SUPPLEMENTARY JOINT MOTION RECORD – VOLUME II

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 WESTMINISTER, 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

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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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Third Parties

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF DONALD I. M. OUTERBRIDGE

(Sworn August 8, 2006)

I, **Donald I. M. Outerbridge**, Executive Director, of the City of Regina, in the Province of Saskatchewan, **MAKE OATH AND SAY AS FOLLOWS:**

BACKGROUND

1. I am the Executive Director of Merchant Law Group ("MLG") and as such I have personal knowledge of the matters and facts about which deposition is made herein except where stated to be on information and belief, and whereso stated I verily believe the same to be true.

2. I have a Bachelor of Arts from the University of Western Ontario and a Bachelor of Commerce (Honours) from the University of Windsor.

3. All of my working career has been dedicated to law office management. I was the Office Manager of Outerbridge, Barristers and Solicitors, in Toronto, Ontario, a firm of 18 lawyers, from 1982 to 1987.

4. I was the General Manager of Simkin Gallagher, Barristers and Solicitors, in Winnipeg, Manitoba, a firm of 35 lawyers, from 1988 to 1992.

5. I joined MLG in February 1993 and have been the Executive Director of MLG since 1993.

6. We are a firm of approximately 50 lawyers and articling students. MLG has offices in Montreal, Winnipeg, Yorkton, Regina, Saskatoon, Calgary (two offices), Edmonton, Kelowna, Surrey, and Victoria (as well as some smaller satellite offices). MLG is a law firm with individual lawyers who are called to the Bar in Quebec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia (and additionally Tony Merchant is a practising member of the

State Bar of Arizona). Over the years, the partners and associates of MLG, in order of their seniority at the Bar have been Bill Purdy, Gordon Neill, Q.C., Garry Wilson, Q.C., Ian Meikle, Anthony Boryski, Tom Doré, E.F.A. Merchant, Q.C., and also of significant seniority are Satnam Aujla, Tim Turple, Henri Chabanole, Patrick Alberts, David Halvorsen, Jane Anne Summers, Howard Tennenhouse, Gerald Heinrichs, and others.

7. In order to present this evidence in a coherent manner, I have included evidence on information and belief with evidence from my own knowledge. This is necessary for a number of reasons. 1) MLG has acted for individuals in connection with Residential School litigation for nine years. Individual affidavit evidence from even a fraction of our thousands of clients would not permit the Court to get a coherent picture of the work done by MLG lawyers for individual clients, and combining the importance of that evidence is useful and practical. 2) Millions of dollars worth of work has been done by dozens of MLG lawyers, some of whom are no longer with our firm, and again to coherently present evidence by way of individual affidavits would make culmination of information for a fact finder impossible. 3) MLG dealings with the government over the years have similarly involved many MLG lawyers. This has also been the case in recent negotiations which have led to two agreements, one concluded in November (the Agreement in Principle or "AIP", whose terms still govern fee issues for Merchant Law Group) and the other which was concluded in May (the Settlement Agreement or "SA"), and executed by most of the parties in May, June, and July. With other plaintiff counsel, and counsel for the Baxter action as a national consortium ("BNC"), MLG entered into discussions which led to these two settlements, and again to bring the evidence of those negotiations before this Honourable Court in any coherent manner through affidavits by a dozen different MLG lawyers who were involved in those negotiations would be impractical and also make extremely difficult the task for this Honourable Court of synthesizing all of the concepts and information. For these various reasons, some of my affidavit includes information and belief from the MLG lawyers who have pursued residential school litigation on behalf of our firm's clients in various provinces.

8. I also have been designated to swear this affidavit in part because I have been with the firm since 1993, and been intricately involved in all management decisions and various partners discussions where residential school issues were handled; and I am therefore in a good position to provide an overview on behalf of the entire firm as to the history of its work with regard to residential schools. I have also been selected to proffer affidavit information on behalf of the firm due to the concern, particularly for the western provinces, that it would be seen as inappropriate for a lawyer from within the firm to swear an affidavit in proceedings where lawyers from the firm also intend to appear as counsel.

9. For ease of reference, the following MLG lawyers have been assigned the following numbers for the purpose of this affidavit. Where a paragraph of this my affidavit is on information and belief, the paragraph will end with the number or numbers of the lawyers by whom I am informed with respect to some of the information in that paragraph, and in each case I verily believe the same information to be true based on the information provided by the same MLG lawyer(s) identified. The following lawyers are by no means the only MLG lawyers who have done work on Residential School matters but were mainly involved in work for the settlement negotiations. All but Gordon Neill attended some of the meetings convened by the Honourable Frank Iacobucci, Q.C., described in this my affidavit:

1.	Gordon Neill	7.	Evatt Merchant
2.	Tony Merchant	8.	Michael Troy
3.	Jane Ann Summers	9.	Bill Slater
4.	Tim Turple	10.	Josh Merchant
5.	Peter Manousos	11.	Matthew Merchant
6.	Mike Mantyka	12.	Suneil Sarai

10. In addition, other MLG lawyers who have been particularly active with Residential School work and litigation over the years are:

Jonathan Abrametz	Jolene Horejda
Patrick Alberts	Jennifer Jamieson
Drew Belobaba	Christian Johnson
Gavin Bentley-Fisher	Mark Lancaster
Jordan Bienert	Matia Matkovic

Tyler Bond	Bruce Neill
Sylvie Bourassa	Graham Neill
Dwayne Braun	Mike Nolin
Jeremy Caissie	James Purdy
Henri Chabanole	Brendan Pyle
Charlene DeLuca	J. D. Roberts
Jeff Deagle	Norm Rosenbaum
Tom DeCoteau	Earl Shaw
Tom Doré	Tom Stepper
Ron Dumonceaux	Steven Summers
Owen Falquero	Chris Tahn
Hong Go	Eric Wagner
Steve Haichert	Brian Warrington
Gerald Heinrichs	Rick Yaholnitsky
Steve Hill	Lennard Young

11. Numerous other lawyers and staff in the firm have also worked on Residential School litigation. Some of our lawyers have worked almost exclusively on Residential School cases for most of the past decade. Since 1997, MLG's Residential School litigation efforts have been constant, including handling thousands of discoveries and pre-trial hearings, handling half the Residential School trials and approximately 2/3 of all appeals in Canada.

MLG FIRST NATIONS HISTORY & WORK

12. MLG has acted for First Nations and First Nations people during all of my years with MLG. The personal history of our lawyers' involvement with First Nations people, and First Nations causes, long predates the beginnings of MLG, which began as a two lawyer firm on March 31, 1986, then bearing a different name. 2. 3. 4.

13. For several years, MLG has acted for or acts now for numerous Chiefs, members of Band Councils numbering in the hundreds, and on behalf of four former Grand Chiefs of the Federation of Saskatchewan Indian Nations. From Tony Merchant's very early years of practice, he represented First Nations people and extensively argued First Nations causes. Politics, trust, friendship, and fellowship, all have a relationship to the task of working with First Nations people. Politics and the law were conjoined regarding First Nations. Tony was elected to the Legislature of Saskatchewan in 1975. His mother has previously been a member

of the Saskatchewan Legislature. His grandfather has previously been a member of the Saskatchewan Legislature. His great uncle was a long time conservative Member of Parliament from Nova Scotia. From 1968 to 1979, one of his brothers-in-law served as a Cabinet Minister from Saskatchewan in the Cabinets of Pierre Elliot Trudeau; and another, then friend who subsequently became his brother-in-law, served in the same Cabinet from 1968 to 1977 as a senior Cabinet Minister from Ontario and later as High Commissioner to London. Throughout those years, Tony Merchant became a friend of a number of Grand Chiefs in Saskatchewan including David Ahenakew and Sol Sanderson, and other aboriginal leaders. 2. 4. 7.

14. Our law firm has acted for approximately ten First Nations over the past decade and for a wide variety of councillors and chiefs dealing with their legal needs, and sometimes issues related to Band Councils. MLG lawyers have appeared before the courts in four provinces and often in the Federal Court, to argue causes on behalf of First Nations, attended sweats and sentencing circles, and a variety of our lawyers have worked for First Nations, worked on business development projects for a variety of First Nations, and acted for individuals of First Nations heritage on hundreds of occasions. Patrick Alberts, Gerald Heinrichs, Rick Yaholnitsky and others, have all worked for First Nations from time to time, and a wide variety of the members of our firm have worked for Band Councillors and individual First Nations people regarding Residential School matters and also regarding many other legal issues over many decades. 2. 3. 4. 6. 7.

15. Our commencement of work on Residential School litigation began in 1997. One of the Chiefs represented by our firm was in our Regina office meeting with Tony and asked him if MLG were interested in doing Residential School litigation, and he agreed. By coincidence, a few days later two band council members from a different First Nation were in Mr. Merchant's office and made the same suggestion. Again Mr. Merchant agreed. After the two people left, Mr. Merchant walked down the hall and spoke with Patrick Alberts and told him about the conversations. Mr. Alberts took the lead in doing work for Carry-the-Kettle, one of

the largest First Nations in Saskatchewan. Mr. Alberts told Mr. Merchant he already had a Residential School case. 2.

16. A number of First Nations began to send clients to MLG. A number of individuals in First Nations institutions, band offices, healing centres, were known to us to be recommending that individuals with Residential School claims contact our firm. 2. 3. 4. 5. 8. 10. 11.

17. As an example, Flora Northwest, one of our representative plaintiffs in Alberta, held various counselling positions in the Hobbema area and based on her recommendations alone, MLG has about 300 or 400 Residential School clients in that area.

18. On two occasions, Tony Merchant has been awarded eagle feathers by First Nations (once where two First Nations came together with their Band Councils and membership for the ceremony), and this recognition of our work regarding First Nations seems to result in additional clients coming to our firm.

19. Residential School litigation became a crusade for many lawyers within our firm. MLG saw a huge injustice to be resolved. MLG lawyers cared a great deal about this work and took the trust of victims personally. Prosecuting claims was expensive for MLG because MLG represented such a large number of Residential School clients, and our lawyers were committed to moving their cases forward. MLG was determined that our clients would not be victims of the 'deep pockets' defence strategy of denying every claim. The government was spending $4.00 on their lawyers and administration, for every $1.00 being paid in settlements or judgments for victims.

20. The determination of MLG was also noted by the media. Media coverage was significant in MLG becoming the focus of attention for Residential School survivors. Now produced and shown to me, and marked as Exhibit "A" to this my affidavit, are a number of print media articles. There were many, many others published over the years.

21. Tony Merchant, Henri Chabanole, Gerald Heinrichs, Josh Merchant, Norm Rosenbaum, Jane Ann Summers, Evatt Merchant, Mike Mantyka, Tim Turple, and others, have from time to time (and in the case of many of these individuals repeatedly) been interviewed by the media about Residential School litigation, and by the First Nations media on television, radio, and in the First Nations print media.

22. In addition, MLG is well known in western Canada from other litigation, and had the advantage of offices all over western Canada MLG offices all over western Canada tend not to be in locations which would be off putting to First Nations people. The MLG Winnipeg office is easily accessible and on Broadway, a well known street. In Yorkton, the MLG office is in a stand alone building owned by Rick Yaholnitsky, located in a city in the midst of a number of First Nations. In Saskatoon, the MLG offices are in a building owned by the Yellow Quill First Nation known as the First Nations Bank Building.

23. The determination of MLG on behalf of First Nations people is also noted by the First Nations community. Our lawyers speak to Residential School victims at any time of day. None of our lawyers have non-published home telephone numbers. All of our lawyers take calls at home, in the evening, and on weekends. Many of our lawyers regularly give their cellular numbers to Residential School clients. Victims call often. Being available helped earn our clients' trust. 2. 3. 4. 6. 7. 8. 9. 11. 12.

