HEALING FOUNDATION, a Corporation established under Part II the Canada Corporations Act, chapter C-32 of the Revised Statutes of Canada, 1970 herein represented by a duly authorized officer ("the Foundation")

OF THE FIRST PART

-and-

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Canadian Heritage and Status of Women ("Her Majesty")

OF THE SECOND PART

WHEREAS the Government of Canada has announced a new national Aboriginal strategy "Gathering Strength – Canada's Aboriginal Action Plan" which includes initiatives aimed at renewing the partnership with Aboriginal People;

WHEREAS one element of the Action Plan provides for the creating of a healing strategy to address the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts;

WHEREAS, in order to implement the creation of the healing strategy, the Government of Canada is prepared to enter into this agreement with the Foundation;

WHEREAS the Government of Canada is prepared to fund the Foundation to support the objective of addressing the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts, by supporting holistic and community-based healing to address needs of individuals, families and communities, including Communities of Interest:

WHEREAS the following measures are recognized as examples of means for the Foundation to fulfill the objective:

- (a) promotion of linkages to other federal/provincial/territorial/aboriginal government health and social services programs;
- (b) focus on early detection and prevention of the intergenerational impacts of physical and sexual abuse;
- (c) recognition of special needs, including those of the elderly, youth and women; and
- (d) promotion of capacity-building for communities to address their long-term healing needs;

WHEREAS the Foundation was established for the purpose of funding Eligible Recipients for Eligible Projects to address the healing needs of Aboriginal people affected by the Legacy of Indian Residential Schools, including the intergenerational impacts;

WHEREAS the Foundation and Her Majesty desire that this agreement set forth their agreement relating to the terms and conditions under which the Foundation shall administer and invest the funds received by it and the Foundation shall determine to whom it shall disburse the funds held by it taking into account, and honouring, in a fair and equitable manner the geographical and demographic reality and the concentration across Canada of those who attended Indian Residential Schools and those who are affected by the Legacy of Indian Residential Schools, including the intergenerational impacts;

AND WHEREAS the Foundation and Her Majesty desire that the Amount not be used to duplicate programs, activities or services provided by or within funding from federal, provincial or territorial governments;

AND WHEREAS Her Majesty has entered into a settlement agreement to resolve the Legacy of Indian Residential Schools, including the intergenerational impacts, which agreement provides for a grant to the Foundation;

NOW THEREFORE in consideration of the premises, the mutual covenants contained herein and the receipt of other good and valuable consideration which the Parties acknowledge, this agreement provides as follows:

ARTICLE I - DEFINITIONS

1.01 Definitions: Unless otherwise defined herein, the following terms shall have the following meanings in this Agreement:

"Aboriginal People" means individuals who are included as Aboriginal peoples referred to in S.35 of the *Constitution Act* 1982 and, for greater certainty, includes Inuit, Métis and First Nations, on and off reserve, regardless of whether they are registered under the *Indian Act*.

"Act" means the *Canada Corporations Act*, R.S.C. 1970, C-32.

"Amount" means the grant from Her Majesty to the Foundation of \$350,000,000 and any additional grant from Her Majesty, and any proceeds arising from the investment of the grant.

"Arbitration Act" means the *Commercial Arbitration Act*, R.S.C. 1985, C-34.6.

"Auditor" means the auditor for the Foundation appointed under Section 10.02 (1).

"Board" means the board of directors of the Foundation as constituted from time to time.

"Business Day" means any day of the year, other than a Saturday, Sunday or any day on which banks are required or authorized to close in Ottawa, Ontario.

"Chairperson" means the Chairperson of the Board.

"Communities of Interest" means a body, collective, association, incorporation, coming together, or other amalgamation of Aboriginal People.

"Community-based" means responding to the healing needs of Aboriginal communities, including Communities of Interest.

"Director" means an individual who is on the Board and includes the Chairperson.

"Eligible Costs" means costs of operating, managing and administering an Eligible Project subject to the provisions of Sections 6.05 and 6.06.

"Eligible Project" means a project carried on or to be carried on to address the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts.

"Eligible Recipient" means an organization located in Canada or individual residing in Canada that carries on, or in the opinion of the Board is capable of carrying on, projects to address the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts.

"Eligible Securities" means securities which are within those classes of securities in which the Foundation may invest the Amount as specified in Schedule 4.02 to the Funding Agreement.

"FAA" means the *Financial Administration Act*, R.S.C. 1985 c. F-11

"Fiscal Year" means the fiscal year of the Foundation as determined in accordance with its by-laws.

"Foundation" means the non-profit Aboriginal Healing Foundation established under the *Canada Corporation Act* to address the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts.

"Funding Agreement" means this agreement providing for the ongoing relationship between the Parties hereto and includes all schedules and exhibits hereto and any amendments hereto or thereto.

"Implementation Date" has the meaning set out in the Settlement Agreement.

"Indian Residential Schools" has the meaning set out in the Settlement Agreement and, for greater certainty, includes any institution included in the Settlement Agreement.

"Legacy of Indian Residential Schools" means any continuing direct or indirect effects of Indian Residential Schools, including the intergenerational impacts, on individuals, families and communities, including Communities of Interest.

"Member" means a member of the Foundation as elected or appointed from time to time in accordance with the Act and the letters patent and

by-laws of the Foundation for so long as such individual remains a member of the Foundation.

"Minister" means the Minister responsible for Canadian Heritage and Status of Women or such other Minister as may be designated from time to time.

"Non-profit Organization" means a corporation, society, association, organization or body operated for profit and no part of whose income is payable to or otherwise available for the personal benefit of any of its proprietors, members or shareholders.

"Party" means either the Foundation or Her Majesty as represented by the Minister, as the context permits or requires, and "Parties" means both of them.

"Person" means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation, with or without share capital, trust, trustee, executor, administrator or other personal legal representative, unincorporated association, institute, institution, or Regulatory Authority howsoever designated or constituted and pronouns have a similarly extended meaning.

"Regulatory Authority" means any government or any governmental, administrative or regulatory entity, department, authority, commission, tribunal official or agency having jurisdiction.

"Settlement Agreement" means the final Indian Residential Schools settlement agreement executed by representatives of Canada, Plaintiffs, The Assembly of First Nations, Inuit Organizations, The General Synod of the Anglican Church of Canada, The Presbyterian Church in Canada, The United Church of Canada and Roman Catholic Entities.

"Special Resolution of the Members" means a resolution passed by not less than two thirds of the votes cast by the Members who voted on the resolution at a meeting of the Members or signed by all the Members entitled to vote on the resolution.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

2.01 Representations of the Foundation: The Foundation represents, warrants to, and covenants with. Her Majesty that:

- (a) it is in good standing under the laws of Canada and of each jurisdiction in which it is required to be registered;

- (b) it has the requisite power (corporate and other) to own its assets and to carry on its activities as contemplated by this Funding Agreement;
- (c) the execution and delivery of this Funding Agreement by it, and the carrying out by it, of all of the activities contemplated hereby, have been duly authorized by all requisite corporate action;
- (d) it has full power to execute and deliver this Funding Agreement and to perform its obligations hereunder;
- (e) it has and will continue to have a Board composed of individuals who reflect the interests of Aboriginal People and who possess the competence, capacities and attributes required to fulfill the obligations of the Foundation under this Funding Agreement, which may include:
 - (i) healing and financial expertise
 - (ii) regional representativeness;
 - (iii) attendance at Indian Residential Schools; or
 - (iv) person credentials and merit;
- (f) The Foundation agrees that:
 - (i) membership of the board is and shall at all times be comprised of a majority of non-federal government representatives or agents; and
 - (ii) federal government representatives or agents shall not comprise a majority proportion of number required to attain quorum or to effect any decision of the Foundation, its members, the Board, or any committee hereof, or to comply with the letters patent and its by-laws.
- (g) this Funding Agreement constitutes a legally binding obligation of the Foundation, enforceable against it in accordance with its terms, subject with respect to enforcement of remedies, to applicable bankruptcy, insolvency, reorganization and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of specific performance or other equitable remedies in accordance with and subject to the authority of the arbitrator as referred to in Article XI;
- (h) the execution and delivery of this Funding Agreement by the Foundation and the performance by the Foundation of its obligations hereunder will not, with or without the giving of notice or the passage of time or both:

- (i) violate the provisions of the Act or of any other applicable law;
 - (ii) violate the provisions of the Foundation's charter, by-laws, any other corporate governance document subscribed to by the Foundation or any resolution of the Board or Members;
 - (iii) violate any judgement, decree, order or award of any court, Regulatory Authority or arbitrator; or
 - (iv) conflict with or result in the breach or termination, of any material term or provision of, or constitute a default under, or cause any acceleration under, any licence, permit, concession, franchise, indenture, mortgage, lease, equipment lease, contract, permit, deed of trust or any other instrument or agreement by which it is bound; and
- (i) there are no actions, suits, investigations or other proceedings pending or, to the knowledge of the Foundation, threatened and there is no order, judgment or decree of any court or Regulatory Authority which could materially and adversely affect the activities contemplated by the Act and this Funding Agreement.

2.02 Representations and Warranties of Her Majesty: Her Majesty represents and warrants to the Foundation that:

- (a) the execution and delivery of this Funding Agreement by Her Majesty and the carry out by Her Majesty of all of the activities contemplated hereby, have been duly authorized;
- (b) Her Majesty has full power to execute and deliver this Funding Agreement and to perform Her Majesty's obligations hereunder; and
- (c) this Funding Agreement constitutes legally binding obligations of Her Majesty enforceable against Her Majesty in accordance with its terms subject to a court's discretionary authority with respect to the granting of a specific performance or other equitable remedies, in accordance with and subject to the authority of the arbitrator as referred to in Article XI.

2.03 Survival: All representations and warranties will survive the execution of this Funding Agreement until the tenth (10th) anniversary of such execution, or such earlier date as may be mutually agreed to by the Parties.

2.04 Termination: This Funding Agreement shall terminate at such time as

- (a) none of the Amount remains with the Foundation;
- (b) Eligible Recipients have accounted for all funds received from the Foundation in a manner acceptable to the Foundation; and
- (c) the Foundation has fulfilled all of its obligations under this Funding Agreement.

ARTICLE III - GRANT

- 3.01 Grant:** Her Majesty made a payment to the Foundation of \$350,000,000 in the federal government fiscal year 1998-99.
- 3.02 Additional Grant:** Her Majesty made a payment to the Foundation of \$40,000,000 on March 31st, 2005
- 3.03** Her Majesty will make a payment to the Foundation of \$125,000,000, payable on the Implementation Date of the Settlement Agreement. No interest is payable by the Minister on the amount. The Foundation agrees to hold, invest, administer and disburse the additional grant in accordance with the Funding Agreement.

ARTICLE IV - INVESTMENT MANAGEMENT OF THE AMOUNT

- 4.01 Prudent Person Principle:** The Recipient shall invest and manage the Amount according to investment policies, standards and procedures that a prudent person would exercise in making investment decisions regarding property belonging to others.
- 4.02 Investment Committee:** The Foundation shall establish a committee (the "Committee") that oversees all matters related to the investment management of the Amount. The Committee should be composed of at least three directors who are not officers or employees of the Foundation. Members of the Committee shall be financially literate and have broad knowledge or experience in investment matters.
- 4.03 Investment of the Amount:**
Without limiting the generality of section 4.01, the Foundation shall ensure that the Amount that has not been disbursed or committed be invested in accordance with the Prudent Person Principle. Investment decisions shall be made with the principal objective being the preservation of the capital to meet future disbursements requirements.

Until the Board approves the Statement of Investment Policy and appoints an investment advisor for the Fund, the Committee shall ensure that the principal amount of the Fund be invested in low-risk, liquid short-term securities denominated in Canadian dollars.

4.04 Statement of Investment Policy:

(1) The Committee shall establish a written Statement of Investment Policy in respect to the Amount's portfolio of investments for approval of the Board. The Committee shall ensure that the Board is regularly made aware of any significant financial risks facing the Foundation, including the consequences of potential significant losses of investments of any or all of the Amount. The Statement of Investment Policy shall be reviewed no less frequently than annually. The Statement of Investment Policy shall include the following components:

- (a) long-term return objectives and expectations;
- (b) diversification policy of the Amount's investment portfolio, including various quantitative limits on investments;
- (c) asset allocation strategy including specific range for short-term fluctuation for each asset class and the long-term targeted asset mix;
- (d) permitted investment instruments and trading activities;
- (e) prohibited investment instruments and trading activities;
- (f) liquidity policy outlining how the Amount's liquidity needs will be addressed;
- (g) risk management policies outlining procedures to manage and mitigate various types of risks that the Foundation faces;
- (h) policy on the lending of cash or securities;
- (i) performance measurement and monitoring procedures;

(2) The Committee shall also establish and approve an investment strategy, describing the means used by the Foundation to best implement the Statement of Investment Policy. The investment strategy shall define the style of investment management, such as active versus passive managers, as well as specific investment instruments that would be used. The investment strategy shall be reviewed no less frequently than annually.

4.05 Investment Advisor and Portfolio Manager: The Committee shall recommend to the Board for their approval the appointment of one or more independent, external investment advisors to provide investment advice. The

Committee may also recommend to the Board the appointment of one or more professional portfolio managers to invest the Amount consistent with the approved Statement of Investment Policy and the investment strategy.

4.06 Conflict of Interest Concerning Investment Management: The Board shall ensure that all investment advisors or portfolio managers who are involved in the investment management of the Amount disclose in writing, on a timely basis, the nature and extent of his/her interest, including any material interest in any entity that is a party of a transaction with the Board.

The Board shall also ensure that the Foundation's conflict of interest policies and procedures cover, among others, voting, prohibited transactions, continuing disclosure and avoidance standards.

4.07 Borrowing: The Foundation shall not borrow money, issue any debt obligation, or give any guarantees to secure a debt of another entity.

4.08 Quantitative Limits on Investment Holdings of the Amount:

- (a) Investments in the securities of any one issuer, or two or more affiliated entities shall be limited to no more than 10% of the assets of the Amount's investment portfolio.
- (b) Section 4.08 (a) does not apply in respect to:
 - (i) investments in securities issued by the Government of Canada or the government of a province, or securities that carry the full faith and credit of either; and
 - (ii) any index, segregated, mutual or pooled fund.
- (c) Investments in the securities with a credit rating of "A" (including all sub-classifications of this rating category) by at least one of the recognized credit rating agencies shall be limited to no more than 20% of the assets of the Amount's investment portfolio.
- (d) Investments in the securities with a credit rating of "AA" (including all sub-classifications of this rating category) by at least one of the recognized credit rating agencies shall be limited to no more than 70% of the assets of the Amount's investment portfolio.
- (e) Investment in securities that are not issued by, or carry the full faith and credit of either the Government of Canada or the government of a province shall be limited to no more than 80% of the assets of the Amount's investment portfolio.

4.09 Investment Holdings in Foreign Currencies: The Amount shall not invest in securities that are not denominated in Canadian dollars.

4.10 Maturities of the Securities: The maturities and terms of investments shall match the profile of the Amount's forecasted disbursements. In cases where the timing of disbursements is unknown, investments shall be held in securities with term to maturity of one year or less.

4.11 Permitted Investments: The Foundation may invest the Amount in the following:

- (a) Bank certificate of deposit;
- (b) Banker's acceptance;
- (c) Treasury bills, commercial paper and other short-term securities, bonds and notes issued by the federal government, provincial governments, municipal governments and corporations;
- (d) Asset-backed securities;
- (e) Mortgage-backed securities

4.12 Prohibited Investments and Trading Activities: The Foundation undertakes not to engage or invest the Amount in the following:

- (a) Equities or shares issued by any corporation;
- (b) Hedge funds or funds of hedge funds;
- (c) Fixed-income instruments rated below A- by Standard & Poors or Fitch Ratings, A3 by Moody's or A- by DBRS;
- (d) Derivatives or any instruments that have derivative holdings or features;
- (e) Non-marketable securities;
- (f) Commodities;
- (g) Repurchase agreements against securities which are not permitted to be held in the portfolio; and
- (h) Margin transactions or any form of leveraging.

ARTICLE V – OVERHEAD AND ADMINISTRATIVE COSTS

5.01 Overhead and Administrative Costs: The Foundation shall minimize overhead and administrative costs required to carry on its business and

affairs. Without limiting the generality of the foregoing, the payments from Her Majesty provided for in Article III, and/or the proceeds from the investment thereof may, be used by the Foundation to the extent necessary to fund any reasonable costs and expenses incurred by it in the ordinary course of its business and affairs subject to this Funding Agreement.

- 5.02 Remuneration:** Remuneration of directors, committee members, and officers of the Foundation shall be reasonable and shall only be paid to the extent permitted by law.

ARTICLE VI - ELIGIBLE RECIPIENTS

- 6.01 Eligible Recipients:** The Foundation shall provide funding only to Eligible Recipients whose Eligible Projects are consistent with Article VII and Article VIII.

- 6.02 Excluded Recipients – Federal:** The Foundation shall not provide funding to any federal department (as defined in the FAA), departmental corporation (as defined in the FAA), parent Crown corporation or wholly owned subsidiary of a parent Crown corporation (as defined in subsection 83(1) of the FAA), any not-for-profit corporation or trust established by a federal department, departmental corporation, or parent Crown corporation or wholly owned subsidiary of a parent Crown corporation. This does not preclude payments for employee interchanges, if any.

- 6.03 Excluded Recipients – Provincial and Territorial:** The Foundation shall not provide funding to any provincial or territorial department, agency, or provincial or territorial Crown Corporation. This does not preclude payments for employee interchanges, if any.

- 6.04 Excluded Recipients - Subsidiaries of the Aboriginal Healing Foundation:** The Foundation shall not provide funding to any subsidiary of the Aboriginal Healing Foundation. This does not preclude payments or commitments already made prior to March 31st, 2005 out of the first grant to the Foundation of \$350M and proceeds arising from its investment.

- 6.05 Donations:** The Foundation shall not accept donations offered with conditions that are contrary to the purposes and objectives stated in this conditional grant agreement.

ARTICLE VII - ELIGIBLE PROJECTS AND ELIGIBLE COSTS

- 7.01 Eligible Projects:** The Foundation shall disburse the Amount by providing funding to Eligible Recipients in respect of the Eligible Costs for Eligible

Projects. Taking into account, and honouring, in a fair and equitable manner, the geographical and demographic reality and the concentration across Canada of those who attended Indian Residential Schools and those who are affected by the Legacy of Indian Residential Schools, including the intergenerational impacts.

7.02 Mandatory Criteria: In order to be eligible, projects:

- (a) shall address healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, which could include the intergenerational impacts;
- (b) shall establish complementary linkages, where possible in the opinion of the Board, to other health/social programs and services (federal/provincial/territorial/aboriginal); and
- (c) shall be designed and administered in a manner that is consistent with Canadian Charter of Rights and Freedoms and applicable human rights legislation.

7.03 General Criteria: An Eligible Project may, but need not:

- (a) focus on prevention and early detection of the effects of the Legacy of Indian Residential Schools, including the intergenerational impacts on all generations;
- (b) include elements of research and of capacity building for communities, including Communities of Interest, to address their long-term healing needs;
- (c) include, where and when possible, and depending on local needs and circumstances, a holistic approach including medial and traditional methodologies;
- (d) address special needs of segments of the population, including those of the elderly, youth and women; and
- (e) be based on a community healing approach designed to address needs of individuals, families and communities, which may include Communities of Interest.

7.04 Contents of Application: For the purpose of assessing projects submitted by Eligible Recipients, the Foundation shall require all Eligible Recipients making application for funding to include in their applications:

- (a) a proposal, which shall outline the objectives of the proposed project and the intended activities and results with regard to the Legacy of Indian Residential Schools, including the intergenerational impacts; and
- (b) an implementation plan, which shall provide information on:
 - (i) the qualifications of the management team and other staff who would work on the project;
 - (ii) time lines and projected expenditures for all elements of the project;
 - (iii) funding commitments received by the Eligible Recipient from other sources with respect to the project, if any;
 - (iv) the specific population of Aboriginal People targeted by the project;
 - (v) the sustainability of the project, and the capacity of the applicant to conduct the activities and achieve the results stated in the proposal;
 - (vi) the relationship between the costs and potential benefits of the project;
 - (vii) an evaluation plan for the project; and
 - (viii) related programs, activities, and services where complementary linkages can be established.

7.05 Eligible Costs: The Foundation in providing funding for Eligible Projects, may pay, subject to section 7.06, all costs of the projects in accordance with the guidelines established in Article IX hereof.

7.06 Ineligible Costs: The following are not Eligible Costs:

- (a) the cost of purchasing, directly or indirectly, real property or of repairing or maintaining real property owned directly or indirectly by the Eligible Recipient is not an Eligible Cost, except in exceptional cases where, in the opinion of the Board, such costs are necessary and ancillary to the effective implementation of the Eligible Project;
- (b) the costs related to compensation to individuals, any litigation or any public inquiry related to Indian Residential Schools is not an Eligible Cost; this does not preclude elements of projects involving locally based public inquiries for healing purposes relating to Indian Residential Schools; and
- (c) the cost related to an Eligible Project which duplicates programs, activities or services provided by or within funding from the federal, provincial or territorial government is not an Eligible Cost.

ARTICLE VIII - OTHER CONTRIBUTIONS

8.01 Other Contributions: The Foundation shall:

- (a) encourage Eligible Recipients to develop collaborative arrangements with the private sector, the voluntary sector, religious organizations, and with the aboriginal, municipal, provincial, territorial and federal governments; and
- (b) encourage Eligible Recipients to secure commitments from the private sector, the voluntary sector, religious organizations, and with the municipal, provincial and territorial governments for contributions, either financial or in kind, to fund Eligible Projects.

ARTICLE IX - COMMITMENTS AND DISBURSEMENTS

9.01 Commitments: The Foundation shall make best efforts to commit the Amount by the first anniversary of the Implementation Date.

9.02 Disbursement: The Foundation shall disburse the Amount prior to the fourth anniversary of the Implementation Date.

9.03 Guidelines on Funding:

- (a) Until a Board of seventeen directors is appointed, the Foundation shall not approve or make any funding commitments for any proposals or projects.
- (b) The Foundation may provide funding up to 100 per cent of the Eligible Costs for any Eligible Project.
- (c) The Foundation shall require that all Eligible Recipients receiving funding for any Eligible Project account by providing reports on activities and results to the project's target population and to the Board. All agreements entered into by the Foundation with Eligible Recipients shall be subject to financial and project audits by the Foundation.
- (d) The Foundation shall ensure that the process for the assessment of project proposals is transparent with clear selection criteria and that there is a clearly defined appeal process conducted for unsuccessful project proposals.

9.04 Advances and Payments: The Foundation shall enter into agreements with the Eligible Recipients respecting, among other things, the manner in which the Foundation will make advances in respect of the commitment to the Eligible Recipient, when those advances will be made and any terms and conditions on which payments will be made, including the achievement of agreed upon milestones.

9.05 Periodic Payments: The Foundation shall make periodic payments to Eligible Recipients to whom funding has been committed in accordance with a schedule of payments agreed to by the Foundation and the Eligible Recipient, (which schedule shall match as closely as possible the expected disbursements to be made by the Eligible Recipient) or, if the Foundation and the Eligible Recipient so agree, a lump sum payment may be made on the condition that the part of the amount not needed for immediate disbursement be invested and proceeds of that investment be accounted in the project.

ARTICLE X - COVENANTS OF THE FOUNDATION

10.01 Covenants of the Foundation: The Foundation covenants and agrees with Her Majesty not to authorize or permit, except by mutual agreement, the adoption of any by-law, or any amendment or change in its letters patent or by-laws or the adoption of any rule, regulation or procedure, whether or not in writing, that is contrary to or in conflict with any provision of this Funding Agreement including the conditions in Schedule 9.01. No material changes in the objectives of the Fund, the use of the Fund's investment policy will be undertaken without prior written approval of the responsible Minister.

ARTICLE XI - FINANCIAL MATTERS AND AUDITS

11.01 Books of Account:

- (a) The Board shall cause books of account and other record to be kept and shall establish financial and management controls, information systems and management practices that will ensure that the business and affairs of the Foundation are carried on, and the financial, human and physical resources of the Foundation are managed effectively, efficiently and economically.
- (b) The books of account and other records of the Foundation shall be maintained in accordance with generally accepted accounting principles, consistently applied, and in such a way that they shall demonstrate that the assets of the Foundation are properly

protected and controlled and that its business and affairs are conducted in accordance with the provisions of this Funding Agreement, and in such a way that they will show

- (i) descriptions and book values of all investments of the Foundation; and
 - (ii) the Eligible Recipients who have received, and are about to receive funding from the Foundation in respect of Eligible Projects, the nature and extent of the projects and the amount of the funding.
- (c) The Foundation shall account for and report on the Amount separately from other sources of funds.

11.02 Auditor:

- (1) The Members;
- (a) as soon as possible after incorporation, shall appoint an auditor for the first fiscal year;
 - (b) at its first meeting in each fiscal year shall appoint an auditor for the Foundation for the fiscal year and fix the Auditor's remuneration.
- (2) The Auditor shall be
- (a) a natural person who
 - (i) is a member in good standing of an institute or association of accountants incorporated by or under an act of the legislature of a province,
 - (ii) has at least five years experience at a senior level in carrying out audits,
 - (iii) is ordinarily resident in Canada, and
 - (iv) is independent of the Board, each of the Directors and each of the officers of the Foundation; or
 - (b) a firm of accountants at least one of whose Members meet the qualifications set out in paragraph (a).
- (3) If an auditor is not appointed at the first meeting of the Members in a fiscal year, the Auditor for the preceding fiscal year shall continue in office until a

successor is appointed. On the expiration of the appointment of the Auditor, the Auditor is eligible for re-appointment.

- (4) The Members may by a Special Resolution remove the Auditor from office.
- (5) An Auditor ceases to hold office when the Auditor
 - (a) dies;
 - (b) resigns; or
 - (c) is removed from office under subsection (4).
- (6) The Members, at a meeting of the Members, may appoint an Auditor to fill any vacancy in the office of the auditor, but if the Members fail to fill the vacancy at a meeting, or if no meeting of the Members is convened without delay after the vacancy occurs, the Board shall appoint an Auditor to fill the vacancy.
- (7) An Auditor appointed to fill a vacancy in the office holds office for the unexpired term of the predecessor in the office.

11.03 Conduct of the Audit:

- (a) The Auditor for the fiscal year shall, as soon as possible after the end of the fiscal year, complete the audit of the books and records of the Foundation in accordance with generally accepted auditing standards of the Canadian Institute of Chartered Accountants (CICA) Handbook, consistently applied and submit a report of the audit to the Members.
- (b) A meeting of the Members shall be convened to consider the report of the Auditor for a fiscal year and at the meeting the Members shall by resolution receive the report.

11.04 Audit Committee:

- (a) The Board shall appoint an audit committee consisting of not fewer than three Directors and fix the duties and functions of the committee
- (b) In addition to any other duties and functions it is required to perform, the audit committee may cause internal audits to be conducted to ensure compliance by the officers and employees of the Foundation with management and information systems and controls established by the Board.

11.05 Annual Report:

- (1) The Foundation shall, within three months after the end of each fiscal year, prepare an annual report in at least both official languages of its activities during the year and include in the report
 - (a) its financial statement for the year, prepared in accordance with Generally Accepted Accounting Principles, as approved by the Board including
 - (i) its balance sheet as at the end of the fiscal year;
 - (ii) a statement of income for the fiscal year;
 - (iii) a statement of change in financial position for the fiscal year;
 - (iv) a statement of investment portfolio; and,
 - (v) individual statements for each of the Recipient's subsidiaries.
 - (b) the report of the Auditor for the year in respect of the audit of the books and records of the Foundation for the year, the Auditor's notes to financial statement and any other reports of the Auditor respecting the financial circumstances of the Foundation in the year;
 - (c) a statement of the Foundation's objectives for that year and a statement on the extent to which the Foundation met those objectives;
 - (d) a statement of the Foundation's objectives for the next year and for the foreseeable future;
 - (e) a statement of the Foundation's investment policies, standards and procedures;
 - (f) a list of Eligible Projects, funding provided, and a description of progress achieved to date;
 - (g) criteria applied to select Eligible Projects;
 - (h) results of a program evaluation or performance audit;
 - (i) the total remuneration paid to each of the following persons in that year by the Foundation, including any fees, allowance or other benefit;
 - (i) employees earning in excess of \$75,000.00;
 - (ii) Board Members earning in excess of \$75,000.00; and,
 - (iii) Contractors receiving total payments in excess of \$75,000.00.

- (j) steps taken with respect to a fair and equitable distribution of the Amount as per Section 7.01; and,
 - (k) a statement of the activities of each of the Recipient's subsidiaries.
- (2) Before the annual report of the Foundation for a fiscal year is distributed to the public, it shall be approved by the Board and by the Members at a meeting of the Members.
- (3) After the annual report of the Foundation for a fiscal year is approved as required under subsection (2), the report shall be made public in accordance with the by-laws of the Foundation and a copy shall be sent to the Minister who shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

11.06 Public Communication and Accountability:

The Foundation shall:

- (a) implement a public communications and accountability strategy to communicate its annual report and publicly account for its activities during the year, including participation in public meeting(s).
- (b) provide appropriate recognition of the contribution of the Government of Canada in its programs, advertising and public communications. Recognition of Canada's support to the Foundation will be in accordance with the Federal Identity Program.
- (c) give reasonable prior notice to the Minister of a proposed public announcement(s) or ceremonies relating to its activities. The Minister, or his designated representative, will be invited to participate in such announcements or ceremonies to take place at a mutually agreed date. Where the Minister or other representative of Canada wishes to participate in such an announcement or ceremony, the Foundation shall co-operate with the representatives of Canada during such announcement.

11.07 Wind-up Provision:

- (1) Subject to the applicable requirements of the Income Tax Act (Canada) and any other applicable legislation with respect to Non-profit Organizations or charitable organizations, as the case may be where both Parties agree that the Foundation shall wind up and dissolve, the unspent amount shall be distributed, by agreement of the Parties to either or both:

- (a) one or more Non-profit Organization(s) in Canada whose objects are the same as or similar to the objects of the Foundation; with preference given to an aboriginally-controlled organization; and/or
 - (b) one or more charitable organizations; with preference given to an aboriginally-controlled organization.
- (2) Despite section 11.07(1), if the Foundation is wound up or dissolved, Canada may require the Foundation to repay out of the moneys arising from the liquidation to the Receiver General for credit to the Consolidated Revenue Fund any amount that is so repayable under the terms of this funding agreement.

11.08 Official Languages: The Foundation shall provide its communications and services to the public in at least both official languages of Canada (French and English) in accordance with the spirit and intent of Part IV of the *Official Languages Act*, R.S.C. (1985) c.31. More specifically, the Foundation shall:

- (a) make any announcements, or documents for Eligible Recipients concerning the national strategy in the official language of their choice;
- (b) actively offer its services to Eligible Recipients in the official language of their choice;
- (c) ensure that any nation-wide communication aimed at the general public is provided in both official languages and that related documents be available in both official languages; and
- (d) ensure, when it is appropriate, that the agreements awarding funding to Eligible Recipients provide for a linguistic clause regarding the recipients' communications to the public, where a significant demand exists for services from an Eligible Recipient to the public in either official language.

11.09 Conflict of Interest:

The Foundation shall include in its by-laws provisions that:

- (a) entitle an Eligible Recipient that has made a proposal for a project to the Foundation to request the Board to make a ruling as to the possible conflict of interest of a Director in the consideration or disposal of the proposal; and

- (b) establish procedures to be followed by the Board in responding to the request and giving the ruling.
- (c) establish policies for conflict of interest and code of conduct of directors, committee members, officers and advisors of the Foundation.

11.10 Corporate Plan: The Foundation will provide corporate plans annually to the Minister at least two months prior to the beginning of the Foundation's fiscal year. Such corporate plans will include, but not be limited to:

- (a) Short and medium term outcomes, (updated as applicable) per the Strategic plan;
- (b) Reference to the Foundation's previous year's corporate plan, especially its successes and remaining challenges;
- (c) Details of the Fund and its management;
- (d) Planned expenditures for the upcoming year, including, but not limited to, the amount of revenue to be drawn from the Fund's income for the fiscal year;
- (e) Planned activities for the upcoming year;
- (f) The anticipated results of those activities;
- (g) The anticipated revenues from other sources;
- (h) Risk assessments and mitigation strategies; and,
- (i) Ongoing performance monitoring strategies.

The Minister may table a copy or a summary of these in Parliament.

11.11 Performance Audit: The Foundation agrees to have carried out an independent performance (value-for money) audit to ensure the economy, efficiency and effectiveness with which funds have been used, at least once every 5 years.

The report shall be made public and a copy shall be sent to the Minister.

The Minister may cause the copy of the report to be laid before each House of Parliament on any of the first fifteen (15) days on which the House is sitting after the Minister receives it.

11.12 Minister's and Auditor General's Right to Audit: Each of Canada and the Auditor General of Canada may, after consultation with the Foundation, choose to conduct his own performance (value-for-money) audit or compliance audit with respect to the use of funds received from Her Majesty in right of Canada, no less frequently than every five years, to be carried out by such a person as the Minister may appoint, at his own cost. The auditor (each of Canada and the Auditor General of Canada) will provide the Foundation with a description of the scope and criteria of the performance and compliance audits. The auditor will be entitled to such information as, in his opinion, is necessary for the fulfillment of its responsibilities. The Foundation will cooperate and provide access to the appropriate records and staff to the auditor to conduct such audits. The auditor will share a copy of the resulting report with the Foundation and with the Minister when the auditor is the Auditor General of Canada. Where the audits are completed by the Auditor General of Canada, the results may be reported to Parliament in a Report of the Auditor General. Where the audit is conducted by the Minister, the Minister may make the results public and report them to Parliament. The Foundation will cooperate and provide access to the appropriate records to conduct such an audit. The Minister may share a copy of the resulting report with the Foundation and agrees to discuss any concerns raised in the audit with the Foundation.

The Minister may cause the copy of the report to be laid before each House of Parliament on any of the first fifteen days on which the House is sitting after the Minister receives it.

11.13 Program Evaluation: The Foundation agrees to have carried out, no less frequently than every 5 years, by an independent third-party using recognized evaluation standards, an evaluation of its activities and projects according to a framework to be approved by the Board, at least once every 5 years. The evaluation will measure the overall performance of the Foundation in achieving the outcomes identified in the Funding Agreement.

11.14 Minister's Right to Conduct a Program Evaluation: The Minister may, after consultation with the Foundation, choose to conduct his own evaluation, by an evaluator(s) of his choosing, of the Funding Agreement as an instrument of policy of the Government of Canada, at his own cost. The Foundation will cooperate and provide access to the appropriate records to conduct such an evaluation. The evaluation report shall be made public and a copy shall be sent to the Minister. The Minister may share a copy of the resulting report with the Foundation and agrees to discuss any concerns raised in the evaluation with the Foundation. The

Minister may cause the copy of the report to be laid before each House of Parliament or any of the first fifteen days on which the House is sitting after the Minister receives it.