24. Litigation efforts by MLG was continuing from its commencement in the late 1990s. We believe maintaining the pressure of litigation by thousands of victims was a fundamental reason why the government eventually appointed Frank Iacobucci, Q.C., and sought to reach a comprehensive settlement. A great deal of work was being done based on the contingency retainer agreements in place with MLG clients.

25. The issues which arose in the public media were, in the view of MLG, part of the work to continue to focus public attention on Residential School injustice.

26. The electronic media was also very important in a public attention and pressure role. There have been frequent appearances on television both nationally and in various markets. As recent examples, in July and August, 2006, Tony Merchant was interviewed extensively by CBC Radio in Saskatchewan which broadcasts into northern Saskatchewan, and by Missinippi Radio which has small repeaters all over the north, regarding Residential School matters. 2. 4. 6.

MLG'S PROPORTION OF CASES

27. In the attached articles, marked as Exhibit "A" to this my affidavit, there are references from time to time to the number of clients represented by MLG in relation to the total number of claims that were known to have been brought against the government and churches. From the early years of Residential School litigation onward, MLG always seemed to have half, or slightly more than half, of the clients that were known and reported in the media. When we had 2,000 Residential School clients, the media would report that from talking to the government they knew there were 3,860 claims. When we had 3,500 clients, the media would be reporting 6,700 claims or 7,000 claims.

28. For example, in the attached June 17, 2000, Saturday Night article, it reads, MLG had taken on "over 3,000 cases". In the January 8, 2001, LeaderPost article it reads, "The Merchant Law Firm represents 4,300 of the 6,000 former Indian Residential School students who are suing the federal government...". In the March 9, 2001, National Post article it reads, "Merchant Law Group represents about 4,300 native people who say they were abused". In the StarPhoenix on November 2, 2004, ran an article stating "Regina lawyer, Tony Merchant, whose firm represents some 6,800 Residential School claims". The Lawyers Weekly on December 2, 2005, said "Merchant Law Group ... represents half of all individual law suits by

former students against the federal government...". On November 20, 2006, we had 8,099 Residential School client files.

29. Since the late 1990s, MLG has represented approximately half of all Residential Schools survivors seeking compensation from the government for Residential School abuse. Most of MLG clients were pursuing litigation before the Superior Courts of Saskatchewan, Alberta, and B.C.; although MLG also had a significant number of clients in Manitoba and Ontario; with some clients from other provinces and territories, and even the U.S.A. As demonstrated by the government own statistics (which are now produced and shown to be and marked as Exhibit "B" to this my affidavit, being a true copy of page 9 of IRSRC 2001-2002 Departmental Performance Report), approximately 70% of the Residential School claims being advanced in Canada were in Alberta and Saskatchewan, where MLG represented about 60% of all claimants.

30. MLG has issued more than half of the claims that are before the court in the province of Alberta. We have issued more than half of the claims that are before the court in the province of Saskatchewan. We have issued a high percentage of the claims or ADR claims that are before the courts or in the ADR system in the provinces of British Columbia and Manitoba. We have some claims from the province of Ontario and Quebec.

31. Further, the amount of litigation work being done in Saskatchewan far outpaced the other provinces. Now produced and shown to be and marked as Exhibit "C" to this my affidavit, is an Access to Information report, dated October 12, 2005, which shows on pages 4 and 5 that the number of lawyers and the cost alone of their salaries (along with their assistants) were far greater that any other province in Canada; as Saskatchewan (followed by B.C. and Alberta) were the provinces in which Residential School litigation was being most aggressively pursued, while litigation in provinces like Ontario and Quebec was less active. (It should be noted that the figures in the same Access to Information report do not reflect the total annual spending of the government on defending Residential School claims. Now produced

and shown to be and marked as Exhibit "D" to this my affidavit, is a true copy of page 15 of IRSRC Planned Spending Estimates, demonstrating additional spending costs of the government concerning Residential School litigation).

32. Various MLG Residential School cases have proceeded to trial in Saskatchewan and British Columbia. MLG initiated the cases management process in Alberta, although there have been no cases in Alberta. No cases moved forward to a conclusion in Manitoba because the Manitoba limitations legislation until the provincial government, to its great credit, passed legislation which resuscitated Residential School litigation. Hence, Manitoba claims were some years behind the claims in other jurisdictions. In Ontario, MLG concluded many cases through work handled mainly by Jane Ann Summers, who is a long standing member of the Law Society of Upper Canada. Tony Merchant argued a number of cases in the Appellate Courts and with Graham Neill from our Edmonton office and Eugene Meehan, Q.C., successfully argued *H.L.*, the first of the two Residential School cases that have gone to the Supreme Court of Canada. 2. 3. 4. 6. 7. 8. 9. 11. 12.

33. The Government of Canada made it very difficult to bring cases to a conclusion. Through demands for document disclosure, examinations for discovery, on many occasions examining the same client more than once and sometimes three times, through the use of experts where clients moving forward to trial would be sent to experts by the government, usually psychologists, retained by the government, and other means. Sometimes they would succeed in having our clients sent on as many as three interviews by experts. Even getting the government to file a Statement of Defence to a claim often took years and several written requests. The government would delay proceedings and make it very difficult for our clients, as well as making it expensive and difficult for us as a law firm. 2. 3. 4. 5. 6. 7.

34. These issues are significant in relation to risk. These issues are significant in relation to the fact that MLG carried more than half the litigation load, and MLG was taking half the cases in Canada to trial and handled more than half of cases on appeal.

35. According to press reports, the Government of Canada was spending $4.00 defending claims for every $1.00 that went to victims by way of judgments and settlements. An example of the battle, whereby the Government of Canada would spend no end of money fighting what was in large part our law firm and what was perceived by us as an attempt to break us as a law firm and break our will to succeed for victims, a suspicion expressed in my presence often in partnership meetings can be seen in an exchange for Cameron J.A. which Tony recounted to me.

36. Tony Merchant was before Mr. Justice Cameron on an application for leave to appeal by the government on a low damages case. MLG was already in the Court of Appeal over a preliminary motion, and the government lawyer told the judge that the reason for delay by the government was that the archivists were searching for information in order to effectively defend. 2.

37. To make the point of how much work had been done by the archivists, explaining the delay, the government lawyer said, 'The cost to date for archivists has been $212,000.' The judge asked quizzically, "How much did you say?". $212,000 was repeated. Judge Cameron sort of cocked his head and said almost wistfully 'I think I am starting to see the nature of the problem'. 2.

38. MLG ran these trials and fought these battles to bludgeon the Government of Canada into being fair to Residential School survivors. It was a rare trial in which we got as much as our ordinary hourly rates. Usually, we lost money in relation to ordinary hourly rates.

39. Even on successful cases, for example *H.L.*, which went to the Supreme Court of Canada, we spent in terms of the value of our time far more time than the compensation that we can achieve by way of a percentage of the amount of damages flowing from our success in the Supreme Court of Canada. Notwithstanding our success in the Supreme Court of Canada,

1/3rd of what will be in the range of $350,000 will not come close to satisfying our unbilled hourly fees accumulated on the H.L. file. The same has been true with a number of our successes, which have not been successful for MLG, except in the sense of maintaining pressure upon the government.

40. Included in Exhibit "A" is an editorial from the Saskatoon StarPhoenix dated April 30, 2005, one month to the day prior to the government announcement of the negotiations that let to this settlement. The StarPhoenix writes that *H.L.* "should serve to speed up a claims settlement process that's dragged on for too long". The Lawyers Weekly of May 13, 2005, included in Exhibit "A", began with the headline "SCC decision on *H.L.* may impact far and wide". The Canadian Lawyer article in 2006 includes, "Tony Merchant, QC, all but feels his firms monumental settlement after a 2005 Supreme Court of Canada win on behalf of one such client, which ruled Ottawa was liable to the tune of $350,000.00 for abuse suffered by that individual in a residential school". Mass and Class torts are often by necessity handled similarly. Work for one client creates impact for others (which is demonstrated by the impact of individual Vioxx trials which have occurred in the United States). *H.L.* was very impactful, as was *Cloud*, and the thousands of individual cases making their way through the Courts, primarily in the Western provinces.

41. MLG contributed in a variety of ways to bringing the government to a decision that a settlement and this settlement in particular was needed and appropriate. We contributed through our pursuit of litigation, which amounted to 50% of the litigation pressure upon the government. There are many examples of our ongoing legal work. We are continuing to conduct Examinations for Discovery, moving cases to pre-trial and trial, dealing in ADR. All of this pressure contributed to achieving the settlement which is before the court.

42. In a letter of December 1, 2005, now produced and shown to me and marked as Exhibit "E" to this my affidavit, from Paul Vickery, which from the accompanying distribution list received wide distribution indicates that until the contemplated SA and court proceedings come

into effect, litigation would continue and litigation on behalf of various clients whose accounts are sought for disclosure is continuing. The letter reads in part:

> ... the Agreement in Principle ... requires that the final settlement be approved by courts.... It provides that the agreement **will be implemented following those approvals, and the expiry of an opt out period,....**
>
> Pending ... implementation ... **litigation is expected to continue in the normal course through discoveries, and to settlement, ...**

43. On our clients' ongoing cases, just as Paul Vickery indicates, there is an ongoing litigation interest to be advanced. For our clients, now and in the future, whether the settlement is approved or not, and whether clients' claims are resolved in litigation, in ADR, under the new Independent Assessment Process ("IAP"), or in the Courts (for serious clients who opt out even if the settlement succeeds), the release of information (particularly information which is solicitor-client privilege or subject to client confidentiality) would have a devastating effect upon their rights and would have a profound effect upon the class. Our clients will be adversely effected even if the settlement is approved and leads to a settlement by way of the Common Experience Payment ("CEP") and the IAP process (and they do not opt-out of the settlement). 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.

44. The SA governs amalgamation of the claims. Pursuant to the agreement, amalgamation of the Ontario claims may occur, as of the Implementation Date. Merchant Law Group does not agree to amalgamation taking effect before the Implementation Date, as it would prejudice the interest and right of the Plaintiffs and proposed classes under the Ontario claims.

45. In relation to determining approval of counsel fees and what may be appropriate, there are many factors which must be considered. In this case, there were the usual risks. When this litigation began, many in the legal profession and government asserted that there was no legal foundation for a 'Residential School claim'. Leaving aside sexual abuse claims in some provinces, there were statute of limitation issues and generally, this was an entirely risky and

new form of litigation. MLG and other firms ventured into this area of law accepting great risks in a effort to win justice for its clients.

46. By way of comparisons between the work of MLG and the BNC, they moved forward mainly in Ontario with *Cloud*, and work conjunctively with us in regards to Alberta case management. We issued class proceedings first in Quebec and Alberta, and have issued the only class proceedings in Manitoba and B.C., under which the SA is being brought forward in those jurisdictions. We had many more individual actions than the BNC and many more individuals with whom we had to interface and organizations to which we reported and with which we had dealings since 1997. They had greater responsibilities in some areas than we did, and we had greater responsibilities in some areas than they did. We do not criticize the entitlement of the BNC to a fixed fee of $40M. Indeed, MLG lawyers believe this is a modest, if anything inappropriately low award of fees to the BNC for their innovative and effective work which formed an important part of achieving this historic resolution of Residential School wrongdoing. 2. 3. 4. 6. 7.

47. We contributed significantly through the media and the public sense of injustice. A significant part of the pressure that was on the government comes as a result of the repeated contact of the media with members of our firm which resulted in the public awareness of the huge and wasteful spending by the government on lawyers and administration. Through the media, we also contributed to the judiciary becoming increasingly impatient with what they saw as a process of delay. There was general support among Canadians, from what we understood to be information from polls conducted by the Government of Canada, for an overall settlement of Residential School litigation and our lawyers told from time to time that support for a comprehensive settlement ran in the range of 70% of Canadians. But nothing ever seemed to happen. 2. 3. 4. 7.

48. MLG also contributed behind the scenes. Tony Merchant spoke over time with numerous Cabinet Ministers and Prime Minister Chrétien about Residential School litigation

issues as well as speaking with a number of Senators, people within the Prime Minister's offices of both Prime Minister Chrétien and Prime Minister Martin, and speaking briefly with individuals in the Conservative Party, one of whom is now a Cabinet Minister. The BNC also saw the need for pressure and Darcy Merkur and Tony Merchant spoke about this from time to time as their work and ours proceeded. Our sense was that they also were doing good work in this regard although Tony Merchant's level of access was different. A lot of work went into this process which was the repeated expressions of the need for justice for First Nations people, expressed both in terms of the politics of why that would be better and fairer and expressed in terms of the injustice on a substantive and non political level. 2. 3. 4. 7.

49. The proposed settlement establishes the National Certification Committee ("NCC") of seven individuals and contemplates the establishment after certification of a National Administration Committee ("NAC") of seven persons. Tony Merchant is a member of the NCC and, if certification and the requested court orders are granted in all jurisdictions, he will be a member of the NAC. Michael Troy and Williams Slater have worked on the IAP subcommittee, and attended meetings and worked to make sure that the IAP program is effective and fair to victims.

50. If the settlement is approved by the Courts including potential appeals, and if 5,000 class members do not opt out, the settlement will come into effect in an estimated eight months.

51. This is an unusual settlement proposal requiring the approval of 9 Courts, with the right of the government, in the event of $5,000 opt outs, to back away from the settlement.

52. MLG, as did the BNC, attended various meetings with a number of lawyers, did significant preparation for meetings, and in working through the reams of proposals and documents and emails, all of the decisions, because they were hugely significant for members of the class and our clients, were made with significant levels of discussion and idea exchanges in person, by telephone, and in written communications, between the various lawyers within

MLG. It is common in resolving class disputes for a great deal of time and effort to go into discussions and negotiations, in this case successful negotiations.

53. MLG, the BNC, the AFN, sometimes the independent counsel group, and sometimes the churches, often had positions that they advanced in writing.

54. The negotiations carry the same risk of any other negotiations. They could fail. The payor could back away. It almost did. The discussions in this instance were far more time consuming because of travel, principally to Toronto for meetings, notwithstanding the fact that this was primarily a western issue. The discussions carried huge disbursements for travel, accommodations, and living expenses for MLG lawyers.

55. The BNC did an excellent job in the discussions with the Federal Government which, in themselves, were time consuming and formed a major part of the work by MLG and the BNC in achieving this settlement with the Federal Government. In those discussions, MLG sometimes had as many as seven representatives present for meetings and eleven different lawyers appeared at the negotiations, which would often involve two or three day meetings at a time. Preparation and attendance for these negotiations were very time consuming. 2. 3. 4. 6. 7.

56. The discussions were more time consuming than would normally be the case because there was not one view expressed by class counsel in the discussions with the payor, but rather a variety of views expressed by BNC and MLG as class counsel, with valued and diverse views expressed by the Assembly of First Nations (the "AFN"), other representatives of First Nations organizations, and a wide variety of independent lawyers who had a few dozen or sometimes some hundreds of individual clients. These lawyers also attended with expressions of view which often were valuable. There were also multiple payors and the views of the churches were expressed. Four church organizations were represented. Almost all of the First Nations organizations, the churches, and as was the case with the government, MLG, and the BNC,

came with multiple representatives. Sometimes there were in the neighbourhood of 100 representatives attending for meetings all of whom would, from time to time, express views, the vast majority of which were useful, interesting and moved the agenda, but also made the process time consuming and expensive for MLG. 2. 3. 4. 5. 6. 7. 11.

57. Work by the BNC was also important. The success by the BNC in *Cloud* was profound in its impact. The good work by the BNC in the Alberta collective case management process was influential. Our lawyers, particularly Jane Ann Summers, Tim Turple, Mike Mantyka, Graham Neill, Tom Stepper, Peter Manousos, Tony Merchant, and others, also took part meaningfully in the Alberta case management process. 2. 3. 4. 5. 6.

58. The BNC did far less on individual cases than MLG, in terms of ADR and individual trials but these comparisons are only important in relation to the fact that the BNC is to receive a $40M fixed fee and MLG is to receive a $40M fixed fee. 2. 3. 4.

59. Comparisons of effort are only necessary to determine whether the relative payments are fair. MLG lawyers who attended the discussions not only think payment to BNC is fair to the payor, but think it undervalues the work of the BNC. In relation to the risk taken by BNC, and the wonderful result achieved by BNC, MLG, and other counsel, a settlement in the range of $5B with total legal fees of less than 2%, means MLG believes payment to BNC is fully and absolutely justified. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.

60. If MLG and the BNC were getting 10% or 15% of $5B that would be far greater than the $40M. If each of the class firms were getting 5% it would be significantly higher than $40M. If MLG were receiving 1/3rd of the CEP (our entitlement under most contingency fee agreements with our clients) that would be more than double $40M.

61. The CEP compensation is exactly the kind of compensation that MLG sought in its class proceedings: compensation for attending a Residential School, losing culture, getting an inappropriate education, and being subjected to verbal and personal abuse.

62. The issues of culture and loss of education were anticipated to require significant development through experts and case authority. Experts in these areas had been engaged and considerable time spent in working their evidence forward towards anticipated applications for certification and proof at trial. 2. 4. 6. 7.

63. We have a case before McIntyre J. of the Saskatchewan Court which is a pure culture case. The case had, in essence, begun, to the extent that there have been a whole series of pre-evidentiary meetings. Expert evidence has been prepared and exchanged at considerable expense. A lot of time has gone into the case which I will describe as "*R.R.*", although there is no order that the case be described by way of initials. It is a pure case of loss of culture. As Tony put it in a speech to a law conference in Toronto in February, 2006:

> Surely, all Canadians, because of the importance of the Francophone issue in our nation, understand that the loss of the capacity to communicate in a language affects the loss of culture and affects the loss of one's sense of self. Some thoughtful residential school clients have described the issue to me as one by which their grandparents speak a Native language and some English and they speak English and little of their Native language so that between the generations they are able to talk about buying a coca cola but not really able to communicate about the beauty of a sunset or emotions of a marital breakdown. The aim of Canada is expressed through our politicians has been accomplished and the generations have been cut off from each other. 2.

64. We will not be proceeding with that case. All of that work and preparation for a test case is lost. The work on cases where we did not succeed is lost. We are giving up our right to a share of the CEP for all of these individuals even if we were receiving our percentage portion of the CEP, and generally our retainer agreements would result in a payment of about 1/3rd of the CEP to MLG. In many instances we did substantially more work than 1/3rd of the CEP would justify.

65. Merchant Law Group has thus far been provided, by e-mail, with only the affidavits of Darcy Merkur (sworn July 28, 2006) and Frank Iacobucci, Q.C. (Sworn July 28, 2006). We have been advised that the full materials filed before this Honorable Court are expected to arrive at our offices on Tuesday, August 8, 2006 As this is a process where the parties seek initial approval of a settlement, we are reluctant to controvert facts and opinions offered which we do not agree with or share. However, specific exception must be taken with paragraphs 33 to 38 inclusively of the affidavit of Frank Iacobucci, Q.C. The information stated in the same paragraphs is specifically denied and controverted, other than paragraph 35 (d).

66. At the time of this affidavit being sworn, MLG has over $40M worth of unbilled work-in-progress fees on individual client files and our class work file. There is a difference of view between MLG and the government whether the verification process has been accomplished. Representatives of the federal government spent 8 days in our offices and were provided various information before leaving over a dispute concerning solicitor-client privilege and client confidentiality.

67. The work, expense, and turmoil within the firm of assembling files in our Regina office from every MLG office across Canada was enormous. In my estimate, from measuring the size and counting of the banker's boxes, I believe if all the files had been piled one on top of another, they would have gone 900 feet in the air.

68. The information concerning MLG fees and disbursement which will be put before the Saskatchewan Court in September will be well detailed.

69. The BNC and MLG contributed very significantly throughout the settlement negotiations with the government which began in June of 2005, and continued more or less to the end of May of 2006.

70. Under the government of Prime Minister Stephen Harper, MLG has had visited upon it ongoing negotiations and 27 different drafts of a settlement agreement, and every draft included various changes, many of which were substantial. Risk continued, and risk grew that a final settlement would not be reached. 2. 3. 4. 6. 7.

71. A news story submitted under Exhibit "A", consistent with 27 drafts, indicates that "a government led by Stephen Harper should not be obligated to live up to an agreement reached by Paul Martin's Liberals".

72. The government insisted upon a settlement involving many unusual factors and placing unusual burdens. MLG supports a settlement in keeping with the terms of AIP and SA MLG seeks for it and for its clients as well as members of the class all of the benefits that flow from specifics of the AIP and SA.

73. This litigation is a mass tort pursued by MLG and others as a mass tort, and pursued by MLG and BNC through class proceedings. MLG launched class proceedings in the Federal Court and in the superior courts of each of the provinces from British Columbia to Quebec.

74. In Ontario, in addition to launching numerous individual actions, and representing hundreds of individual claimants in negotiated settlements, MLG launched Residential School class proceedings under in *Kenneth Sparvier* 05-CV-31052 and *Joan Van Fleet* 05-CV-032248.

75. Additionally, in other jurisdictions, as well as launching thousands of individual actions, MLG launched class proceedings (both for First Nations and Metis Residential School survivors) in:

Federal Court	Court File No.
Kenneth Sparvier	T 848-05
George Laliberte	T 1620-05

Quebec	
Clifford House	550-06-000021-056
Morris Cardinal	500-06-000308-052
Manitoba	
Christine Semple	C1-05-01-43585
Saskatchewan	
Kenneth Sparvier	816 of 2005
Norman Pauchey	002 of 2002
George Laliberte	1653 of 2005
Elizabeth Aubichon	2036 of 2005
Alberta	
George Laliberte	0501-14216
Flora Northwest	0501-09167
British Columbia	
Camble Quatell	L051875

76. MLG initiated the Court application that resulted in the test case and case management process in Alberta (as no prairie province at the time had class proceedings legislation). In Saskatchewan, we filed a proposed class action with the Court on the first available day (January 2, 2002) that the *Class Actions Act* came into force. Amongst other things, these two provinces had the most Residential Schools and the most survivors. Subsequently, MLG launched various actions. MLG launched two Residential School actions in the Federal Court. (Those actions are to be discontinued in accordance with the SA.) In addition to launching proceedings in the Federal Court, we launched class proceedings in the superior courts of each province from Quebec to British Columbia. MLG was the first firm to launch class proceedings in all provinces except Ontario, and in B.C., Saskatchewan, and Manitoba these remain the only actions.

GOVERNMENT DELAY TACTICS

77. This long journey has been a difficult battle for Residential School survivors (and MLG). It became an obsession for many in our firm. MLG would not be bullied by the government lawyers prepared to spend more money on their own lawyers and the defending cases, than settlements would cost. This is relevant in the application before the Court because

it contributed so significantly to the size of accounts for individual clients, and the work and time that went into our class and representative action work.

78. Residential School litigation has been very meaningful for MLG. The risks of the huge personal and financial commitment undertaken by MLG cost the firm dearly. A former senior partner of the firm, Ian Meikle, used to describe it as the "Residential School disaster". Many partners and lawyers left our firm because Residential School litigation created such a huge financial drain for our firm as we continued to do huge amounts of work without payment and run up disbursements which might not be recovered.