11.15 Default: The following shall constitute events of default:

- (a) If the Foundation becomes bankrupt or insolvent, goes into receivership or takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors;
- (b) An order is made or resolution passed for the winding-up of the Foundation or the Foundation is dissolved, except where the Parties agree to the winding-up, dissolution and the distribution of the Uncommitted Amount in accordance with Section 10.07;
- (c) The Foundation has submitted materially false or misleading information or has made misrepresentations of a material nature to the Minister, other than in good faith;
- (d) The Foundation makes a materially false or misleading statement concerning support by the Minister or the Government of Canada in any internal and/or public communication, other than in good faith;
- (e) The Foundation ceases its activities or substantially changes the nature of its business;
- (f) The Foundation has not met or satisfied any of the material terms and conditions of the Funding Agreement.

11.16 Rectification Period:

- (a) The events of default in Subsections 10.15 (c), (d) and (e) (with respect to the Foundation ceasing its activities or substantially changing the nature of its business) and Subsections 10.15 (f) shall only be considered events of default if the Foundation has been notified in writing by the Minister of the alleged default and the Foundation has not rectified the default within thirty (30) days of written notice thereof.
- (b) Where the Minister is concerned about the probability of imminent default as outlined in the Section 10.15, under the Funding Agreement, the Minister will notify the Foundation in writing and the two parties will discuss the concerns, with the Foundation rectifying any default within thirty (30) days of written notice thereof.

- (c) Remedies. If an event of default as outlined in Section 10.15 has occurred, or in the reasonable opinion of the Minister, is likely to occur, and the Foundation has not rectified as in Section 10.16 (a), or the Minister has notified the Foundation pursuant to section 10.16(b), the Minister may require the Foundation to repay any unspent portion of the Amount.
- (d) No waiver . The fact that the Minister refrains from exercising a remedy he is entitled to exercise under the Funding Agreement will not be considered to be a waiver of such right and, furthermore, partial or limited exercise of a right conferred on him will not prevent him in any way from later exercising any other right or remedy under this Funding Agreement or other applicable law, unless the Minister waives such right in writing.

ARTICLE XII – ARBITRATION

- 12.01 Arbitration:** Any dispute arising out of or in connection with this Funding Agreement, including any question regarding its existence, validity or termination, shall be submitted to and fully resolved by arbitration under the *Arbitration Act* of Ontario as amended or substituted from time to time, except to the extent the rules and procedures therein contained are modified by the rules for arbitration set out in Schedule 11.01 hereof.
- 12.02 Power of Arbitrator:** In the event that an arbitrator concludes that either Party has not complied with its obligations under this Funding Agreement, the arbitrator may order such Party to comply with the provisions of this Funding Agreement in the future, and in the event of non-compliance by the Foundation, the arbitrator may direct the Foundation in the way in which it must modify its funding programs so as to comply with these requirements in the future.
- 12.03 Transfer of Funds to Third Party:** In the event that the arbitrator determines that the Foundation has significantly or repeatedly breached any of the provisions of this Funding Agreement, the arbitrator shall have the power to designate a third party, subject to the approval of Her Majesty (after consulting with the National Aboriginal Organizations who have nominated Members of the Board), to hold and disburse the remaining Amount in accordance with the terms of this Funding Agreement.
- 12.04 Costs of Arbitration:** The costs of arbitration shall be shared equally by the Parties.

ARTICLE XIII – CONFIDENTIALITY

- 13.01 Confidentiality:** The Foundation shall develop a policy relating to confidentiality which shall define what constitutes confidential information, the treatment to be given to such information and the circumstances under which such information may be disclosed by the Foundation, Directors and officers, employees, agents and representatives of the Foundation, Eligible Recipients or other Persons.

ARTICLE XIV - INTERPRETIVE MATTERS AND CONVENTIONS

- 14.01 Gender and Number:** Any reference in this Funding Agreement to gender shall include all genders and words importing the singular number only shall include the plural and vice versa.
- 14.02 Headings:** The provision of a Table of Contents, the division of this Funding Agreement into Articles, Sections, Subsections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Funding Agreement.
- 14.03 Statutory References:** Unless expressly stated to the contrary, any references in this Funding Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other Regulatory Authority shall be construed as a reference thereto as enacted at the date hereof as such law, by-law, rule, regulation, order or act may be amended, re-enacted or superseded from time to time.
- 14.04 Calculation of Time Period:** When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Funding Agreement, the date which is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next Business Day.
- 14.05 Performance on Holidays:** If under this Funding Agreement any payment or calculation is to be made or any other action is to be taken on a day which is not a Business Day, the payment or calculation is to be made, and that other action is to be taken, as applicable, on or as of the next day that is a Business Day.
- 14.06 References:** In this Funding Agreement, references to “hereof”, “hereto”, and “hereunder” and similar expressions mean and refer to this Funding

Agreement taken as a whole and not to any particular Article, Section, Subsection or other subdivision, "Article", "Section", Subsection" or other subdivision of this Funding Agreement followed by a number means and refers to the specified Article, Section, Subsection or other subdivision of this Funding Agreement.

ARTICLE XV – MISCELLANEOUS

- 15.01 Severability:** If any provision of this Funding Agreement is determined to be invalid or unenforceable by an arbitrator that provision shall be deemed to be severed herefrom and the remaining provisions of this Funding Agreement shall not be affected thereby and shall remain valid and enforceable; provided that in the event that any portion of this Funding Agreement shall have been so determined to be invalid or unenforceable (the "offending portion"), the Parties shall negotiate in good faith such changes to this Funding Agreement as will best preserve for the Parties the benefits and obligations of such offending portion.
- 15.02 Amendments:** This Funding Agreement may only be amended, modified or supplemented by a written agreement signed by both of the Parties; Her Majesty's execution of such agreement will be subject to internal review processes.
- 15.03 Meeting of the Parties:** Within the sixty days following the annual meeting of Members referred to in Section 11.05, the Parties may, at the request of either Party, meet to discuss the operation of the Foundation relating to the Funding Agreement, including the investment provisions.
- 15.04 Waiver:** All waivers under this Funding Agreement must be made in writing and failure at any time to require any Party's performance of any obligations under this Funding Agreement shall not affect the right subsequently to require performance of that obligation. No waiver of any of the provisions of this Funding Agreement by either Party shall be deemed to constitute a waiver of such provision by the other Party or a waiver by such Party of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing duly executed by the Party to be bound thereby.
- 15.05 Governing Law:** This Funding Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 15.06 Entire Agreement:** This Funding Agreement constitutes the entire agreement between the Parties pertaining to the matters contemplated

hereby and supersedes all prior agreements, understandings, negotiations and discussion, whether oral or written, of the Parties.

15.07 Indemnification and Limitation of Liability: The Foundation shall indemnify and hold harmless Her Majesty from and against all claims, losses, damages, costs, expenses, actions and other proceedings made, sustained, brought, prosecuted, threatened to be brought or prosecuted in any manner, based upon, occasioned by, attributable to, or arising from any wilful or negligent act, omission or delay on the part of the Foundation, or the Directors, officers, employees or agents of the Foundation. Notwithstanding anything to the contrary contained herein, neither of the Parties will be liable for the indirect, or consequential damages of the other Party nor for loss of revenues or profits. Therefore, the Parties expressly acknowledge and agree that they will not be liable for each other's indirect, or consequential damages or for damages for lost profits or lost revenues under this Funding Agreement, regardless of whether such liability arises in tort (including negligence), contract, fundamental breach or breach of a fundamental term, misrepresentation, breach or warranty, breach of fiduciary duty, indemnification or otherwise.

15.07.01 Limitation of Liability arising from the Charter and Human Rights Legislation: The Foundation shall satisfy any judgement or order made by a court or human rights tribunal against Her Majesty which judgement or order determines that an act or omission of the Foundation or any entity funded by the Foundation to carry out the objects of the Foundation breached the Canadian Charter of Rights and Freedoms or human rights legislation in connection with the Eligible Project, by paying any damages or making good any financial liability and by making any modifications to the actions of the Foundation or entity funded by the Foundation to comply with such judgement or order.

15.07.02 Survival: The provisions of Sections 14.07 and 14.07.01 shall survive termination of this Agreement with respect to matters arising prior to the termination of the Agreement.

15.08 Further Assurances: The Parties will, from time to time during the course of this Funding Agreement or upon its expiry and without further consideration, execute and deliver such other documents and instruments and take such further action as the other may reasonably require to effect the activities contemplated hereby.

15.09 Notices: Any notice, direction or other instrument required or permitted to be given under this Funding Agreement shall be in writing (including telecopier, telex or any other means of communication by which words are capable of being visibly and instantaneously reproduced at a distant point

of reception) and given by delivering it or sending it by telecopy or other similar means of communication addressed:

- (1) if to the Foundation, at:

Attention: Chief Executive Officer

Telecopier:

- (2) if to the Minister at:

Telecopier:

Any such notice, direction or other instrument given as aforesaid shall be effective upon the date of delivery or transmission, as the case may be, unless delivered or transmitted on a day which is not a Business Day in which event it shall be deemed to be effective on the next Business Day. Either Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to the Party at its changed address.

15.10 Time of the Essence: Time shall be of the essence in this Funding Agreement.

15.11 Third Party Beneficiaries: Each Party intends that this Funding Agreement shall not benefit or create any right or cause of action in, or on behalf of, any Person, other than the Parties and no Person, other than the Parties, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

15.12 Assignment and Successors: This Funding Agreement and any rights or duties hereunder may not be transferred, assigned or delegated to any other Person by either Party without the express prior written consent of the other Party to this Funding Agreement, such consent not to be unreasonably withheld. This Funding Agreement shall inure to the benefit of and be binding upon the Parties, their successors and permitted assigns.

15.13 Relationship of the Parties: Nothing contained in this Funding Agreement shall be construed to place the Parties in the relationship of partners or joint venturers and neither Party shall have any right to obligate or bind the other Party in any manner.

Moreover, this is an agreement for the performance of a service and the Foundation is engaged under the Agreement as an independent entity for the sole purpose of providing a service. Neither the Foundation nor any of the Foundation's personnel is engaged under the Agreement as an employee, servant or agent of Her Majesty. For greater certainty, in no event will the Foundation or any of its Directors, officers, employees or agents be entitled to bind or obligate Her Majesty and in no event will any of the foregoing be considered to be an agent of Her Majesty. The Foundation agrees to be solely responsible for any and all applications, reports, payments, deductions, or contributions required to be made including those required for Canada or Quebec Pension Plans, Employment Insurance, Worker's Compensation or Income Tax.

15.14 Remedies Cumulative: All rights, powers and remedies provided under this Funding Agreement or otherwise available in respect thereof at law or in equity shall be cumulative and not alternative and the exercise or beginning of the exercise of any thereof by either Party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such Party.

15.15 Costs and Expenses: The Foundation shall pay all legal and accounting costs and expenses incurred by it in authorizing, preparing and executing this Funding Agreement.

15.16 Execution in Counterparts: This Funding Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

15.17 Excusable Delays: The dates and times by which either Party is required to perform any obligation under this Funding Agreement shall be postponed automatically to the extent, for the period of time, that the Party is prevented from so performing by circumstances beyond its reasonable control. Said circumstances shall include acts of nature, strikes, lockouts, riots, acts of war, epidemics, government regulations imposed after the fact, fire, communications failures, power failures, earthquakes or other disasters.

15.18 Excluded Persons: No member of the House of Commons or Senate shall be admitted to any share or part of this Funding Agreement nor to any benefit to arise therefrom. The members of the House of Commons and the Senate shall not be appointed as Directors on the Board.

15.19 Lobbyists: Where lobbyists are used, the Foundation must ensure that the lobbyists are registered in accordance with the *Lobbyist Registration Act*, that no actual or potential conflict of interest exists, that the Foundation does not pay lobbyists on a contingency fee basis, and in circumstances where the Foundation contracts with the lobbyists to assist them when seeking grants from federal government entities, fees paid to lobbyists cannot be related to the value of the grants received.

IN WITNESS WHEREOF the Parties have caused, their duly authorized representatives to execute this Funding Agreement made the day of ,2006, as of the date first above written.

FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS
REPRESENTED BY THE MINISTER OF CANADIAN HERITAGE AND
STATUS OF WOMEN

Minister of Canadian Heritage and Status of Women

FOR ABORIGINAL HEALING FOUNDATION

Chairman

SCHEDULE 9.01 - FEDERAL CONDITIONS FOR FUNDING THE RESIDENTIAL SCHOOLS HEALING STRATEGY

The following conditions shall be reflected at all times in either the Letters Patent of Incorporation and By-laws of the Foundation; or, in the Funding Agreement; or, both.

1. Composition of the Board shall reflect the interests of all Aboriginal People, and provide for a majority of First Nations representatives. The decision-making processes of the Board shall be fair and reflect the appropriate interests of all Aboriginal People.
2. Members of the Board shall not hold political office in any government or representative Aboriginal political organization.
3. A Board selection process, acceptable to the Government of Canada, shall be stipulated in the by-laws of said Foundation.
4. The Amount shall not be used as compensation to individuals, or to pay any costs for litigation or any public inquiry related to Indian Residential Schools.
5. Initiatives supported by the Amount shall focus on the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts.
6. Disbursement of the Amount shall be fair and equitable, taking into account, and honouring, the geographical and demographic reality and the concentration across Canada of First Nations, Inuit and Métis who attended Indian Residential Schools, and those who are affected by the Legacy of Indian Residential Schools, including the intergenerational impacts.
7. The process for the assessment of initiatives to be supported by the Amount shall be transparent with clear selection criteria; this process will include a clearly defined appeal process for unsuccessful proposals.
8. Proposals submitted shall include clear objectives, time frames and expected outcomes.

9. Accountability will be achieved through public annual reports, including an annual auditor's report, as well as, a public communications and accountability strategy, including participation in public meetings.

SCHEDULE 11.01 - RULES FOR ARBITRATION

The following rules and procedures (the "Rules") shall apply with respect to any matter to be arbitrated by the Parties under the terms of this Funding Agreement.

1. INITIATION OF ARBITRATION PROCEEDINGS

- (a) If any Party to this Funding Agreement wishes to have any matter under the Funding Agreement arbitrated in accordance with the provisions of this Funding Agreement, it shall give notice to the other Party specifying particulars of the matter or matters in dispute and proposing the name of the individual it wishes to be the single arbitrator. Within 15 days after receipt of such notice, the other Party shall give notice to the first Party advising whether such Party accepts the arbitrator proposed by the first Party. If such notice is not given within such 15 day period, the other Party shall be deemed to have accepted the arbitrator proposed by the first Party. If the Parties do not agree upon a single arbitrator within such 15 day period, either Party may apply to a judge of the Ontario Court General Division under the Arbitration Act, as amended or substituted for from time to time, for appointment of a single arbitrator (the "Arbitrator").
- (b) The individual selected as Arbitrator shall be qualified by education and experience to decide the matter in dispute and shall be at arm's length from both Parties.

2. SUBMISSION OF WRITTEN STATEMENTS

- (a) Within 20 days of the appointment of the Arbitrator, the Party initiating the arbitration (the "Claimant") shall send the other Party (the "Respondent") a statement of claim ("Statement of Claim") setting out in sufficient detail the facts and any contentions of law on which it relies and the relief that it claims.
- (b) Within 20 days of the receipt of the Statement of Claim, the Respondent shall send the Claimant a statement of defence ("Statement of Defence") stating in sufficient detail which of the facts and contentions of law in the Statement of Claim it admits or denies, on what grounds and on what other facts and contentions of law it relies.

- (c) Within 20 days of receipt of the Statement of Defence, the Claimant may send the Respondent a statement of reply ("Statement of Reply").
- (d) All Statements of Claim, Defence and Reply shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents on which the Party concerned relies and which have not previously been submitted by any Party.
- (e) After submission of all the Statements, the Arbitrator will give directions for the further conduct of the arbitration.

3. MEETINGS AND HEARINGS

- (a) The arbitration shall take place in the National Capital Region as described in the Schedule to the National Capital Act, or in such another place as the Claimant and the Respondent shall agree upon in writing. The arbitration shall be conducted in English unless otherwise agreed by such Parties and the Arbitrator. Subject to any adjournments which the Arbitrator allows, the final hearing will be continued on successive working days until it is concluded.
- (b) All meetings and hearings will be in private unless the Parties otherwise agree.
- (c) Each Party may be represented at any meetings or hearings by legal counsel.
- (d) Each Party may examine, cross-examine and re-examine all witnesses at the arbitration.
- (e) The Parties may agree to conduct the arbitration in part or in whole by way of written submission.

4. THE DECISION

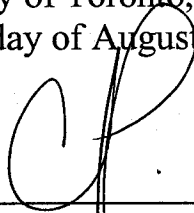
- (a) The Arbitrator will make a decision in writing and, unless the Parties otherwise agree, will set out reasons for decision in the decision.
- (b) The Arbitrator will send the decision to the Parties as soon as practicable after the conclusion of the final hearing, but in any event no later than 60 days thereafter unless that time period is extended for a fixed period by the Arbitrator on written notice to each Party because of illness or other cause beyond the Arbitrator's control.

5. JURISDICTION AND POWERS OF THE ARBITRATOR

- (a) By submitting to arbitration under these Rules, the Parties shall be taken to have conferred on the Arbitrator the following jurisdiction and powers, to be exercised at the Arbitrator's discretion subject only to these Rules and in accordance with the law, with the object of ensuring the just, expeditious, economical and final determination of the dispute referred to arbitration.
- (b) Without limiting the jurisdiction of the Arbitrator at law, the Parties agree that the Arbitrator shall have jurisdiction to:
 - (i) determine any question of law arising in the arbitration;
 - (ii) determine any question as to the Arbitrator's jurisdiction;
 - (iii) determine any question of good faith, dishonesty or fraud arising in the dispute;
 - (iv) order any Party to furnish further details of that Party's case in fact or in law;
 - (v) proceed in the arbitration notwithstanding the failure or refusal of any Party to comply with these Rules or with the Arbitrator's orders or direction, or to attend any meeting or hearing, but only after giving that Party written notice that the Arbitrator intends to do so;
 - (vi) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
 - (vii) make one or more interim awards;
 - (viii) hold meetings and hearings and make a decision (including a final decision) in Ontario or elsewhere with the concurrence of the Parties thereto;
 - (ix) order the Parties to produce to the Arbitrator and to each other for inspection and to supply copies of, any documents or classes of documents in their possession or power which the Arbitrator determines to be relevant;
 - (x) order the preservation, storage, sale or other disposal of any property or thing under the control of either of the Parties;

- (xi) make interim order to secure all or part of any amount in dispute in the arbitration; and
 - (xii) exercise the powers set out in section 11.02 and 11.03 of the Funding Agreement.
- (c) Without otherwise limiting the jurisdiction of the Arbitrator at law, the Arbitrator shall not make any order requiring the reimbursement of any part of the Amount to Her Majesty.

Exhibit "D" to the Affidavit
of Jonathan Ptak, sworn before me
at the City of Toronto, Ontario
this 18th day of August, 2006

A handwritten signature in black ink, appearing to be 'CP', written over a horizontal line.

Celeste Poltak
A Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, MICHELLINE AMMAQ, PERCY ARCHIE, CHARLES BAXTER SR., ELIJAH BAXTER, EVELYN BAXTER, DONALD BELCOURT, NORA BERNARD, JOHN BOSUM, JANET BREWSTER, RHONDA BUFFALO, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, BRENDA CYR, DEANNA CYR, MALCOLM DAWSON, ANN DENE, BENNY DOCTOR, LUCY DOCTOR, JAMES FONTAINE in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, VINCENT BRADLEY FONTAINE, DANA EVA MARIE FRANCEY, PEGGY GOOD, FRED KELLY, ROSEMARIE KUPTANA, ELIZABETH KUSIAK, THERESA LAROCQUE, JANE McCALLUM, CORNELIUS McCOMBER, VERONICA MARTEN, JOAN MICHELL, STANLEY THOMAS NEPETAYPO, FLORA NORTHWEST, NORMAN PAUCHEY, CAMBLE QUATELL, ALVIN BARNEY SAULTEAUX, CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER, EDWARD TAPIATIC, HELEN WINDERMAN and ADRIAN YELLOWKNEE

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE UNITED CHURCH OF CANADA, THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA, ARCHDIOCESE OF VANCOUVER – THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, HÔTEL-DIEU DE NICOLET, INSITUT DES SOEURS DU BON CONSEIL, LA CORPORATION ARCHIÉPISCOPALE CATHOLIQUE ROMAINE DE ST. BONIFACE, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE D'HUSON – THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE JAMES (THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY THE CATHOLIC DIOCESE OF MOOSONEE, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, LES OBLATES DE MARIE IMMACULEE DU MANITOBA, LES OEUVRES OBLATES DE L'ONTARIO, LES PERES MONTFORTAINS, LES RÉSIDENCES OBLATES DU QUEBEC, LES SOEURS DE JESUS-MARIE, LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE L'ALBERTA, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VERGE, LES SOEURS DE LA CHARITÉ DE ST.-HYACINTHE, LES SOEURS DE LA CHARITÉ DES T.N.O,

LES SOEURS DE NOTRE DAME – AUXILIATRICE, LES SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE, LES SOEURS DE ST. FRANCOIS D'ASSISE, MISSIONARY OBLATES - GRANDIN, OBLATES OF MARY IMMACULATE – ST. PETER'S PROVINCE, ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, ROMAN CATHOLIC DIOCESE OF WHITEHORSE, ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, SISTERS OF CHARITY (GREY NUNS) OF ALBERTA, SISTERS OF CHARITY OF OTTAWA – LES SOEURS DE LA CHARITÉ D'OTTAWA, SISTERS OF CHARITY, A BODY CORPORATE also known as SISTERS OF CHARITY OF ST. VINCENT DE PAUL, HALIFAX, also known as SISTERS OF CHARITY HALIFAX, SISTERS OF INSTRUCTION OF THE CHILD JESUS, SOEURS GRISES DE MONTRÉAL/GREY NUNS OF MONTREAL, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE BENEDICTINE SISTERS OF MT. ANGEL OREGON, THE BISHOP OF VICTORIA, CORPORATION SOLE, THE CATHOLIC EPISCOPALE CORPORATION OF MACKENZIE – FORT SMITH, EPISCOPAL CORPORATION OF SASKATOON, IMMACULATE HEART COMMUNITY OF LOS ANGELES CA, OMI LACOMBE CANADA INC., THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH THE BAPTIST CHURCH IN CANADA, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN BAY, THE CANADA IMPACT NORTH MINISTRIES, THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE GREY NUNS OF MANITOBA INC. – LES SOEURS GRISES DU MANITOBA INC., THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA , THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE INCORPORATED SYNOD OF THE DIOCESE OF ALGOMA, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS CORPORATION SOLE, THE ROMAN CATHOLIC BISHOP OF NELSON CORPORATION SOLE, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, THE SISTERS OF ST. JOSEPH OF SAULT ST. MARIE, THE SISTERS OF THE PRESENTATION, THE SYNOD OF THE ANGLICAN CHURCH OF THE DIOCESE OF QUEBEC, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLOMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF NEW WESTMINSTER,

THE SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE BOARD OF HOME MISSIONS AND SOCIAL SERVICE OF THE PRESBYTERIAN CHURCH OF CANADA, THE ROMAN CATHOLIC EPISCOPAL CORPORATION, THE SISTERS OF ST. ANN, LES MISSIONNAIRES OBLATES DE ST. BONIFACE and THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA
Defendants

PROCEEDING UNDER the following legislation, as appropriate:

- (a) In the Province of Alberta: the *Class Proceedings Act*, S.A. 2003, c. C-16.5;
- (b) In the Province of British Columbia: the *Class Proceedings Act*, R.S.B.C. 1996, c.50;
- (c) In the Province of Manitoba: *The Class Proceedings Act*, C.C.S.M. c. C130;
- (d) In the Provinces of Newfoundland and Labrador, Prince Edward Island, New Brunswick, Nova Scotia and Ontario: the *Class Proceedings Act, 1992 (Ontario)*, S.O. 1992, c. 6;
- (e) In The Northwest Territories: Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg. 010-96;
- (f) In Nunavut: Rule 62 of the *Rules of the Supreme Court of the Northwest Territories*, N.W.T. Reg. 010-96, as adopted by the Territory by operation of Section 29 of the *Nunavut Act*, S.C. 1993, c. 28.
- (g) In the Province of Ontario: the *Class Proceedings Act*, 1992, S.O. 1992, c. 6;
- (h) In the Province of Québec: Articles 999–1051 of the *Code of Civil Procedure (Québec)*;
- (i) In the Province of Saskatchewan: *The Class Actions Act*, S.S. 2001, c.C-12.01; and
- (j) In the Yukon Territory: Rule 5(11) of the *Supreme Court Rules (British Columbia.)* B.C. Reg. 220/90 as adopted by the Territory by operation Section 38 of the *Judicature Act (Yukon)* R.S.Y. 2002, c. 128.

JUDGMENT

THIS MOTION, made by the Plaintiffs for certification of this action as a class proceeding and for judgment approving the settlement of the action, in accordance with the terms of the Agreement, was heard August 29, 30 and 31, 2006, at the Court House, at 316 University Avenue, Toronto, Ontario.

ON READING the joint motion record of the parties, the facts of the plaintiffs and the defendants and upon hearing any interested parties,

AND WITHOUT ADMISSION OF LIABILITY on the part of any of the Defendants who deny liability,

AND UPON HEARING the submissions of counsel for the Plaintiffs and the Defendants,

1. **THIS COURT ORDERS AND DECLARES** that for the purpose of this judgment, the following definitions apply:

DEFINITIONS:

- a) "Action" means this proceeding, court file number 00-CV-192059CP;
- b) "Agreement" means the Settlement Agreement entered into by the parties on May 10th, 2006, with schedules, attached hereto as Schedule "A";
- c) "Approval Date" means the date the last court issues its approval order and is the date on which this judgment becomes final;
- d) "Approval Orders" means the judgment or orders of the Courts certifying the Class Actions and approving the Agreement as fair, reasonable and in the best interests of the Class Members for the purposes of settlement of the Class Actions pursuant to the applicable class proceedings legislation or the common law;
- e) "Canada" means the Defendant, the Government of Canada, as represented in this proceeding by the Attorney General of Canada;
- f) "Class" or "Class Members" means:
 - a. each and every person
 - i. who, at anytime prior to December 31, 1997, resided at an Indian Residential School in Canada; or

- ii. who is a parent, child or sibling or spouse of a person who, at anytime prior to December 31, 1997, resided at an Indian Residential School in Canada,
- and,
- b. who, at the date of death resided in, or if living, as of the date hereof, resided in:
 - i. Alberta, for the purposes of the Alberta Court of Queen's Bench;
 - ii. British Columbia, for the purposes of the Supreme Court of British Columbia;
 - iii. Manitoba, for the purposes of the Manitoba Court of Queen's Bench;
 - iv. Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories;
 - v. Nunavut, for the purposes of the Nunavut Court of Justice;
 - vi. Ontario, Prince Edward Island, Newfoundland, Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;
 - vii. Quebec, for the purposes of the Quebec Superior Court;
 - viii. Saskatchewan, for the purposes of the Court of Queen's Bench for Saskatchewan; and
 - ix. Yukon, for the purposes of the Supreme Court of the Yukon Territory,but excepting all Excluded Persons.
- g) "Class Actions" means the omnibus Indian residential Schools Class Actions Statements of Claim referred to in Article Four (4) of the Agreement;
 - h) "Class Period" means until December 31, 1997;
 - i) "Common Experience Payment" means a lump sum payment made to an Eligible CEP Recipient in the manner set out in Article Five (5) of the Agreement;
 - j) "Court" means, in Alberta, the Alberta Court of Queen's Bench, in British Columbia, the Supreme Court of British Columbia, in Manitoba, the Manitoba Court of Queen's Bench, in the Northwest Territories, the Supreme Court of the Northwest Territories, in Nunavut, the Nunavut Court of Justice, in Ontario, the Ontario Superior Court of Justice, in Quebec, the Quebec Superior Court, in Saskatchewan, the Court of Queen's Bench for Saskatchewan and in the Yukon, the Supreme Court of the Yukon;

- k) "Eligible CEP Recipient" means any former Indian Residential School student who resided at any Indian Residential School prior to December 31, 1997 and who was alive on May 30, 2005 and who does not opt out, or is not deemed to have opted out of the Class Actions during the Opt Out Periods or is an Excluded Person;
- l) "Excluded Persons" means all persons who attended the Mohawk Institute Residential School in Brantford, Ontario, between 1922 and 1969, and their parents, siblings, spouses and children and any person who opts out of this proceeding in accordance with this judgment;
- m) "Forum" means the Alberta Court of Queen's Bench, the Supreme Court of British Columbia, the Manitoba Court of Queen's Bench, the Supreme Court of the Northwest Territories, the Nunavut Court of Justice, the Ontario Superior Court of Justice, the Quebec Superior Court, the Court of Queen's Bench for Saskatchewan and the Supreme Court of the Yukon Territory, and "Fora" refers to them all;
- n) "Implementation Date" means the latest of:
- i. the expiry of thirty (30) days following the expiry of the Opt-Out Periods; and
 - ii. the date following the last day on which a Class Member in any jurisdiction may appeal or seek leave to appeal any of the Approval Orders; and
 - iii. the date of a final determination of any appeal brought in relation to the Approval Orders.
- o) "Indian Residential School" means:
- i. institutions listed on List "A" to OIRSRC's Dispute Resolution Process attached to the Agreement as Schedule "E";
 - ii. institutions listed in Schedule "F" of the Agreement ("Additional Residential Schools") which may be expanded from time to time in accordance with Article 12.01 of the Agreement; and
 - iii. any institution which is determined to meet the criteria set out in Sections 12.01(2) and (3) of the Agreement;
- p) "Mailing Costs" means the cost of mailing a notice to the Class Members as described in *infra* below;
- q) "Notice Costs" means the cost of publishing the Notice at Schedule "D" attached hereto;
- r) "Opt Out Period" or "Opt Out Deadline" means the period commencing on the Approval Date as set out in the Approval Orders;

- s) "Other Released Church Organizations" includes the Dioceses of the Anglican Church of Canada listed in Schedule "G" of the Agreement and the Catholic entities listed in Schedule "H" of the Agreement, that did not operate an Indian Residential School or did not have an Indian Residential School located within their geographical boundaries and have made, or will make, a financial contribution towards the resolution of claims advanced by persons who attended an Indian Residential School;
 - t) "Releasees" means, jointly and severally, individually and collectively, the defendants in the Class Actions and each of their respective past and present parents, subsidiaries and related or affiliated entities and their respective employees, agents, officers, directors, shareholders, principals, members, attorneys, insurers, subrogees, representatives, executors, administrators, predecessors, successors, heirs, transferees and assigns and also the entities listed in Schedules "B", "C", "G" and "H" of the Agreement;
 - u) "Representative Plaintiffs" are those individuals listed as plaintiffs in this title of proceedings;
 - v) "Spouse" includes a person of the same or opposite sex to a Survivor Class Member who cohabited for a period of at least one year with that Survivor Class Member immediately before his or her death or a person of the same or opposite sex to a Survivor Class Member who was cohabiting with that Survivor Class Member at the date of his or her death and to whom that Survivor Class Member was providing support or was under a legal obligation to provide support on the date of his or her death; and
 - w) "Trustee" means Her Majesty in right of Canada as represented by the incumbent Ministers from time to time responsible for Indian Residential Schools Resolution and Service Canada. The initial Representative Ministers will be the Minister of Canadian Heritage and Status of Women and the Minister of Human Resources Skills and Development, respectively.
2. **THIS COURT ORDERS** that the Action be and is hereby certified as a Class Proceeding.
3. **THIS COURT ORDERS AND DECLARES** that to the extent the Amended Statement of Claim, the materials filed in connection with the motion for certification and approval of settlement, or this judgment are inconsistent with the technical rules of civil procedure or rules of court, strict compliance with such rules is waived in order to ensure the most just, expeditious and efficient resolution of this matter.
4. **THIS COURT ORDERS** that the Survivor Class is defined as the following:

All persons who resided at an Indian Residential School in Canada at anytime prior to December 31, 1997, who are living, or who were living as of May 30, 2005, and who, as of the date hereof, or who, at the date of death resided in:

- (a) Alberta, for the purposes of the Alberta Court of Queen's Bench;
- (b) British Columbia, for the purposes of the Supreme Court of British Columbia;
- (c) Manitoba, for the purposes of the Manitoba Court of Queen's Bench;
- (d) Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories; and
- (e) Nunavut, for the purposes of the Nunavut Court of Justice;
- (f) Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;
- (g) Quebec, for the purposes of the Quebec Superior Court;
- (h) Saskatchewan, for the purposes of the Saskatchewan Court of Queen's Bench;
- (i) Yukon, for the purposes of the Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

5. **THIS COURT ORDERS** that the Family Class is defined as the following:

All parents, siblings, spouses, children and grandchildren including minors, the unborn and disabled individuals, of all persons who resided at an Indian Residential School in Canada at anytime prior to December 31, 1997, and who, as of the date hereof, are resident in:

- (a) Alberta, for the purposes of the Alberta Court of Queen's Bench;
- (b) British Columbia, for the purposes of the Supreme Court of British Columbia;
- (c) Manitoba, for the purposes of the Manitoba Court of Queen's Bench;
- (d) Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories; and
- (e) Nunavut, for the purposes of the Nunavut Court of Justice;

- (f) Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;
- (g) Quebec, for the purposes of the Quebec Superior Court;
- (h) Saskatchewan, for the purposes of the Saskatchewan Court of Queen's Bench;
- (i) Yukon, for the purposes of the Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

6. **THIS COURT ORDERS** that the Deceased Class is defined as the following:

All persons who resided at an Indian Residential School in Canada at anytime prior to December 31, 1997, who died before May 30, 2005, and who were, at their date of death, residents of:

- (a) Alberta, for the purposes of the Alberta Court of Queen's Bench;
- (b) British Columbia, for the purposes of the Supreme Court of British Columbia;
- (c) Manitoba, for the purposes of the Manitoba Court of Queen's Bench;
- (d) Northwest Territories, for the purposes of the Supreme Court of the Northwest Territories; and
- (e) Nunavut, for the purposes of the Nunavut Court of Justice;
- (f) Ontario, Prince Edward Island, Newfoundland, and Labrador, New Brunswick, Nova Scotia and any place outside of Canada, for the purposes of the Ontario Superior Court of Justice;
- (g) Quebec, for the purposes of the Quebec Superior Court;
- (h) Saskatchewan, for the purposes of the Saskatchewan Court of Queen's Bench;
- (i) Yukon, for the purposes of the Supreme Court of the Yukon Territory;

But excepting Excluded Persons.