79. Residential School litigation was complex as to facts and extremely complex as to the law. During the years of assisting in the development of the law, MLG lawyers were dealing with many nuances of vicarious liability, non-delegatable authority, limitation periods, *Public Officers' Protection Act* (a limitation issue that arose specifically and separately in Saskatchewan and Manitoba), thin skull, crumbling skull, past and future earnings, causation, comparative filial relationships, cultural genocide, deprivation, and inadequate education. All of this related to psychological issues which are more difficult to prove both by way of causation and damages as well as using experts in a wide variety of genre, psychologists, occupational utilization experts, earnings loss and actuaries, and fitting the facts as they emerged in individual cases into this complex web of legal principles had a significant effect upon MLG work. Third party claims added to the complexity. What was the role and responsibility of the churches? In some cases, the government added First Nations as third parties. There were many files where the government added half a dozen church organizations and also added Gordon's First Nation and other First Nations. All of these issues added to risk and complexity. All of these issues required sophisticated legal analysis and a great deal of work. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.

80. The government could afford to defend impractically. The government did defend impractically. The government seemed happily to be engaged in spending sometimes hundreds

of thousands of dollars defending a $20,000.00 or $40,000.00 individual claim. No individual or corporation would do that.

81. Additionally, the law was developing and changing. Our firm went to the Supreme Court of Canada with *H.L.* but within Residential School litigation there was a whole series of other cases that also went to the appellate level, many taken by MLG and some taken by other firms, and we fought very complex and important cases, which laid down legal principles which had broad forward application but were time consuming in their development and pursuit. 2. 3. 4. 6. 7. 8.

82. Partners' meetings which I attended were often fixated on the legal issues we were encountering with Residential School litigation (and the financial pressures which beset the firm as a result). MLG lost many lawyers over the past ten years who became frustrated working on Residential School files and the sense that the work would never be concluded. MLG lost many lawyers who thought Residential School litigation was far to risky and unlikely to succeed (and that the firm would not be financial sustainable as a result). In the affidavit of Darcy Merkur, paragraph 37 states:

> The residential school claims became "bet the firm" litigation for DP whose practice since 1994 has come to focus primarily on residential school claims.

83. As it is true for David Patterson (who I believe is a sole practitioner), so too did Merchant Law Group "bet the firm" on residential school litigation, and the Patterson comments have put succinctly the tremendous amount of risk taken by many firms in pursuing residential school claims, and the unending amount of work and cost involved in prosecuting these claims against the Federal Government. Merchant Law Group bet a large firm and has been pursuing thousands of individual claims since 1997. In fact, the risk was so great and the prospect for success thought by some to be so uncertain, that MLG has seen many lawyers and even partners leave the firm, citing to me that their main reason for leaving the firm was concerns over the financial risks of the residential school litigation that could bankrupt the

firm, consume it financially, in terms of work load and lawyer productivity, and a stated view that the litigation required would be unending and would consume endless hours, with little prospect of succeeding in most cases.

84. Pressure on people within the firm was very real. We are still under that kind of pressure. I have frequently not known whether we will be able to make bi-monthly staff payroll. We have often come close to having our telephones cut off and on one occasion did have telephones cut off. We were always under pressure from our bank, for being unable to make the interest payment for loans. Judging from what they said to me, and the pressures they have placed on MLG, they were extremely concerned about MLG's financial stability. We did completely "bet the firm". MLG undertook huge risks.

85. The litigation experience for Residential School survivors was also extremely frustrating for them. Being put through the unfair processes to which victims were cruelly subjected by the Government of Canada was very hard on our clients. I have heard Tony describe it as a process "like tearing an emotional bandage off a psychological wound". Many victims had tried to put the memories and wrongdoing of Residential School behind them. Most victims had never talked with anybody about the sexual abuse to which they were subjected. They had never even talked with family. The government in essence encouraged them to come forward by apologizing and claiming that fair compensation would be paid. Then our clients were subjected to repeated discoveries, written disclosures and interrogatories, psychological assessments, and even the receipt of mail created pressures upon our clients because this was a part of the semi-public disclosure.

86. When the Government of Canada decided that they would fight every case and revictimize litigant after litigant, that was the wrong decision. It entrenched within the First Nations community a sense of further betrayal.

87. The government, on more than one occasion prior to this settlement, presented packages which were half-hearted and unsuccessful in ending Residential School litigation and dealing fairly with victims. For example, on December 6, 2002, the government announced that $1.7B was budgeted for an Alternative Dispute Resolution system. Most survivors did not opted for that process because of the limits on payouts and the structural weaknesses of the ADR program as defined by the government (although the ADR adjudicators and people involved were fair).

88. The question remains, "What brought the government to negotiation the settlement which is now before the court?" In April, 2005, *H.L.* was decided on appeal from the Court of Appeal of Saskatchewan (where the Appellate Court had reduced H.L.'s damages to about $120,000.00), with the Supreme Court of Canada largely restoring a trial award. The Trial Judge had awarded H.L. a total of $80,000.00 in non-pecuniary damages, $296,527.00 in pecuniary damages, and $30,665.00 in estimated pre-judgment interest, an award the Supreme Court upheld, although directing recalculations which would moderately reduce the size of the award. *H.L.* was a case of moderate sexual abuse but confirmed you can get damages for loss of earnings flowing from your abuse in Residential School. Hence, for all moderate to serious cases from then on, the government could have found themselves facing $250,000.00 or more in damages.

89. In *Cloud* (a BNC case), the Ontario Court of Appeal held that the students at the Mohawk Institute were entitled to move forward collectively in a class action. The Supreme Court of Canada refused leave to appeal on Cloud a few weeks after rendering their decision in *H.L.* The government announced the appointment of Frank Iacobucci, Q.C., within a month of these two decisions by the Supreme Court.

90. And finally, National Chief Phil Fontaine of the AFN is an extremely effective advocate for fairness and justice, and his influence on the Prime Minister was significant, for

which Chief Fontaine should be commended for his decades of work regarding this injustice. National Chief Phil Fontaine had profound impact in these negotiations.

91. The combination of these factors, with the weight of ongoing litigation (much of it being pressed forward by MLG), lead to the settlement before this Honourable Court.

92. I make this affidavit for no improper purpose.

SWORN BEFORE ME at Municipality of Kincardine, in the Province of Ontario, this 8TH day of August, 2006.

A COMMISSIONER FOR OATHS in and for the Province of Ontario;
My Commission expires:
GREGORY J. CALLAHAN
BARRISTER & SOLICITOR

Donald I. M. Outerbridge

This is Exhibit "A" as referred to in
the affidavit of DONALD T. M. OUTERBRIDGE
sworn before me this 8th day of
AUGUST A.D. 20 06

A Commissioner for Oaths
in and for
the Province of Ontario
~~My Commission expires~~ MK
Being a Solicitor

GREGORY T. CALLAHAN
BARRISTER & SOLICITOR

Six thousand lawsuits over residential schools threaten to bankrupt Canada's Churches and clog up the court system for years. At the centre of the fight is a Regina lawyer named Tony Merchant. Is this a righteous battle or a game of brinksmanship?

CASELOAD

By Larry Krotz

IN 1969, WHILE TAKING A BREAK from university and seeking adventure, I got myself shipped north to the icy shores of Hudson Bay, to Churchill, Manitoba, where I would become a dormitory supervisor, one of a dozen, at the Churchill Vocational Centre. It was a residential school run by the federal government. The students were not young children, but teenagers, Inuit, from settlements across the eastern Arctic, there to take mostly trades training with a bit of academic upgrading thrown in. I was twenty, not much older than the oldest students, and was put in charge of a dormitory of the youngest boys. Unable to pronounce my name, they called me "Mr. Krunch."

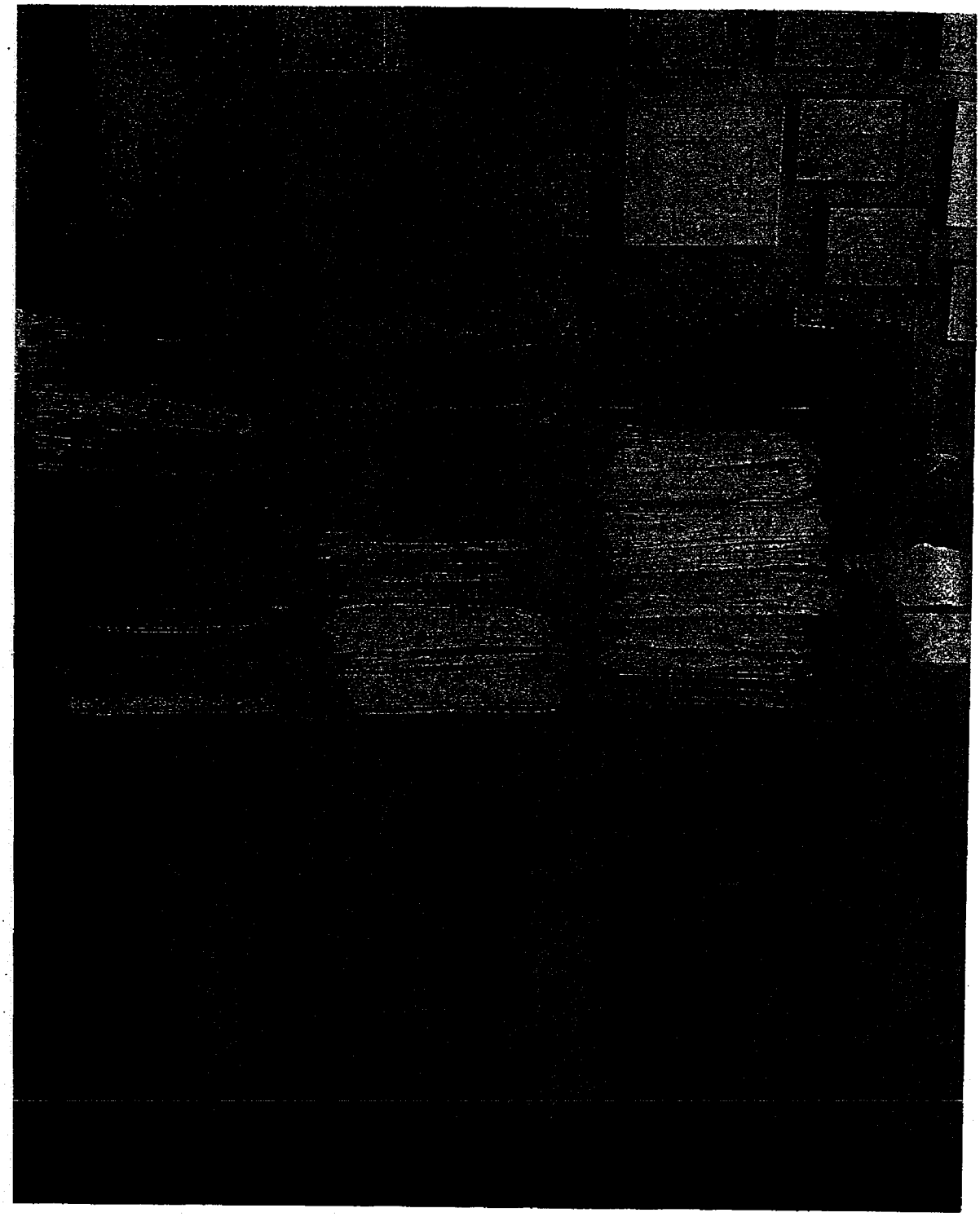
I believe we handled our job in a kindly way. After school the boys would gather in their four-bed rooms and jabber away in Inuktitut. No one was strapped or otherwise punished for this. The boys joked about the government-issue clothing, referring to the thick-soled footwear they'd been given as "elephant shoes." Friday night was clean-the-dorms night, a binge everybody entered into furiously. When the cleaning was done, a movie was shown in the gym during which a committee of the supervisors checked the dorms for dust. The inhabitants of the one judged cleanest were rewarded with extra juice at bedtime. The school was an institution, to be sure, but one run, by and large, with good intentions.