7. **THIS COURT ORDERS** that the Class shall consist of the Survivor Class, the Family Class and the Deceased Class.

8. **THIS COURT ORDERS AND DECLARES** that the Representative Plaintiffs be and are hereby appointed as representatives of the Class.

9. **THIS COURT ORDERS AND DECLARES** that the Representative Plaintiffs are adequate representatives of the Class and comply with the statutory residency requirements in the applicable class proceedings legislation.

10. **THIS COURT ORDERS AND DECLARES** that the common issues in the Action are the following:

- a) By their operation or management of Indian Residential Schools during the Class Period, did the Defendants breach a duty of care they owed to the Survivor Class and the Deceased Class to protect them from actionable physical or mental harm?
- b) By their purpose, operation or management of Indian Residential Schools during the Class Period, did the Defendants breach a fiduciary duty they owed to the Survivor Class and the Deceased Class or the aboriginal or treaty rights of the Survivor Class and the Deceased Class to protect them from actionable physical or mental harm?
- c) By their purpose, operation or management of Indian Residential Schools during the Class Period, did the Defendants breach a fiduciary duty they owed to the Family Class?
- d) If the answer to any of these common issues is yes, can the Court make an aggregate assessment of the damages suffered by all Class members of each class as part of the common trial?

11. **THIS COURT ORDERS AND DECLARES** that the claims by the Class Members for aggravated, exemplary and punitive damages be and hereby are dismissed, without costs and with prejudice.

12. **THIS COURT ORDERS AND DECLARES** that the certification of this Action is conditional on the approval of the settlement and is without prejudice to the Defendants' right to contest certification or to contest the jurisdiction of this court in the future, should the settlement fail. All materials filed, submissions made or positions taken by any party are without prejudice in the event the settlement fails.

13. **THIS COURT ORDERS AND DECLARES** that the settlement of the Action as particularized in the Agreement is fair, reasonable, adequate and in the best interests of the Class Members.

14. **THIS COURT ORDERS** that the Agreement, which is attached hereto as Schedule "A", and which is expressly incorporated by reference into this judgment, is hereby approved and shall be implemented, and the parties are directed to comply with its terms, subject to any further order of this court.

15. **THIS COURT ORDERS AND DECLARES** that this Court shall supervise the implementation of the Agreement and this judgment and, without limiting the generality of the foregoing, may issue such orders as are necessary to implement and enforce the provisions of the Agreement and this judgment.

16. **THIS COURT ORDERS AND DECLARES** that the Trustee be and is hereby appointed, until further order of this court, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Agreement and this judgment.

17. **THIS COURT ORDERS AND DECLARES** that each Class Member who does not opt out in accordance with the terms of the Agreement and this judgment and his or her heirs, personal representatives and assigns or its past and present agents, representatives, executors, administrators, predecessors, successors, transferees and assigns, have released and shall be conclusively deemed to have fully, finally and forever released the Defendants and the Other Released Church Organizations and each of their respective past and present parents, subsidiaries and related or affiliated entities and their respective employees, agents, officers, directors, shareholders, partners, principals, members, attorneys, insurers, subrogees, representatives, executors, administrators, predecessor, successors, heirs, transferees and assigns from any and all actions, causes of action, common law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which they ever had, now have or may have hereafter have, directly or indirectly or any way relating to or arising directly or indirectly by way of any subrogated or assigned right or otherwise in relation to an Indian Residential School or the operation generally of Indian Residential Schools

and this release includes any such claim made or that could have been made in any proceeding including the Class Actions and including claims that belong to the Class Member or personally, whether asserted directly by the Class member or by any other person, group or legal entity on behalf of or as a representative for the Class Member.

18. **AND THIS COURT ORDERS AND DECLARES** for greater certainty that the Releases referred to in paragraph 17 above bind each Class Member who does not opt out in accordance with the terms of the Agreement and this judgment whether or not he or she submits a claim to the Administrator, whether or not he or she is eligible for individual compensation under the Agreements or whether the Class Member's claim is accepted in whole or in part.

19. **THIS COURT ORDERS AND DECLARES** that any individual action brought by a Class Member who does not opt out in accordance with the terms of this judgment are hereby stayed and shall be dismissed on the Implementation Date.

20. **THIS COURT ORDERS AND DECLARES** that any existing class proceeding or representative action brought by a Class Member is hereby stayed and shall be dismissed on the Implementation Date.

21. **THIS COURT ORDERS AND DECLARES** that each Class Member who does not opt out in accordance with the terms of this judgment and each of his or her respective heirs, executors, administrators, personal representatives, agents, subrogees, insurers, successors and assigns shall not make any claim or take any proceeding against any person or corporation, including the Crown, in connection with or related to the claims released pursuant to paragraph 17 of this judgement, who might claim or take a proceeding against the Defendants or Other Released Church Organizations, in any manner or forum, for contribution or indemnity or any other relief at common law or in equity or under the provisions of the *Negligence Act*, R.S.O. 1990 c. n-3, as amended, or its counterpart in other jurisdictions or under any other statute or the rules of court of Ontario or any other jurisdiction. A Class Member who makes any claim or takes any proceeding that is subject to this paragraph shall immediately discontinue such claim or proceeding and this paragraph shall operate conclusively as a bar to any such action or proceeding.

22. **THIS COURT ORDERS AND DECLARES** that the claims of the Class Members in this action are hereby dismissed, without costs and with prejudice and that such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.
23. **THIS COURT ORDERS** that no Class Member may opt out of this class proceeding after [date to be determined] 2007, without leave of this court.
24. **THIS COURT ORDERS** that no person may opt out a minor or a person who is under a disability without leave of the court after notice to the Public Guardian and Trustee and to the Children's Lawyer, or such other public trustee as may be applicable.
25. **THIS COURT ORDERS** that the Administrator, Crawford Class Action Services, shall, within thirty (30) days of the end of the Opt Out Period, report to this court and advise as to the names of those persons who have opted out of this class proceeding.
26. **THIS COURT ORDERS** that on or before [date to be determined] 2006, the Class Members shall be given notice of this judgment and the approval of the Agreement, in accordance with the terms of the Notice Plan attached hereto and at the expense of Canada as set out in the Notice Plan.
27. **THIS COURT DECLARES** that the notice provided in paragraph 26 above, satisfies the requirements of this court and is the best notice practicable under the circumstances.
28. **THIS COURT ORDERS** that forthwith after the publication and delivery of the notice required by paragraph 26 of this judgment, Canada shall serve upon Class Counsel, the Defendants and the Administrator and file with this court affidavits confirming that they have given the notice in accordance with the Notice Plan, the Agreement and this judgment.
29. **THIS COURT ORDERS AND DECLARES** that the Agreement and this judgment are binding upon each Class Member who does not opt out, including those persons who are minors or are mentally incapable and that any requirements or rules of civil procedure which would impose further obligations with respect to this judgment are dispensed with.

30. **THIS COURT ORDERS THAT [designated individual to be determined]** be appointed as Chief Adjudicator until further order of this court, with the duties and responsibilities as set out in the Agreement.

31. **THIS COURT ORDERS AND DECLARES** that no person may bring any action or take any proceedings against the Trustee, its employees, agents, partners, associates, representatives, successors or assigns or against the Chief Adjudicator for any matter in any way relating to the Agreement, the administration of the Agreement or the implementation of this judgment, except with leave of this court on notice to all affected parties,

32. **THIS COURTS DECLARES** that the Representative Plaintiffs, Defendants, Released Church Organizations, Class Counsel or the Trustee, after fully exhausting the dispute resolution mechanisms contemplated in the Agreement, may apply to the Court for directions in respect of the implementation, administration or amendment of the Agreement or the implementation of this judgment on notice to all affected parties, or otherwise in conformity with the terms of the Agreement.

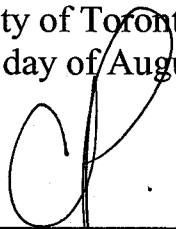
33. **THIS COURT DECLARES** that the Consent and Agreements which were entered into by the Defendants and the Released Church Organizations and this judgment that is issued by this court, is without any admission of liability, that the Defendants and the Released Church Organizations deny liability and that the Consent to the Agreement is not an admission of liability by conduct by the Defendants and that this judgment is deemed to be a without prejudice settlement for evidentiary purposes.

34. **THIS COURT ORDERS AND DECLARES** that in the event that the number of Eligible CEP Recipients who opt out of this class proceeding exceeds five thousand (5,000), the Agreement will be void and this judgment will be set aside in its entirety subject only to the right of Canada, at its sole discretion, to waive compliance with section 4.15 of the Agreement.

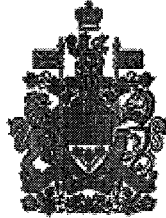
35. **THIS COURT DECLARES** that this order will be rendered null and void in accordance with the terms of the Agreement, in the event that the Agreement is not approved in substantially the same terms by way of order or judgment of the court in all of the Fora.

36. **THIS COURT DECLARES** that the provisions of the *Class Proceedings Act, 1992*, shall apply in their entirety to the supervision, operation and implementation of the Agreement and this judgment.

Exhibit "E" to the Affidavit
of Jonathan Ptak, sworn before me
at the City of Toronto, Ontario
this 18th day of August, 2006

A handwritten signature in black ink, appearing to be 'C. Poltak', written over a horizontal line.

Celeste Poltak
A Commissioner for Taking Affidavits



HOUSE OF COMMONS
OTTAWA, CANADA
K1A 0A6

38th Parliament, 1st Session

The Standing Committee on Aboriginal Affairs and Northern Development has the honour to present its

FOURTH REPORT

Study on the Effectiveness of the Government Alternative Dispute Resolution Process for the Resolution of Indian Residential School Claims

Pursuant to Standing Order 108. (2) the Committee undertook a study on the effectiveness of the government's alternative dispute resolution (ADR) process for the resolution of Indian residential school claims.

The Committee considered the written and oral evidence presented by witnesses including:

1. former residential school students, some appearing as individuals and others as spokespersons for the Aboriginal Healing Foundation, the National Residential School Survivor Society, Children of the Shingwauk Alumni Association, the Indian Residential School Survivor Society, Spirit Wind and the Association for the Survivors of the Shubenacadie Indian Residential School;
2. the National Consortium of Residential School Survivors' Counsel;
3. Hon. Ted Hughes, Chief Adjudicator, Indian Residential Schools Resolution Canada;
4. Hon. Anne McLellan, Deputy Prime Minister and Minister Responsible for Indian Residential Schools Resolution Canada;
5. Mario Dion, Deputy Minister, Indian Residential Schools Resolution Canada;
6. the Assembly of First Nations (AFN);
7. the Canadian Bar Association (CBA).

The Committee took particular note, in formulating the recommendations below, of the AFN report entitled "Assembly of First Nations Report on Canada's Dispute Resolutions Plan to Compensate for Abuses in Indian Residential Schools", first released in November 2004, and of the Canadian Bar Association February 2005 report entitled "The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors".

The Committee took particular note, in formulating the recommendations below, of the written and oral evidence of the former students and the representatives of former students and survivors' organizations regarding their personal experiences in the residential schools and in the Indian Residential Schools Resolution Canada ADR process. The witnesses were compelling for their

candour and integrity about their experience as inmates in the residential school system and fair, frank and persuasive on matters of public policy.

The Committee took particular note, in formulating the recommendations below, of the written and oral evidence of the Minister, the Deputy Minister and the Chief Adjudicator. The evidence was contradictory with respect to financial and case-resolution performance numbers of the Indian Residential Schools Resolutions Canada ADR process and failed to resolve discrepancies between the evidence in chief of the witnesses and the numbers obtained from other government sources. This is troubling because it speaks of fiscal mismanagement and an absence of administrative control. More disconcerting, however, the Minister's evidence was unapologetic and self-congratulatory with respect to both the underlying framework and the results of the ADR process. It disclosed her apparent disconnectedness from the experience of the survivor witnesses, for whom she has a particular duty of care and to whom she is not listening.

The Committee is drawn to the inescapable conclusion that the ADR process is an excessively costly and inappropriately applied failure, for which the Minister and her officials are unable to raise a convincing defence. Specifically the ADR process is a failure because:

1. It is strikingly disconnected from the so-called pilot projects that preceded it.
2. The consultative mechanisms that informed its development did not include a sufficiently broad range of participation by former residential school students and other relevant professionals – legal, cultural, psychological and healing.
3. It is failing to provide impartial and even-handed due process.
4. It is not attracting former students to apply in credible numbers.
5. It is structured to compensate too narrow a population of former students.
6. It provides grossly inadequate compensation when, grudgingly, it does so.
7. It excludes too many of the some 87,000 remaining former students from eligibility.
8. It is proceeding too slowly, allowing too many former students to die uncompensated.
9. It is using a model of dispute resolution that is disrespectful, humiliating and unfeeling and re-victimizes former students, who are now elderly and vulnerable.
10. It is an arbitrary administrative solution that is vulnerable to political whim.
11. Its high structural costs are fixed and will always be disproportionate to the size of compensation granted.
12. Its so-called verification process imposes an egregious burden of proof on the applicants that programs failure into the resolutions process, requires irrelevant data and imposes a cost on the applicant that can exceed the size of an award.
13. Former students do not trust the process.
14. There is no satisfactory evidence in the numbers that the program is working.

The Committee took note of the consistency of the former students, the AFN, the CBA and the National Consortium of Residential School Survivors Counsel on five points:

1. the necessity of compensation for those former students who are able to establish a cause of action and a lawful entitlement to compensation process;
2. the necessity of keeping the compensation referred to in item 1 above separate and apart from compensation for sexual and severe physical abuse;
3. the absolute necessity for a settlement process that includes direct negotiations with the former students and the vigorous protection of their legal rights during the negotiations;
4. the wisdom of a court-approved, court-supervised settlement that is transparent, is arrived at in a neutral manner and cannot be tampered with politically;
5. The necessity of a settlement that is comprehensive and final and relieves the Government of future liability.

The Committee took note of three recommendations by former students and their groups:

1. the need for continued financial support of healing processes, with a greater degree of local direction and personal self-direction on how that healing is to be achieved;
2. the need for a respectful, thoughtful, national forum in which the truth is told about the residential school experience by former students so that Canadians will know and never forget;
3. the urgency for prompt compensation, reconciliation and healing because former students are elderly; on average some 30 to 50 former students die each week uncompensated and bearing the grief of their experience to the grave

The Committee took note of the sweeping, thoughtful and constructive analysis and recommendations contained in the AFN and CBA reports it received and believes they are seminal documents that can assist in the compensation and healing processes.

The Committee took note of the Canadian Bar Association's recommendation, in its report "The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors", for a restorative reconciliation payment that would "recognize a person as a survivor of an injurious program for which the Government of Canada is responsible". This recommendation is consistent with the Assembly of First Nations' call for a "lump sum award granted to any person who attended an Indian Residential School". The Committee further took note of the Canadian Bar Association's recommendation on payment details, including the following as to amount, as a reference point for court-supervised, -approved and -enforced negotiations and settlement:

1. the reconciliation payment should start with a base amount for any time spent at a school (for example, \$10,000) and add an amount for each year at a school (for example \$3,000).

The Committee regrets the manner with which the Government has administered the Indian Residential Schools Claims program and recommends that the Government give consideration to the advisability of Government taking the following steps:

1. **That the Government take all the actions recommended below on an urgent basis, with consideration for the frailty and short life expectancy of the former students.**
2. **That the Government terminate the Indian Residential Schools Resolutions Canada Alternative Dispute Resolutions Process.**
3. **That the Government engage in court-supervised negotiations with former students to achieve a court-approved, court-enforced settlement for compensation that relieves the Government of its liability for those former students who are able to establish a cause of action and a lawful entitlement to compensation.**
4. **That the Government ensure that the courts have full and final discretion with respect to limitations on legal fees.**
5. **That the Government expedite the settlement of those claims involving aggravated circumstances, including those involving sexual and severe physical abuse, in a separate restorative judicial process.**
6. **That the Government , to ensure that former students have the opportunity to tell their stories to all Canadians in a process characterized by dignity and respect, cause a national truth and reconciliation process to take place in a forum that validates the worth of the former students and honours the memory of all children who attended the schools.**
7. **That the Government ask the Auditor General to conduct an audit of the Indian**

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Residential Schools Canada Dispute Resolution Process from its creation to its winding down.

- 8. That the Government respond publicly in writing to the Assembly of First Nations report “Assembly of First Nations Report on Canada’s Dispute Resolutions Plan to Compensate for Abuses in Indian Residential Schools” and the Canadian Bar Association report “The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors”.**

Copies of the relevant *Minutes of Proceedings* (Meetings Nos. 18, 19, 20 and 25) are tabled.

Respectfully submitted,

Nancy Karetak-Lindell, M.P.
Chair

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHARLES BAXTER SR., ELIJAH BAXTER, LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, JAMES FONTAINE in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, PETER GEORGE TAATI AIRO, MICHELLINE AMMAQ, DONALD BELCOURT, JOHN BOSUM, RHONDA BUFFALO, FREDDIE JOHNNY EKOMIAK, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, JIM CHEWANISH, EARL KENNETH COTE, MALCOLM DAWSON, ANN DENE, KEITH DIETER, VINCENT BRADLEY FONTAINE, MARIE GAGNON, PEGGY GOOD, CLIFFORD HOUSE, FRED KELLY, ROSEMARIE KUPTANA, JIMMIE KUMARLUK, ELIZABETH KUSIAK, THERESA LAROCQUE, JAME McCALLUM, CORNELIUS McCOMBER, STANLEY THOMAS NEPETAYPO, CAROLYN TAKATAK NIVIAIXIE, FLORA NORTHWEST, ELIASIE NOWKAWALK, NORMAN PAUCHEY, CAMBLE QUATELL, ALVIN BARNEY SAULTEAUX, SIMON SCIPIO, ELIZABETH SCIPIO-KOOKASH, CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER, ALVIN GERALD STRAIGHTNOSE, EDWARD TAPIATIC, BLANDINA TULUGARJUK, HELEN WINDERMAN and ADRIAN YELLOWKNEE

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE BAPTIST CHURCH IN CANADA, THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, THE ROMAN CATHOLIC BISHOP OF VICTORIA, THE ROMAN CATHOLIC BISHOP OF NELSON, THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD-McLENNAN, THE CATHOLIC ARCHDIOCESE OF EDMONTON, LA DIOCESE DE SAINT-PAUL, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF MacKENZIE, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, THE ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT-BONIFACE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF SAULT STE. MARIE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES

BAY, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN CANADA, IMPACT NORTH MINISTRIES, INSTITUT DES SOEURS DU BON CONSEIL, JESUIT FATHERS OF UPPER CANADA, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (also known as LES REVERENDS PERES OBLATS DE L'IMMACULEE CONCEPTION DE MARIE), LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (PROVINCE DU CANADA-EST), LES PERES MONTFORTAINS (also known as THE COMPANY OF MARY), LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES TERRITOIRES DU NORD OUEST, LES SOEURS DE LA CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (also known as SISTERS OF CHARITY OF OTTAWA – GREY NUNS OF THE CROSS), LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE NICOLET AND THE SISTERS OF ASSUMPTION, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE DE L'ALBERTA, LES SOEURS DE NOTRE DAME AUXILIATRICE, LES SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE, LES SOEURS DE ST. FRANCOIS D'ASSISE, MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (also known as MISSIONARY OBLATES OF THE SACRED HEARTS AND MARY IMMACULATE or LES MISSIONAIRES OBLATS DE SAINT-BONIFACE), SISTERS OF THE HOLY NAMES OF JESUS AND MARY (also known as THE RELIGIOUS ORDERS OF JESUS AND MARY and LES SOEURS DE JESUS-MARIE), SISTERS OF THE PRESENTATION OF MARY (SOEURS DE LA PRESENTATION DE MARIE), ST. PETER'S PROVINCE, THE BENEDICTINE SISTERS, THE BOARD OF THE HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS, THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE DAUGHTERS OF THE HEART OF MARY (also known as LA SOCIETE DES FILLES DE COEUR DE MARIE and THE DAUGHTERS OF THE IMMACULATE HEART OF MARY), THE DIOCESE OF MOOSONEE,, THE DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE GREY NUNS OF MANITOBA INC. (also known as LES SOEURS GRISES DU MANITOBA INC.), THE GREY SISTERS NICOLET, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE MISSIONARY OBLATES OF MARY IMMACULATE-GRANDIN PROVINCE, THE MISSIONARY OBLATES OF MARY IMMACULATE-PROVINCE OF ST. JOSEPH, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA , THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE OBLATS OF MARY IMMACULATE, THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, THE SISTERS OF CHARITY (GREY NUNS) OF MONTREAL (also known as LES SOEURS DE LA CHARITÉ (SOEURS GRISES) DE L'HÔPITAL GÉNÉRAL DE MONTREAL), THE SISTERS OF CHARITY (GREY NUNS) OF ST.

ALBERT (also known as THE SISTERS OF CHARITY (GREY NUNS) OF ST, ALBERTA), THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES, THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, THE SISTERS OF INSTRUCTION OF THE CHILD JESUS (also known as THE SISTERS OF THE CHILD JESUS), THE SISTERS OF SAINT ANNE, THE SISTERS OF ST. JOSEPH OF SAULT STE. MARIE, THE SISTERS OF THE CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (also known as THE SISTERS OF CHARITY OF HALIFAX), THE SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF WESTMINSTER, THE SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE UNITED CHURCH IN CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF FRANK IACOBUCCI
(sworn August 10, 2006)**

I, Frank Iacobucci, Q.C., of the City of Toronto, MAKE OATH AND SAY:

1. Since May 30, 2005, I have served as the Federal Representative leading negotiations with interested parties toward the resolution of the legacy of Indian Residential Schools. These negotiations, which resulted in a Settlement Agreement as described below, included long and complex discussions respecting legal fees. Indeed, legal fees were a central element of the negotiations and there would have been no Settlement Agreement without an agreement on legal fees. I therefore have knowledge of the matters to which I depose herein.
2. The discussions of legal fees with Tony Merchant, Q.C., representing the Merchant Law Group ("MLG"), were particularly long and complex. As described in detail at paragraph 26 of this affidavit, I had and continue to have a number of very serious concerns about the information put forward by MLG to justify its position on legal fees. These concerns include:

- (a) uncertainty about the number of former residential schools students who had retained MLG;
- (b) lack of evidence or rationale to support the MLG's claim that it had Work-in-Progress of approximately \$80 million on its residential school files; and
- (c) an apparent discrepancy between the amount of class action work MLG represented it had carried out and the amount of class action work it had actually done.

3. As a result of these concerns, I required and MLG agreed that it would comply with the following four-part verification process as a condition of receiving payment for legal fees.

- (a) First, MLG's dockets, computers records of Work-in-Progress and any other evidence relevant to the MLG's claim for legal fees will be made available for review and verification by a firm to be chosen by me.
- (b) Second, I will review the material from the verification process and consult with MLG to satisfy myself that the amount of legal fees to be paid to MLG is reasonable and equitable taking into consideration the amounts and basis on which fees are being paid to other lawyers in respect of this settlement, including the payment of a 3 to 3.5 multiplier in respect of the time on class action files and the fact that MLG has incurred time on a combination of class action files and individual files.
- (c) Third, if I am not satisfied that the \$40 million is a reasonable and equitable amount in light of this test, MLG and I will make reasonable efforts to agree on another amount.
- (d) Fourth, if we cannot reach agreement, the amount of the fees to be paid to MLG shall be determined by Mr. Justice Ball or, if he is not available, another Justice of the Court of Queen's Bench in Saskatchewan.

4. MLG has not complied with the verification process, taking the position that it cannot do so without breaching solicitor-client privilege.

5. Without this verification, there is no way to determine whether \$40 million in legal fees is a reasonable and equitable amount to pay to MLG. I have therefore instructed counsel to bring this motion to request this Honourable Court's assistance to require MLG to comply with its verification requirements in a manner that provides appropriate protection to solicitor-client privilege.

Indian Residential Schools Settlement Agreement

6. On November 20, 2005, after five months of intensive negotiations, the parties executed an Agreement in Principle to form the basis of a comprehensive settlement package. The Agreement in Principle was approved by Cabinet on November 22, 2005. A copy of the Agreement in Principle is attached to this affidavit as Exhibit "A".

7. For the next five months, the parties continued negotiations to finalize the Agreement in Principle. The parties have now agreed on a comprehensive Settlement Agreement, which was approved by Cabinet on May 10, 2006. A copy of the Settlement Agreement is attached as Exhibit "B".

8. The Settlement Agreement comprises five main elements:

- (a) a Common Experience Payment to be paid to each former residential school student who was living on May 30, 2005;
- (b) an Independent Assessment Process under which a former residential school student can seek additional compensation for sexual or serious physical abuse;
- (c) a Truth and Reconciliation Process, including the establishment of a Truth and Reconciliation Commission;
- (d) funding for commemorative activities; and

- (e) funding to the Aboriginal Healing Foundation for healing programs over a five-year period.

9. In addition to these five elements, the settlement of legal fees was a crucial component of the Settlement Agreement.

10. The parties are now engaged in the preparatory work to seek certification and approval of the Settlement Agreement from courts in nine provinces and territories at hearings commencing August 29, 2006 and ending on October 17, 2006.

Negotiations Respecting Legal Fees

11. There was extensive discussion during the course of these negotiations about the legal fees to be paid to plaintiffs' counsel. Obtaining agreement on legal fees was complicated by three main considerations:

- (a) the existence of thousands of retainer agreements under which former residential school students had agreed to pay to their lawyers contingency fees which I understood ranged from 20 per cent to 45 per cent or more of any judgment or settlement;
- (b) the strongly-expressed views of the Assembly of First Nations and Inuit representatives that the full amount of the Common Experience Payment must be paid to former residential school students without any reduction for contingency fees; and
- (c) the claim by class action counsel on the basis of the existing jurisprudence that they should be paid significant multipliers of their normal fees on the basis of the risk they had incurred, and other factors, in pursuing these cases.

12. In the case of MLG, the discussions respecting legal fees were further complicated by the "hybrid" nature of MLG's representation of its clients. MLG claimed to have retainer agreements with thousands of former residential schools students -- far more than claimed by any other individual law firm -- but also claimed that it had incurred substantial class action time that should be subject to a multiplier rate.

Agreements Respecting Legal Fees

13. The agreements respecting legal fees are contained in Article Thirteen of the Settlement Agreement. These provisions are in most respects identical to the provisions respecting legal fees contained in Article XII of the Agreement in Principle.

The Payment of Legal Fees to Individual Lawyers

14. Sections 13.05 and 13.06 of the Settlement Agreement establish the fundamental principle for the payment of legal fees under the Settlement Agreement, namely, that each lawyer who had a retainer agreement or a substantial solicitor-client relationship (a "Retainer Agreement") with a former student as of May 30, 2005 will be paid for outstanding Work-in-Progress up to a cap of \$4,000, so long as he or she does not charge any fees in respect of the Common Experience Payment. The requirement that a Retainer Agreement exist as of May 30, 2005 is intended to avoid providing a windfall to lawyers who "signed up" clients once my appointment and the existence of the settlement discussions was known.

15. Section 13.07 requires that, in order to receive this payment, each lawyer must provide a statutory declaration that attests to the number of Retainer Agreements he or she had with former students as of May 30, 2005 and the amount of outstanding Work-in-Progress in respect of these Retainer Agreements. Article 13.07 also allows the government to engage in such further verification processes with individual lawyers as circumstances require with the consent of the lawyers involved, such consent not to be unreasonably withheld.

16. Sections 13.02 and 13.03 also provide for the payment to lawyers of fees at their normal hourly rate for the negotiations leading to the Agreement in Principle and the finalization of the Settlement Agreement, commencing in July 2005 and terminating as of the date of execution of the Settlement Agreement.

Payment of Legal Fees to the National Consortium member firms and the Merchant Law Group

17. In addition to providing for the payment of legal fees to individual lawyers, the Settlement Agreement provides for the payment of legal fees in respect of the work of the 19

member law firms of the National Consortium, and the Merchant Law Group. In recognition of the substantial number of former students represented by each of these groups and the class action work they have done, each of these two groups is to be paid a lump sum of \$40 million, subject to the verification processes described below. The lump sum is paid in lieu of the payments to individual lawyers of Work-in-Progress up to \$4,000 and negotiation fees for the July 2005 to November 20, 2005 period.

(a) National Consortium Legal Fees

18. The National Consortium is a consortium of 19 law firms that is the successor to the 24-member National Association of Indian Residential School Plaintiffs' Counsel, formed in 1998. The Consortium includes: Thomson Rogers, lead counsel in the *Baxter* class action; Cohen Highley and Koskie Minsky, counsel in the *Cloud* class proceeding, certified as a class action in Ontario; Field LLP, lead counsel in the Alberta Test Case Litigation; David Paterson, counsel in the *Blackwater* proceedings in British Columbia; and Arnold, Pizzo and McKiggan, counsel for the Shubenacadie School representative action in New Brunswick. I understand that the National Consortium was established to coordinate the efforts of counsel involved in these and other actions.

19. Section 13.08(1) of the Settlement Agreement provides that the National Consortium will be paid \$40 million in legal fees and that any lawyer who is a partner of, employed by or otherwise affiliated with a National Consortium member law firm is not entitled to the payments described in paragraph 14 above or the payment of negotiation fees for the July 2005 to November 20, 2005 period.

20. The National Consortium has prepared a draft affidavit describing the work done collectively by the National Consortium and each of its members, the proposed distributions of the \$40 million payment to each of its members, and the rationales for the amounts of these payments. My colleagues and I are currently engaged in reviewing and commenting upon this affidavit.

(b) **MLG Legal Fees**

21. MLG claims to represent thousands of individual former residential school students. MLG has brought 10 class actions in jurisdictions across Canada on behalf of former residential school students. However, of these class actions, one was brought in 2002 and the rest were commenced only at the end of April 2005 onward. None of these actions has progressed beyond the filing of a statement of claim and some minor procedural activities.

22. The MLG class actions are:

- a) *Pauchay et al v. The Attorney General of Canada*
(Saskatchewan)
Date Filed: January 3, 2002
- b) *Sparvier et al v. Attorney General of Canada*
(Saskatchewan)
Date Filed: April 29, 2005
- c) *House et al v. Attorney General of Canada*
(Québec)
Date Filed: May 13, 2005
- d) *Sparvier et al v. Attorney General of Canada*
(Federal Court – Saskatchewan – Proposed Class Action)
Date Filed: May 13, 2005
- e) *Sparvier et al v. Attorney General of Canada*
(Ontario)
Date Filed: May 17, 2005
- f) *Northwest et al v. Attorney General of Canada*
(Alberta)
Date Filed: June 21, 2005
- g) *Semple et al v. Attorney General of Canada*
(Manitoba)
Date Filed: August 2, 2005
- h) *Quatell et al v. Attorney General of Canada*
(British Columbia)
Date Filed: August 2, 2005

- i) *Laliberte v. The Attorney General of Canada*
(Saskatchewan – Proposed Class Action)
Date Filed: September 23, 2005
- j) *Aubichon et al v. Attorney General of Canada*
(Saskatchewan – Proposed Class Action)
Date Filed: December 9, 2005

23. Section 13.08(2) of the Settlement Agreement establishes a distinct set of fees provisions for MLG, based on the legal fees provisions in the Agreement in Principle and in the Agreement between Canada and the Merchant Law Group respecting verification of legal fees entered into on November 20, 2005 (the “Merchant Fees Verification Agreement”), attached to this affidavit as Exhibit “C”.

24. In light of the large number of former students MLG purports to represent and the ten class actions with respect to which MLG alleges it has expended considerable effort, the amount of fees to be paid to MLG is set at \$40 million.

25. However, the payment of these fees is subject to the four-part verification process described at paragraph 3 of this affidavit.

26. I required this verification process as part of our fees agreement with MLG because I had very serious concerns about the information put forward by MLG to justify its position on fees. These concerns included the following.

- (a) **Actual number of retainers.** MLG represented during the legal fees negotiations that it had entered into Retainer Agreements with 7,000 to 8,000 former students, but was unable to offer any evidence as to how many of these Retainer Agreements existed as of May 30, 2005.
- (b) The number of retainers that MLG represented existed changed frequently during the negotiations and appeared not to make allowances for cases that had settled or determined by trial, former clients who had died, and those who were represented by other law firms.
- (c) **Actual amount of Work-in-Progress.** MLG represented that it had Work-in-Progress outstanding on these files of approximately \$80 million, but was

unable to offer any evidence to support this amount or to explain how and why these costs were incurred. I have recently been shown a copy of an article that appeared in the *Leader Post* on August 9, 2004 in which Mr. Merchant was reported to have stated that MLG carried approximately \$12 million in unpaid work. A copy of this article is attached to this affidavit as Exhibit "D".

- (d) **Actual amount of class action work.** MLG represented that it should be paid substantial fees in respect of the class actions it had brought but, unlike the National Consortium, MLG appeared to have expended very limited resources on these class actions.

27. Mr. Merchant signed the Merchant Fees Verification Agreement on November 20, 2006, which was the last day of negotiations before the Agreement in Principle was executed. Before Mr. Merchant signed the Merchant Fees Verification Agreement, my colleague John Terry and I explained to him and his colleagues the terms of the Merchant Fees Verification Agreement and the fact that the 19 law firms who were members of the National Consortium were not being asked to sign a similar agreement.

28. Neither Mr. Merchant nor any other representatives of MLG ever raised any issues respecting solicitor-client privilege when the Merchant Fees Verification Agreement was signed.

Attempts to Carry Out the Verification Process

29. In December 2005, my colleague John Terry contacted MLG to make arrangements for the verification process described in paragraph 3 of this affidavit to be carried out. MLG indicated that it was arranging for residential school files to be moved from its various offices to Regina so that verification might begin in mid-January. On January 11, 2006, MLG advised us that it had brought its files to Regina and would be prepared to begin the verification process on January 16, 2006. MLG expressed concerns that the verification process should be carried out without violating solicitor-client privilege.

30. Pursuant to the Merchant Fees Verification Agreement, I chose Deloitte & Touche LLP ("Deloitte") to carry out the verification. From January 17, 2006 to January 24, 2006, representatives of Deloitte attended at MLG's offices in Regina for the purpose of carrying out the verification process. Deloitte's attempts to carry out the verification process are described in the affidavit of Edward Nagel dated June 15, 2006, filed in this motion.

31. As Mr. Nagel explains, on January 24, 2006, the verification process was terminated by the MLG, citing concerns about solicitor-client privilege in respect of its files. As a result, the verification process has not been carried out.

32. The verification process agreed to by MLG is essential to provide me with sufficient information to determine the reasonableness of the fees to be paid to MLG. The Merchant Fees Verification Agreement requires me to satisfy myself that the amount of fees to be paid to MLG is reasonable and equitable "taking into consideration the amounts and basis on which fees are being paid to other lawyers in respect of this settlement". The basis on which fees are being paid to other lawyers in respect of this settlement is to compensate them for outstanding Work-in-Progress, capped at \$4,000, in respect of each Retainer Agreement existing as of May 30, 2005 and to provide an appropriate multiplier for class action work. To apply these principles to the MLG fees, Canada needs to have reliable information respecting, among other things:

- (a) the number of Retainer Agreements that MLG had with its clients as of May 30, 2005;
- (b) the amount of MLG's Work-in-Progress in respect of each Retainer Agreement, bearing in mind the \$4,000 cap for each Retainer Agreement; and
- (c) the amount and nature of the class action work that MLG says it carried out.

33. I therefore request this Honourable Court's assistance to require MLG to comply with its verification requirements in a manner that provides appropriate protection to solicitor-client privilege through the supervision of Deloitte by this Honourable Court.

34. I make this affidavit in support of an application on behalf of the Defendant, the Attorney General of Canada, for further and better access to the records, documents, and client files of MLG.

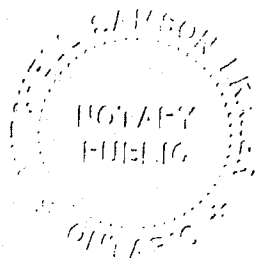
SWORN BEFORE ME at the City of
Toronto, on August 10, 2006.

Mitchell

A Notary Public in and for the
Province of Ontario

Frank Iacobucci

Frank Iacobucci



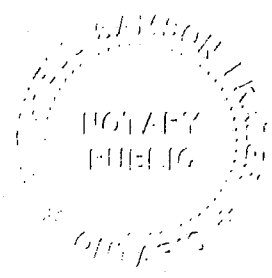
THIS IS EXHIBIT*A*..... REFERRED TO IN THE
AFFIDAVIT OF FRANK IACOBUCCI

SWORN BEFORE ME, THIS*10th*.....

DAY OF*August*..... 2006

.....*Michael [unclear]*.....

Notary Public in and for the Province of Ontario



May 8, 2006

CANADA, as represented by the Honourable Frank Iacobucci

-and-

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

-and-

Independent Counsel

-and-

THE ASSEMBLY OF FIRST NATIONS and INUIT REPRESENTATIVES

-and-

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

**INDIAN RESIDENTIAL SCHOOLS
SETTLEMENT AGREEMENT**

May 8, 2006

**INDIAN RESIDENTIAL SCHOOLS
SETTLEMENT AGREEMENT****TABLE OF CONTENTS**

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May 8, 2006

**Indian Residential Schools
Settlement Agreement**

WHEREAS:

A. Canada and certain religious organizations operated Indian Residential Schools for the education of aboriginal children and certain harms and abuses were committed against those children;

B. The Parties desire a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools;

C. The Parties further desire the promotion of healing, education, truth and reconciliation and commemoration;

D. The Parties entered into an Agreement in Principle on November 20, 2005 for the resolution of the legacy of Indian Residential Schools:

- (i) to settle the Class Actions and the Cloud Class Action, in accordance with and as provided in this Agreement;
- (ii) to provide for payment by Canada of the Designated Amount to the Trustee for the Common Experience Payment;
- (iii) to provide for the Independent Assessment Process;
- (iv) to establish a Truth and Reconciliation Commission;
- (v) to provide for an endowment to the Aboriginal Healing Foundation to fund healing programmes addressing the legacy

of harms suffered at Indian Residential Schools including the intergenerational effects; and

- (vi) to provide funding for commemoration of the legacy of Indian Residential Schools;

E. The Parties, subject to the Approval Orders, have agreed to amend and merge all of the existing proposed class action statements of claim to assert a common series of Class Actions for the purposes of settlement;

F. The Parties, subject to the Approval Orders and the expiration of the Opt Out Periods without the Opt Out Threshold being met, have agreed to settle the Class Actions upon the terms contained in this Agreement;

G. The Parties, subject to the Approval Orders, agree to settle all pending individual actions relating to Indian Residential Schools upon the terms contained in this Agreement, save and except those actions brought by individuals who opt out of the Class Actions in the manner set out in this Agreement, or who will be deemed to have opted out pursuant to Article 1008 of *The Code of Civil Procedure of Quebec*;

H. This Agreement is not to be construed as an admission of liability by any of the defendants named in the Class Actions or the Cloud Class Action.

THEREFORE, in consideration of the mutual agreements, covenants and undertakings set out herein, the Parties agree that all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any

Class Member or Cloud Class Member ever had, now has or may hereafter have arising in relation to an Indian Residential School or the operation of Indian Residential Schools, whether such claims were made or could have been made in any proceeding including the Class Actions, will be finally settled based on the terms and conditions set out in this Agreement upon the Implementation Date, and the Releasees will have no further liability except as set out in this Agreement.

ARTICLE ONE INTERPRETATION

1.01 Definitions

In this Agreement, the following terms will have the following meanings:

“Aboriginal Healing Foundation” means the non-profit corporation established under Part II of the *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970 to address the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including intergenerational effects.

“Agreement in Principle” means the Agreement between Canada, as represented by the Honourable Frank Iacobucci; Plaintiffs, as represented by the National Consortium, Merchant Law Group, Inuvialuit Regional Corporation, Makivik Corporation, Nunavut Tunngavik Inc., Independent Counsel, and the Assembly of First Nations; the General Synod of the Anglican Church of Canada, the Presbyterian Church in Canada, the United

Church of Canada and Roman Catholic Entities, signed November 20, 2005;

“Appropriate Court” means the court of the province or territory where the Class Member resided on the Approval Date save and except:

- a) that residents of the provinces of Newfoundland and Labrador, Nova Scotia, New Brunswick and Prince Edward Island will be deemed to be subject to the Approval Order of the Superior Court of Justice for Ontario;
- b) International Residents will be deemed to be subject to the Approval Order of the Superior Court of Justice for Ontario;

“Approval Date” means the date the last Court issues its Approval Order;

“Approval Orders” means the judgments or orders of the Courts certifying the Class Actions and approving this Agreement as fair, reasonable and in the best interests of the Class Members and Cloud Class Members for the purposes of settlement of the Class Actions pursuant to the applicable class proceedings legislation, the common law or Quebec civil law;

~~**“Business Day”** means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person who needs to take action pursuant to this Agreement is situated or a holiday under the federal laws of Canada applicable in the said Province or Territory;~~

“Canada” or “Government” means the Government of Canada;

“CEP” and “Common Experience Payment” mean a lump sum payment made to an Eligible CEP Recipient in the manner set out in Article Five (5) of this Agreement;

“CEP Application” means an application for a Common Experience Payment completed substantially in the form attached hereto as Schedule “A” of this Agreement and signed by an Eligible CEP Recipient or his or her Personal Representative along with the documentation required by the CEP Application.

“CEP Application Deadline” means the fourth anniversary of the Implementation Date;

“Church” or “Church Organization” means collectively, The General Synod of the Anglican Church of Canada, The Missionary Society of the Anglican Church of Canada, The Dioceses of the Anglican Church of Canada listed in Schedule “B”, The Presbyterian Church in Canada, The Trustee Board of the Presbyterian Church in Canada, The Foreign Mission of the Presbyterian Church in Canada, Board of Home Missions and Social Services of the Presbyterian Church in Canada, The Women’s Missionary Society of the Presbyterian Church in Canada, The United Church of Canada, The Board of Home Missions of the United Church of Canada, The Women’s Missionary Society of the United Church of Canada, The Methodist Church of Canada, The Missionary Society of The Methodist Church of Canada and the Catholic Entities listed in Schedule “C”.

“Class Actions” means the omnibus Indian Residential Schools Class Actions Statements of Claim referred to in Article Four (4) of this Agreement;

“Class Members” means all individuals including Persons Under Disability who are members of any class defined in the Class Actions and who have not opted out or are not deemed to have opted out of the Class Actions on or before the expiry of the Opt Out Period;

“Cloud Class Action” means the *Marlene C. Cloud et al. v. Attorney General of Canada et al.* (C40771) action certified by the Ontario Court of Appeal by Order entered at Toronto on February 16, 2005;

“Cloud Class Members” means all individuals who are members of the classes certified in the Cloud Class Action;

“Cloud Student Class Member” means all individuals who are members of the student class certified in the Cloud Class Action;

“Commission” means the Truth and Reconciliation Commission established pursuant to Article Seven (7) of this Agreement;

“Continuing Claims” means those claims set out in Section I of Schedule “D” of this Agreement.

“Courts” means collectively the Quebec Superior Court, the Superior Court

of Justice for Ontario, the Manitoba Court of Queen's Bench, the Saskatchewan Court of Queen's Bench, the Alberta Court of Queen's Bench, the Supreme Court of British Columbia, the Nunavut Court of Justice, the Supreme Court of the Yukon and the Supreme Court of the Northwest Territories;

“Designated Amount” means one billion nine hundred million dollars (\$1,900,000,000.00) less any amounts paid by way of advance payments, if any, as at the Implementation Date.;

“Designated Amount Fund” means the trust fund established to hold the Designated Amount to be allocated in the manner set out in Article Five of this Agreement;

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

“Educational Programs or Services” shall include, but not be limited to, those provided by universities, colleges, trade or training schools, or which relate to literacy or trades, as well as programs or services which relate to the preservation, reclamation, development or understanding of native history, cultures, or languages.

“Eligible CEP Recipient” means any former Indian Residential School student who resided at any Indian Residential School prior to December 31, 1997 and who was alive on May 30, 2005 and who does not opt out, or is not deemed to have opted out of the Class Actions during the Opt-Out

Periods or is a Cloud Student Class Member;

“Eligible IAP Claimants” means all Eligible CEP Recipients, all Non-resident Claimants and includes references to the term “Claimants” in the IAP.

“Federal Representative” means the Honourable Frank Iacobucci;

“IAP Application Deadline” means the fifth anniversary of the Implementation Date:

“IAP Working Group” means counsel set out in Schedule “U” of this Agreement.

“Implementation Date” means the latest of :

- (1) the expiry of thirty (30) days following the expiry of the Opt-Out Periods; and
- (2) the day following the last day on which a Class Member in any jurisdiction may appeal or seek leave to appeal any of the Approval Orders; and
- (3) the date of a final determination of any appeal brought in relation to the Approval Orders;

“Independent Counsel” means Plaintiffs’ Legal Counsel who have signed this Agreement, excluding Legal Counsel who have signed this Agreement in their capacity as counsel for the Assembly of First Nations or for the Inuit Representatives or Counsel who are members of the Merchant Law Group or

members of any of the firms who are members of the National Consortium;

“Independent Assessment Process” and **“IAP”** mean the process for the determination of Continuing Claims, attached as Schedule “D”;

“Indian Residential Schools” means the following:

- (1) Institutions listed on List “A” to OIRSRC’s Dispute Resolution Process attached as Schedule “E”;
- (2) Institutions listed in Schedule “F” (“Additional Residential Schools”) which may be expanded from time to time in accordance with Article 12.01 of this Agreement; and,
- (3) Any institution which is determined to meet the criteria set out in Section 12.01(2) and (3) of this Agreement;

“International Residents” means Class Members who are not resident in a Canadian Province or Territory on the Approval Date.

“Inuit Representatives” includes Inuvialuit Regional Corporation (“IRC”), Nunavut Tunngavik Inc. (“NTI”) and Makivik Corporation; and may include other Inuit representative organizations or corporations.

“NAC” means the National Administration Committee as set out in Article ~~Four (4) of this Agreement;~~

“NCC” means the National Certification Committee as set out in Article Four (4) of this Agreement;

“Non-resident Claimants” means all individuals who did not reside at an Indian Residential School who, while under the age of 21, were permitted by an adult employee of an Indian Residential School to be on the premises of an Indian Residential School to take part in authorized school activities prior to December 31, 1997. For greater certainty, Non-resident Claimants are not Class Members or Cloud Class Members;

“OIRSRC” means the Office of Indian Residential Schools Resolution Canada;

“Opt Out Periods” means the period commencing on the Approval Date as set out in the Approval Orders;

“Opt Out Threshold” means the Opt Out Threshold set out in Section 4.14 of this Agreement;

“Other Released Church Organizations” includes the Dioceses of the Anglican Church of Canada listed in Schedule “G” and the Catholic Entities listed in Schedule “H”, that did not operate an Indian Residential School or did not have an Indian Residential School located within their geographical boundaries and have made, or will make, a financial contribution towards the resolution of claims advanced by persons who attended an Indian Residential School;

“Oversight Committee” means the Oversight Committee set out in the Independent Assessment Process attached as Schedule “D”;

“Parties” means collectively and individually the signatories to this Agreement;

“Personal Credits” means credits that have no cash value, are transferable only to a family member who is a member of the family class as defined in the Class Actions or the Cloud Class Action, may be combined with the Personal Credits of other individuals and are only redeemable for either personal or group education services provided by education entities or groups jointly approved by Canada and the Assembly of First Nations pursuant to terms and conditions to be developed by Canada and the Assembly of First Nations. Similar sets of terms and conditions will be developed by Canada and Inuit Representatives for Eligible CEP Recipients having received the CEP who are Inuit. In carrying out these discussions with the Assembly of First Nations and Inuit Representatives, Canada shall obtain input from counsel for the groups set out in Section 4.09(4)(d), (e), (f) and (g);

“Personal Representative” includes, if a person is deceased, an executor, administrator, estate trustee, trustee or liquidator of the deceased or, if the person is mentally incompetent, the tutor, committee, Guardian, curator of the person or the Public Trustee or their equivalent or, if the person is a minor, the person or party that has been appointed to administer his or her affairs or the tutor where applicable;

“Person Under Disability” means

- (1) a minor as defined by that person’s Province or Territory of residence; or
- (2) a person who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity and for whom a Personal Representative has been appointed;

“Pilot Project” means the dispute resolution projects set out in Schedule “T” of this Agreement;

“RACs” means the Regional Administration Committees as set out in Article Four of this Agreement;

“Releasees” means, jointly and severally, individually and collectively, the defendants in the Class Actions and the defendants in the Cloud Class Action and each of their respective past and present parents, subsidiaries and related or affiliated entities and their respective employees, agents, officers, directors, shareholders, partners, principals, members, attorneys, insurers, subrogees, representatives, executors, administrators, predecessors, successors, heirs, transferees and assigns the definition and also the entities listed in Schedules “B”, “C”, “G” and “H” of this Agreement.

“Trustee” means Her Majesty in right of Canada as represented by the incumbent Ministers from time to time responsible for Indian Residential

Schools Resolution and Service Canada. The initial Representative Ministers will be the Minister of Canadian Heritage and Status of Women and the Minister of Human Resources Skills Development, respectively.

1.02 Headings

The division of this Agreement into Articles, Sections and Schedules and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms "herein", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Agreement.

1.03 Extended Meanings

In this Agreement, words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term "including" means "including without limiting the generality of the foregoing".

1.04 No Contra Proferentem

The Parties acknowledge that they have reviewed and participated in settling

the terms of this Agreement and they agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting parties is not applicable in interpreting this Agreement.

1.05 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date hereof or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.06 Day For Any Action

Where the time on or by which any action required to be taken hereunder expires or falls on a day that is not a Business Day, such action may be done on the next succeeding day that is a Business Day.

1.07 When Order Final

For the purposes of this Agreement a judgment or order becomes final when the time for appealing or seeking leave to appeal the judgment or order has expired without an appeal being taken or leave to appeal being sought or, in the event that an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals as may be taken have been disposed of and the time for further appeal, if any, has expired.

1.08 Currency

All references to currency herein are to lawful money of Canada.

1.09 Schedules

The following Schedules to this Agreement are incorporated into and form part of it by this reference as fully as if contained in the body of this Agreement:

- Schedule A – CEP Application Form
- Schedule B – Dioceses of the Anglican Church
- Schedule C – Roman Catholic Entities
- Schedule D – Independent Assessment Process
- Schedule E – Residential Schools
- Schedule F – Additional Residential Schools
- Schedule G – Anglican Releasees
- Schedule H – Catholic Releasees
- Schedule I – Trust Agreement
- Schedule J – Commemoration Policy Directive
- Schedule K – Settlement Notice Plan
- Schedule L – Process Flow Chart
- Schedule M – Funding Agreement between the Aboriginal Healing Foundation and Canada
- Schedule N – Mandate for Truth and Reconciliation Commission
- Schedule O-1 – The Presbyterian Church Entities in Canada Agreement
- Schedule O-2 – The Anglican Entities Agreement

Schedule O-3 – The Catholic Entities Church Agreement
Schedule O-4 – The United Church of Canada Agreement
Schedule P – IAP Full and Final Release
Schedule Q – Treasury Board Travel Directive
Schedule R – No Prejudice Commitment Letter
Schedule S – National Certification Committee Members
Schedule T – Pilot Projects
Schedule U – IAP Working Group Members
Schedule V – Agreement Between the Government of Canada and the
Merchant Law Group Respecting the Verification of Legal Fees

1.10 No Other Obligations

It is understood that Canada will not have any obligations relating to the CEP, IAP, truth and reconciliation, commemoration, education and healing except for the obligations and liabilities as set out in this Agreement.

ARTICLE TWO

EFFECTIVE DATE OF AGREEMENT

2.01 Date when Binding and Effective

This Agreement will become effective and be binding on and after the Implementation Date on all the Parties including the Class Members and Cloud Class Members subject to Section 4.14. The Cloud Class Action Approval Order and each Approval Order will constitute approval of this Agreement in respect of all Class Members and Cloud Class Members

residing in the province or territory of the Court which made the Approval Order, or who are deemed to be subject to such Approval Order pursuant to Section 4.04 of this Agreement. No additional court approval of any payment to be made to any Class Member or Cloud Class Member will be necessary.

2.02 Effective in Entirety

None of the provisions of this Agreement will become effective unless and until the Courts approve all the provisions of this Agreement, except that the fees and disbursements of the NCC will be paid in any event.

ARTICLE THREE

FUNDING

3.01 CEP Funding

- (1) Canada will provide the Designated Amount to the legal representatives of the Class Members and the Cloud Class Members in trust on the Implementation Date. The Class Members and the Cloud Class Members agree that, contemporaneous with the receipt of the Designated Amount by their legal representatives, the Class Members and Cloud Class Members irrevocably direct the Designated Amount, in its entirety, be paid to the Trustee.

-
- (2) The Parties agree that the Designated Amount Fund will be held

and administered by the Trustee as set out in the Trust Agreement attached as Schedule "T" of this Agreement.

3.02 Healing Funding

On the Implementation Date Canada will transfer one hundred and twenty-five million dollars (\$125,000,000.00) as an endowment for a five year period to the Aboriginal Healing Foundation in accordance with Article Eight (8) of this Agreement. After the Implementation Date the only obligations and liabilities of Canada with respect to healing funding are those set out in this Agreement.

3.03 Truth and Reconciliation Funding

- (1) Canada will provide sixty million dollars (\$60,000,000.00) in two instalments for the establishment and work of the Commission. Two million dollars (\$2,000,000.00) will be available on the Approval Date to begin start-up procedures in advance of the establishment of the Commission. The remaining fifty-eight million dollars (\$58,000,000.00) will be transferred within thirty (30) days of the approval of the Commission's budget by Canada. After the date of the final transfer, Canada will have no further obligations or liabilities with respect to truth and reconciliation funding except as set out in this Agreement.

- (2) Canada will appoint an interim Executive Director to begin

start-up procedures for the Commission. The interim Executive Director may make reports to the NCC. The interim Executive Director will be appointed as soon as practicable after the Approval Date. That appointment will remain effective until the appointment of the Commissioners. Canada will assume responsibility for the salary of the Executive Director Position during this interim period.

3.04 Commemoration Funding

The funding for commemoration will be twenty million dollars (\$20,000,000.00) for both national commemorative and community-based commemorative projects. The funding will be available in accordance with the Commemoration Policy Directive, attached as Schedule "J". For greater certainty, funding under this Section 3.04 includes funding previously authorized in the amount of ten million dollars (\$10,000,000) for commemoration events. This previously authorized amount of ten million dollars (\$10,000,000) will not be available until after the Implementation Date. After the Implementation Date the only obligations and liabilities of Canada with respect to commemoration funding are those set out in this Agreement.

3.05 IAP Funding

Canada will fund the IAP to the extent sufficient to ensure the full and timely implementation of the provisions set out in Article Six (6) of this Agreement.

3.06 Social Benefits

- (1) Canada will make its best efforts to obtain the agreement of the provinces and territories that the receipt of any payments pursuant to this Agreement will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member or a Cloud Class Member pursuant to any legislation of any province or territory of Canada.

- (2) Canada will make its best efforts to obtain the agreement of the necessary Federal Government Departments that the receipt of any payments pursuant to this Agreement will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member or a Cloud Class Member pursuant to any social benefit programs of the Federal Government such as old age security and Canada Pension Plan.

3.07 Family Class Claims

The Parties agree and acknowledge that the programmes described in Sections 3.02, 3.03 and 3.04 will be available for the benefit of the Cloud Class Members and all Class Members including the family class defined in the Class Actions.

ARTICLE FOUR
IMPLEMENTATION OF THIS AGREEMENT

4.01 Class Actions

The Parties agree that all existing class action statements of claim and representative actions, except the Cloud Class Action, filed against Canada in relation to Indian Residential Schools in any court in any Canadian jurisdiction except the Federal Court of Canada (the "original claims") will be merged into a uniform omnibus Statement of Claim in each jurisdiction (the "Class Actions"). The omnibus Statement of Claim will name all plaintiffs named in the original claims and will name as Defendants, Canada and the Church Organizations.

4.02 Content of Class Actions

- (1) The Class Actions will assert common causes of action encompassing and incorporating all claims and causes of action asserted in the original claims.
- (2) Subject to Section 4.04, the Class Actions will subsume all classes contained in the original claims with such modification as is necessary to limit the scope of the classes and subclasses certified by each of the Courts to the provincial or territorial boundaries of that Court save and except the Aboriginal Sub-class as set out and defined in the *Fontaine v. Attorney General*

of Canada, (05-CV-294716 CP) proposed class action filed in the Ontario Superior Court of Justice on August 5, 2005 which will not be asserted in the Class Actions.

4.03 Consent Order

- (1) The Parties will consent to an order in each of the Courts amending and merging the original claims as set out in Section 4.01 and 4.02 of this Agreement.
- (2) For greater certainty, the order consented to in the Ontario Superior Court of Justice will not amend or merge the Cloud Class Action.

4.04 Class Membership

Class membership in each of the Class Actions will be determined by reference to the province or territory of residence of each Class Member on the Approval Date save and except:

- (a) residents of the provinces of Newfoundland and Labrador, Nova Scotia, New Brunswick and Prince Edward Island, and;
- (b) International Residents,

who are be deemed to be members of the Ontario Class.

4.05 Consent Certification

- (1) The Parties agree that concurrent with the applications referred to in Section 4.03, applications will be brought in each of the Courts for consent certification of each of the Class Actions for the purposes of Settlement in accordance with the terms of the Agreement.
- (2) Consent certification will be sought on the express condition that each of the Courts, pursuant to the applications for consent certification under Section 4.05(1), certify on the same terms and conditions; including the terms and conditions set out in Section 4.06 save and except for the variations in class and subclass membership set out in Sections 4.02 and 4.04 of this Agreement.

4.06 Approval Orders

Approval Orders will be sought:

- (a) ~~incorporating by reference this Agreement in its entirety;~~
- (b) ordering and declaring that such orders are binding on all Class Members, including Persons Under Disability, unless they opt out or are deemed to have opted out on or before the expiry of the Opt Out Periods;

- (c) ordering and declaring that on the expiry of the Opt Out Periods all pending actions of all Class Members, other than the Class Actions, relating to Indian Residential Schools, which have been filed in any court in any Canadian jurisdiction against Canada or the Church Organizations, except for any pending actions in Quebec which have not been voluntarily discontinued by the expiry of the Opt Out Period, will be deemed to be dismissed without costs unless the individual has opted out, or is deemed to have opted out on or before the expiry of the Opt Out Periods.
- (d) ordering and declaring that on the expiry of the Opt Out Periods all class members, unless they have opted out or are deemed to have opted out on or before the expiry of the Opt Out Periods, have released each of the defendants and Other Released Church Organizations from any and all actions they have, may have had or in the future may acquire against any of the defendants and Other Released Church Organizations arising in relation to an Indian Residential School or the operation of Indian Residential Schools.
- (e) ordering and declaring that in the event the number of Eligible CEP Recipients opting out or deemed to have opted out under the Approval Orders exceeds five thousand (5000), this Agreement will be rendered void and the Approval Orders set aside in their entirety subject only to the right of Canada, in its

sole discretion, to waive compliance with Section 4.14 of this Agreement.

- (f) ordering and declaring that on the expiration of the Opt Out Periods all Class Members who have not opted out have agreed that they will not make any claim arising from or in relation to an Indian Residential School or the operation of Indian Residential Schools against any person who may in turn claim against any of the defendants or Other Released Church Organizations.
- (g) ordering and declaring that the obligations assumed by the defendants under this Agreement are in full and final satisfaction of all claims arising from or in relation to an Indian Residential School or the operation of Indian Residential Schools of the Class Members and that the Approval Orders are the sole recourse on account of any and all claims referred to therein.
- (h) ordering and declaring that the fees and disbursements of all counsel participating in this Agreement are to be approved by the Courts on the basis provided in Articles Four (4) and Thirteen (13) of this Agreement, except that the fees and disbursements of the NCC and the IAP Working Group will be paid in any event.
- (i) ordering and declaring that notwithstanding Section 4.06(c), (d)

and (f), a Class Member who on or after the fifth anniversary of the Implementation Date had never commenced an action other than a class action in relation to an Indian Residential School or the operation of Indian Residential Schools, participated in a Pilot Project, applied to the DR Model, or applied to the IAP, may commence an action for any of the Continuing Claims within the jurisdiction of the court in which the action is commenced. For greater certainty, the rules, procedures and standards of the IAP are not applicable to such actions.

- (j) ordering and declaring that where an action permitted by Section 4.06(i) is brought, the deemed release set out in Section 11.01 is amended to the extent necessary to permit the action to proceed only with respect to Continuing Claims.
- (k) ordering and declaring that for an action brought under Section 4.06(i) all limitations periods will be tolled, and any defences based on laches or delay will not be asserted by the Parties with regard to a period of five years from the Implementation Date.
- (l) ordering and declaring that notwithstanding Section 4.06(d) no action, except for Family Class claims as set out in the Class Actions and the Cloud Class Action, capable of being brought by a Class Member or Cloud Class Member will be released where such an action would be released only by virtue of being a member of a Family Class in the Class Actions or the Cloud Class Action.

4.07 Cloud-Class Action Approval Order

There will be a separate approval order in relation to the Cloud Class Action which will be, in all respects save as to class membership and Section 17.02 of this Agreement, in the same terms and conditions as the Approval Orders referred to herein.

4.08 Notice

- (1) The parties agree that the NCC will implement the Residential Schools Class Action Litigation Settlement Notice Plan prepared by Hilsoft Notifications and generally in the form attached as Schedule "K".
- (2) The NCC will develop a list of counsel with active Indian Residential Schools claims and who agree to be bound by the terms of this Agreement, before the Approval date, which will be referenced in the written materials and website information of the notice program.
- (3) The legal notice will include an opt out coupon which will be returnable to a Post Office Box address at Edmonton, Alberta.
- (4) There will be a "1-800" number funded by Canada which will provide scripted information concerning the settlement. The information will convey a statement to the effect that although

there is no requirement to do so, Class Members may wish to
~~consult a lawyer.~~

4.09 National Certification Committee

- (1) The Parties agree to the establishment of a NCC with a mandate to:
 - a) designate counsel having carriage in respect of drafting the consent certification documents and obtaining consent certification and approval of this Agreement;
 - b) provide input to and consult with Trustee on the request of Trustee;
 - c) obtain consent certification and approval of the Approval Orders in the Courts on the express condition that the Courts all certify on the same terms and conditions.
 - d) exercise all necessary powers to fulfill its functions under the Independent Assessment Process.
- (2) The NCC will have seven (7) members with the intention that decisions will be made by consensus.
- (3) Where consensus can not be reached, a majority of five (5) of the seven (7) members is required.

- (4) The composition of the NCC will be one (1) counsel from each of the following groups:
 - a) Canada;
 - b) Church Organizations;
 - c) Assembly of First Nations;
 - d) The National Consortium;
 - e) Merchant Law Group;
 - f) Inuit Representatives; and
 - g) Independent Counsel

- (5) The NCC will be dissolved on the Implementation Date.

- (6) Notwithstanding Section 4.09(4) the Church Organizations may designate a second counsel to attend and participate in meetings of the NCC. Designated second counsel will not participate in any vote conducted under Section 4.09(3).

4.10 Administration Committees

- (1) In order to implement the Approval Orders the Parties agree to the establishment of administrative committees as follows:
 - a) one National Administration Committee ("NAC"); and
 - b) three Regional Administration Committees ("RACs").

- (2) Notwithstanding Section 4.10(1) neither the NAC nor the RAC's will meet or conduct any business whatsoever prior to the Implementation Date, unless Canada agrees otherwise.

4.11 National Administration Committee

- (1) The composition of the NAC will be one (1) representative counsel from each of the groups set out at section 4.09(4):
- (2) The first NAC member from each group will be named by that group on or before the execution of this Agreement.
- (3) Each NAC member may name a designate to attend meetings of the NAC and act on their behalf and the designate will have the powers, authorities and responsibilities of the NAC member while in attendance.
- (4) Upon the resignation, death or expiration of the term of any NAC member or where the Court otherwise directs in accordance with 4.11(6) of this Agreement, a replacement NAC ~~member will be named by the group represented by that~~ member.
- (5) Membership on the NAC will be for a term of two (2) years.
- (6) In the event of any dispute related to the appointment or service

of an individual as a member of the NAC, the affected group or individual may apply to the court of the jurisdiction where the affected individual resides for advice and directions.

- (7) The Parties agree that Canada will not be liable for any costs associated with an application contemplated in Section 4.11(6) that relates to the appointment of an individual as a member of the NAC.
- (8) No NAC member may serve as a member of a RAC or as a member of the Oversight Committee during their term on the NAC.
- (9) Decisions of the NAC will be made by consensus and where consensus can not be reached, a majority of five (5) of the seven (7) members is required to make any decision. In the event that a majority of five (5) members can not be reached the dispute may be referred by a simple majority of four (4) NAC members to the Appropriate Court in the jurisdiction where the dispute arose by way of reference styled as *In Re Residential Schools*.
- (10) Notwithstanding Section 4.11(9), where a vote would increase the costs of the Approval Orders whether for compensation or procedural matters, the representative for Canada must be one (1) of the five (5) member majority.

- (11) There will not be reference to the Courts for any dispute arising under Section 4.11(10).
- (12) The mandate of the NAC is to:
- (a) interpret the Approval Orders;
 - (b) consult with and provide input to the Trustee with respect to the Common Experience Payment;
 - (c) ensure national consistency with respect to implementation of the Approval Orders to the greatest extent possible;
 - (d) produce and implement a policy protocol document with respect to implementation of the Approval Orders;
 - (e) produce a standard operating procedures document with respect to implementation of the Approval Orders;
 - (f) act as the appellate forum from the RACs;
 - ~~(g) review the continuation of RACs as set out in Section 4.13;~~
 - (h) assume the RACs mandate in the event that the RACs cease to operate pursuant to Section 4.13;
 - (i) hear applications from the RACs arising from a dispute

related to the appointment or service of an individual as a member of the RACs;

- (j) review and determine references from the Truth and Reconciliation Commission made pursuant to Section 7.01(2) of this Agreement or may, without deciding the reference, refer it to any one of the Courts for a determination of the matter;
- (k) hear appeals from an Eligible CEP Recipient as set out in Section 5.09(1) and recommend costs as set out in Section 5.09(3) of this Agreement;
- (l) apply to any one of the Courts for determination with respect to a refusal to add an institution as set out in Section 12.01 of this Agreement;
- (m) retain and instruct counsel as directed by Canada for the purpose of fulfilling its mandate as set out in Sections 4.11(12)(j),(l) and(q) and Section 4.11(13) of this Agreement;
- (n) develop a list of counsel with active Indian Residential Schools claims who agree to be bound by the terms of this Agreement as set out in Section 4.08(5) of this Agreement;
- (o) exercise all the necessary powers to fulfill its functions

under the IAP;

- (p) request additional funding from Canada for the IAP as set out in Section 6.03(3) of this Agreement;
 - (q) apply to the Courts for orders modifying the IAP as set out in Section 6.03(3) of this Agreement.
 - (r) recommend to Canada the provision of one additional notice of the IAP Application Deadline to Class Members and Cloud Class Members in accordance with Section 6.04 of this Agreement.
- (13) Where there is a disagreement between the Trustee and the NAC, with respect to the terms of the Approval Orders the NAC or the Trustee may refer the dispute to the Appropriate Court in the jurisdiction where the dispute arose by way of reference styled as *In Re Residential Schools*.
- (14) Subject to Section 6.03(3), no material amendment to the Approval Orders can occur without the unanimous consent of the NAC ratified by the unanimous approval of the Courts.
- (15) Canada's representative on the NAC will serve as Secretary of the NAC.
- (16) Notwithstanding Section 4.11(1) the Church Organizations may

designate a second counsel to attend and participate in meetings of the NAC. Designated second counsel will not participate in any vote conducted under Section 4.11(9).

4.12 Regional Administration Committees

- (1) One (1) RAC will operate for the benefit of both the Class Members, as defined in Section 4.04, and Cloud Class Members in each of the following three (3) regions:
 - a) British Columbia, Alberta, Northwest Territories and the Yukon Territory;
 - b) Saskatchewan and Manitoba; and
 - c) Ontario, Quebec and Nunavut.
- (2) Each of the three (3) RACs will have three (3) members chosen from the four (4) plaintiff's representative groups set out in Sections 4.09(4)(d),(e),(f) and (g) of this Agreement.
- (3) Initial members of each of the three (3) RAC's will be named by the groups set out in sections 4.09(4)(d),(e),(f) and(g) of this Agreement on or before the execution of this Agreement and Canada will be advised of the names of the initial members.
- (4) Upon the resignation, death or expiration of the term of any

RAC member or where the Court otherwise directs in accordance with 4.12(7) of this Agreement, a replacement RAC member will be named by the group represented by that member.