There was one thing, though, I won't forget. Very early in my stint, I arrived at breakfast one morning to note the absence of the residence administrator, a man in his fifties. He was my boss; he had met me at the plane, given me my tour of the school, assigned me my job. In his stead, that morning, was the school principal, who informed us tersely that our boss had been sent away on the plane the night before. My co-workers looked at one another knowingly, and appeared relieved. I'd been there less than two weeks and didn't have a clue. The man had run a "special" dorm where the selected "brighter" boys had more room and more privileges. He wouldn't be running it any longer.

This, everyone considered, was the end of it. But over the years, I often wondered if it really would be.

WHEN I FIRST WALK INTO TONY Merchant's office in Regina, I don't see him at all. He's hidden behind a stack of files high enough you could execute an Olympic dive from it. I've been invited to sit in on a conference with a group of his associates. The single chair available places me where I can only hear his well-modulated voice and stare at that pile of files. (I will never see Tony Merchant without files; even a Sunday morning cup of coffee at his home happens in a sunroom with case files littering the floor.) But even though twenty minutes pass before I actually see him, the office reveals a lot about Anthony Merchant. I turn to the walls by the door. Along with the requisite degrees and bar memberships is a gallery of photographs. Jean Chrétien. John Turner. "To Tony Merchant with all good wishes, Pierre Elliott Trudeau, 1973." A photograph of ›

Photographs by Derek Shapton



Only a third of Merchant's cases are people claiming sexual abuse. They're the easy ones, if you will. After that, things get murky

the 1964 Saskatchewan Liberal caucus, led by the then premier Ross Thatcher, has one woman among the men, Mrs. S. (Sally) Merchant, Tony's mother. Tony Merchant is a fifth-generation lawyer and a third-generation politician. Between 1975, when he was thirty, and 1979, he was a Liberal member of the Saskatchewan legislature. In 1979, the year Joe Clark defeated Trudeau, he was an unsuccessful federal candidate.

But if Tony Merchant's time wasn't then, perhaps it's now. He has become the biggest player in the biggest set of lawsuits in Canadian history. Six thousand native people who went to residential schools – like the one I worked at in Churchill – have levied suits against the federal government and Canada's Churches for mistreatment they claim happened when they were children. The number will not remain static; a government spokesman tells me the total is growing by twenty a week. Church hierarchies are panicking about bankruptcy; the government is lining up its defences. But there is more: of the 6,000 cases, more than half are being brought by a single law firm, the Merchant Law Group of Regina, Saskatoon, Calgary, Edmonton, Vancouver, Yorkton, and Winnipeg. Tony Merchant is on a white charger, carrying the lance of what could prove to be a huge historical reckoning.

He is not doing this alone; the Merchant Law Group is made up of forty-eight lawyers. But you don't take on over 3,000 cases without drawing some attention. A year ago the Law Society of Saskatchewan passed a set of comprehensive rules, governing how lawyers market legal services to potential clients who might be in a vulnerable or "weakened state." Though some thought the measure was aimed at Merchant, Allan Snell, co-director of administration, denies this.

"I'm a tad irritated at the reaction of the profession," Merchant says. He protests that what he has undertaken is an educational exercise; the Law Society, he says, "ought to be proud of the fact that here are thousands of people with a fairly real entitlement to compensation, who didn't know they had that entitlement. These people live in remote areas and by and large, they're not reading *The Globe and Mail* or the *National Post*." He contrasts his clients with the majority of Canadians who, should they suffer even a car accident, know they have the right to sue. His clients are less aware of their rights, he says, and, in the cases at hand, "were conditioned to keep their stories secret and consider them an embarrassment."

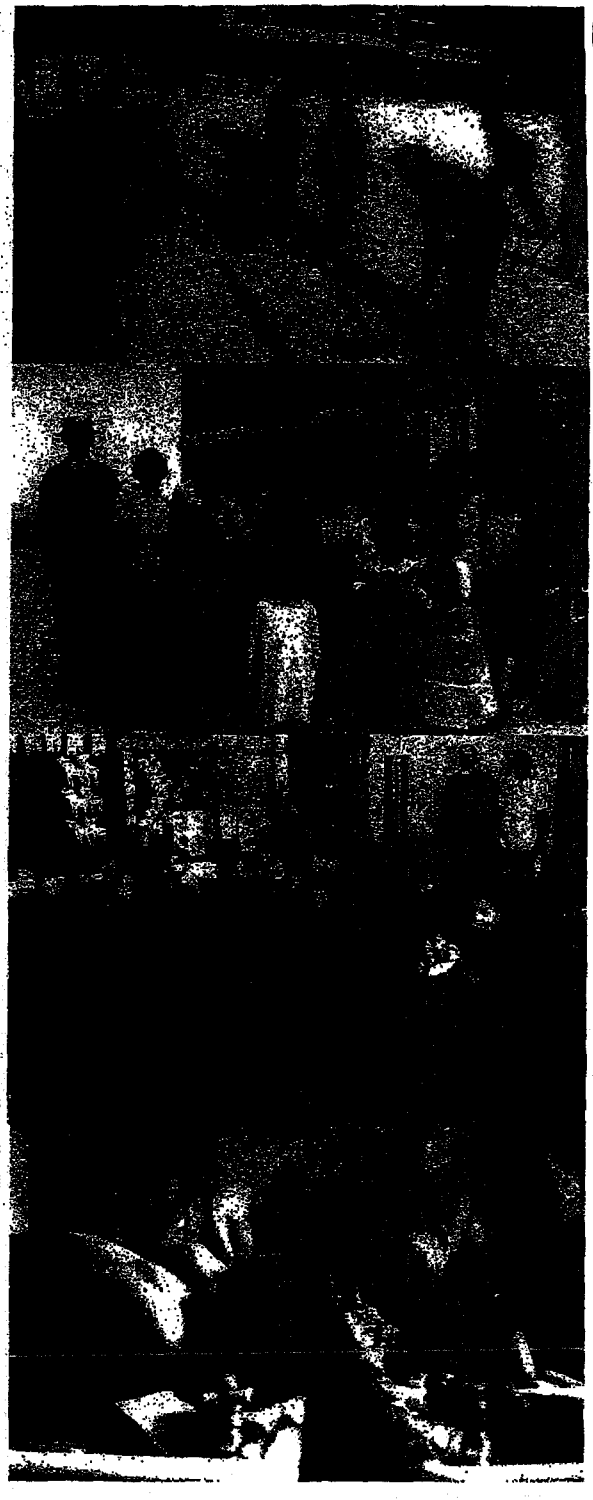
A HUNDRED AND TWENTY YEARS ago, after Confederation, the passage of the Indian Act, and the signing of most of the western treaties, the Government of Canada set up a residential-school system for the education of Indian children, as they were called then. It contracted with the Roman Catholic, Anglican, Methodist, and Presbyterian Churches (these latter two joined in 1925 to form the United Church) to staff and run the schools and residences, something the Churches seemed happy to undertake as missionary ventures. In their heyday, the 1930s, there were about eighty of these schools, mostly in western Canada. They remained in operation until the 1980s, though by 1969, Church responsibilities had passed back to the government. At their best, they provided basic schooling to First Nations people who lived in remote communities and wouldn't have otherwise received it. They gave an education to people who could then go on and make substantial contributions in many areas of Canadian life. But according to many who have studied residential schools or lived through them, they were also a vehicle for assimilation, and the conclusions of the Royal Commission on Aboriginal Peoples (1996) and of academics like Professor John Milloy, whose book on residential schools is titled *A National Crime*, are scathing. By separating children from their parents, their communities, and their native languages, the residential schools, they charge, attempted to "kill the Indian in the child." At their very worst, the schools made lonely children vulnerable to physical and sexual abuse at the hands of the very people who were supposed to be looking after them: teachers, priests, principals, nuns, and dormitory supervisors. Not all, but far too many, it seems.

Though the residential schools were pretty much phased out twenty-five years ago, there are still 105,000 First Nations people who spent parts or all of their early lives in them. Anecdotal evidence of abuse has been around for a long time, but it was not until the early 1990s that the first verifiable stories emerged. A handful of criminal charges were laid, and a number of now elderly people, including a dormitory supervisor who'd worked at the United Church's Alberni School on Vancouver Island, a former principal of the Anglican Church's school on the Gordon Reserve in Saskatchewan, and eight employees of various Catholic-run schools, were convicted. There have been apologies from the Churches and the federal government, but the matter hasn't gone away. The criminal cases opened the floodgates for the civil suits now being launched.

Merchant claims he got his first residential-school clients because he'd already acted for First Nations in other ways. As the firm began taking on these cases, the numbers grew through word of mouth. "We got the reputation that we were aggressive, and people started seeking us out," Merchant says. The clients are predominantly from the four western provinces, with a few from the rest of Canada, and some who've since moved to the U.S. "We also get clients because, unlike some other firms, we've chosen to be available twenty-four hours a day." Merchant tells me this after explaining to someone on the phone that no, he can't loan the person money against his lawsuit to buy a truck.

Still, the decision to take on so many clients has been traumatic. Since virtually all the work is contingency – 30 percent of the awards when they win – Merchant is gambling his firm. It wasn't a slam dunk; when he decided to push ahead, six of his associates left. "If the public thinks that as lawyers we're going to make a lot of money on this," he argues, "I have to say that a quarter of my partnership didn't agree." He stuck with the decision, and the work now consumes him. Sixty percent of Merchant's time and energy goes into the cases and, with only a couple of settlements to date, the returns have been sparse. His income from the practice of law last year, he says, was $45,000. In 1996, handling a lot of civil litigation, including corporate- and family-law matters, it had been ten times that. Yet he still has to pay the overhead; he maintains a big office and has six secretaries working just for him.

PREVIOUS PAGE: TONY MERCHANT'S OFFICE IN REGINA; THIS PAGE, RESIDENTIAL-SCHOOL LIFE: (TOP TO BOTTOM) HOCKEY AT PELICAN SCHOOL, SIOUX LOOKOUT, ONTARIO; GIRLS AT ST. JOHN'S RESIDENTIAL SCHOOL, CHAPLEAU, ONTARIO; CLASSROOM AT OLD SUN (BLACKFOOT) SCHOOL, GLEICHEN, ALBERTA; BOYS AT THE SAME SCHOOL. ALL PHOTOGRAPHS WERE TAKEN BY ANGLICAN MISSIONARIES. NO INFORMATION ABOUT DATES OR NAMES IS AVAILABLE



COURTESY OF THE ANGLICAN CHURCH OF CANADA ARCHIVES

REGINA, ON A MID-APRIL SUNDAY morning. I'm to meet Mel George and William Key at a restaurant on 13th Avenue. The wind, which never quits blowing across the prairies, is at least no longer frigid. As I approach I see Mel, whom I've met once before, loping in a big, confused circle. He waves his long arms in dismay. "The place isn't here anymore," he says. Mel, who is forty-five, has just got out of jail. He and William, who is older, fifty-seven, are your proverbial rounders.

"Well, let's go somewhere else," I suggest. There's a buffet in a strip mall across the street. Mel and William look at one another hesitantly. It looks kind of fancy.

"As long as they'll let us in," says Mel. "They might be prejudiced."

I pause to make sure I'm hearing this, then tell them they shouldn't worry. But they do. In nearby Saskatoon, two policemen have just been charged with unlawful confinement and assault after allegedly driving a native man to the edge of town and letting him freeze. Feelings are running high on both sides.