- (5) Membership on each of the RACs will be for a two (2) year term.
- (6) Each RAC member may name a designate to attend meetings of the RAC and the designate will have the powers, authorities and responsibilities of the RAC member while in attendance.
- (7) In the event of any dispute related to the appointment or service of an individual as a member of the RAC, the affected group or individual may apply to the NAC for a determination of the issue.
- (8) No RAC member may serve as a member of the NAC or as a member of the Oversight Committee during their term on a RAC.
- (9) ~~Each RAC will operate independently of the other RACs. Each RAC will make its decisions by consensus among its three members. Where consensus can not be reached, a majority is required to make a decision.~~
- (10) In the event that an Eligible CEP Recipient, a member of a

RAC, or a member of the NAC is not satisfied with a decision of a RAC that individual may submit the dispute to the NAC for resolution.

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

4.13 Review by NAC

Eighteen months following the Implementation Date, the NAC will consider and determine the necessity for the continuation of the operation of any or all of the 3 RACs provided that any determination made by the NAC must be unanimous.

4.14 Opt Out Threshold

In the event that the number of Eligible CEP Recipients opting out or deemed to have opted out under the Approval Orders exceeds five thousand (5,000), this Agreement will be rendered void and the Approval Orders set aside in their entirety subject only to the right of Canada, in its sole discretion, to waive compliance with this Section of this Agreement. Canada has the right to waive compliance with this Section of the Agreement until thirty (30) days after the end of the Opt Out Periods.

4.15 Federal Court Actions Exception

The Parties agree that both the *Kenneth Sparvier et al. v. Attorney General of Canada* proposed class action filed in the Federal Court on May 13, 2005 as Court File Number: T 848-05, and the *George Laliberte et al v. Attorney General of Canada* proposed class action filed in the Federal Court on September 23, 2005 as Court File Number: T-1620-05, will be discontinued without costs on or before the Implementation Date.

ARTICLE FIVE COMMON EXPERIENCE PAYMENT

5.01 CEP

Subject to Sections 17.01 and 17.02, the Trustee will make a Common Experience Payment out of the Designated Amount Fund to every Eligible CEP Recipient who submits a CEP Application provided that:

- (1) the CEP Application is submitted to the Trustee in accordance with the provisions of this Agreement;
- ~~(2) the CEP Application is received prior to the CEP Application Deadline;~~
- (3) the CEP Application is validated in accordance with the ~~provisions of this Agreement;~~ and

- (4) the Eligible CEP Recipient was alive on May 30, 2005.

5.02 Amount of CEP

The amount of the Common Experience Payment will be:

- (1) ten thousand dollars (\$10,000.00) to every Eligible CEP Recipient who resided at one or more Indian Residential Schools for one school year or part thereof; and
- (2) an additional three thousand (\$3,000.00) to every eligible CEP Recipient who resided at one or more Indian Residential Schools for each school year or part thereof, after the first school year; and
- (3) less the amount of any advance payment on the CEP received

5.03 Interest on Designated Amount Fund

Interest on the assets of the Designated Amount Fund will be earned and paid as provided in Order in Council P.C. 1970-300 of February 17, 1970 made pursuant to section 21(2) of the Financial Administration Act as set out in the Trust Agreement attached as Schedule "T".

5.04 CEP Application Process

- (1) No Eligible CEP Recipient will receive a CEP without

submitting a CEP Application to the Trustee.

- (2) The Trustee will not accept a CEP Application prior to the Implementation Date or after the CEP Application Deadline.
- (3) Notwithstanding Sections 5.01(2) and 5.04(2) of this Agreement, where the Trustee is satisfied that an Eligible CEP Recipient is a Person Under Disability on the CEP Application Deadline or was delayed from delivering a CEP Application on or before the CEP Application Deadline as prescribed in Section 5.04(2) as a result of undue hardship or exceptional circumstances, the Trustee will consider the CEP Application filed after the CEP Application Deadline, but in no case will the Trustee consider a CEP Application filed more than one year after the CEP Application Deadline unless directed by the Court.
- (4) No person may submit more than one (1) CEP Application on his or her own behalf.
- (5) Where an Eligible CEP Recipient does not submit a CEP Application as prescribed in this Section 5.04 that Eligible CEP Recipient will not be entitled to receive a Common Experience Payment and any such entitlement will be forever extinguished.
- (6) The Trustee will process all CEP Applications substantially in accordance with Schedule "L" attached hereto. All CEP

Applications will be subject to verification.

- (7) The Trustee will give notice to an Eligible CEP Recipient of its decision in respect of his or her CEP Application within 60 days of the decision being made.
- (8) A decision of the Trustee is final and binding upon the claimant and the Trustee, subject only to the CEP Appeal Procedure set out in Section 5.09 of this Agreement.
- (9) The Trustee agrees to make all Common Experience Payments as soon as practicable.

5.05 Review and Audit to Determine Holdings

- (1) The Trustee will review the Designated Amount Fund on or before the first anniversary of the Implementation Date and from time to time thereafter to determine the sufficiency of the Designated Amount Fund to pay all Eligible CEP Recipients who have applied for a CEP as of the date of the review.
- (2) The Trustee will audit the Designated Amount Fund within twelve (12) months following the CEP Application Deadline to determine the balance held in that fund on the date of the audit.

5.06 Insufficiency of Designated Amount

In the event that a review under Section 5.05(1) determines that the Designated Amount Fund is insufficient to pay all Eligible CEP Recipients who have applied, as of the date of the review, to receive the Common Experience Payment to which they are entitled, Canada will add an amount sufficient to remedy any deficiency in this respect within 90 days of being notified of the deficiency by the Trustee.

5.07 Excess Designated Amount

- (1) If the audit under Section 5.05(2) determines that the balance in the Designated Amount Fund exceeds the amount required to make the Common Experience Payment to all Eligible CEP Recipients who have applied before the CEP Application Deadline by more than forty million dollars (\$40,000,000.00), the excess will be apportioned *pro rata* to all those who received a Common Experience Payment to a maximum amount of three thousand dollars (\$3,000.00) per person in the form of Personal Credits.
- (2) After the payment of the maximum amount of Personal Credits to all Eligible CEP Recipients who have received the CEP, including payment of all administration costs related thereto, all excess funds remaining in the Designated Amount Fund will be transferred to the National Indian Brotherhood Trust Fund (NIBTF) and to the Inuvialuit Education Foundation (IEF),

consistent with applicable Treasury Board policies, in the proportion set out in Section 5.07(5). The monies so transferred shall be used for educational programs on terms and conditions agreed between Canada and NIBTF and IEF, which terms and conditions shall ensure fair and reasonable access to such programs by all class members including all First Nations, Inuit, Inuvialuit and Métis persons. In carrying out its discussions with NIBTF and IEF, Canada shall obtain input from counsel for the groups set out in Section 4.09(d), (e), (f) and (g).

- (3) If the audit under Section 5.05(2) determines that the balance in the Designated Amount Fund exceeds the amount required to make Common Experience Payments to all Eligible CEP Recipients who have applied before the CEP Application Deadline by less than forty million dollars (\$40,000,000.00), there will be no entitlement to Personal Credits, and the excess will be transferred to the NIBTF and IEF in the proportions set out in Section 5.07(5) for the same purposes and on the same terms and conditions set out in Section 5.07(2).
- (4) ~~Any and all amounts remaining in the Designated Amount Fund~~ on January 1, 2015 will be paid to the NIBTF and the IEF in the proportions set out in Section 5.07(5) for the same purposes and on the same terms and conditions set out in Section 5.07(2).
- (5) Funds in the Designated Amount Fund shall be transferred to

the NIBTF and the IEF respectively proportionately based on the total number of Eligible CEP Recipients other than Inuit and Inuvialuit who have received the CEP in the case of the NIBTF and the total number of Inuit and Inuvialuit Eligible CEP Recipients who have received the CEP in the case of the IEF.

5.08 CEP Administrative Costs

- (1) It is agreed that Canada will assume all internal administrative costs relating to the CEP and its distribution.
- (2) It is agreed that all internal administrative costs relating to the Personal Credits and their distribution will be paid from the Designated Amount Fund.

5.09 CEP Appeal Procedure

- (1) Where a claim made in a CEP Application has been denied in whole or in part, the applicant may appeal the decision to the NAC for a determination.
- (2) ~~In the event the NAC denies the appeal in whole or in part the applicant may apply to the Appropriate Court for a determination of the issue.~~
- (3) The NAC may recommend to Canada that the costs of an appeal under Section 5.09(1) be borne by Canada. In

exceptional circumstances, the NAC may apply to the Appropriate Court for an order that the costs of an appeal under Section 5.09(1) be borne by Canada.

ARTICLE SIX

INDEPENDENT ASSESSMENT PROCESS

6.01 IAP

An Independent Assessment Process will be established as set out in Schedule "D" of this Agreement.

6.02 IAP Application Deadline

- (1) Applications to the IAP will not be accepted prior to the Implementation Date or after the IAP Application Deadline.
- (2) Where an Eligible IAP Claimant does not submit an IAP Application as prescribed in this Section 6.02(1) that Eligible IAP Claimant will not be admitted to the IAP and any such entitlement to make a claim in the IAP will be forever extinguished.
- (3) All applications to the IAP which have been delivered prior to the IAP Application Deadline will be processed within the IAP as set out in Schedule "D" of this Agreement.

6.03 Resources

- (1) The parties agree that Canada will provide sufficient resources to the IAP to ensure that:
 - a) Following the expiry of a six month start-up period commencing on the Implementation Date:
 - (i) Continuing Claims which have been screened into the IAP will be processed at a minimum rate of two-thousand five-hundred (2500) in each twelve (12) month period thereafter; and
 - (ii) the Claimant in each of those two-thousand five hundred (2500) Continuing Claims will be offered a hearing date within nine months of their application being screened-in. The hearing date will be within the nine month period following the claim being screened-in, or within a reasonable period of time thereafter, unless the claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that objective.
 - b) Notwithstanding Section 6.03(1)(a), all IAP claimants whose applications have been screened into the IAP as of the eighteen (18) month anniversary of the Implementation

Date will be offered a hearing date before the expiry of a further nine month period or within a reasonable period of time thereafter, unless the claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that objective.

- c) All IAP claimants screened-in after the eighteen (18) month anniversary of the Implementation Date will be offered a hearing within nine (9) months of their claim being screened in. The hearing date will be within the nine month period following the claim being screened-in, or within a reasonable period of time thereafter, unless the claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that objective.
 - d) For greater certainty, all IAP Applications filed before the expiration of the IAP Application Deadline will be processed prior to the six (6) year anniversary of the Implementation Date unless a claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that objective.
- (2) In the event that Continuing Claims are submitted at a rate that is less than two-thousand five hundred (2,500) per twelve month period, Canada will be required only to provide resources sufficient to process the Continuing Claims at the rate at which they are received, and within the timeframes set out in

Section 6.03 (1)(a) and (b) of this Agreement.

- (3) Notwithstanding Article 4.11(11), in the event that Continuing Claims are not processed at the rate and within the timeframes set out in Section 6.03(1)(a) and (b) of this Agreement, the NAC may request that Canada provide additional resources for claims processing and, after providing a reasonable period for Canada's response, apply to the Courts for orders necessary to permit the realization of Section 6.03(1).

6.04 Notice of IAP Application Deadline

One additional notice of the IAP Application Deadline may be provided on the recommendation of the NAC to Canada.

ARTICLE SEVEN

TRUTH AND RECONCILIATION AND COMMEMORATION

7.01 Truth and Reconciliation

- (1) A Truth and Reconciliation process will be established as set out in Schedule "N" of this Agreement.
- (2) The Truth and Reconciliation Commission may refer to the NAC for determination of disputes involving document production, document disposal and archiving, contents of the

Commission's Report and Recommendations and Commission decisions regarding the scope of its research and issues to be examined. The Commission shall make best efforts to resolve the matter itself before referring it to the NAC.

- (3) Where the NAC makes a decision in respect of a dispute or disagreement that arises in respect of the Truth and Reconciliation Commission as contemplated in Section 7.01(2), either or both the Church Organization and Canada may apply to any one of the Courts for a hearing *de novo*.

7.02 Commemoration

Proposals for commemoration will be addressed in accordance with the Commemoration Policy Directive set out in Schedule "J" of this Agreement.

ARTICLE EIGHT

HEALING

8.01 Healing

- (1) To facilitate access to healing programmes, Canada will provide the endowment to the Aboriginal Healing Foundation as set out in Section 3.02 on terms and conditions substantially similar to the draft attached hereto as Schedule "M".
- (2) On or before the expiry of the fourth anniversary of the

Implementation Date, Canada will conduct an evaluation of the healing initiatives and programmes undertaken by the Aboriginal Healing Foundation to determine the efficacy of such initiatives and programmes and recommend whether and to what extent funding should continue beyond the five year period.

8.02 Availability of Mental Health and Emotional Support Services

Canada agrees that it will continue to provide existing mental health and emotional support services and agrees to make those services available to those who are resolving a claim through the *Independent Assessment Process* or who are eligible to receive compensation under the *Independent Assessment Process*. Canada agrees that it will also make those services available to Common Experience Payment recipients and those participating in truth and reconciliation or commemorative initiatives.

ARTICLE NINE CHURCH ORGANIZATIONS

9.01 The Parties agree that the Church Organizations will participate in this Agreement as set out herein and in accordance with the Agreements between Canada and the Church Organizations attached hereto in Schedules "O-1", The Presbyterian Church Agreement, Schedule "O-2", The Anglican Entities Agreement, Schedule "O-3", The Catholic Entities Agreement and Schedule "O-4", The United Church of Canada Agreement.

ARTICLE TEN
Duties of the Trustee

10.01 Trustee

In addition to the duties set out in the Trust Agreement, the Trustee's duties and responsibilities will be the following:

- a) developing, installing and implementing systems and procedures for processing, evaluating and making decisions respecting CEP Applications which reflect the need for simplicity in form, expedition of payments and an appropriate form of audit verification, including processing the CEP Applications substantially in accordance with Schedule "L" of this Agreement;
- b) developing, installing and implementing systems and procedures necessary to meet its obligations as set out in the Trust Agreement attached as Schedule "T" hereto;
- c) developing, installing and implementing systems and procedures for paying out compensation for validated CEP Applications;
- d) reporting to the NAC and the Courts respecting CEP Applications received and being administered and compensation paid;

- e) providing personnel in such reasonable numbers as are required for the performance of its duties, and training and instructing them;
- f) keeping or causing to be kept accurate accounts of its activities and its administration of the CEP, including payment of compensation under the CEP, preparing such financial statements, reports and records as are required by the NAC and the Courts, in form and content as directed by the Courts and submitting them to the Courts so often as the Courts direct;
- g) receiving and responding to all enquiries and correspondence respecting the validation of CEP Applications, reviewing and evaluating all CEP Applications, making decisions in respect of CEP Applications, giving notice of its decisions in accordance with the provisions this Agreement and communicating with Eligible CEP Recipients, in either English or French, as the Eligible CEP Recipient elects;
- h) receiving and responding to all enquiries and correspondence respecting payment of compensation for valid CEP Applications, and forwarding the compensation ~~in accordance with the provisions of this Agreement~~ and communicating with Eligible CEP Recipients, in either

English or French, as the Eligible CEP Recipient elects;

- i) administering Personal Credits in accordance with Section 5.07 of this Agreement;
- j) maintaining a database with all information necessary to permit the NAC and the Courts to evaluate the financial viability and sufficiency of the Designated Amount Fund from time to time, subject to applicable law; and,
- k) such other duties and responsibilities as the Courts may from time to time by order direct.

ARTICLE ELEVEN RELEASES

11.01 Class Member and Cloud Class Member Releases

- (1) The Approval Orders will declare that in the case of Class Members and Cloud Class Members:
 - a) Each Class Member and Cloud Class Member has fully, finally and forever released each of the Releasees from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including

for damages, contribution, indemnity, costs, expenses and interest which any such Class Member or Cloud Class Member ever had, now has, or may hereafter have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to an Indian Residential School or the operation of Indian Residential Schools and this release includes any such claim made or that could have been made in any proceeding including the Class Actions or the Cloud Class Action whether asserted directly by the Class Member or Cloud Class Member or by any other person, group or legal entity on behalf of or as representative for the Class Member or Cloud Class Member.

- b) The Class Members and Cloud Class Members are deemed to agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or any other person or persons in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act*, R.S.O. 1990, c. N-3, or its counterpart in other jurisdictions, the common law, Quebec civil law or any other statute of Ontario or any other jurisdiction in relation to an Indian Residential School or the operation of Indian Residential Schools;

c) Canada's, the Church Organizations' and the Other Released Church Organizations' obligations and liabilities under this Agreement constitute the consideration for the releases and other matters referred to in Section 11.01(a) and (b) inclusive and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Class Members or and Cloud Class Members are limited to the benefits provided and compensation payable pursuant to this Agreement, in whole or in part, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.

(2) Notwithstanding Section 11.01(1), no action, except for Family Class claims as set out in the Class Actions and the Cloud Class Action, capable of being brought by a Class Member or Cloud Class Member will be released where such an action would be released only by virtue of being a member of a Family Class in the Class Actions or the Cloud Class Action.

11.02 Non-resident Claimant Releases

- (1) The Approval Orders will order and declare that Non-resident Claimants on being accepted into the IAP, must execute a Release in the form set out in Schedule "P" of this Agreement.
- (2) Nothing in Section 4.06 (c), (d) or (f) or Section 11.01(1)(a)

will prevent a Non-resident Claimant from pursuing his or her claim in the IAP.

- (3) For greater certainty nothing in this Section 11.02 will prevent the bringing of an action contemplated in Section 4.06(i) and (j) of this Agreement.

11.03 Claims by Opt Outs and Others

If any person not bound by this Agreement claims over or brings a third party claim, makes any claim or demand or takes any action or proceeding against any defendant named in the Class Actions or the Cloud Class Action arising in relation to an Indian Residential School or the operation of Indian Residential Schools, no amount payable by any defendant named in the Class Actions or the Cloud Class Action to that person will be paid out of the Designated Amount Fund.

11.04 Cessation of litigation

- (1) Upon execution of this Agreement, the representative plaintiffs named in the Class Actions and the Cloud Class Action, and counsel from each of the groups set out in Section 4.09(4)(c), (d), (e), (f) and (g) will cooperate with the defendants named in the Class Actions and in the Cloud Class Action to obtain approval of this Agreement and general participation by Class Members and Cloud Class Members and Non-resident Claimants in all aspects of the Agreement.

- (2) Each counsel from each of the groups set out in section 4.09(4)(c), (d), (e), (f) and (g) will undertake, within five days after the Approval Date, not to commence or assist or advise on the commencement or continuation of any actions or proceedings calculated to or having the effect of undermining this Agreement against any of the Releasees, or against any person who may claim contribution or indemnity from any of the Releasees in any way relating to or arising from any claim which is subject to this Agreement, provided that nothing in the Agreement will prevent any counsel from advising any person whether to opt out of the Class Actions and to continue to act for that person.

ARTICLE TWELVE

ADDITIONAL INDIAN RESIDENTIAL SCHOOLS

12.01 Request to Add Institution

- (1) Any person or organization (the "Requestor") may request that an institution be added to Schedule "F", in accordance with the criteria set out in Section 12.01(2) of this Agreement, by submitting the name of the institution and any relevant information in the Requestor's possession to Canada;
- (2) The criteria for adding an institution to Schedule "F" are:

- a) The child was placed in a residence away from the family home by or under the authority of Canada for the purposes of education; and,
 - b) Canada was jointly or solely responsible for the operation of the residence and care of the children resident there.
- (3) Indicators that Canada was jointly or solely responsible for the operation of the residence and care of children there include, but are not limited to, whether:
- a) The institution was federally owned;
 - b) Canada stood as the parent to the child;
 - c) Canada was at least partially responsible for the administration of the institution;
 - d) Canada inspected or had a right to inspect the institution; or,
 - e) Canada did or did not stipulate the institution as an IRS.
- (4) Within 60 days of receiving a request to add an institution to Schedule "F", Canada will research the proposed institution and determine whether it is an Indian Residential School as defined ~~in this Agreement and will provide both the Requestor and the~~ NAC with:

- a) Canada's decision on whether the institution is an Indian Residential School;
- b) Written reasons for that decision; and
- c) A list of materials upon which that decision was made;

provided that Canada may ask the Requestor for an extension of time to complete the research.

- (5) Should either the Requestor or the NAC dispute Canada's decision to refuse to add a proposed institution, the Requestor may apply to the Appropriate Court, or the NAC may apply to the court of the province or territory where the Requestor resides for a determination.
- (6) Where Canada adds an institution to Schedule "F" under Section 12.01(4), Canada may provide the Requestor with reasonable legal costs and disbursements.

ARTICLE THIRTEEN

LEGAL FEES

13.01 Legal Fees

Canada agrees to compensate legal counsel in respect of their legal fees as

set out herein.

13.02 Negotiation Fees (July 2005 – November 20, 2005)

- (1) Canada agrees to pay each lawyer, other than lawyers representing the Church Organizations, who attended the settlement negotiations beginning July 2005 leading to the Agreement in Principle for time spent up to the date of the Agreement in Principle in respect of the settlement negotiations at his or her normal hourly rate, plus reasonable disbursements, and GST and PST, if applicable except that no amount is payable under this Section 13.02(1) for fees previously paid directly by OIRSRC.
- (2) All legal fees payable under Section 13.02(1) will be paid no later than 60 days after the Implementation Date.

13.03 Fees to Complete Settlement Agreement (November 20, 2005 – Execution of Settlement Agreement)

- (1) Canada agrees to pay each lawyer, other than lawyers representing the Church Organizations, for time spent between November 20, 2005 and the date of execution of this Agreement in respect of finalizing this Agreement at each lawyer's normal hourly rate, plus reasonable disbursements and GST and PST, if applicable except that no amount is payable under this Section 13.03(1) for fees previously paid directly by OIRSRC.

- (2) No fees will be payable under Section 13.03(1) for any work compensated under Section 13.04 of this Agreement.
- (3) All legal fees payable under Section 13.03(1) will be paid no later than 60 days after the Implementation Date.

13.04 Fees Accrued after November 20, 2005 (NCC Fees)

- (1) Legal fees payable to legal counsel from November 20, 2005 forward will be paid in accordance with the terms set out in Section 13.10(1)(2)(4) and (5) of this Agreement.
- (2) Subject to 13.07, all legal fees payable under Section 13.06 and 13.08 will be paid no later than 60 days after the Implementation Date.

13.05 No Fees on CEP Payments

No lawyer or law firm that has signed this Settlement Agreement or who accepts a payment for legal fees from Canada, pursuant to Sections 13.06 or 13.08, will charge an Eligible CEP Recipient any fees or disbursements in respect of the Common Experience Payment.

13.06 Fees Where Retainer Agreements

Each lawyer who had a retainer agreement or a substantial solicitor-client

relationship (a "Retainer Agreement") with an Eligible CEP Recipient as of May 30, 2005, will be paid an amount equal to the lesser of:

- a) the amount of outstanding Work-in-Progress as of the date of the Agreement in Principle in respect of that Retainer Agreement and
- b) \$4,000, plus reasonable disbursements, and GST and PST, if applicable,

and will agree that no other or further fee will be charged with respect to the CEP.

13.07 Proof of Fees

In order to receive payment pursuant to Section 13.06 of this Agreement, each lawyer will provide to OIRSRC a statutory declaration that attests to the number of Retainer Agreements he or she had with Eligible CEP Recipients as of May 30, 2005 and the amount of outstanding Work-in-Progress in respect of each of those Retainer Agreements as docketed or determined by review. OIRSRC will review these statutory declarations within 60 days of the Implementation Date and will rely on these statutory declarations to verify the amounts being paid to lawyers and will engage in such further verification processes with individual lawyers as circumstances require with the consent of the lawyers involved, such consent not to be unreasonably withheld.

13.08 The National Consortium and the Merchant Law Group Fees

- (1) The National Consortium will be paid forty million dollars (\$40,000,000.00) plus reasonable disbursements, and GST and PST, if applicable, in recognition of the substantial number of Eligible CEP Recipients each of them represents and the class action work they have done on behalf of Eligible CEP Recipients. Any lawyer who is a partner of, employed by or otherwise affiliated with a National Consortium member law firm is not entitled to the payments described in Section 13.02 and 13.06 of this Agreement.
- (2) The fees of the Merchant Law Group will be determined in accordance with the provisions of the Agreement in Principle executed November 20, 2005 and the Agreement between Canada and the Merchant Law Group respecting verification of legal fees dated November 20, 2005 attached hereto as Schedule "V", except that the determination described in paragraph 4 of the latter Agreement, will be made by Justice Ball, or, if he is not available, another Justice of the Court of Queen's Bench of Saskatchewan, rather than by an arbitrator.
- (3) The Federal Representative will engage in such further verification processes with respect to the amounts payable to the National Consortium as have been agreed to by those parties.

(4) In the event that the Federal Representative and either the National Consortium or the Merchant Law Group cannot agree on the amount payable for reasonable disbursements incurred up to and including November 20, 2005, under Section 13.08(1) of this Agreement, the Federal Representative will refer the matter to:

- (a) the Ontario Superior Court of Justice, or an official designated by it, if the matter involves the National Consortium;
- (b) the Saskatchewan Court of Queen's Bench, or an official designated by it, if the matter involves the Merchant Law Group;

to fix such amount.

(5) The National Consortium member law firms are as follows:

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

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

Coller Levine
Adams Gareau

All legal fees payable under Section 13.08 will be paid no later than 60 days after the Implementation Date.

13.09 Cloud Class Action Costs, Fees and Disbursements

- (1) Canada will pay all cost awards in the Cloud Class Action that remain outstanding as of November 20, 2005 to Counsel for the Plaintiffs in that action. Canada will not seek to recover any portion of any costs paid pursuant to this Section 13.09(1) from the Anglican entities named as Defendants in the Cloud Class Action.
- (2) Canada will pay the fees and disbursements of the Plaintiffs in the Cloud Class Action as set out in Article 13 of this Agreement.

13.10 NCC Fees

- (1) Canada will pay members of the NCC fees based upon reasonable hourly rates and reasonable disbursements, but such fees will not include any fee for the Government of Canada, or the Church Organizations.

- (2) Subject to Section 13.10(4), any fees referred to in Section 13.10(1) and accrued after April 1, 2006 will be subject to a maximum operating budget of sixty-thousand dollars (\$60,000.00) per month.
- (3) Notwithstanding Section 13.10(2) and subject to Section 13.10(4), the NCC may apply to Canada for additional funding in exceptional circumstances up to a maximum monthly amount of fifteen thousand dollars (\$15,000.00).
- (4) The maximum operating budget referred to in Section 13.10(1) and the maximum additional funding in exceptional circumstances referred to in Section 13.10(3) will be reviewed and reassessed by Canada on July 1, 2006 and the first day of each month thereafter. Canada, in its sole discretion, may reduce or increase the maximum operating budget or the maximum additional funding or both.
- (5) Counsel who is designated by the NCC as counsel having carriage in respect of drafting, consent certification and approval of the settlement will be paid their normal hourly rates and reasonable disbursements to be billed by Counsel and paid by Canada on an ongoing basis. Such fees and disbursements are not subject to the maximum operating budget referred to in paragraph 13.10(2).
- (6) Other counsel who appear in court, if designated by the NCC

and approved by Canada, will be paid an appearance fee of two thousand dollars (\$2000.00) per diem. Such fees are not subject to the maximum operating budget referred to in paragraph 13.10(2).

- (7) The NCC, and counsel appointed on behalf of the NCC, will submit their accounts to the OIRSRC for payment, and will be paid within 60 days of such submission.
- (8) The NCC will submit its accounts to the OIRSRC for payment. The submitted accounts will be verified by OIRSRC to ensure compliance with the Treasury Board Travel Directive, attached as Schedule "Q", prior to payment.

13.11 NAC Fees

- (1) Members of the NAC will be compensated at reasonable hourly rates subject to the maximum monthly operating budget set out at Section 13.11(2) of this Agreement except the representatives for Canada or the Church Organizations, who will not be compensated under this Agreement.
- (2) Subject to Section 13.11(4), any fees referred to in Section 13.10(1) will be subject to a maximum operating budget of sixty-thousand dollars (\$60,000.00) per month.
- (3) Notwithstanding Section 13.11(2) and subject to Section

13.11(4), the NAC may apply to Canada for additional funding in exceptional circumstances up to a maximum monthly amount of fifteen thousand dollars (\$15,000.00).

- (4) The maximum operating budget referred to in Section 13.11(2) and the maximum additional funding in exceptional circumstances referred to in Section 13.11(3) will be reviewed and reassessed by Canada on the first day of the first month after the Implementation Date and on the first day of each month thereafter. Canada, in its sole discretion, may reduce or increase the maximum operating budget or the maximum additional funding or both.
- (5) The NAC will submit its accounts to the OIRSRC for payment. The submitted accounts will be verified by OIRSRC to ensure compliance with the Treasury Board Travel Directive, attached as Schedule "Q", prior to payment.

13.12 RAC Fees

- (1) Members of the RACs, will be compensated at reasonable hourly rates subject to the maximum monthly operating budget set out at Section 13.12(2).
- (2) Canada will provide each RAC with an operating budget that will not exceed seven thousand dollars (\$7,000.00) per month for each RAC except that each RAC may apply for additional

funding in exceptional circumstances.

- (3) The RACs will submit their accounts to the OIRSRC for payment. The submitted accounts will be verified by OIRSRC to ensure compliance with the Treasury Board Travel Directive, attached as Schedule "Q", prior to payment.

13.13 IAP Working Group Fees

- (1) Canada agrees to pay each member of the IAP Working Group, other than lawyers representing Canada or the Church Organizations, who attended the IAP Working Group meetings beginning November 20, 2005 for time spent up to the Implementation Date, as requested in writing by Canada, at his or her normal hourly rate, plus reasonable disbursements, and GST and PST, if applicable except that no amount is payable under this Section 13.13(1) for fees previously paid directly by OIRSRC.
- (2) No fees are payable under Section 13.13(1) for time billed under Section 13.02 or 13.03.
- (3) The IAP Working Group, will submit their accounts to the OIRSRC for payment, and will be paid within 60 days of such submission.

13.14 Oversight Committee Fees

- (1) Canada agrees to pay an honorarium to each member of the Oversight Committee, other than members representing Canada or the Church Organizations, at the same rate and on the same conditions as apply from time to time for adjudicators appointed for the IAP.
- (2) Notwithstanding 13.14(1), Oversight Committee members will be paid the honorarium set out in 13.14(1) for a period not exceeding 3 days per month in those months where they attend in-person meetings or 1 day per month in those months where the meeting is held by teleconference or other means.
- (2) The Oversight Committee members will submit their accounts to the OIRSRC for payment. The accounts will be paid within 60 days of their submission. The accounts will be verified by OIRSRC to ensure compliance with the Treasury Board Travel Directive, attached as Schedule "Q", prior to payment.

ARTICLE FOURTEEN

FIRST NATIONS, INUIT, INUVIALUIT AND MÉTIS

14.01 Inclusion

For greater certainty, every Eligible CEP Recipient who resided at an Indian Residential School is eligible for the CEP and will have access to the IAP in

accordance with the terms of this Agreement including all First Nations, Inuit, Inuvialuit and Métis students.

**ARTICLE FIFTEEN
TRANSITION PROVISIONS**

15.01 No Prejudice

The parties agree that the no prejudice commitment set out in the letter of the Deputy Minister of the OIRSRC dated July, 2005, and attached as Schedule "R" means that following the Implementation Date:

- (1) All Eligible CEP Recipients are entitled to apply to receive the CEP regardless of whether a release has been signed or a judgment received for their Indian Residential School claim prior to the Implementation Date.

- (2) Where a release of an Indian Residential School claim was signed after May 30, 2005 in order to receive the payment of an award under the DR Model:
 - ~~a) Canada will adjust the award to reflect the compensation scale set out at page 6 of the IAP attached as Schedule "D" of this Agreement;~~

 - b) the Eligible IAP Claimant may apply to have their hearing re-opened to reconsider the assignment of points under the

Consequential Loss of Opportunity category set out at page 6 of the IAP attached as Schedule "D" of this Agreement, and pursuant to the standards of the IAP, in any case where the adjudicator assessed their claim as falling within the highest level in the Consequential Loss of Opportunity category in the DR Model;

- c) an Eligible IAP Claimant who alleges sexual abuse by another student at the SL4 or SL5 category, where such abuse if proven would be the most serious proven abuse in their case, may have their hearing re-opened to consider such an allegation in accordance with the standards of the IAP.

- (3) Following the coming into force of the Approval Orders, at the request of an Eligible IAP Claimant whose IRS abuse claim was settled by Canada without contribution from a Catholic Entity set out in Schedule "C" of this Agreement, such settlement having been for an amount representing a fixed reduction from the assessed Compensation, Canada will pay the balance of the assessed compensation to the Eligible IAP ~~Claimant. Provided, however, that no amount will be paid to an~~ Eligible IAP Claimant pursuant to this section until the Eligible IAP Claimant agrees to accept such amount in full and final satisfaction of his or her claim against a Catholic Entity set out in Schedule "C" of this Agreement, and to release them by

executing a release substantially in the form of the release referred to in Section 11.02 of this Agreement.

- (4) Until the Implementation Date, Canada will use its best efforts to resolve cases currently in litigation, including those that would not fit within the IAP.

15.02 Acceptance and Transfer of DR Model Claims

- (1) No applications to the DR Model will be accepted after the Approval Date.
- (2) DR applications received on or before the expiration of the Approval Date for which a hearing date had not been set as of the Implementation Date will be dealt with as follows:
 - a) any application which alleges only physical abuse will be processed under the DR Model unless the claimant elects to transfer it to the IAP;
 - b) any application which includes an allegation of sexual abuse will be transferred to the IAP unless the claimant, within 60 days of receiving notice of the proposed transfer, elects in writing to remain in the DR Model.
- (3) An Individual whose claim is transferred under Section

15.02(2) of this Agreement is not required to complete an additional application to the IAP, but may modify their existing DR application to the extent necessary to claim the relief available under the IAP.

- (4) Any Eligible IAP Claimant who received but did not accept a decision under the DR Model or a Pilot Project decision may apply to the IAP on the condition that all evidence used in the DR Model hearing or pilot project hearing will be transferred to the IAP proceeding.

ARTICLE SIXTEEN CONDITIONS AND TERMINATION

16.01 Agreement is Conditional

This Agreement will not be effective unless and until it is approved by the Courts, and if such approvals are not granted by each of the Courts on substantially the same terms and conditions save and except for the variations in membership contemplated in Sections 4.04 and 4.07 of this Agreement, this Agreement will thereupon be terminated and none of the Parties will be liable to any of the other Parties hereunder, except that the fees and disbursements of the members of the NCC will be paid in any event.

16.02 Termination of Agreement

This Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled.