When we go in, the waitress is friendly, takes us to a table near the back, and pours coffee. Other customers, mostly people who've been to church and are buttoned up in their Sunday best, pay us little heed. But I can tell that even when there is nothing to fear, Mel and William are used to expecting the worst. In one way or another, they think about this all the time. That, and their chaotic lives. Mel, though just out of jail, still faces some unresolved motor-vehicle offences. How many? "About forty." He has five kids and is in the midst of a custody fight; his wife has problems with drugs, and Children's Aid has put their children in foster homes. For his part, William has a badly swollen finger on his left hand; he can hardly manage his knife and fork. A week earlier he'd gone to his daughter's house and found a party in progress. He got angry, hit his son-in-law, and broke his hand.

We load up from the buffet table. Around us the church people tuck into their chicken wings and potato salad. They smile obligingly. Through it all, however, there is something they can't know. Mel and William both spent their childhoods at the Gordon Residential School in central Saskatchewan. Both have ugly memories from those days, and both now blame the residential school for their troubles. So they are suing. William is going after the federal government, which financed the school, the Anglican Church, which ran it, and one school employee. Their lawsuits are part of the 6,000. If they win, the nice folks eating their chicken wings – either as parishioners or as taxpayers – will be expected to pay.

WILLIAM'S EYES TURN MOIST. WHEN he was eleven, in 1953, his father died. His widowed mother placed him in the residence of the nearby Anglican school he'd already been attending as a day student. There were six big dormitories – three for boys and three for girls – accommodating perhaps 180 children. In the dorms, they were separated by age. In William's dorm, in order to counter bedwetting, the supervisors would waken the boys throughout the night and take them to the bathroom. For some of the supervisors, William says (and for some of the boys), the ritual didn't end there. Two of the men, he claims, would steer boys, including him, into their own rooms after the bathroom drill.

"You never wanted to say no to those people," he says. "There'd be >

At their worst, the residential schools made lonely children vulnerable to abuse at the hands of the ver

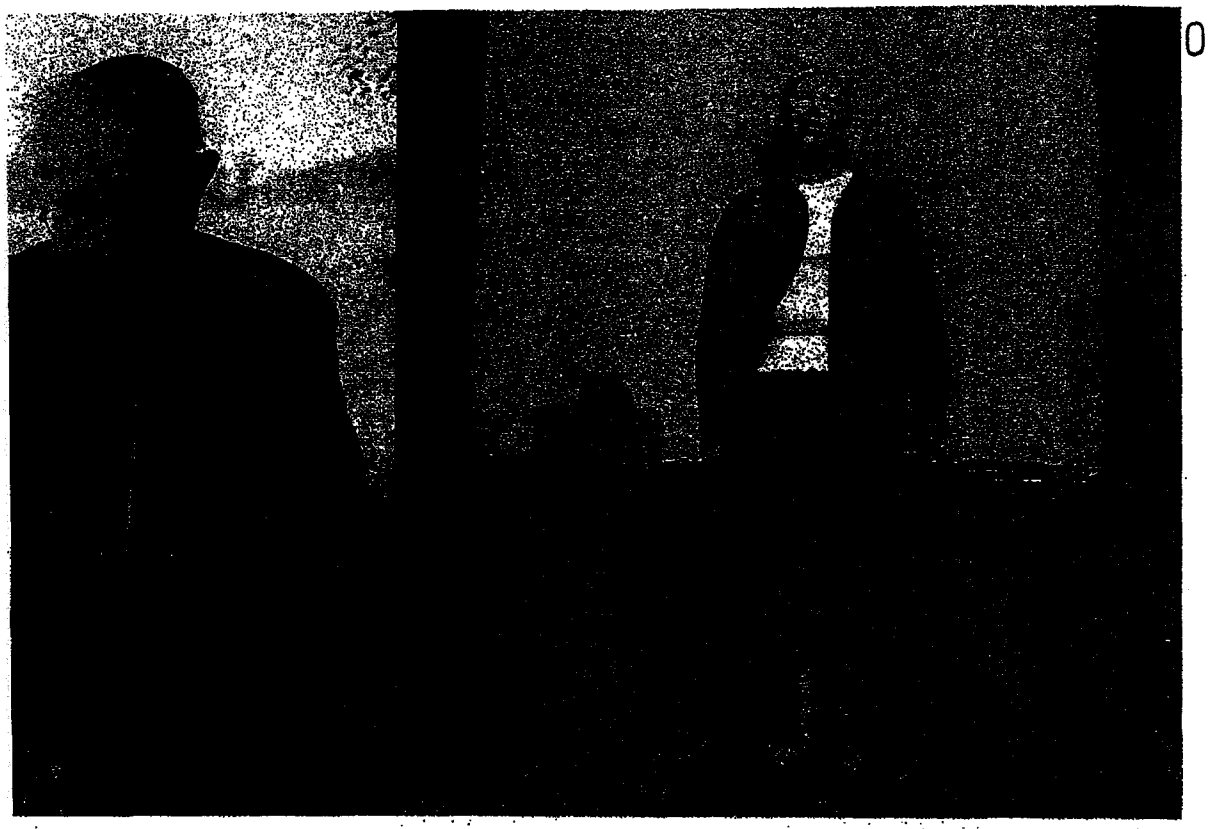
trouble for you the next day." But over the years he ended up paying an altogether different price. "For forty years I denied. People asked about the residential school and I'd tell them it was okay, but I had to look away; I knew I was lying. I'm not stable, I can't stay in one place. I drank for twenty-six years." He claims he was never able to hug his children. "I always had to see where my hands were, and I was never able to stand anybody coming up behind me."

Then, one day years later, when he was watching television, William saw one of the men he says molested him. "He was receiving an award from the government for working with Indian children. He was getting a grant to start a street program in Saskatoon. I told my wife, 'That's one of the guys who abused me.' " William filed his lawsuit.

But if William's story and reasoning are straightforward, Mel's are not. "When this whole thing [residential-school lawsuits] was coming out, I thought it was phony-baloney," says Mel, who went to the same school as William fifteen years later. "My brother told me to see this lawyer so I went along with it." But then Mel got to thinking about his life – problems with women, problems with the law (one of his convictions, fifteen years ago, was for sexual assault) – and he ceased to be skeptical. He switched from his original lawyer to Merchant. He recalled how a principal, who was later convicted of sexually assaulting other boys, introduced him to marijuana. He decided to blame the school for his life. "How else could it have happened? I spent all my time there, away from my father. I must have learned things there," he reasons.

Mel's, not William's, is the kind of case that will test where all of this will go. Only a third of Merchant's cases are people claiming sexual abuse. They're the easy ones, if you will. After that, things get murky. It's one thing to make a claim because something the whole of society considers reprehensible happened to you. But, as I find when I visit more of Merchant's clients around Saskatchewan, there are broader questions: What if your lawsuit is about feeling bad because you were separated from your parents, because you lost your language, because you weren't permitted to learn and practise your culture? Will the courts deem such things worthy of redress? Will the larger Canadian community be sympathetic?

Yet this is where Merchant is placing his bets, and these are the arguments for which he's committed to fight. "A number of lawyers skim off the sexual-abuse cases," he



(FROM LEFT) WILLIAM KEY AND MEL GEORGE; ROSABELLE AND ANDREW GORDON; ALMA POITRAS

people who were supposed to be looking after them: teachers, priests, principals, nuns, dorm supervisors

says. "They're the proven, simple commodity." A handful of these have been settled with awards in the $100,000 to $300,000 range. One of Merchant's clients won such a judgment in Saskatchewan last year; another judgment in Lytton, B.C., prompted the Cariboo Diocese of the Anglican Church to contemplate declaring bankruptcy. But the ones to watch will be the big glut of cases still to come, in which the grievances are less dramatic and less easily nailed down. "If press reports are true, we have half the cases in Canada," Merchant says, "because we're interested in all the issues. We have that reputation with First Nations people."

ONE SUNNY MORNING I TAKE OFF across the broad landscape of Saskatchewan. For all his years in the province, including those years in politics, Tony Merchant tells me he has been to only four Indian reserves; his low-slung black Jaguar has not negotiated those rough roads. At first I find this astonishing, but in Saskatchewan, reserves are often isolated, out-of-the-way places that few people visit. On a hectic day of driving I'll manage to visit as many reserves as Tony Merchant has in his entire life. I'm off to meet more of his clients.

At Pasqua, on the lip of the beautiful Qu'Appelle Valley, I go first to see Andrew Gordon. A feisty nonagenarian, Andrew Gordon went to the Oblate-run Qu'Appelle Industrial School. It was eighty years ago, but his memories of the place still fill him with fury. He describes it as a Dickensian world where the whole student body was forced to watch as punishments were meted out to their fellows. When boys ran away, a frequent occurrence, they were whipped mercilessly. Andrew describes being lashed when he was fourteen years old. He points to his head. One of the staff, he alleges, kicked him in the head and he's had headaches ever since – for seventy-five years.

What's interesting about my visit with Andrew Gordon is that while we talk, his wife, Rosabelle, who sits across the room, will interrupt every anecdote of nastiness to say that it wasn't like that for her. Rosabelle's experiences were entirely different and, it seems, entirely positive. She went to a United Church school at Round Lake and later became the first trained native nurse in western Canada.

Then I move on to Peepeekisis, a sprawling patch of prairie and buffalo wallow about an hour northeast of Regina where, in a small beige-and-brown house at the end of a dusty laneway, I meet Alma and George Poitras. They have raised six children, and Alma, who is fifty-four, teaches in the local school. George, who was also a teacher, is now >

The Churches agonize about how much they might be expected to pay. They wonder why their apologies and promises to help haven't been enough

retired. Alma pours a cup of coffee and confirms that, yes, she has filed a lawsuit. Then she tells me her story.

When she was seven years old, in 1952, her parents were forced to place her in grade one at St. Anthony's Indian Residential School at Onion Lake, near the Alberta border. The residence was run by nuns. Once, to punish her for having left the school grounds without permission, Alma got a strapping and had her hair cut off. Another time, she watched her brother (five of her twelve siblings were at the school when she was there) get kicked by a male teacher in order to chastise him for reading a comic book after the bell had rung. "I remember I felt very hurt from that," she says. Yet another time, as summer vacation approached, one of the sisters announced that Alma, who was then fourteen, ought to spend the summer, not back with her family, but working for the nun's brother. Alma claims that she went off to take the job and her parents were never told.

"Were you ever sexually abused?" I ask.

Alma surprises me by saying yes, but then she immediately clarifies that it didn't happen at the school. I ask if anybody was sexually abused by staff at the school. She answers, "Not that I know."

When I ask Alma why she is suing, she pauses for a moment, fingering the memory of her experiences like a stone in the pocket. What has provoked a desire in her for redress is something nebulous, yet real, a sense of loneliness, of being a stranger in the world. She reaches for two photos of elderly women in kerchiefs, her mother and George's mother. "It's like they stole our parents away," she says. Behind her is a photograph of her own children, now grown. For many years Alma and George both battled alcoholism, and that's what their children had to put up with. She blames the residential schools.

AS TRAGIC AND POIGNANT AND awful as it all is, what I find fascinating is how well and how predictably all involved are playing their roles, as if sticking to an assigned script. There are no surprises. The Churches agonize about how much they might be expected to pay, while wondering why their apologies and promises to help in the healing haven't been enough. The government prevaricates while trying to appear concerned. The lawyers (on both sides) take the philosophical high ground, but their meters are running. The native people come on-stage yet again as the victims.