ARTICLE SEVENTEEN**CEP PAYMENTS TO APPROVED PERSONAL REPRESENTATIVES****17.01 Compensation if Deceased on or after May 30, 2005**

If an Eligible CEP Recipient, dies or died on or after May 30, 2005 and the CEP Application required under Article Five (5) has been submitted to the Trustee by him or her prior to his or her death or by his or her Personal Representative after his or her death and within the period set out in Section 5.04(2), the Personal Representative will be paid the amount payable under Article Five (5) to which the deceased Eligible CEP Recipient would have been entitled if he or she had not died.

17.02 Deceased Cloud Class Members

Notwithstanding Section 17.01, if an Eligible CEP Recipient who is a member of a certified class in the Cloud-Class Action died on or after October 5, 1996, and the CEP Application required under Article Five (5) has been submitted to the Trustee by his or her Personal Representative within the period set out in Section 5.04(2), the Personal Representative will be paid the amount payable under Article Five (5) to which the deceased Eligible CEP Recipient would have been entitled if he or she had not died.

17.03 Person Under Disability

If an Eligible CEP Recipient is or becomes a Person Under Disability prior to receipt of a Common Experience Payment and the CEP Application required under Article Five (5) has been submitted to the Trustee by him or her prior to becoming a Person Under Disability or by his or her Personal Representative after he or she becomes a Person Under Disability within the period set out in Section 5.04(2), the Personal Representative will be paid the amount payable under Article Five (5) to which the Eligible CEP Recipient who has become a Person Under Disability would have been entitled if he or she had not become a Person Under Disability.

ARTICLE EIGHTEEN**GENERAL****18.01 No Assignment**

No amount payable under this Agreement can be assigned and such assignment is null and void except as expressly provided for in this Agreement.

18.02 Compensation Inclusive

For greater certainty, the amounts payable to Eligible IAP Claimants under this Agreement are inclusive of any prejudgment interest or other amounts that may be claimed by Eligible IAP Claimants.

18.03 Applicable Law

This Agreement will be governed by the law of Ontario.

18.04 Dispute Resolution

The parties agree that they will fully exhaust the dispute resolution mechanisms contemplated in this Agreement before making any application to the Courts for directions in respect of the implementation, administration or amendment of this Agreement or the implementation of the Approval Orders. Application to the Courts will be made with leave of the Courts, on notice to all affected parties, or otherwise in conformity with the terms of the Agreement.

18.05 Notices

Any notice or other communication to be given in connection with this Agreement will be given in writing and will be given by personal delivery or by electronic communication addressed to each member of the NCC or NAC as the case may be or to such other address, individual or electronic communication number as a Party may from time to time advise by notice given pursuant to this Section. Any notice or other communication will be exclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient and on the Business Day during which such normal business

hours next occur if not so transmitted. The names and business addresses of the members of the NCC are attached as Schedule "S".

18.06 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Agreement.

18.07 Benefit of the Agreement

This Agreement will enure to the benefit of and be binding upon the respective heirs, assigns, executors, administrators and successors of the Parties.

18.08 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

18.09 Official Languages

Canada will prepare a French translation of this Agreement for use at the Approval Hearings. Prior to Implementation Date, Canada will pay the costs of the preparation of an authoritative French version of this Agreement and

such cost shall include costs of review by a designate of the Parties. The authoritative French version shall be executed by the same Parties who executed this Agreement and, once executed, shall be of equal weight and force at law.

Signed this 15th day of June, 2006.

ON BEHALF OF HER MAJESTY THE
QUEEN IN RIGHT OF CANADA

By: 

The Honourable Jim Prentice

THE FEDERAL REPRESENTATIVE

By: 

The Honourable Frank Iacobucci

ASSEMBLY OF FIRST NATIONS

By: _____
Phil Fontaine, National Chief

By: _____
Kathleen Mahoney

INUVIALUIT CORPORATION

By: _____
Hugo Prud'homme

NATIONAL CONSORTIUM

By: _____
Craig Brown

COHEN HIGHLY LLP

By: _____
Russell Raikes

THE UNITED CHURCH OF
CANADA

By: _____
Alexander D. Pettingill

NUNAVUT TUNNGAVIK INC.

By: _____
Janice Payne

MAKIVIK CORPORATION

By: _____
Gilles Gagne

MERCHANT LAW GROUP

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

THE PRESBYTERIAN CHURCH
IN CANADA

By: _____
S. John Page

THE GENERAL SYNOD OF THE
ANGLICAN CHURCH OF
CANADA

By: _____
S. John Page

SISTERS OF CHARITY, a body
 corporate also known as Sisters of
 Charity of St. Vincent de Paul, Halifax
 also known as Sisters of Charity of
 Halifax

By: _____
 Thomas Mcdonald

THE ROMAN CATHOLIC
 EPISCOPAL CORPORATION OF
 HALIFAX

By: _____
 Hugh Wright

LES SOEURS DE NOTRE DAME-
 AUXILIATRICE

By: _____
 Pierre L. Baribeau

LES SOEURS DE ST. FRANCOIS
 D'ASSISE

By: _____
 Pierre L. Baribeau

INSITUT DES SOEURS DU BON
 CONSEIL

By: _____
 Pierre L. Baribeau

LES SOEURS DE SAINT-JOSEPH DE
 SAINT-HYACINTHE (The Sisters of St.
 Joseph of St. Hyacinthe)

By: _____
 Pierre L. Baribeau

LES SOEURS DE JESUS-MARIE

By: _____
 Pierre L. Baribeau

LES SOEURS DE L'ASSOMPTION
 DE LA SAINTE VERGE

By: _____
 Pierre L. Baribeau

LES SOEURS DE L'ASSOMPTION
 DE LA SAINT VIERGE DE
 L'ALBERTA

By: _____

Pierre L. Baribeau

LES SOEURS DE LA CHARITÉ DE
ST.-HYACINTHEBy: _____
Pierre L. BaribeauLES OEUVRES OBLATES DE
L'ONTARIOBy: _____
Pierre Champagne/Ron CazaLES RÉSIDENCES OBLATES DU
QUÉBECBy: _____
Pierre Champagne/Ron CazaLA CORPORATION EPISCOPALE
CATHOLIQUE ROMAINE DE LA
BAIE JAMES (The Roman Catholic
Episcopal Corporation of James
Bay) THE CATHOLIC DIOCESE
OF MOOSONEEBy: _____
Pierre Champagne/Ron CazaSOEURS GRISES DE
MONTRÉAL/GREY NUNS OF
MONTREALBy: _____
W. Roderick Donlevy/Michel
ThibaultSISTERS OF CHARITY (GREY
NUNS) OF ALBERTABy: _____
W. Roderick Donlevy/Michel
ThibaultLES SOEURS DE LA CHARITÉ DES
T.N.O.By: _____
W. Roderick Donlevy/ Michel
ThibaultHÔTEL-DIEU DE NICOLET
(HDN)

By: _____

THE GREY NUNS OF MANITOBA
INC. – LES SOEURS GRISES DU
MANITOBA INC.

By: _____
W. Roderick Donlevy

LA CORPORATION EPISCOPAL
CATHOLIQUE ROMAINE DE LA
BAIE D' HUDSON THE ROMAN
CATHOLIC EPISCOPAL
CORPORATION OF HUDSON'S
BAY

By: _____
Rheal Teffaine

MISSIONARY OBLATES—GRANDIN

By: _____
Curtis Onishenko

LES OBLATS DE MARIE
IMMACULÉE DU MANITOBA

By: _____
Rheal Teffaine

THE ARCHIEPISCOPAL
CORPORATION OF REGINA

By: _____
James Ehmann, Q.C.

THE SISTERS OF THE
PRESENTATION

By: _____
Mitchell Holash

THE SISTERS OF ST. JOSEPH OF
SAULT ST. MARIE

By: _____
Charles Gibson

LES SOEURS DE LA CHARITÉ
D'OTTAWA – SISTERS OF
CHARITY OF OTTAWA

By: _____

OBLATES OF MARY IMMACULATE-
ST. PETER'S PROVINCE

By: _____
William Sammon

THE SISTERS OF SAINT ANN

By: _____
Patrick J. Delsey Law
Corporation

SISTERS OF INSTRUCTION OF THE
CHILD JESUS

By: _____
Violet Allard

THE BENEDICTINE SISTERS OF
MT. ANGEL OREGON

By: _____
Azool Jaffer-Jeraj

LES PERES MONTFORTAINS

By: _____
Bernie Buettner

THE ROMAN CATHOLIC BISHOP
OF KAMLOOPS CORPORATION
SOLE

By: _____
John Hogg

THE BISHOP OF VICTORIA,
CORPORATION SOLE

By: _____
Frank D. Corbett

THE ROMAN CATHOLIC BISHOP
OF NELSON CORPORATION
SOLE

By: _____
John Hogg

ORDER OF THE OBLATES OF
MARY IMMACULATE IN THE
PROVINCE OF BRITISH COLUMBIA

By: _____
Fr. Terry MacNamara OMI

THE SISTERS OF CHARITY OF
PROVIDENCE OF WESTERN
CANADA

By: _____
Ray Baril, Q.C.

LA CORPORATION EPISCOPALE
CATHOLIQUE ROMAINE DE
GROUARD

By: _____
Karen Trace

ROMAN CATHOLIC EPISCOPAL
CORPORATION OF KEEWATIN

By: _____
James Ehmann, Q.C.

LA CORPORATION
ARCHIÉPISCOPALE CATHOLIQUE
ROMAINE DE ST. BONIFACE

By: _____
Rheal Teffaine

LES MISSIONNAIRES OBLATES
DE ST. BONIFACE THE
MISSIONARY OBLATES SISTERS
OF ST. BONIFACE

By: _____
Rheal Teffaine

ROMAN CATHOLIC
ARCHIEPISCOPAL CORPORATION
OF WINNIPEG

By: _____
Bill Emslie, Q.C.

LA CORPORATION EPISCOPALE
CATHOLIQUE ROMAINE DE
PRINCE ALBERT

By: _____
Mitchell Holash

THE ROMAN CATHOLIC BISHOP
OF THUNDER BAY

By: _____
John Cyr

IMMACULATE HEART
COMMUNITY OF LOS ANGELES
CA

By: _____
Mark Rowan

ARCHDIOCESE OF VANCOUVER
THE ROMAN CATHOLIC
ARCHBISHOP OF VANCOUVER

By: _____
Mary Margaret MacKinmon

ROMAN CATHOLIC DIOCESE OF
WHITEHORSE

By: _____
Azool Jaffer-Jeraj

THE CATHOLIC EPISCOPALE
CORPORATION OF MACKENZIE

By: _____
Karen Trace

THE ROMAN CATHOLIC
EPISCOPAL CORPORATION OF
PRINCE RUPERT

By: _____
Gary R. Brown

FULTON & COMPANY

By: _____
Len Marchand, P. Eng.

ROSE A. KEITH, LLB.

By: _____
Rose A. Keith

LACKOWICZ, SHIER & HOFFMAN

By: _____
Dan Shier

CABOTT & CABOTT

By: _____
Laura I. Cabott

KESHEN MAJOR

By: _____
Greg Rickford
F. J. SCOTT HALL LAW
CORPORATION

BILKEY, QUINN

By: _____
David Bilkey
HEATHER SADLER JENKINS

By: _____
Scott Hall

By: _____
Sandra Staats

HUTCHINS GRANT & ASSOCIATES

By: _____
Peter Grant

DUBOFF EDWARDS HAIGHT &
SCHACHTER

By: _____
Harley Schachter

By: _____
Brian O'Reilly

MACDERMID LAMARSH
GORSALITZ

By: _____
Robert Emigh

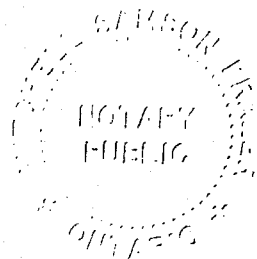
MACPHERSON LESLIE &
TYERMAN LLP

By: _____
Maurice Laprairie, Q.C.

THIS IS EXHIBIT*B*..... REFERRED TO IN THE
AFFIDAVIT OF FRANK IACOBUCCI
SWORN BEFORE ME, THIS*10*.....
DAY OF*August*..... 2006

Michael Frongia

.....
Notary Public in and for the Province of Ontario



November 20, 2005

**CANADA, as represented by The Honourable
Frank Iacobucci**

- and -

**PLAINTIFFS, as represented by the National Consortium,
Merchant Law Group, and other legal counsel as undersigned**

- and -

THE ASSEMBLY OF FIRST NATIONS

- and -

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

AGREEMENT IN PRINCIPLE

WHEREAS Canada and certain religious entities operated Indian Residential Schools for the education of aboriginal children and certain harms and abuses were committed against those children;

AND WHEREAS the parties desire a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools;

AND WHEREAS the parties further desire the promotion of healing and reconciliation;

AND WHEREAS the parties agree that this Agreement in Principle should form the basis of a comprehensive settlement package that the Honourable Frank Iacobucci will recommend to Canada;

AND WHEREAS the parties agree that the comprehensive settlement will not be effective anywhere until approved by every court as set out herein;

AND WHEREAS the Federal Representative has recommended that an advance payment on the Common Experience Payment will be made to certain elderly former students;

THEREFORE, in consideration of the mutual covenants set out herein, the parties have entered into this Agreement in Principle.

I. DEFINITIONS

"Church" or **"Church organization"** means any one or more of the entities listed in Schedule "A" hereof (the "Roman Catholic entities"), the General Synod of the Anglican Church of Canada¹, the United Church of Canada, the Presbyterian Church in Canada;

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

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

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

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

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

"Federal Representative" means the Honourable Frank Iacobucci;

"Independent Assessment Process" ("IAP") means the process for the determination of individual abuse claims attached hereto as Schedule "B";

¹ It is understood that General Synod of the Anglican Church of Canada agrees to be bound by these provisions and to recommend them to all Dioceses and the Missionary Society.

"Indian Residential Schools" means the following:

1. Institutions listed on List "A" to IRSRC's Dispute Resolution Process attached as Schedule "C" (Whitehorse Baptist Mission to be re-added);
2. Institutions listed in Schedule "D" ("Additional Residential Schools") which may be amended from time to time; and,
3. any institution which is determined to meet the following criteria:
 - (a) The child was placed in a residence away from the family home by or under the authority of the federal government for the purposes of education; and,
 - (b) The federal government was jointly or solely responsible for the operation of the residence and care of the children resident there.
 - (c) Indicators that the residence was federal in nature include, but are not limited to, whether:
 - (i) The institution was federally owned;
 - (ii) The federal government stood as the parent to the child;
 - (iii) The federal government was at least partially responsible for the administration of the institution;
 - (iv) The federal government inspected or had a right to inspect the institution; or,
 - (v) The federal government did or did not stipulate that the institution was an IRS.

"NAC" means the national administration committee as described herein.

II. COMPENSATION TO ELIGIBLE CEP RECIPIENTS

1. Canada will make a Common Experience Payment to every Eligible CEP Recipient who was alive on May 30, 2005.
2. The amount of the Common Experience Payment will be:
 - (a) \$10,000 to every Eligible CEP Recipient who attended an Indian Residential School for one school year or part thereof.
 - (b) \$3,000 for each school year (or part thereof) thereafter that an Eligible CEP Recipient attended a residential school.
 - (c) An Eligible CEP Recipient who accepts the Common Experience Payment will be deemed pursuant to the court orders contemplated by this Agreement in Principle

to have released Canada and the Church Organizations for all claims arising out of his or her residential School experience or attendance but will retain the right to pursue a claim in accordance with the terms and conditions of the Individual Assessment Process set forth below.

3. To effectuate the distribution of the Common Experience Payments, Canada will transfer the Designated Amount to Service Canada and will develop application procedures for Eligible CEP Recipients that will reflect the need for simplicity of form, expedition of payments, and an appropriate form of audit verification in consultation with all parties.
4. The Federal Representative will recommend to the Deputy Prime Minister that the Minister of Finance designate that the Designated Amount be entitled to earn interest pursuant to Canada's policy applicable thereto; any interest would be added to the Designated Amount.
5. In the event that the Designated Amount is insufficient to pay all Eligible CEP Recipients the Common Experience Payments to which they are entitled, Canada agrees to add a sufficient amount to remedy any deficiency in this respect.
6. In the event the Designated Amount proves to be in excess by more than \$40,000,000 of the total amount required to pay all Eligible CEP Recipients their Common Experience Payments, Canada agrees to cause Service Canada to credit each Eligible Recipient with an amount up to \$3,000 for each Eligible CEP Recipient for Personal Healing (the "Personalized Healing Amount") services from a list of healing entities or groups jointly approved by Canada and the AFN pursuant to terms and conditions to be developed by Canada and the AFN with input from all the parties that will reflect ease of access to any genuine programmes for healing among other factors. A similar set of terms and conditions will be developed by Canada and Inuit organizations for Eligible CEP Recipients who are Inuit. If the excess after payment of the Common Experience Payments is less than \$40,000,000, such lesser amount will be paid to the Aboriginal Healing Foundation.
7. In the further event that the Designated Amount proves to be in excess of the amount required to pay the Personalized Healing Amounts, Canada agrees that Service Canada will transfer any such excess to the Aboriginal Healing Foundation.
8. It is agreed that Canada will assume the costs of verifying claims for the Common Experience Payments and administrative expenses relating to their distribution.

III. SETTLEMENT AGREEMENT PROVISIONS FOR THE INDEPENDENT ASSESSMENT PROCESS

1. The parties agree that the only IRS claims which may be pursued by former students of Indian Residential Schools and the compensation to be paid for such claims when proven, are as set out at pages 2-6 of the IAP attached as Schedule "B".
2. The parties further agree that the Instructions set out at pages 29-35 of the IAP are approved, subject to minor wording changes consistent with the intended meaning.

3. The parties further agree that the remaining standards for the IAP shall be substantially as set out in Schedule "B".
4. No limitations defence will be advanced in any continuing claim diverted by the Chief Adjudicator to the courts. Canada will rely on Crown immunity in such claims where applicable.
5. It is agreed that Canada will provide sufficient resources to permit, after a 6 month lead-in period, the resolution of no fewer than 2500 continuing claims per year, and to maintain the current standard of offering an IAP hearing, or to resolve an IAP claim, within nine months of an application having been screened in, provided the delay is not the responsibility of the claimant. Where these goals are not achieved the NAC may request that the government provide additional resources for claims processing, or may apply to the court for an order making changes to the IAP process sufficient to permit the realization of these goals.

IV. TRUTH AND RECONCILIATION

A Truth and Reconciliation process will be established substantially in the form attached hereto as Schedule "E".

V. COMMEMORATION

1. Canada will provide funding for commemoration initiatives, events, projects and memorials with respect to Indian Residential Schools at both the national and community level.
2. Such funding will be approximately \$20 million covering both national commemorative and community-based activities and projects including funding already authorized.

VI. HEALING

1. Canada will provide one hundred and twenty-five million dollars (\$125,000,000) as an endowment to the Aboriginal Healing Foundation to fund healing programmes over a five year period to address the legacy of harms including the physical and sexual abuse suffered in Indian Residential Schools.
2. In the fourth year after the court orders approving the settlement package, Canada agrees to have an evaluation of the healing initiatives and programmes undertaken by the Aboriginal Healing Foundation to determine the efficacy of such initiatives and programmes and to recommend whether and to what extent funding should continue.

VII. INUIT AND INUVIALUIT

For greater certainty, all Inuit and Inuvialuit students who attended institutions listed on Schedule "C" while such schools operated as residential schools or Schedule "D" are eligible for the CEP and will have access to the IAP in accordance with its terms.

The government will continue to research institutions from the list attached as Schedule "F" and provide a determination before December 1, 2005.

VIII. CHURCH PROVISIONS

The churches² and church entities agree that, as parties to the Settlement Agreement, they will:

1. Provide, at their own expense, assistance with witnesses and access to documents for the resolution of continuing claims on terms substantially similar to the following:
 - comply with all reasonable requests from Canada for information and assistance during the proceedings;
 - provide counsel for Canada and any researchers or experts retained by it, with full access to all relevant files and databases, excepting documents with respect to which solicitor-client privilege or other lawful privilege applies and is asserted. Any information obtained from records pursuant to this section will be used exclusively for the defence of the continuing claim or claims for which the information was sought unless otherwise agreed in writing; and
 - in litigation, provide disclosure and production of relevant documents in their possession or control, provide witness statements on request, attend as appropriate at the discovery of their witnesses, and otherwise facilitate the testimony of witnesses within their employ.
2. Provide along with Canada for the provision of all relevant documents to and for the use of the Truth and Reconciliation Commission, subject only to overriding concerns about the privacy interests of an individual. In such cases, researchers for the Commission shall have access to such documents provided privacy is respected.
3. Refrain from advancing or relying upon any limitations or laches defence in any continuing claim for which the Chief Adjudicator authorizes recourse to the courts, and pay any judgement in such claims to which they are a party and in which the Crown is immune from liability, provided that the Crown has agreed to indemnify the Church.
4. The Crown may settle any continuing claims without a hearing, subject to any rights of consultation set out in an applicable Church/Crown agreement.
5. Binding financial and other commitments will be entered into with the Crown concerning the resolution of the IRS legacy on terms substantially similar to existing letters of understanding with the Crown and certain denominations and the Memorandum of Understanding between the Crown and the Catholic entities.

² It is understood that General Synod of the Anglican Church of Canada agrees to be bound by these provisions and to recommend them to all Dioceses and the Missionary Society.

The Government confirms its commitment to renegotiate existing church agreements to give effect to the most favoured nation clauses found within them with a view to maintaining equity among the denominations.

IX. ADDITIONAL INDIAN RESIDENTIAL SCHOOLS

Any person or organization ("Requestor") may propose institutions to be added to Schedule "D" by submitting the name of the institution and any relevant information in their possession to the government;

The government will research the proposed institution and determine whether it meets the test set out in part 3 of the definition of Indian Residential Schools and advise the Requestor and the national administration committee and provide the reasons for the determination and all the information on which the decision was based within 60 days;

Should either the Requestor or the national administration committee dispute the government's determination, they may apply to the class action court in the jurisdiction where they reside or, if they reside outside Canada, the Ontario Court for a determination of the issue.

X. IMPLEMENTATION

The implementation of the final settlement judgment shall be accomplished substantially in the form attached hereto as Schedule "G".

XI. SOCIAL BENEFITS OR SOCIAL ASSISTANCE BENEFITS

Canada will use its best efforts to obtain agreement with provincial and territorial governments and any federal government departments to ensure that the receipt of any payments under the settlement agreement will not affect the amount, nature or duration of any social benefits or social assistance benefits available or payable to an Eligible CEP Recipient or Eligible IAP Claimant. The other parties also agree to use their best efforts to reach similar results.

XII. LEGAL FEES

WHEREAS legal counsel have done very substantial work on behalf of Eligible CEP Recipients for many years, have contributed significantly to the achievement of the Agreement in Principle and have undertaken not to seek payment of legal fees in respect of the Common Experience Payment to be paid to Eligible CEP Recipients, Canada agrees to compensate legal counsel in respect of their legal fees as follows.

1. Each lawyer who had a retainer agreement or a substantial solicitor-client relationship (a "Retainer Agreement") with an Eligible CEP Recipient as of May 30, 2005 (the date that the Federal Representative's appointment was announced) shall be paid an amount equal to the lesser of the amount of outstanding Work-in-Progress as of the date of the Agreement in Principle in respect of that Retainer Agreement or \$4,000, plus reasonable disbursements, and GST and PST, if applicable.

2. Each lawyer, other than lawyers representing the Churches, who attended the settlement negotiations beginning July 2005 leading to the Agreement in Principle shall be compensated for time spent up to the date of the Agreement in Principle in respect of the settlement negotiations at his or her normal hourly rate, plus reasonable disbursements, and GST and PST, if applicable.
3. Each lawyer shall provide to the Federal Representative an affidavit or statutory declaration that attests to the number of Retainer Agreements he or she had with Eligible Recipients as of May 30, 2005 and the amount of outstanding Work-in-Progress in respect of each of those Retainer Agreements as docketed or determined by review. The Federal Representative shall rely on these affidavits to verify the amounts being paid to lawyers and shall engage in such further verification processes with individual lawyers as circumstances require with the consent of the lawyers involved, such consent not to be unreasonably withheld.
4. The National Consortium and the Merchant Law Group shall each be paid \$40,000,000 plus reasonable disbursements, and GST and PST, if applicable, in recognition of the substantial number of Eligible CEP Recipients each of them represents and the class action work they have done on behalf of Eligible CEP Recipients. Paragraphs 1, 2 and 3 above shall not apply to any lawyer who is a partner of, employed by or otherwise affiliated with a National Consortium member law firm or the Merchant Law Group.
5. The Federal Representative shall engage in such further verification processes with respect to the amounts payable to the Merchant Law Group and National Consortium as have been agreed to.
6. No lawyer or law firm that has taken part in these settlement negotiations or who accepts a payment for legal fees from the Canada shall charge an Eligible CEP Recipient any fees or disbursements in respect of the Common Experience Payment paid to that Eligible CEP Recipient.
7. Legal fees payable to legal counsel from November 20 forward shall be paid in accordance with the terms set out in Articles 44 and 45 of Schedule "G" to this Agreement in Principle.
8. All legal fees payable under the above provisions shall be paid no later than 60 days after the expiry of the latest applicable opt-out period.
9. The National Consortium member law firms are as follows:

Thomson, Rogers	Troniak Law Office
Richard W. Curtis Law Office	Koskie Minsky
Field LLP	Leslie R. Meiklejohn Law Office

David Paterson Law Corp.	Huck Birchard
Docken & Company	Ruston Marshall
Arnold, Pizzo, McKiggan	Rath & Company
Cohen Highley LLP	Levene Tadman Gutkin Golub
White, Ottenheimer & Baker	Coller Levine
Thompson Dorfman Sweatman	Adams Gareau
Ahlstrom Wright Oliver & Cooper	

XIII. TRANSITION PROVISIONS

It is agreed that the no prejudice commitment set out in the letter of the DM of IRSRC dated July, 2005, and attached as Schedule "H" means that following the coming into force of the final settlement agreement:

1. All Eligible CEP Recipients are entitled to receive the CEP regardless of whether a release has been signed or a judgment received for their IRS claim.
2. Where a release of an IRS claim was signed after May 30, 2005 in order to receive the payment of an award under the DR Model:
 - (a) the government will recalibrate the award in light of the compensation scale set out at page 6 of Schedule "B";
 - (b) the claimant may have their hearing re-opened to reconsider the assignment of points under the Consequential Loss of Opportunity category in Schedule "B", and pursuant to the standards of the IAP, in any case where the adjudicator assessed their claim as falling within the highest level in the Consequential Loss of Opportunity scale in the DR Model;
 - (c) a claimant who alleges sexual abuse by another student at the SL4 or SL5 category, where such abuse if proven would be the most serious proven abuse in their case, may have their hearing re-opened to consider such an allegation in accordance with the standards of the IAP.
3. Following the coming into force of a final settlement agreement, Canada will, at the request of a claimant whose IRS abuse claim was settled by Canada without contribution

from a Catholic entity which was party to such claim and is a party to this Agreement in Principle, such settlement having been for an amount representing a fixed reduction from the assessed Compensation, offer to pay the balance of the assessed compensation to the Claimant. Provided, however, that no amount shall be paid to a Claimant pursuant to this section until the Claimant agrees to accept such amount in full and final satisfaction of his or her claim against the Catholic Defendants, and to release the Catholic Defendants.

As well until a final settlement agreement comes into force, Canada will make best efforts to resolve cases currently in litigation, including those that would not fit within the IAP.

XIV. CONFIDENTIALITY

Save as required by law, the parties agree that the undertaking of confidentiality as to discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to this Agreement in Principle continues in force.

XV. COMMUNICATIONS

Save as required by law, the parties agree to not engage in any media or public communication as to this Agreement in Principle until after its approval by Cabinet. Following approval by Cabinet, Canada will make an initial public announcement.

XVI. FINAL SETTLEMENT AGREEMENT

It is acknowledged by the parties that further discussion will be necessary to give effect to the provisions of this Agreement in Principle in a final settlement agreement. Canada agrees to compensate lawyers for time spent in such further discussions between the date of execution of this Agreement In Principle and the date of execution of the final settlement at the lawyers' normal hourly rates, plus reasonable disbursements and GST and PST, if applicable.


It is understood by all the Parties that the Federal Representative is recommending to Canada that this Agreement in Principle should form the basis of a comprehensive settlement package and the Federal Representative has no authority to bind Canada.

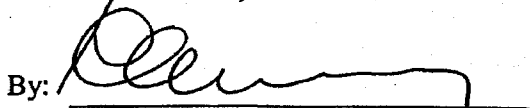
Signed this 20th day of November, 2005.

THE FEDERAL REPRESENTATIVE


By: 
The Honourable Frank Iacobucci

ASSEMBLY OF FIRST NATIONS

By: 
Phil Fontaine, National Chief

By: 
Kathleen Mahoney

CABOTT & CABOTT

By: 
for Laura Cabott

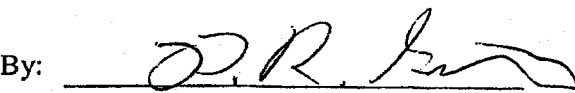
COHEN HIGHLY LLP

By: 
Russell Raikes

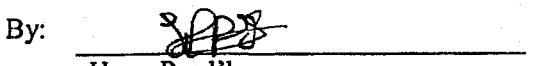
HEATHER SADLER JENKINS

By: 
Sandra Staats

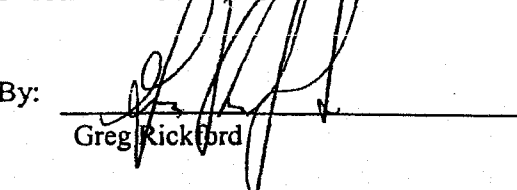
HUTCHINS, GRANT & ASSOCIATES

By: 
Peter R. Grant

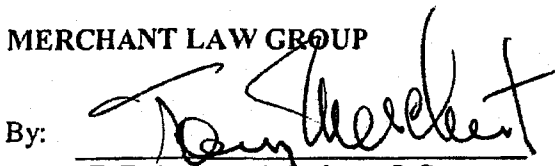
Registered
INUVIALUIT CORPORATION

By: 
Hugo Prud'homme

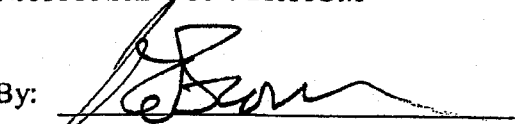
BRIAN O'REILLY
KESHEN & MAJOR

By: 
Greg Rickford

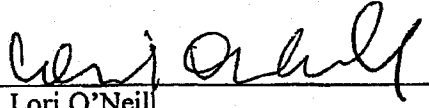
MERCHANT LAW GROUP

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

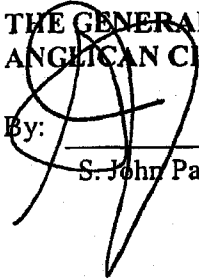
NATIONAL CONSORTIUM

By: 
Craig Brown

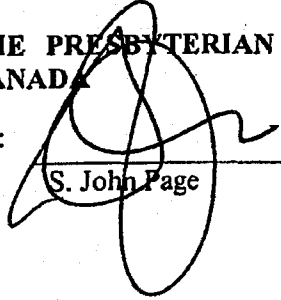
NELLIGAN O'BRIEN PAYNE

By: 
Lori O'Neill


THE GENERAL SYNOD OF THE
ANGELICAN CHURCH OF CANADA

By: 
S. John Page

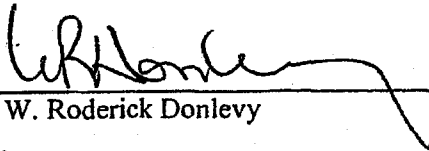
THE PRESBYTERIAN CHURCH IN
CANADA

By: 
S. John Page

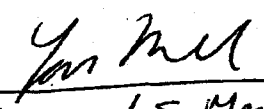
THE UNITED CHURCH OF CANADA

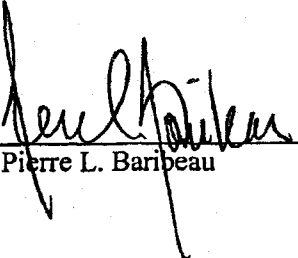
By: 
Alexander D. Pettingill

CATHOLIC ENTITIES

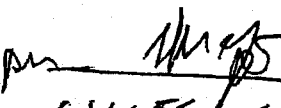
By: 
W. Roderick Donlevy

FULTON & COMPANY

By: 
Leonard S. Marchand

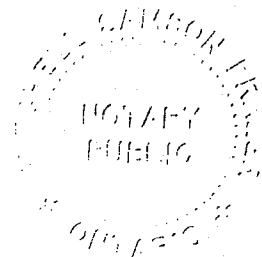
By: 
Pierre L. Baribeau

MAKIVIK CORPORATION

By: 
GILLES GAGNE

THIS IS EXHIBIT^C..... REFERRED TO IN THE
AFFIDAVIT OF FRANK IACOBUCCI
SWORN BEFORE ME, THIS^{10th}.....
DAY OF^{August}..... 2006

.....^{Michelle Fry}.....
Notary Public in and for the Province of Ontario

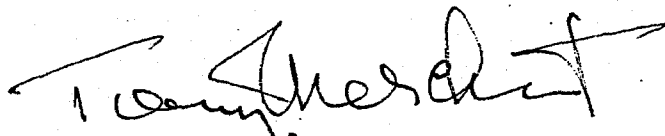
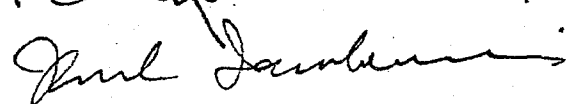


**Agreement Between the Government of Canada
and the Merchant Law Group Respecting the Verification of Legal Fees**

The Government of Canada and the Merchant Law Group agree that in addition to the requirement to provide an affidavit as set out in Article ■ of the Agreement in Principle, the Merchant Law Group's fees shall be subject to the following verification process.

- 1) The Merchant Law Group's dockets, computer records of Work in Progress and any other evidence relevant to the Merchant Law Group's claim for legal fees shall be made available for review and verification by a firm to be chosen by the Federal Representative the Honourable Frank Iacobucci.
- 2) The Federal Representative shall review the material from the verification process and consult with the Merchant Law Group to satisfy himself that the amount of legal fees to be paid to the Merchant Law Group is reasonable and equitable taking into consideration the amounts and basis on which fees are being paid to other lawyers in respect of this settlement, including the payment of a 3 to 3.5 multiplier in respect of the time on class action files and the fact that the Merchant Law Group has incurred time on a combination of class action files and individual files.
- 3) If the Federal Representative is not satisfied as described in 2) above, he and the Merchant Law Group shall make all reasonable efforts to agree to another amount to be paid to the Merchant Law Group for legal fees.
- 4) If the Federal Representative and the Merchant Law Group cannot agree as described in 3) above, the amount to be paid to the Merchant Law Group for legal fees shall be determined through binding arbitration, but that amount shall in no event be more than \$40 million or less than \$25 million. The arbitration shall be by a single arbitrator who shall be a retired judge:

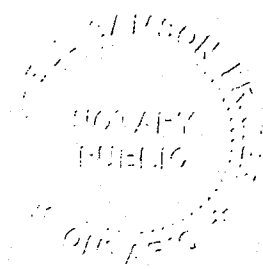
- (a) selected by the Federal Representative and the Merchant Law Group from a list comprising:
 - (i) John Major,
 - (ii) Peter Cory,
 - (iii) John Morden, or
 - (iv) Allan McEachern; and
- (b) if not so jointly chosen, then chosen by the Federal Representative in consultation with Tony Merchant and appointed in accordance with the Saskatchewan *Arbitration Act*, with the arbitration to take place in Saskatchewan.