There are also the accompanying questions. How broadly will the courts expand interpretations of abuse and claims to damages? Will awards be restricted to people who suffered demonstrably at the hands of a few bad apples within an otherwise meritorious system? Or will the system itself be judged so flawed that anybody who entered it deserves compensation? Will this remain the responsibility of the Churches, or will the government take them off the hook? The ancillary questions are likewise intriguing. Is money the best solution? The government has already made a $350-million "healing fund" available for programs, but not for individual awards. What will happen to impoverished communities already plagued with social problems if a few people within them win large financial settlements and others remain with nothing?

Merchant's main complaint is about the slowness with which things are moving. This wouldn't be the case if it were one of the banks, or Trans-Canada Pipelines, he says. He blames members of his own profession. "From the defence side I've never seen anything go wrong so desperately in relation to lawyers." He returns from a case-management conference where a judge gathered all the lawyers involved to get agreement on a schedule to proceed. The conference lasted three hours; four lawyers were there for the federal government, one for the Anglican Church, one for the Oblates, and Merchant and a partner, Patrick Alberts, for their complainants. No agreement was reached. "From the government's side," Merchant complains, "they were going to speed things up. So their answer was to hire a whole bunch of additional lawyers. Of course: What do lawyers do best? They slow things down."

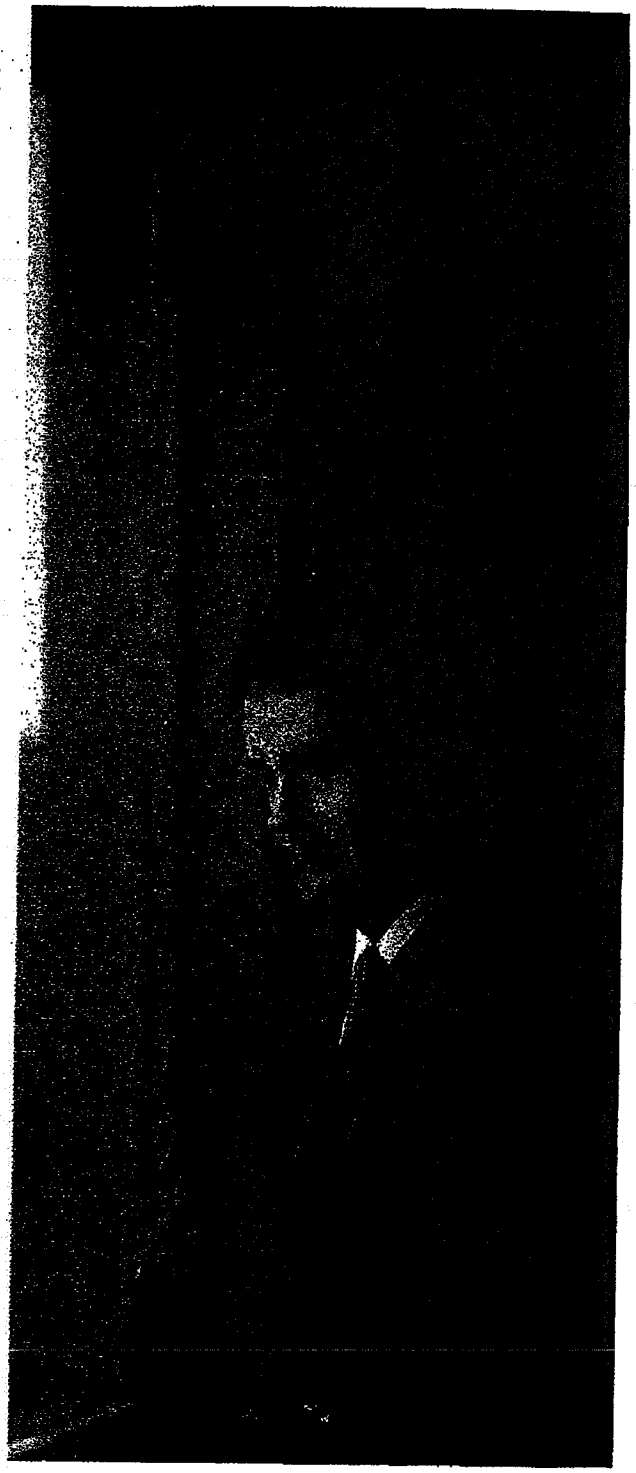
The beginning of the slowness, it ought to be acknowledged, is in the strategy of the lawyers placing the suits, lawyers like Tony Merchant. The public assumes these are class actions; with only a couple of exceptions they are not. They are filed by individual people with individual grievances, and Merchant believes they should be dealt with individually. But 6,000 individual cases make for a lot of potential court traffic. Alberta, British Columbia, and Saskatchewan are all taking defendants and complainants through a pretrial process, like the case-management meeting in Regina. The idea is to get groups of test cases everyone agrees can proceed to trial and, on the basis of the outcome, go ahead with the remainder or find ways to settle out of court. This "inventing of the wheel," as one of Merchant's lawyers, Tim Turple, terms it, is slow. The first actual trials are not expected until late this year at the very earliest, and probably not until 2001.

The most poignant issue of urgency is the age of some of the complainants. Andrew Gordon is almost ninety. Sixteen of Merchant's clients have died in the past two years without their suits being heard.

IF THE CANADIAN GOVERNMENT has any intention of being obstreperous, there is no hint of it in the demeanour and presentation of Shawn Tupper, who has been director of the federal government's Residential Schools Unit since 1996, when it was set up. The Unit employs thirty-two people to deal with the issue and shepherd it along. In our conversation he immediately uses the word "survivor" when referring to those native people who went to residential schools. I think this a considerable linguistic concession to make right off the bat. On the desk in front of him, like a little charter of rights, lies a "Statement of Reconciliation" issued by the government in 1998 to signify that its intentions are gentle and kind, that it feels everyone's pain. "We're not into deny, deny, deny," says Tupper, "but resolve, resolve, resolve."

He gets tough, though, when he talks about the nature of the claims. The government intends to be strict about their validity. By this he means that the government does not want to do "a Nova Scotia," where the provincial government, caught recently by allegations of abuse at the Shelburne School for Boys, is thought to have paid out far too much, far too easily, to far too many complainants. And he is tough on the Churches: "They have to accept their part and be prepared to pay."

The Churches, needless to say, are



TONY MERCHANT IN TORONTO LAST MONTH: "WE DON'T WANT TO BE SEEN AS CAUSING THE CHURCHES TO GO BANKRUPT"

in a panic. The Anglican Church in Canada, its auditors have told it, could be one year away from bankruptcy. The United Church has budgeted $3 million a year for the foreseeable future to fight and pay for residential-school lawsuits. It employs a full-time residential-schools coordinator, the Reverend Brian Thorpe, who tries to put a hopeful spin on things by saying, "This can be the destruction of the Church, or it can lead to renewed life." For the next few years, Thorpe acknowledges, the lawsuits are going to be "an institutional fact of life for the Church." The stalwarts of the Churches, says Thorpe, the people who sit in the pews, are not panicking but are bewildered and baffled. "They wonder what their responsibilities should be for the actions of a previous generation."

TONY MERCHANT SAYS HE IS TRYing to avoid actually suing the Churches: "They don't have any money and all they do is whine and say they're sorry." It's not true that they don't have money, but it's often, he believes, hard to get at. A practising Catholic, Merchant makes the observation that the Roman Catholic Church didn't get to be worth its many billions by putting it all in one pot. Dioceses and orders and so on are all legally separate from one another, making the Catholic Church, in this case, less vulnerable than the Anglican or United Churches, each of which is a single legal entity. (None of the Church institutions appear able to rely on insurance policies to pay their way in this.) You get the sense, though, that Merchant considers lawsuits against Churches to be bad public relations. "We don't want to be seen as causing the Churches to go bankrupt." His real target is the federal government. Given that it contracted with the Churches to run the schools, he likens the relationship between the two institutions to that between a principal and a school board. "Something happens, do you sue the principal or do you sue the school board?" In some instances, however, the government has involved the Churches as a third party, even in cases where the Churches were not named in the initial lawsuits. "It's happened to the Anglicans and it's happened a couple of times to us," says Thorpe, admitting that the Churches expect more of this and acknowledging that it seems like dirty pool on the government's part.

HOW WILL THIS TURN OUT? WILL Merchant's gamble, that the question of abuse will be broadly interpreted, pay off? Is he the heroic champion of a whole new swath of native justice, or a cagey manipulator who'll make millions once his commissions are taken off the settlements? Everyone talks about the importance of the courts. But 6,000 cases and counting? Will this, in the end, require not a legal but a political solution? Something not from the courts, but from the federal cabinet?

Merchant insists that these are individual people with individual grievances and that the courts are the appropriate recourse. But one wonders: all those Liberal photographs on the walls of his office. Might he have some strategy for a huge political negotiation in the back of his mind? "First Nations people, by and large, vote Liberal," he tells me. "They have good memories of the time when Jean Chrétien was minister of Indian Affairs. They generally have faith that the government here will eventually do the right thing." ■

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SPORTS

Pats make two trades

Team shook up/B1, B2

REGINA

Veterinarian offers alternative

Sthamann uses homeopathy/A3

YOUR MONEY

Martin's tax cu offset somewh:

Other costs rise/C1

Monday, January 8, 2001

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Abuse saga to air on '60 Minutes II'

By PAMELA COWAN
of The Leader-Post

An American TV crew will return to Regina later this week to interview lawyer Tony Merchant and former Indian residential school students for *60 Minutes II*.

"They sent a crew here to see me a couple of weeks ago," said Merchant in an interview with The Leader-Post on Saturday.

That visit was not taped for the CBS newsmagazine.

"I think they're coming on the 11th or 12th and they'll be here for four or five days and then they're going to Ottawa as I understand it," said Merchant.

Merchant

The Merchant Law Firm represents 4,300 of the 6,000 former Indian residential school students who are suing the federal government, religious orders and the church for compensation as alleged victims of sexual abuse and cultural genocide.

This is not Merchant's first interview by international media outlets about the residential school lawsuits. *The New York Times*, *The Boston Globe*, BBC, PBS and CNN have also interviewed him.

"I don't think the Canadian media understand or fully appreciate how significant the residential school litigation is," said Merchant. "This is a very, significant issue where an aboriginal people were systemically mistreated and that's an international issue — a nation mistreating their hosts.

"Perhaps we in Canada have not seen the significance of this because it's right under our noses and it was a little issue a number of years ago."

What happened in Canada's residential schools is a world story, yet Canadian journalists haven't focused on the victims' pain but the money issues, said Merchant.

The lawyer doesn't think the world exposure is positive for Canadians or residential school victims because it amounts to Canada having its dirty linen washed for us in public and he doesn't want Canada to run away

Please see Merchant, page A2

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Merchant hopes residential school story is covered fairly

some people who quite rightly see that they are helping all First Nations people by publicly confronting the issues.

"Some of our clients want the public to know because they know that helps for public acceptance of the validity of appropriate compensation and bringing closure."

Merchant added: Clients also want the public to know what happened at residential schools so they understand why the prime minister, pope and other church figures are apologizing to First Nations people.

PETER WILSON/StarPhoenix

NEVER FORGET THE PAST

ORDON FIRST NATION — Fred Quewezance sweeps his eyes across the historical mural that takes up an entire wall in the old gym. Slowly he raises his arm to point out one of the faded black and white photographs — a man in a uniform and cap.

ny grandfather who fought in the First World War. rseas fighting for king, country and for democracy. vas that he came back to find there was no for him or any other Indian in their own country," e sighs.

n First Nation land manager and a member of the First Nation treaty land entitlement negotiation team, Quewezance is fighting different battles these days. The skirmishes and struggles of his team are now played out in conference rooms, not trenches.

STER

However, he says that the tenacity and determination to seek justice has the same energy that powered his grandfather and other Indian veterans in their fight for freedom.