November 20, 2005
Toronto, Ontario.

THIS IS EXHIBIT¹⁰..... REFERRED TO IN THE
AFFIDAVIT OF FRANK IACOBUCCI
SWORN BEFORE ME, THIS^{10th}.....
DAY OF^{August}..... 2006

.....^[Signature].....
Notary Public in and for the Province of Ontario



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The Leader-Post (Regina, Saskatchewan)

August 9, 2004 Monday
Final Edition

SECTION: SPECIAL SECTION; Kevin O'Connor; Pg. D9

LENGTH: 901 words

HEADLINE: Just a Helping Hand?: Are lawyers trying to settle residential school claims just to get rich?

BYLINE: Kevin O'Connor, The Leader-Post

BODY:

Regina lawyer Tony Merchant sits down at his desk, two huge stacks of residential school files in front of him, and ponders the \$100-million question.

Is it possible, he's asked, that Regina-based Merchant Law Group could eventually make \$100 million or more from Indian residential school lawsuits, as has been suggested before in the media?

His answer: it's possible.

"Over the course of years, you can get to huge numbers," said Merchant, whose Regina-based firm represents some 6,800 former residential school students across Canada.

"I hope the public is right and that things turn out to be wonderfully remunerative. We think we will do well, but what people ought to understand is that currently we carry about \$12 million of work that's unpaid."

The amount of money going to lawyers has been one of the ongoing controversies of the settlement process.

First Nations leaders have raised concerns about both the large fees abuse victims are paying to their lawyers, and to the many millions of dollars Ottawa is spending on government lawyers to defend the cases.

At the Assembly of First Nations annual conference in Charlottetown last month, Grand Chief Phil Fontaine said while \$71 million has been spent to date settling claims, \$200 million will be spent on lawyers.

Indian Residential Schools Resolution Department spokesperson Nicole Daus says nowhere near that amount has been spent to date.

But no one disputes that plaintiffs lawyers have already made millions and stand to make many more millions as the settlement money begins to flow faster.

Ottawa plans to spend \$954 million on payments to former residential school students over the next seven years.

Under the government's new fast-track approach to residential school settlements (Alternative Dispute Resolution), Ottawa adds 15 per cent to awards where lawyers are assisting the claimants.

However, any lawyer's fee, whether it's 15 per cent or 45 per cent, is still something that has to be worked out between the client and the lawyer, according to Indian Residential Schools Resolution director general Shawn Tupper.

Merchant said his residential school clients pay anywhere from 20 per cent to 40 per cent of their settlement or award, depending on what stage of the proceedings the case has proceeded to.

But he said he's heard of lawyers who charge their residential clients up to 50 per cent of their settlements.

The relatively high fee that applies on contingency work is fair because of the financial burden the lawyer assumes on cases that don't result in a settlement, he said.

There's also the high cost of taking these cases to court to consider, Merchant said. For example, one residential school case that went all the way to the Supreme Court of Canada required \$260,000 of legal work, he said.

In a worst case scenario, the client could end up with a reduced settlement and the fee for the lawyer would be about \$30,000.

Merchant said the public should be concerned more about the millions Ottawa is spending on their own lawyers in order to fight residential school lawsuits.

He points out that the federal government announced last year it expects to spend \$1.7 billion on residential school cases over the next seven years, but only about \$1 billion of that (\$954 million) is going to the actual payouts.

Tupper said that doesn't mean Ottawa is spending \$700 million on staff lawyers.

In fact, most of the non-settlement money will go to various programs aimed at helping aboriginal people.

This year, for example, the department's budget is \$93 million, but about \$8 million is for administration and \$14 million will pay the Justice Department for lawyers.

The remaining \$71 million will go toward a health program aimed at aboriginal people. Tupper said the government has been concerned about the amount of settlement money going to plaintiff lawyers and those considerations went into planning for the Alternative Dispute Resolution process.

"We had seriously considered whether we could design a process that had no lawyer involvement at all," Tupper said.

"But there are already more than 11,000 claims and those lawyers are there. They're unavoidable, they have a relationship with their clients and we can't interfere in that."

Eddie Bitternose, band councillor at the Gordon First Nation, estimates that more than half the money received by people who were sexually abused by former principal William Starr ended up going to the lawyers.

"Guys don't know that when they're going to have coffee with their lawyer, they're actually paying \$150 or \$200," he said.

"In one case in our community, there was one guy who ended up not getting anything. The visits and calls to his lawyer added up to more than his share.

"He ended up with nothing."

However, Merchant defended the contingency system, where clients don't pay the lawyer unless there's a settlement or court award.

"This is an example of something truly wonderful by lawyers," he said.

The financial arrangement is similar to that for typical personal injury liability cases, he said.

Under the contingency system, low-income people who couldn't afford to pay lawyers on an hourly basis are still able to take complex cases to trial.

"This is an example of lawyers doing what they really ought to be doing," he said.

"They ought to find people, particularly the downtrodden, who merit recognition and compensation...and find a solution for them. And that's really what's happened."

GRAPHIC: Photo: Bryan Schlosser, Leader-Post; Tony Merchant says lawyers are not working on the residential school settlements just to get rich.

LOAD-DATE: August 9, 2004

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHARLES BAXTER SR., ELIJAH BAXTER, LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, JAMES FONTAINE in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, PETER GEORGE TAATI AIRO, MICHELLINE AMMAQ, DONALD BELCOURT, JOHN BOSUM, RHONDA BUFFALO, FREDDIE JOHNNY EKOMIAK, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, JIM CHEWANISH, EARL KENNETH COTE, MALCOLM DAWSON, ANN DENE, KEITH DIETER, VINCENT BRADLEY FONTAINE, MARIE GAGNON, PEGGY GOOD, CLIFFORD HOUSE, FRED KELLY, ROSEMARIE KUPTANA, JIMMIE KUMARLUK, ELIZABETH KUSIAK, THERESA LAROCQUE, JAME McCALLUM, CORNELIUS McCOMBER, STANLEY THOMAS NEPETAYPO, CAROLYN TAKATAK NIVIAxie, FLORA NORTHWEST, ELIASIE NOWKAWALK, NORMAN PAUCHEY, CAMBLE QUATELL, ALVIN BARNEY SAULTEAUX, SIMON SCIPIO, ELIZABETH SCIPIO-KOOKASH, CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER, ALVIN GERALD STRAIGHTNOSE, EDWARD TAPIATIC, BLANDINA TULUGARJUK, HELEN WINDERMAN and ADRIAN YELLOWKNEE

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE BAPTIST CHURCH IN CANADA, THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, THE ROMAN CATHOLIC BISHOP OF VICTORIA, THE ROMAN CATHOLIC BISHOP OF NELSON, THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD-McLENNAN, THE CATHOLIC ARCHDIOCESE OF EDMONTON, LA DIOCESE DE SAINT-PAUL, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF MacKENZIE, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, THE ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT-BONIFACE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF SAULT STE. MARIE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES

BAY, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN CANADA, IMPACT NORTH MINISTRIES, INSTITUT DES SOEURS DU BON CONSEIL, JESUIT FATHERS OF UPPER CANADA, LES MISSIONNAIRES OBLATS DE MARIE IMMACULEE (also known as LES REVERENDS PERES OBLATS DE L'IMMACULEE CONCEPTION DE MARIE), LES MISSIONNAIRES OBLATS DE MARIE IMMACULEE (PROVINCE DU CANADA-EST), LES PERES MONTFORTAINS (also known as THE COMPANY OF MARY), LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES TERRITOIRES DU NORD OUEST, LES SOEURS DE LA CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (also known as SISTERS OF CHARITY OF OTTAWA – GREY NUNS OF THE CROSS), LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE NICOLET AND THE SISTERS OF ASSUMPTION, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE DE L'ALBERTA, LES SOEURS DE NOTRE DAME AUXILIATRICE, LES SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE, LES SOEURS DE ST. FRANCOIS D'ASSISE, MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (also known as MISSIONARY OBLATES OF THE SACRED HEARTS AND MARY IMMACULATE or LES MISSIONNAIRES OBLATS DE SAINT-BONIFACE), SISTERS OF THE HOLY NAMES OF JESUS AND MARY (also known as THE RELIGIOUS ORDERS OF JESUS AND MARY and LES SOEURS DE JESUS-MARIE), SISTERS OF THE PRESENTATION OF MARY (SOEURS DE LA PRESENTATION DE MARIE), ST. PETER'S PROVINCE, THE BENEDICTINE SISTERS, THE BOARD OF THE HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS, THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE DAUGHTERS OF THE HEART OF MARY (also known as LA SOCIETE DES FILLES DE COEUR DE MARIE and THE DAUGHTERS OF THE IMMACULATE HEART OF MARY), THE DIOCESE OF MOOSONEE,, THE DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE GREY NUNS OF MANITOBA INC. (also known as LES SOEURS GRISES DU MANITOBA INC.), THE GREY SISTERS NICOLET, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE MISSIONARY OBLATES OF MARY IMMACULATE-GRANDIN PROVINCE, THE MISSIONARY OBLATES OF MARY IMMACULATE-PROVINCE OF ST. JOSEPH, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA , THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE OBLATS OF MARY IMMACULATE, THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, THE SISTERS OF CHARITY (GREY NUNS) OF MONTREAL (also known as LES SOEURS DE LA CHARITÉ (SOEURS GRISES) DE L'HÔPITAL GÉNÉRAL DE MONTREAL), THE SISTERS OF CHARITY (GREY NUNS) OF ST.

ALBERT (also known as THE SISTERS OF CHARITY (GREY NUNS) OF ST, ALBERTA), THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES, THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, THE SISTERS OF INSTRUCTION OF THE CHILD JESUS (also known as THE SISTERS OF THE CHILD JESUS), THE SISTERS OF SAINT ANNE, THE SISTERS OF ST. JOSEPH OF SAULT STE. MARIE, THE SISTERS OF THE CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (also known as THE SISTERS OF CHARITY OF HALIFAX), THE SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF WESTMINSTER, THE SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE UNITED CHURCH IN CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF EDWARD NAGEL
(sworn August 11, 2006)

I, EDWARD NAGEL, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Chartered Accountant and Senior Manager in the Deloitte & Touche LLP Forensic & Dispute Services group ("Deloitte") and as such have personal knowledge of the matters herein deposed to.
2. I have focused exclusively on forensic and investigative accounting and dispute resolution since 1998. My experience encompasses conducting financial investigations, anti-fraud consulting, analysing and quantifying economic damages and resolving allegations of fraud and financial misconduct. I have provided expert witness testimony before the Superior Court of Justice in Ontario.

Scope to Deloitte Engagement

3. Deloitte was retained by Torys LLP ("Counsel") to assist in reviewing retainer agreements and other data relevant to this matter, in order to assist the Honourable Frank

Iacobucci in his evaluation and determination of the amount payable to Merchant Law Group (MLG) for their services in relation to the Residential School claims. Throughout, Deloitte has been represented by Peter Dent, Eric Khan and myself.

4. Specifically, as part of the verification process (hereinafter referred to as the "verification exercise"), Deloitte was asked to review the following:

- (a) The number of retainer agreements that MLG had with its clients as at May 30, 2005;
- (b) The amount of Work-in-Progress ("WIP") in respect of each retainer agreement, bearing in mind the \$4,000 cap for each retainer agreement; and
- (c) The amount and nature of the class action work that MLG indicated it carried out.

Approach to Deloitte Engagement

5. Deloitte (myself, along with Messr. Khan) attended MLG's Regina offices located at 2401 Saskatchewan Drive, Regina, Saskatchewan, S4P 4H8, from January 17, 2006 to January 24, 2006. We participated in several meetings with MLG representatives, including Tony Merchant, Evatt Merchant, Don Outerbridge, Gordon Neill, Cindy Roth and MLG's Information Technology professional (name unknown).

6. On January 17, 2006, MLG provided Deloitte with an undated document (copy attached as exhibit "A") relating to its physical files, confidentiality, disbursements as well as various correspondence compiled by MLG regarding solicitor-client privilege from select provincial law societies, including Manitoba, Alberta, and British Columbia (copies attached as Exhibit "B"). This documentation, together with MLG's letter to Deloitte dated January 24, 2006, (copy attached as Exhibit "C") highlighted MLG's concerns regarding solicitor-client privilege and client confidentiality, should Deloitte obtain unfettered and unsupervised access to its client files.

7. MLG advised Deloitte that there were 543 banker boxes, plus a further 102 3-foot tank drawers containing files relating to this matter. Deloitte mapped the location of the boxes,

cabinets and rooms in order to facilitate future review of such client files. Deloitte opened a random selection of 25 boxes/cabinets to verify that the labelled files contained within each were consistent with the list included with the box/cabinet, where available. Free access to remove and review the contents of MLG's client files was asked for; however, it was not provided to us. Deloitte cannot confirm the total number of boxes/files purported by MLG to relate to this matter.

8. MLG advised Deloitte that they were unable to obtain approximately 200 additional files relating to this matter (See Exhibit A).

9. Deloitte assembled the following team of professionals to complete the aforementioned scope of work (including the dates that they attended MLG's offices):

- (a) Edward Nagel - January 17-24, 2006;
- (b) Eric Khan - January 17-24, 2006;
- (c) Marcia Barry - January 18-20, 2006;
- (d) Thomas Matthews - January 18-24, 2006;
- (e) Kimberly Mazzei - January 20-21, 2006;
- (f) Nicole Osayande - January 20-22, 2006; and
- (g) Ian Middlemas - January 22-24, 2006.

10. In an effort to address MLG's concerns relating to solicitor-client privilege and confidentiality of their client files, and based on discussions between Deloitte and MLG, Deloitte developed a Laptop Security and Chain of Custody document ("Protocol Document"). A copy of the Protocol Document that was executed by MLG and Deloitte on January 19, 2006, is attached hereto and marked as Exhibit "D". Pursuant to the Protocol Document, Deloitte sourced and configured two dedicated laptops with appropriate encryption software that was acquired for this matter. Deloitte also obtained four external USB devices

to back up its work product files. The terms of the Protocol Document required that all confidential information be maintained at MLG's Regional offices.

11. During our attendance at MLG's offices, Deloitte obtained the following information/documentation (in addition to documents otherwise referred to herein):

- (a) A list of typical documents contained in MLG client work product files and samples of such documents.
- (b) An electronic listing of the 8,560 clients with whom MLG claims to have had a solicitor-client relationship in this matter ("Client Listing").
- (c) Photocopies of MLG's available 4,823 retainer agreements.
- (d) An electronic summary listing of MLG's WIP and disbursements *by client* for the period from inception of this matter to November 20, 2005 and for November 21, 2005 to January 20, 2006.
- (e) Four MLG client work product files, as selected by MLG, in relation to this matter.
- (f) Hard copy detailed WIP and disbursement reports provided by MLG for seven clients in relation to this matter, as selected by Deloitte.
- (g) Curriculum vitae for Don Outerbridge, MLG Director of Administrative Activities and Financial Management.

12. Deloitte developed an Access database to capture the information from our verification exercise. Deloitte provided MLG with screen prints of our database for their review, which included the information fields proposed to be captured during the verification exercise.

13. Deloitte developed a sampling approach for purposes of reviewing MLG's client files.

14. Deloitte reconciled the hard copy retainer agreements provided by MLG to its Client Listing, which encompassed a review of MLG client codes, MLG signatures, client signatures and retainer agreement dates.

15. Deloitte prepared three written document requests dated January 20, 2006, January 22, 2006 and January 24, 2006 (copies attached as Exhibit "E"). The first two requests were provided to MLG; the third document request was not provided to MLG due to the cessation of the verification exercise (See paragraphs 27 - 30).

16. Deloitte conducted preliminary research on EasyLaw to ascertain the functionality of the software with respect to obtaining electronic output from MLG's billing system.

Observations

17. Deloitte requested of MLG, but did not receive, the following information/documentation, which I believe is required to complete the verification exercise:

- (a) Electronic listings of summary WIP for the *Residential Schools' class action file* from the inception of this matter through to November 20, 2005 and from November 21, 2005 to January 16, 2006.
- (b) Electronic listing of total hours billed by MLG lawyers for each year since the inception of this matter through to November 20, 2005 and from November 21, 2005 to January 16, 2006 in relation to:
 - (i) This matter; and
 - (ii) Total MLG billings.
- (c) Electronic listing of MLG lawyers with their respective level, initials, hourly rate(s), and related employee codes.
- (d) For the sample of client files included in Deloitte's request dated January 22, 2006 (*and Deloitte's revised request for information dated January 24, 2006*):
 - (i) All information/documentation that supports a substantial solicitor-client relationship.

- (ii) A line-by-line detail of hours billed by MLG lawyers, by day, from the inception of this matter through to November 20, 2005 and from November 21, 2005 to January 16, 2006.
- (iii) A line-by-line detail of disbursements incurred from the inception of this matter through to November 20, 2005 and from November 21, 2005 to January 16, 2006.
- (e) Confirmation from MLG as to whether the following client codes relate to this matter (identified from the summary WIP listing referred to in paragraph 11 above) 479907, 569703, 539519, 409782, 480422, 465454, 471025, 470107, 460380, 469118, and 239742.
- (f) Verification from Cindy Roth of MLG whether MLG's Billing System (EasyLaw) could be exported to Excel.
- (g) Sample retainer agreement formats used by MLG's offices to secure clients in relation to this matter.

18. Further to the information/documentation referred to herein, additional as yet undetermined information may be required to complete the verification exercise. However, the potential need for additional information will only become known upon the resumption of the verification exercise.

19. MLG provided Deloitte with access to its hardcopy retainer agreements, which amounted to 4,823 or approximately 56% of MLG's 8,560 purported clients. Based on Deloitte's review of such retainer agreements, we noted the following:

- (a) 1,704 (or 35%) of the 4,823 were not signed by MLG.
- (b) 31 (or 0.6%) of the 4,823 were not signed by the client.
- (c) 782 (or 16%) of the 4,823 were not dated.
- (d) 238 (or 5%) of the 4,823 were dated after May 30, 2005.

- (e) 42 (or 0.9%) of the 4,823 were in a different format from the remaining population of retainer agreements provided by MLG.

20. During Deloitte's attendance at MLG's offices, we noted that additional retainer agreements were provided for consideration; these additional retainer agreements were, for the most part, dated in 2006.

21. As part of Deloitte's review of the 25 boxes/cabinets referred to in paragraph 7 above, Deloitte identified at least one box included amongst MLG's purported work product, which was unrelated to this matter.

22. At no time during the site visit to MLG's offices was Deloitte afforded unsupervised access to MLG work product. Further, Deloitte's review of MLG's purported 8,560 client work product files was restricted to a cursory review of four client work product files, all of which were selected by MLG.

23. Deloitte was provided with limited access to MLG's files for the purpose of reviewing WIP, which encompasses time spent on the class action file and time spent on individual client files. In order to test the validity of MLG's WIP, a detailed approach is required. Therefore, a verification of the *bona fide* hours charged could not be performed based on the procedures conducted to-date.

24. Deloitte noted that MLG Executive Director, Don Outerbridge, had time charged to client files. Tony Merchant stated that Don Outerbridge's time charges reflect work performed by MLG paralegal staff who were said to be dedicated exclusively to this matter.

25. MLG advises Deloitte that all Residential Schools' clients were identified with a 6-digit code that commenced with a "39". Based on a review of MLG's high-level WIP report, Deloitte identified at least 11 clients that appear to be unrelated to this matter based on their assigned code. Tony Merchant stated that no additional effort would be provided by MLG to remove the unrelated clients and that MLG would not be responsible for excluding same from its WIP report.

26. Based on Deloitte's review of seven detailed WIP reports provided by MLG (selected by Deloitte), our observations include the following:

- (a) Multiple time and disbursements entries dated February 1, 2004 pertaining to work performed from September 1998 to early 2004: this requires further clarification. We noted a further entry dated February 1, 2004 for one lawyer that exceeded 1,200 hours; the description indicates "Settlement Conference". While a conversion of the EasyLaw billing system was purportedly conducted on February 1, 2004, and may explain these entries, this illustrates an apparent weakness of MLG's billing system in that it permits time entries to exceed 24 hours per day.
- (b) The hourly rate charged by Tony Merchant on one of the detailed WIP reports that Deloitte reviewed relating to this matter was \$750 per hour in contrast to \$450 per hour charged by him on an apparently unrelated engagement.
- (c) Deloitte noted time entries for 0.02 (or 1.2 minutes) corresponding to the preparation of letters by Tony Merchant amongst the seven WIP reports. Tony Merchant stated that recording time in this manner is common practice when the same letters are sent to multiple clients and charges are allocated amongst such clients.

Cessation of Verification Exercise

27. On January 23, 2006, MLG agreed to provide Deloitte with access to its client files based on the information fields and sampling methodology referred to in paragraphs 12 and 13, respectively and the Protocol Document that was developed.

28. In anticipation of gaining access to MLG's client files, Deloitte prepared a revised document request, a copy of which is included within Exhibit "E", that we intended to provide to MLG on the morning of January 24, 2006.

29. On January 24, 2006, upon arrival to MLG's Regina offices, Deloitte was advised that as a result of an MLG partner meeting, a letter setting out MLG's position with regards to Deloitte's access to its client files, would be forthcoming (See Exhibit "C").

30. Upon receipt of the letter referred to in paragraph 29 and a meeting between Deloitte (myself, along with Messr. Khan) and Tony Merchant, Evatt Merchant, Gordon Neill, and Don Outerbridge it became our understanding that MLG would not be granting further access to its client files, as previously agreed. In the absence of further access to MLG client files, the carrying out of the verification exercise would not be possible, based on the planned methodology described herein.

31. Based upon the limited access to MLG's records, documents and client files, Deloitte has not been able to complete its review of the following:

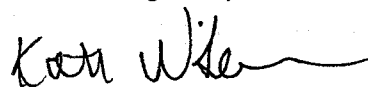
- (a) the number of retainer agreements that MLG had with its clients as at May 30, 2005;
- (b) The amount of WIP in respect of each retainer agreement, bearing in mind the \$4,000 cap for each retainer agreement; and
- (c) The amount and nature of the class action work that MLG indicated it carried out.

Time Spent by Deloitte team at the MLG offices

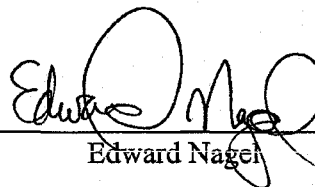
32. Although the Deloitte team was present for eight days at MLG's offices from January 17 to 24, 2006, the majority of that time was spent on meetings and planning with respect to the verification exercise, rather than executing the verification exercise. In addition, although we arranged for substantial resources (staff and equipment) to be present to execute the review, these resources could not be effectively utilized because we were given only very limited access to the documents we needed to execute the verification exercise.

33. Deloitte spent the majority of its time conducting the following:
- (a) Participating in a series of meetings with various representatives of MLG to address concerns raised by MLG regarding solicitor-client privilege and timely completion of the verification exercise;
 - (b) Designing a mutually agreed upon methodology with MLG to conduct the verification exercise;
 - (c) Planning for the execution of the verification exercise; and
 - (d) Reconciling retainer agreements to MLG's Client Listing.
34. To the extent that Deloitte was able to conduct some aspects of the verification exercise (e.g. reviewing retainer agreements), Deloitte experienced delays given that Tony Merchant's consent was required for all significant decisions regarding MLG's participation in the review as well as access to its files. Tony Merchant's limited availability and competing client commitments restricted meeting times and further delayed the verification exercise.
35. As a result, Deloitte could not execute the verification exercise.

SWORN BEFORE ME at the City of
Toronto, on August 11th, 2006.



A Notary Public in and for the
Province of Ontario



Edward Nagel

KATE WILSON

THIS IS EXHIBIT*A*..... REFERRED TO IN THE
AFFIDAVIT OF EDWARD NAGEL
SWORN BEFORE ME, THIS*11th*.....
DAY OF*August*..... 2006

Kate Wilson
.....

A Commission for Taking Affidavits

KATE WILSON

MERCHANT LAW GROUP

(AN INTERPROVINCIAL LAW FIRM)

SASKATCHEWAN DRIVE PLAZA 2401 SASKATCHEWAN DRIVE REGINA CANADA S4P 4H8 TELEPHONE 306 359-7777 FACSIMILE 306 522-3299

GORDON J.K. NEILL, Q.C.
DREW R. FLYK
Residing in REGINA
L. JAMES NEUMEIER *
JONATHAN S. ABRAMETZ
Residing in SASKATOON
J. E. JOSHUA MERCHANT
NATASHA DEVIJ *
KEVIN LIESLAL
HOWARD TENNENHOUSE
WILLIAM G. SLATER
Residing in MONTREAL
REGISTERED MEDIATOR

E. F. ANTHONY MERCHANT, Q.C.
MICHAEL R. TROY
ANTHONY L. BOBYSKI
DWAYNE Z. BRALN
JEREMY C.A. CAESSE
RICHARD YAHOLNITSKY
RUPINDER K. DEHALIWAL
GREGORY R. PINCOTT, F.M.D. *
ANNA SHULMAN
VICTOR B. OLSON
SUNEIL A. SARAI
G. E. CROWE (1915-1988)
PRACTICES UNDER CORPORATION I

DAVID A. HALVORSEN I
CASEY CHURKO
ROBERT G. CROWE *
MICHAEL MANTYKA
JONATHAN CROSS -
Residing in VORICTON
JORDAN C. BIENERT
Residing in CALGARY
JAMIE CRAMER *
Residing in WINNIPEG
DARREN WILLIAMS
IN ARTICLES -

HENRI P.V. CRABANOLE I
STEVEN A. HAICHERT -
TIMOTHY E. TUPLE
EVATT F.A. MERCHANT
AYYMAN HAMMOUD *
PETER MANOUSOS
RYAN TEACHUK *
RONALD E. KAMPTSCH
Residing in EDMONTON
JANE ANN SUMMERS
SURREY VICTORIA
IN ARTICLES (ALBERTA) *

GERALD B. HEINRICHS
STEPHEN HILL -
JOHN D. HARDY
MATTHEW V.R. MERCHANT
TREVOR NEWELL
HELMUT ERMS
JASON FROSE *
GRAHAM K. NEILL
S. NORMAN ROSENBAUM
SATNAM S. AULIA
OWEN FALQUEBO
NON-PRACTISING *

Physical Files

Although we are unable to get our hands on about 200 files, the balance of the files have been assembled in Regina. This constitutes 543 12" x 18" bankers boxes of files sent in from other offices which are in all our hallways and an additional 102 tank drawers which are 3 feet long filled with the Regina files. If the files were stacked one on top of the other they would reach 849 feet into the air and with the currently missing files probably 900 feet high.

Confidentiality

Concerning confidentiality I enclose copies of the letters regarding solicitor client privilege and confidentiality received from Law Societies. Interpreting their advice liberally towards granting you maximum access, we believe that because you were not lawyers but here to count numbers and while client names are per se confidential, you could, within the office and without removing copies, be permitted to look at lists which disclose client names and basic computer information.

Disbursements

Our disbursements will change marginally as additional costs are docketed. Our fees will continue to accumulate as ongoing general residential school work continues, such as responding to inquiries by class members.

THIS IS EXHIBIT*B*..... REFERRED TO IN THE
AFFIDAVIT OF EDWARD NAGEL
SWORN BEFORE ME, THIS*11th*.....
DAY OF*August*..... 2006

Kate Wilson
.....

A Commission for Taking Affidavits

KATE WILSON



The Law Society of Manitoba

219 KENNEDY STREET
WINNIPEG, MANITOBA
R3C 1S8

ALLAN FINEBLIT, O.C., B.A., LL.B.
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E-Mail: kdangerfield@lawsociety.mb.ca

January 4, 2005

*Delivered by Courier
Personal and Confidential*

Mr. S. Norman Rosenbaum
Merchant Law Group
812 - 363 Broadway
Winnipeg, MB R3C 3N9

Dear Mr. Rosenbaum:

Re: Practice Advice

Thank you for your letter of December 22, 2005. While you have raised a number of specific issues, I thought that given the time frame to which you have referred, it would be most useful to respond to your inquiry generally, and then should you require anything further, you can follow-up with me as required.

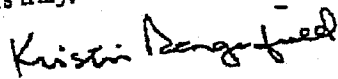
You have quite properly identified some significant concerns associated with a review of client files by a third party, in this case, chartered accountants retained by the Government of Canada. I would presume that the terms of the settlement reached with the Government of Canada, contemplate a process for approving fees which may in part address some of your concerns. You did not, however, reference any particular provisions in this regard, but it would nonetheless be prudent to review the terms of settlement specifically as they relate to the fee payment. For example, presumably the Government of Canada, as a named defendant, is already in a position to identify the names of your clients. While such information is always confidential, it is not the subject of solicitor client privilege. I would assume that no settlement funds will be forthcoming from the Government of Canada without the identification of the claimants. Leaving aside for the moment the issue of the need for client consent to disclose that information, if it is not already in the possession of the Government of Canada, is it likely that any funds would be forthcoming in the absence of that disclosure?

Mr. S. Norman Rosenbaum
January 4, 2006
Page 2

In any event, the Rules of Professional Conduct prevent a lawyer from releasing confidential information to a third party absent the client's consent. That consent may be provided either expressly or impliedly. In these unique circumstances, where your law firm will benefit significantly by a substantial payment from the Government of Canada, no information ought to be disclosed without the express authorization from your clients to do so. It would be incumbent upon you to carefully document the proposal with respect to the fee payment to your clients, in order that they can truly provide an informed consent to disclosure of what would otherwise be confidential (if not the subject of solicitor client privilege) information. Furthermore, anytime a third party pays some or all of a client's fees and disbursements, there is a risk of a conflict of interest. In particular, the lawyer may favour the interests of the third party (or indeed the lawyer's own interests) over those of the client. In the circumstances, it would be prudent to recommend that your clients obtain independent legal advice prior to authorizing you to disclose any information to agents of the Government of Canada for the purpose of securing payment of your legal fees.

Perhaps once you have had the opportunity to consider these comments, you may wish to contact the writer further to discuss any remaining concerns you might have.

Yours truly,



C. Kristin Dangerfield
Senior General Counsel

CKD/h

The Law Society
of British Columbia



VIA FACSIMILE 306-522-3299

REPLY TO: Barbara Buchanan
Direct Line: 604-697-5816
Fax: 604-646-5902
E-mail: bbuchanan@lsbc.org

December 28, 2005

Mr. E.F. Anthony Merchant, Q.C.
Barrister & Solicitor
2401 Saskatchewan Drive
Regina, Saskatchewan S4P 4H8

Dear Mr. Merchant:

Re: Duty of Confidentiality to Clients

As discussed in our telephone conversation of December 28, 2005, I am in receipt of your letter dated December 22, 2005 addressed to Ms. Felicia Folk. Ms. Folk has left the Law Society of BC and has gone into private practice.

Your questions are dealt with in Chapter 5 (Confidential Information) of the *Professional Conduct Handbook*. Rules 1 – 5 and 11 are particularly pertinent to the questions you raise. As an alternative to referring to the hard copy, you can access the *Professional Conduct Handbook* on the Law Society of BC website (www.lawsociety.bc.ca). A lawyer may only disclose a client's confidential information if the client has given the lawyer the authority to do so.

As I mentioned to you yesterday, I recommend that you also review the information on the Law Society website regarding the treatment of PST. Since you were not aware of the December 2005 BCCA decision regarding PST, you may wish to provide an email address to the Law Society of BC. In addition to posting PST information on the website, the Law Society sent the same information to BC lawyers by email.

You told me that you have two offices in BC so it concerns me that the PST information did not come to your attention until we spoke. You may wish to consider providing an email address to the Law Society so that you receive information quickly. You could even make the Law Society website your home page.

I trust this will be helpful to you.

Yours truly,



Barbara Buchanan
Practice Advisor
Ethics & Practice Advice

CONFIDENTIALITY & PRIVILEGE: LAWYERS' ACCOUNTS

The distinction between the evidentiary law of privilege and a lawyer's duty to maintain confidentiality is occasionally focussed on the question of the production as evidence of a lawyer's accounting records.

Manes and Silver summarized the rule¹:

Generally, solicitor's dockets, accounts and cheques are not privileged because they are not communications occurring for the purpose of obtaining legal advice. However, where the dockets, accounts or cheques or attendant communications thereon may contain privileged notations by the solicitor, the court should review and delete those notations before ordering production.

The authors caution that "...such information must still be relevant to an issue in the proceedings...".

A lawyer's time records were in issue where a litigant sought to recover solicitor-client costs². To an extent, privilege had been lost because the records had been proven in open court but, still, the court thought there might be unrelated or otherwise confidential information justifying some deletions.

The test is whether the records contain information amounting to communications for the purpose of obtaining legal advice. The Supreme Court of Canada has held that accounting information provided to a legal aid agency was privileged³. The Federal Court of Appeal has discussed the difference between privilege and confidentiality in the context of production of solicitor's accounts⁴. In considering what was producible, it stated⁵:

Perhaps the most important distinction that needs to be highlighted is that it is only communications that are protected by the privilege. Acts of counsel or mere statements of fact are not protected....The general rationale for not protecting matters of fact or acts done is the detrimental effect it would have on litigation. For example, a person cannot avail himself or herself of the privilege by simply communicating a fact to a lawyer or allowing a lawyer to perform an act in his or her place.

Holding that a lawyer's statements of account are privileged, the court explained that trust ledgers and other financial records of the lawyer are not. The parts of those records revealing privileged communications can be severed. The cases are "...not really in conflict. It merely reflects the existence of a broad exception to the scope of the privilege, namely, that it is only communications which are protected. The acts of counsel or mere statements of facts are not protected⁶". The Supreme Court of Canada has, in the context of search warrants, followed *Stevens* and held that even the amount of fees is privileged⁷.

¹ *Solicitor-Client Privilege in Canadian Law*, Butterworths, Toronto, 1993, at p. 173.

² *Mintz v. Mintz* (1983), 38 C.P.C. 125 (Ont. H.C.J.)

³ *Descoteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590

⁴ In *Stevens v. Canada*, [1998] F.C.J. No. 794

⁵ *Ibid.*, para. 25.

⁶ *Ibid.*, para. 42.

⁷ *Maranda v. Richer*, [2003] S.C.J. 69

Documents of this nature produced on examination for discovery are subject to an implied undertaking that they cannot be used for any purpose outside of the litigation.

In summary, statements of account (invoices, bills of account) to clients are privileged as communications for the purpose of obtaining legal advice. Subject to severing portions containing advice or communications and to relevance, the following will be producible:

- ❖ Trust account records;
- ❖ Time records;
- ❖ Cancelled cheques and cheque stubs;
- ❖ Cheque requisitions;
- ❖ Periodic financial statements;
- ❖ Certain disbursement records.

THIS IS EXHIBIT^C..... REFERRED TO IN THE
AFFIDAVIT OF EDWARD NAGEL
SWORN BEFORE ME, THIS^{11th}.....
DAY OF^{August}..... 2006

Kate Wilson
.....

A Commission for Taking Affidavits

KATE WILSON

MERCHANT LAW GROUP

AN INTERPROVINCIAL LAW FIRM

SASKATCHEWAN DRIVE PLAZA 2401 SASKATCHEWAN DRIVE REGINA CANADA S4P 4E8 TELEPHONE 306 359-7777 FACSIMILE 306 522-3299

GORDON J.K. NEILL, Q.C.
DREW R. FLYK
 Residing in REGINA
L. JAMES NEUMEIER *
JONATHAN S. ABRAMETZ
 Residing in SASKATOON
J. E. JOSHUA MERCHANT
NATACHA DEVJI *
KEVIN LIESLAR
HOWARD TENNENHOUSE
WILLIAM G. SLATER
 Residing in MONTREAL
 REGISTERED MEDIATOR

E. F. ANTHONY MERCHANT, Q.C.
MICHAEL R. TROY
ANTHONY L. BORYSKI
DWAYNE Z. BRAUN
JEREMY C.A. CAISSIE
RICHARD YARDINITSKY
RUPINDER K. DHALIWAL
GREGORY R. PINCOTT, Ph.D. *
ANNA SHULMAN
VICTOR B. OLSON
SUNEIL A. SARAI
G. E. CROWE (1925-1989)
 PRACTISES UNDER CORPORATION /

DAVID A. HALVORSEN /
CASEY CHURKO
ROBERT G. CROWE *
MICHAEL MANTYKA
JONATHAN CROSS -
 Residing in YORKTON
JORDAN C. BIENERT
 Residing in CALGARY
JAMIE CRAMER *
 Residing in WINNIPEG
DARREN WILLIAMS
 IN ARTICLES -

HENRI P.V. CHABANDE -J
STEVEN A. HACHERT -
TIMOTHY E. TURPLE
EVATT R.A. MERCHANT
AYTMAN HAMMOUD *
PETER MANDUSOS
RYAN TRACHUK *
RONALD E. KAMPITSCH
 Residing in EDMONTON
JANE ANN SUMMERS
SURREY/ VICTORIA
 IN ARTICLES (ALBERTA) *

GERALD R. HEIDRICHS
STEPHEN HILL -
JOHN D. HARDY
MATTHEW V.K. MERCHANT
TREVOR NEWELL
HELMUT EHMS
JASON FIEGE *
GRAHAM K. NEILL
S. NORMAN ROSENBAUM
SATNAM S. AULFA
OWEN FALQUERO
 NON-PRACTISING *

January 24, 2006

Deloitte and Touche LLP

Attention: J. Eric Khan & Edward Nagel

Dear Sirs:

I have been asked to write on behalf of our firm, further to a meeting which took place this morning.

For more than a decade, I have been the person designated to take the lead on issues of ethics and Law Society compliance. As a result, I have been asked to outline our firm's decision concerning the verification process.

We collectively do not think there is more information we can provide you without being in clear breach of the canons of ethics and our obligations to maintain solicitor-client confidentiality.

We can not breach solicitor-client privilege *to some degree*. It is simply not permissible. Moreover, any breach is simply impossible. There is no settlement of residential school litigation in place. Even if the common experience settlement is approved, thousands of our clients will have an ongoing litigation interest against your client (the federal government, under the proposed Independent Assessment Process). Some clients may also choose to reject the proposed structured settlement process, and instead will face a court trial against your client.

It is unallowable to disclose solicitor-client privileged information to a third party, and the proposed disclosure of information here is to the agents of an opposing party regarding ongoing litigation.

There is no issue of the sacrosanct nature of the solicitor and client duty of confidentiality, and to use a Supreme Court wording, it is a superordinate principle, where appearance is every bit as important as reality, so that members of the public will know with absolute assurance that under no circumstances will the solicitor and client duty of confidentiality be breached. Bearing in mind the importance of this principle, the letters from Law Societies' practice advisors were stark in their clarity.

- 2 -

Nine of us met this morning over the issue of verification of legal fees. Tony and Evatt Merchant, and to a limited extent Tim Turple, have been involved in various discussions concerning these matters in the past week. We have concluded that the verification process can not override our obligations under solicitor-client privilege, and I underscore advice we have received:

From the Manitoba Law Society: "In any event, the Rules of Professional Conduct prevent a lawyer from releasing confidential information to a third party absent the client's consent.... In these unique circumstances, where your law firm will benefit significantly by a substantial payment from the Government of Canada, no information ought to be disclosed without the expressed authorization from your clients to do so.... Furthermore, anytime a third party pays some or all of a client's fees and disbursements, there is a risk of a conflict of interest. In particular, the lawyer may favour the interest of the third party (or indeed the lawyer's own interests) over those of the client. In the circumstances, it would be prudent to recommend that your clients obtain independent legal advice prior to authorizing you to disclose any information to agents of the Government of Canada for the purpose of securing payment of the legal fees."

From the Law Society of British Columbia: "A lawyer may only disclose a client's confidential information if the client has given the lawyer the authority to do so."

From the Alberta Law Society: "The Supreme Court of Canada has held that accounting information provided to a legal aid agency was privileged. The Federal Court of Appeal has discussed the difference between privilege and confidentiality.... The Supreme Court of Canada has, in the context of search warrants, followed *Stevens* and held that in the amount of fees as privileged."

As the Law Society of Alberta has pointed out, the Sinclair Stevens decision, which has been followed in other cases, indicates that even solicitors accounts are privileged.

We have attempted to provide you information to allow for "verification" without breaching solicitor-client privilege. Additional information can only amplify the information provided and should not be necessary. This process was not intended to be an audit for value or similar process.

No Law Society, jurist, or arbitrator would find that it was acceptable for solicitor-client privilege to be breached, based upon clearly defined precedent, even if a different intention were intended by the federal government, Torys, and/or Merchant Law Group. These three entities can not enter into an agreement resulting in the deliberate breach of the solicitor and client duty of confidentiality to our clients and our requirement to protect the privileged and confidential information of our clients can not be contravened.

I want to note that we have already given you access to a significant amount of information. You have seen our retainer agreements. You have seen our boxes and cabinets of files which we estimate would stretch 900 feet. You have seen our pre- and post-November 20 work in progress figures. We have provided you with a list of our files which includes an indication of when they were opened. Those records are accurate and we are prepared to swear affidavits confirming the same, as is contemplated by the agreement in principle.

- 3 -

Although you have discussed with Evatt and Tony the possibility of being allowed to examine files, the same is simply impossible. The issues of propriety, confidentiality, and privilege prevent it.

Any client specific information you have received must be returned. Your own data is yours to retain but any information that we have provided must remain here at Merchant Law Group, and if there is any information in dispute, it should be sealed in envelopes, which I will hold in trust.

I have been providing legal advice to accountants and auditors on a regular basis for over the last 35 years, and have some knowledge of the Handbook of the Institute of Chartered Accountants. With respect, we believe that the agreement in principle is being incorrectly interpreted by your client if they believe it gives you authority to see our client files or obtain more information than we have provided or are prepared to provide. If you are unable to complete verification based on the records provided, may I suggest that you qualify your opinion accordingly.

We regret any inconvenience this has caused you. I recognize that both sides have made substantial efforts. We appreciate that you have been here for eight days straight. We too put forward substantial effort in this process. We had hundreds of boxes of files assembled and shipped to Regina. We prepared lists and furnished copies of the over 5,000 retainer agreements from our files. When we made arrangements for you to come here, we thought you would be here for four days or less. We believed we were making arrangements for you to come last week in order to complete the verification process and report back to your client this week, so that the final agreement could be signed by February 1. We have done what we can but our firm as a whole has to ensure that we act appropriately. Merchant Law Group is not prepared to allow the creation of significant difficulties with our clients, the courts, and our Law Societies. We will not knowingly do the wrong thing and the terms of verification do not and could not require our firm to do so.

Thank you.

Yours truly,

MERCHANT LAW GROUP

Per:



Gordon J.K. Neill, Q.C.

GJKN*lc

cc. Hon. Frank Iacobucci, Q.C.
John Terry

THIS IS EXHIBIT *10* REFERRED TO IN THE
AFFIDAVIT OF EDWARD NAGEL
SWORN BEFORE ME, THIS *11th*
DAY OF *August* 2006

Kate Wilson
.....

A Commission for Taking Affidavits

KATE WILSON

Deloitte.

Deloitte & Touche LLP
79 Wellington Street West
Suite 1900
P.O. Box 29 TD Centre
Toronto ON M5K 1B9
Canada

Tel: 416.643.8309
Fax: 416.601.6690
www.deloitte.ca

Memo

Date: January 19, 2006
To: Tony Merchant, Merchant Law Group ("MLG")
From: Peter Dent, Edward Nagel, Eric Khan
Subject: Laptop Security and Chain of Custody

In order to maintain a secure computing environment (password protection and hard drive encryption) we would endeavour to take the following into consideration.

Laptop Configuration and Use

1. Forensically sterilize the dedicated laptop hard drives so that it contains no data whatsoever (as if the hard drive was factory sealed).
2. Install the following to create a "base" Operating System ("OS"):
 - a. Windows XP
 - b. Microsoft Office (which will include Microsoft Access)
 - c. McAfee Anti-Virus Enterprise software
 - d. PGP Whole Disk Encryption
 - e. Install all Windows XP security updates
 - f. Password protect the laptop
3. We would acquire a forensic copy of the laptops to create a snapshot of their configuration.
4. Develop and use the Microsoft Access database solely on the dedicated laptops.
5. Encrypted nightly backups copied to CD or USB thumb drives.

Audit. Tax. Consulting. Financial Advisory.

Member of
Deloitte Touche Johnston

Merchant Law Group
January 19, 2006
Page 2

Maintaining the Chain of Custody

1. The dedicated laptops would be left on-site at MLG's Regina office in a secure location:
 - If there was a breach of the physical security of the location and the laptops are stolen, the data contained within would be unreadable due to encryption.
2. The backup CD's/thumb drives would also be left on-site in a secure location but not together with the laptops:
 - If there was a breach of the physical security of the location and the CD's or USB thumb drives were stolen, the data contained within would be unreadable due to encryption.
3. Only Deloitte practitioners will know the passwords used to log into the laptops.
4. A forensic analysis can be done on the laptop hard drives at any time during the engagement to determine any changes that have occurred to the data contained within.
5. Upon completion of Deloitte's fieldwork, all personal information (defined as client name, client address and client six-digit code) captured will be removed from all files, electronic and paper. In order to facilitate future reference to MLG's files, Deloitte will provide MLG with a legend that cross-references MLG's list with Deloitte's list using assigned identifiers.
6. All personal information (as defined above) provided to Deloitte by MLG will be maintained at all times at MLG's Regina offices.
7. MLG agrees to maintain the cross-reference list referred to in item #5 above until specifically instructed by Counsel, John Terry, Torys LLP (Toronto).

Scalability

1. As Deloitte will maintain a snapshot of the laptops prior to any sensitive data being put onto the hard drives, we can configure a third laptop to be used for the engagement.

Local LAN

1. We will implement a Local Area Network ("LAN") to ensure that all laptops utilize a single database to ensure data completeness.

00337

01/19/2006 18:19 FAX 306 522 3299

MERCHANT LAW GROUP

004/004

Merchant Law Group
January 19, 2006
Page 3

Merchant

for Tony Merchant
On behalf of The Merchant Law Group

Peter Dent

Peter Dent
On behalf of Deloitte & Touche LLP

D3

THIS IS EXHIBIT*E*..... REFERRED TO IN THE
AFFIDAVIT OF EDWARD NAGEL
SWORN BEFORE ME, THIS*11th*.....
DAY OF*August*..... 2006

Kate Wilson

.....
A Commission for Taking Affidavits

KATE WILSON

RESIDENTIAL SCHOOLS CLASS ACTION MATTER
Request for Information

Request from: Eric Khan
Request to: Cindy Roth
Date Requested: January 20, 2006

Nature of Request:

1. Please provide a report for the following Residential School clients, which includes a line-by-line detail of hours billed per lawyer, by day for the period (a) Inception of matter through to November 20, 2005; and (b) November 21, 2005 to current. In addition, we require details comprising disbursements for both periods.

399938
39F731
399127
399655
399252
402345
399056

2. Please review the following list of client codes included in the WIP documents provided to us and advise whether or not they relate to the Residential Schools Class Action matter.

479907
569703
539519
409782
480422
465454
471025
470107
460380
469118
239742

RESIDENTIAL SCHOOLS CLASS ACTION MATTER
Request for Information

Request from: Edward Nagel, Eric Khan
Request to: Evatt Merchant/Tony Merchant
Date Requested: January 24, 2006

Nature of Request:

1. Electronic listing of summary Work-In-Progress ("WIP") by client from the inception of this Matter¹ through to November 20, 2005 and from November 21, 2005 to January 16, 2006 (*excluding non-Residential Schools clients*).
2. Electronic listing of summary WIP for the Residential Schools file² from the inception of this Matter through to November 20, 2005 and from November 21, 2005 to January 16, 2006.
3. Electronic listing of total hours billed by The Merchant Law Group ("MLG") lawyer for each year since the inception of this Matter through to November 20, 2005 and from November 21, 2005 to January 16, 2006 relating to:
 - a. The Matter; and
 - b. Total MLG billings.
4. Electronic listing of MLG lawyers with their respective level, initials, hourly rate, and related employee codes.
5. Blank copies of Retainer Agreement formats.
6. For the clients listed in the attached *revised* Appendix A, please provide the following information:
 - a. All information/documentation that supports a substantial solicitor-client relationship.
 - b. An electronic line-by-line detail of hours billed per MLG lawyer, by day from the inception of this Matter through to November 20, 2005 and from November 21, 2005 to January 16, 2006.
 - c. An electronic line-by-line detail of disbursements incurred from the inception of this Matter through to November 20, 2005 and from November 21, 2005 to January 16, 2006.

¹ For purposes herein, the Matter refers to all the Residential School files, including those associated with the Class Action as well as those corresponding to individual client files.

² For purposes herein, the Residential Schools file refers to docketed hours not pertaining to a specific MLG client, but rather activities incurred by MLG pursuant to the entire class population.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

CHARLES BAXTER SR., ELIJAH BAXTER, LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, JAMES FONTAINE in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, PETER GEORGE TAATI AIRO, MICHELLINE AMMAQ, DONALD BELCOURT, JOHN BOSUM, RHONDA BUFFALO, FREDDIE JOHNNY EKOMIAK, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, JIM CHEWANISH, EARL KENNETH COTE, MALCOLM DAWSON, ANN DENE, KEITH DIETER, VINCENT BRADLEY FONTAINE, MARIE GAGNON, PEGGY GOOD, CLIFFORD HOUSE, FRED KELLY, ROSEMARIE KUPTANA, JIMMIE KUMARLUK, ELIZABETH KUSIAK, THERESA LAROCQUE , JAME McCALLUM, CORNELIUS McCOMBER, STANLEY THOMAS NEPETAYPO, CAROLYN TAKATAK NIVIAxie, FLORA NORTHWEST, ELIASIE NOWKAWALK, NORMAN PAUCHEY, CAMBLE QUATELL, ALVIN BARNEY SAULTEAUX, SIMON SCIPIO, ELIZABETH SCIPIO-KOOKASH, CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER, ALVIN GERALD STRAIGHTNOSE, EDWARD TAPIATIC, BLANDINA TULUGARJUK, HELEN WINDERMAN and ADRIAN YELLOWKNEE

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE BAPTIST CHURCH IN CANADA, THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, THE ROMAN CATHOLIC BISHOP OF VICTORIA, THE ROMAN CATHOLIC BISHOP OF NELSON, THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD-McLENNAN, THE CATHOLIC ARCHDIOCESE OF EDMONTON, LA DIOCESE DE SAINT-PAUL, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF MacKENZIE, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, THE ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT-BONIFACE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF SAULT STE. MARIE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY, THE ROMAN

CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, THE ROMAN CATHOLIC
 EPISCOPAL CORPORATION OF HUDSON'S BAY, LA CORPORATION
 EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN
 CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, BOARD OF HOME
 MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN
 CANADA, IMPACT NORTH MINISTRIES, INSTITUT DES SOEURS DU BON
 CONSEIL, JESUIT FATHERS OF UPPER CANADA, LES MISSIONAIRES OBLATS
 DE MARIE IMMACULEE (also known as LES REVERENDS PERES OBLATS DE
 L'IMMACULEE CONCEPTION DE MARIE), LES MISSIONAIRES OBLATS DE
 MARIE IMMACULEE (PROVINCE DU CANADA-EST), LES PERES
 MONTFORTAINS (also known as THE COMPANY OF MARY), LES REVERENDS
 PERES OBLATS DE MARIE IMMACULEE DES TERRITOIRES DU NORD OUEST,
 LES SOEURS DE LA CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (also
 known as SISTERS OF CHARITY OF OTTAWA – GREY NUNS OF THE CROSS), LES
 SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE NICOLET AND THE
 SISTERS OF ASSUMPTION, LES SOEURS DE L'ASSOMPTION DE LA SAINTE
 VIERGE DE L'ALBERTA, LES SOEURS DE NOTRE DAME AUXILIATRICE, LES
 SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE, LES SOEURS DE ST.
 FRANCOIS D'ASSISE, MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (also
 known as MISSIONARY OBLATES OF THE SACRED HEARTS AND MARY
 IMMACULATE or LES MISSIONAIRES OBLATS DE SAINT-BONIFACE), SISTERS
 OF THE HOLY NAMES OF JESUS AND MARY (also known as THE RELIGIOUS
 ORDERS OF JESUS AND MARY and LES SOEURS DE JESUS-MARIE), SISTERS OF
 THE PRESENTATION OF MARY (SOEURS DE LA PRESENTATION DE MARIE), ST.
 PETER'S PROVINCE, THE BENEDICTINE SISTERS, THE BOARD OF THE HOME
 MISSIONS OF THE UNITED CHURCH OF CANADA, THE CANADIAN
 CONFERENCE OF CATHOLIC BISHOPS, THE COMPANY FOR THE
 PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW
 ENGLAND COMPANY), THE DAUGHTERS OF THE HEART OF MARY (also known
 as LA SOCIETE DES FILLES DE COEUR DE MARIE and THE DAUGHTERS OF THE
 IMMACULATE HEART OF MARY), THE DIOCESE OF MOOSONEE,, THE
 DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO,
 THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE
 GREY NUNS OF MANITOBA INC. (also known as LES SOEURS GRISES DU
 MANITOBA INC.), THE GREY SISTERS NICOLET, THE INCORPORATED SYNOD
 OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE
 MISSIONARY OBLATES OF MARY IMMACULATE-GRANDIN PROVINCE, THE
 MISSIONARY OBLATES OF MARY IMMACULATE-PROVINCE OF ST. JOSEPH,
 THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA , THE
 MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known
 as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE OBLATS OF
 MARY IMMACULATE, THE ORDER OF THE OBLATES OF MARY IMMACULATE
 IN THE PROVINCE OF BRITISH COLUMBIA, THE SISTERS OF CHARITY (GREY
 NUNS) OF MONTREAL (also known as LES SOEURS DE LA CHARITÉ (SOEURS
 GRISES) DE L'HÔPITAL GÉNÉRAL DE MONTREAL), THE SISTERS OF CHARITY
 (GREY NUNS) OF ST. ALBERT (also known as THE SISTERS OF CHARITY (GREY

NUNS) OF ST, ALBERTA), THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES, THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, THE SISTERS OF INSTRUCTION OF THE CHILD JESUS (also known as THE SISTERS OF THE CHILD JESUS), THE SISTERS OF SAINT ANNE, THE SISTERS OF ST. JOSEPH OF SAULT STE. MARIE, THE SISTERS OF THE CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (also known as THE SISTERS OF CHARITY OF HALIFAX), THE SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE SYNOD OF THE DIOCESE OF BRITISH COLOMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF WESTMINSTER, THE SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE UNITED CHURCH IN CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA

Defendants

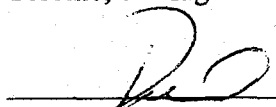
Proceeding under the *Class Proceedings Act, 1992*

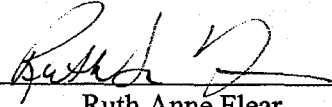
**AFFIDAVIT OF RUTH ANNE FLEAR
(sworn August 11, 2006)**

I, Ruth Anne Flear, of the City of Toronto, MAKE OATH AND SAY:

1. I am a legal secretary with Torys LLP, counsel to the federal representative, the Honourable Frank Iacobucci.
2. I faxed to E. F. Anthony Merchant from the Honourable Frank Iacobucci a letter dated August 3, 2006 by sending a copy of same by fax to 306.522.3299. A copy of the letter along with fax cover page and transmission sheet are attached as Exhibit "A" to this affidavit.

SWORN BEFORE ME at the City of
Toronto, on August , 2006.


Commissioner for Taking Affidavits


Ruth Anne Flear

DAVID OUTERBRIDGE

THIS IS EXHIBIT*A*..... REFERRED TO IN THE
AFFIDAVIT OF RUTH ANNE FLEAR,
SWORN BEFORE ME, THIS*11*.....
DAY OF*August*..... 2006

.....*[Signature]*.....

A Commission for Taking Affidavits

TO RYS LLP
NEW YORK TORONTO

Suite 3000
79 Wellington St. W.
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada

The Honourable Frank
Iacobucci, Q.C.
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August 3, 2006

FAX

Mr. E.F. Anthony Merchant
Merchant Law Group
Saskatchewan Drive Plaza
2401 Saskatchewan Drive
Regina, Saskatchewan S4P 4H8

Dear Mr. Merchant:

Re: Indian Residential Schools

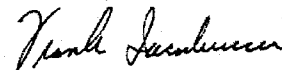
I am writing to advise that the Merchant Law Group has not satisfied me, as federal representative, that the fees it seeks are reasonable, as is required by the fee verification agreement entered into between us. As a result, I have recommended that Canada not support any application brought by the Merchant Law Group for fee approval. That recommendation has been accepted.

I can advise that the federal government will continue to seek approval of the residential schools settlement and certification of the class actions as provided in the final settlement agreement to which you are a party.

It remains our intention to strictly enforce the fee verification agreement and, if you continue in your present course, we anticipate that, as suggested in Justice Ball's order, a trial of the issue will be required following the completion of the approval and certification process.

We would point out that at present there is no information whatsoever before the courts concerning MLG's fees and disbursements.

Yours truly,



Frank Iacobucci

FI/raf

TO RYS LLP
NEW YORK TORONTO

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100745

Date August 3, 2003 **Client-Matter #** 01746-2002
From The Honourable Frank Iacobucci **Direct Tel** 416-865-8217
Page(s) 2 (including this cover page)

Recipient	Fax Number	Tel Number
E. F. Anthony Merchant Merchant Law Group	(306) 522-3299	(306) 359-7777

Comments Please see attached.

If there are problems with this transmission, please call the FAX department at 416.865.7950.

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***** -JOURNAL- ***** DATE AUG-03-2006 ***** TIME 16:21 *****

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-TORYS LLP TORONTO -

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHARLES BAXTER SR., ELIJAH BAXTER, LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, JAMES FONTAINE in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, PETER GEORGE TAATI AIRO, MICHELLINE AMMAQ, DONALD BELCOURT, JOHN BOSUM, RHONDA BUFFALO, FREDDIE JOHNNY EKOMIAK, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, JIM CHEWANISH, EARL KENNETH COTE, MALCOLM DAWSON, ANN DENE, KEITH DIETER, VINCENT BRADLEY FONTAINE, MARIE GAGNON, PEGGY GOOD, CLIFFORD HOUSE, FRED KELLY, ROSEMARIE KUPTANA, JIMMIE KUMARLUK, ELIZABETH KUSIAK, THERESA LAROCQUE, JAME McCALLUM, CORNELIUS McCOMBER, STANLEY THOMAS NEPETAYPO, CAROLYN TAKATAK NIVIAxie, FLORA NORTHWEST, ELIASIE NOWKAWALK, NORMAN PAUCHEY, CAMBLE QUATELL, ALVIN BARNEY SAULTEAUX, SIMON SCIPIO, ELIZABETH SCIPIO-KOOKASH, CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER, ALVIN GERALD STRAIGHTNOSE, EDWARD TAPIATIC, BLANDINA TULUGARJUK, HELEN WINDERMAN and ADRIAN YELLOWKNEE

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE BAPTIST CHURCH IN CANADA, THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, THE ROMAN CATHOLIC BISHOP OF VICTORIA, THE ROMAN CATHOLIC BISHOP OF NELSON, THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD-McLENNAN, THE CATHOLIC ARCHDIOCESE OF EDMONTON, LA DIOCESE DE SAINT-PAUL, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF MacKENZIE, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, THE ROMAN CATHOLIC ARCHIEPISCOPAL

CORPORATION OF WINNIPEG, LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT-BONIFACE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF SAULT STE. MARIE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN CANADA, IMPACT NORTH MINISTRIES, INSTITUT DES SOEURS DU BON CONSEIL, JESUIT FATHERS OF UPPER CANADA, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (also known as LES REVERENDS PERES OBLATS DE L'IMMACULEE CONCEPTION DE MARIE), LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (PROVINCE DU CANADA-EST), LES PERES MONTFORTAINS (also known as THE COMPANY OF MARY), LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES TERRITOIRES DU NORD OUEST, LES SOEURS DE LA CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (also known as SISTERS OF CHARITY OF OTTAWA - GREY NUNS OF THE CROSS), LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE NICOLET AND THE SISTERS OF ASSUMPTION, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE DE L'ALBERTA, LES SOEURS DE NOTRE DAME AUXILIATRICE, LES SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE, LES SOEURS DE ST. FRANCOIS D'ASSISE, MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (also known as MISSIONARY OBLATES OF THE SACRED HEARTS AND MARY IMMACULATE or LES MISSIONAIRES OBLATS DE SAINT-BONIFACE), SISTERS OF THE HOLY NAMES OF JESUS AND MARY (also known as THE RELIGIOUS ORDERS OF JESUS AND MARY and LES SOEURS DE JESUS-MARIE), SISTERS OF THE PRESENTATION OF MARY (SOEURS DE LA PRESENTATION DE MARIE), ST. PETER'S PROVINCE, THE BENEDICTINE SISTERS, THE BOARD OF THE HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS, THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE DAUGHTERS OF THE HEART OF MARY (also known as LA SOCIETE DES FILLES DE COEUR DE MARIE and THE DAUGHTERS OF THE IMMACULATE HEART OF MARY), THE DIOCESE OF MOOSONEE,, THE DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE GREY NUNS OF MANITOBA INC. (also known as LES SOEURS GRISES DU MANITOBA INC.), THE GREY SISTERS NICOLET, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE MISSIONARY OBLATES OF MARY IMMACULATE-GRANDIN PROVINCE, THE MISSIONARY OBLATES OF MARY IMMACULATE-PROVINCE OF ST. JOSEPH, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA , THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE OBLATS OF

MARY IMMACULATE, THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, THE SISTERS OF CHARITY (GREY NUNS) OF MONTREAL (also known as LES SOEURS DE LA CHARITÉ (SOEURS GRISES) DE L'HÔPITAL GÉNÉRAL DE MONTREAL), THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERT (also known as THE SISTERS OF CHARITY (GREY NUNS) OF ST, ALBERTA), THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES, THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, THE SISTERS OF INSTRUCTION OF THE CHILD JESUS (also known as THE SISTERS OF THE CHILD JESUS), THE SISTERS OF SAINT ANNE, THE SISTERS OF ST. JOSEPH OF SAULT STE. MARIE, THE SISTERS OF THE CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (also known as THE SISTERS OF CHARITY OF HALIFAX), THE SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE SYNOD OF THE DIOCESE OF BRITISH COLOMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF WESTMINSTER, THE SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE UNITED CHURCH IN CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF FATHER JACQUES GAGNÉ
(SWORN APRIL 8, 2006)**

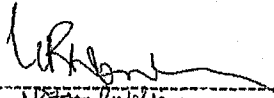
I, Father Jacques GAGNÉ, O.M.I., of Ottawa, Ontario, duly-designated representative of "Les résidences oblates du Québec", as per a duly-designated procuration dated December 1, 2005, (and which is attached hereto and marked as Exhibit "A" to this my affidavit), MAKE OATH AND SAY as follows, that:

1. I am the duly-designated representative of the corporation known as "Les résidences oblates du Québec" which is named as defendant in this proposed Class Action Settlement, and as such have personal knowledge of the facts and matters hereinafter deposed to except where stated to be on information and belief and where so stated, I verily believe the same to be true.
2. I am a member of the religious institute known as "Les Missionnaires Oblats de Marie-Immaculée", or, in English, "The Missionary Oblates of Mary Immaculate".
3. I am authorized to depose this Affidavit on behalf of the above-mentioned corporation (hereinafter referred to as "the Corporation") which is a corporation initially incorporated on December 8, 1976 as "Les Missionnaires Oblats de Québec" and whose successor

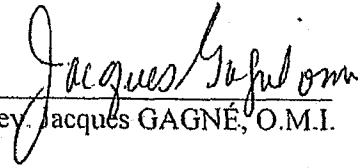
corporation is "Les Résidences oblates du Québec".

4. The Corporation is named as defendant or as third party in court proceedings in the Province of Quebec and in the Province of Ontario by former students of residential schools or by Her Majesty the Queen in Right of Canada.
5. In excess of 35 claims and plaintiffs have either commenced claims against the Corporation as a defendant or in which the Corporation was added as a third party by Her Majesty the Queen in Right of Canada. In the Ontario Baxter class action, Canada has initiated third party proceedings against the Corporation. The defence of such proceedings has constituted a heavy burden on both the finances and personnel of the Corporation. The Corporation has expended and continues to expend excessive resources and funds in the defence of proceedings involving residential schools. In the absence of a settlement, the Corporation will be required to expend even greater resources and funds to the extent available for the continued defence of such proceedings.
6. The average age of members of the Corporation (November 2005) is 74.80.
7. Without admitting liability for any alleged wrongdoing by the Corporation or by those for whom the Corporation may be responsible, the Corporation desires to achieve a fair and reasonable settlement of the Residential School Litigation so that resources and funds of the Corporation that are currently being spent in defence of such litigation can be redirected towards promoting healing and reconciliation in regards to former students of residential schools, their families and their communities. To this end, the Corporation and a number of other Corporations entered into a settlement agreement with Her Majesty the Queen in Right of Canada, copies of which are appended to the Settlement agreement filed in this proceeding.
8. The Corporation supports the proposed settlement agreement as being fair and reasonable considering the factual and legal risks inherent in continued litigation and the costs of trials and appeals of such litigation.
9. In furtherance of the proposed settlement agreement, the Corporation consents to the certification of this particular action under the provisions of the Class Action Proceedings legislation and to court approval of the proposed settlement agreement as a practical means of concluding a national settlement regarding residential school litigation. Although the Corporation consents to the certification of the class action in this instance, it remains the position of the Corporation that class action certification should not be available for the adjudication of factual and legal issues in disputed residential school proceedings. The Corporation further understands that by providing this Affidavit it is not attorning to the jurisdiction of this court over any disputed residential school proceedings.
10. I make this Affidavit on behalf of the Corporation in support of the motion to this Honourable Court to approve certification and the proposed settlement agreement.

SWORN BEFORE ME at the City)
of Calgary, in the Province of)
Alberta, this 24 day of)
April A.D. 2006)



Notary Public
A Commissioner for Oaths in and
for the Province of Saskatchewan
Beau a Solicite


Rev. Jacques GAGNÉ, O.M.I.

00354

LES RÉSIDENCES OBLATES DU QUÉBEC
3400, chemin Saint-Louis, C.P. 9696
Sainte-Foy (Québec) G1V 4C2

EXTRAIT du procès-verbal d'une assemblée du conseil d'administration de la corporation *LES RÉSIDENCES OBLATES DU QUÉBEC*, tenue le 1^{er} décembre 2005, au 3400, chemin Saint-Louis, Sainte-Foy (Québec).

Le 23 novembre 2005, s'est tenue une conférence de presse à Ottawa où il fut annoncé qu'un accord de principe avait été conclu entre le gouvernement du Canada, les conseillers juridiques des anciens étudiants des internats, les conseillers juridiques pour les organismes d'Église (y compris 41 organismes catholiques) et d'autres représentants d'anciens étudiants, y compris l'Assemblée des Premières Nations et d'autres organismes autochtones.

En raison du paragraphe ci-haut mentionné,

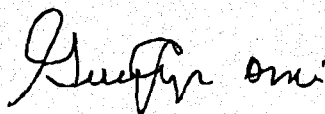
SUR PROPOSITION DÛMENT APPUYÉE,
IL EST RÉSOLU À L'UNANIMITÉ

D'AUTORISER le père Jacques Gagné, o.m.i., à signer pour et au nom de la corporation *Les Résidences Oblates du Québec* (anciennement Les Missionnaires Oblats de Québec) tout document relatif à l'accord de principe.

ADOPTÉE.

Copie certifiée d'une résolution adoptée par le conseil d'administration de la corporation *Les Résidences Oblates du Québec* à une assemblée dûment convoquée le 1^{er} décembre 2005 et à laquelle il y avait quorum. Cette résolution est toujours en force.

Signé à Sainte-Foy, le 1^{er} décembre 2005



 Guy Cyr, o.m.i.
 président

This is Exhibit "A" referred to in the Affidavit of Father Jacques Gagné sworn before me this 8th day of

April A.D. 2006

 A Notary Public in and for the Province of Saskatchewan Being a Solicitor

BAXTER, et al. v.

THE ATTORNEY GENERAL v. THE SYNOD OF ANGLICAN
CHURCH, et al.

Court File No: 00-CV-192059CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**SUPPLEMENTARY JOINT MOTION
RECORD**

**(Motion for Settlement Approval
returnable August 29, 30 and 31, 2006)**

THOMSON, ROGERS

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Counsel for the Plaintiffs