The friendly eyes of his grandfather seem to take on new life as Quewezance moves closer to the photographic mural. One picture shows a couple of smiling men as they look up from their task of building a hayrack. Another shows the 1948 Dream

BRYAN SCHLOSSER/Leader-Post

Tony Merchant says lawyers are not working on the residential school settlements just to get rich.

JUST A HELPING HAND?

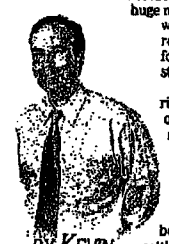
Regina lawyer Tony Merchant sits down at his desk, two huge stacks of residential school files in front of him, and ponders the $100-million question.

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 to understand is that currently we carry about $12 million of work that's unpaid."



BY KEVIN O'CONNOR

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 Dauz says nowhere near that

MOVING BEYOND

Are lawyers trying to settle residential school claims just to get rich?

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."

Killing the Indian: Canada's Indian Residential Schools

60 Minutes II: Aired Internationally on CBS on Tuesday, May 8, 2001.

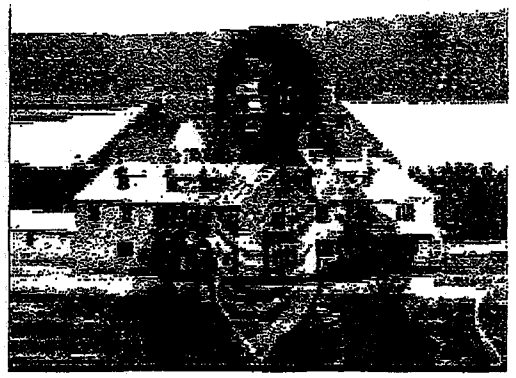
Compiled by F. G. Vaughn-Marshall from CBS screen shots and Closed Caption stream.

>> Bob Simon: A century ago, the Government of Canada set up a system of boarding schools to educate Indian children.

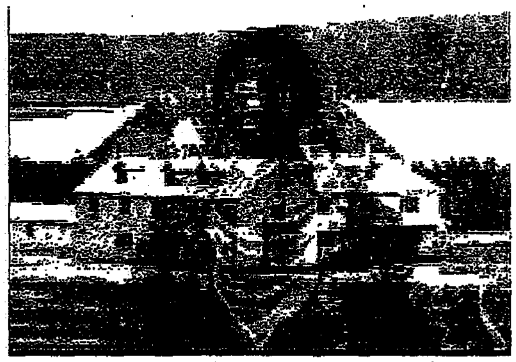
Canada's biggest churches were paid to run the schools.

But the schools were really an exercise in social engineering.

The goal was to eradicate Indian culture from the Canadian nation. The Canadian government said it hoped the residential schools would turn the "savage child" into a "civilized adult"; or, as one Canadian official put it, "kill the Indian in the child."



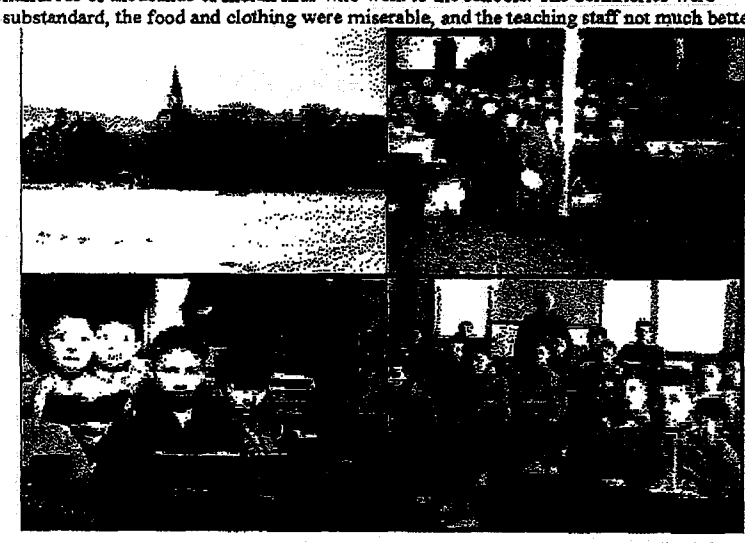
Today, those schools are closed, but the bitter memories are very much alive. And thousands of Indian kids who are not kids anymore are taking legal action which could actually wipe out some of Canada's most important churches. But that's the end of the story. First, the beginning. In the 1850s, Canada set up the schools, took Indian children away from their families, and taught them a new way of life. When they got to the schools, their hair was chopped off, they were put in uniforms, and they were not allowed to speak their native language, which was often the only language they knew. In fact, the residential schools weren't really schools as much as processing plants. Indian kids went in one end, little Canadians came out the other. It was not a gentle process.



Today, those schools are closed, but the bitter memories are very much alive. And thousands of Indian kids who are not kids anymore are taking legal action which could actually wipe out some of Canada's most important churches. But that's the end of the story. First, the beginning. In the 1880s, Canada set up the schools, took Indian children away from their families, and taught them a new way of life. When they got to the schools, their hair was chopped off, they were put in uniforms, and they were not allowed to speak their native language, which was often the only language they knew. In fact, the residential schools weren't really schools as much as processing plants. Indian kids went in one end, little Canadians came out the other. It was not a gentle process.

Richard Redman:

>> Richard Redman: The people that were there were going to get the Indian out of you by hook or by crook. If it meant beating the living hell out of you, they were going to do it.
>> Simon: And in most of the cases, they succeeded, didn't they?
>> Redman: A lot of cases they did, yeah.
>> Simon: Richard Redman is an alumnus, or, rather, a survivor of the Lebret school, where he spent eight years under the tutelage of catholic nuns and priests. He's one of hundreds of thousands of Indian kids who went to the schools. The dormitories were substandard, the food and clothing were miserable, and the teaching staff not much better.



>> Redman: I went there for an education. Unfortunately, they had a different idea.

>> Simon: The idea at Lebret and most of the other schools was to teach Indian kids how to become seamstresses, carpenters, laundry workers-- trades they presumably could use in later life. Not much reading, writing, or arithmetic; that was for white kids.

>> Simon: Did you get a good education?

>> Redman: I got toughened up.

>> Simon: How did they toughen you up?

>> Redman: You learned to take a beating.

>> Simon: Were you beaten a lot?

>> Redman: Yeah.

>> Simon: The kids were beaten in public and everyone knew about it, but other things happened in private, behind closed doors-- dark secrets which no one talked about for decades. Did you have to survive sexual abuse as well?

>> Redman: I suppose you could say that. But at six years old, what do you know about sexual abuse? You know, where the authorities lies and when the authority tells you to do something, or the authority comes and does something to you that you don't understand, you learn to, like anything else, take it and keep on, keep on going until the next time.

>> Simon: And there always was a next time. The schools were well placed for keeping secrets. Most were in remote corners of the Canadian vastness; desolate prairies where it's hard to tell where the winter sky ends and where the snow-covered fields begin. The schools were so isolated that the outside world hardly took notice of their existence, and took no notice at all of what went on inside. Lebret, the town where Richard Redman went to school, is on a lake that's frozen solid much of the year. The church is still standing, but most of the school has been torn down. What's this building there right behind you?

>> Redman: That's the gymnasium. It's all that's left of the school. One of the punishments that was doled out was that you had to get a toothbrush and scrub the cement floor on the weekend.

>> Simon: Scrub the cement floor with a toothbrush.

>> Redman: Yeah.

>> Simon: Redman left the place 40 years ago, but his memories are as fresh as the snow.

>> Redman: Couple of guys, one of them stole a quarter or a dime and it was found out at the count that this coin was missing. The priest came down and they called the guy up that had taken his money. So he takes off his cross and put it down; his ring, puts it down; his watch and then his collar, and puts it down. And all of us are sitting around, and he says, "this is what happens when you steal." And he reaches into his pocket and he pulls out a lighter not unlike this one. And he gets the senior boys to hold this guy's hand, and then he lights it. And he says, "this is what happens when you steal." And he burns the guy's fingers.

Tony Merchant:

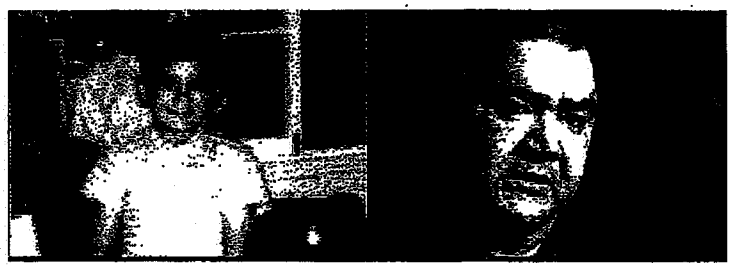
Tony Merchant: That physical cruelty became the cover for sexual cruelty, and, of course, it was a terrible atmosphere in which to run any sort of an education.
>> Simon: Tony Merchant has heard the horror stories. He's a lawyer who represents Richard Redman and 4,000 others who attended the schools. But the extreme physical and sexual abuse, did it just happen re and there, a few bad apples?

>> Simon: Tony Merchant has heard the horror stories. He's a lawyer who represents Richard Redman and 4,000 others who attended the schools. But the extreme physical and sexual abuse, did it just happen re and there, a few bad apples?

>> Merchant: You say a few bad apples? No. It really became bad barrels. Bad apples accumulated, and it was a system that just kept coming unstuck and never got corrected.

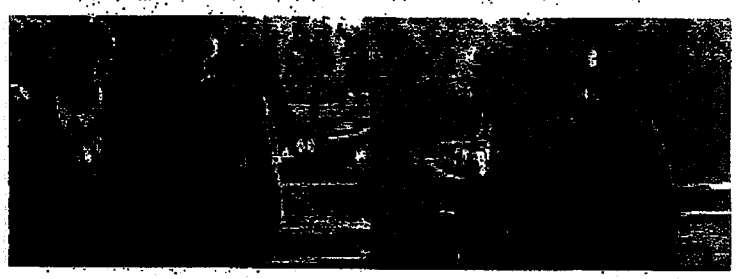
>> Simon: One of the most notorious bad barrels was the Gordon school in Saskatchewan, run by the Anglican Church. Ben Pratt was a student there.

Ben Pratt:



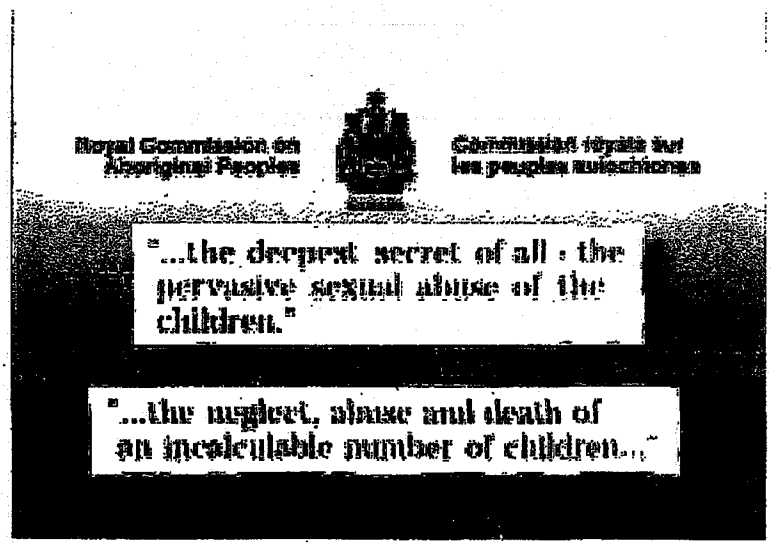
>> Pratt: And I wasn't there more than six months and the sexual abuse started. I came out of school with a grade three education. I can't read or write.
>> Simon: You can't read or write?
>> Pratt: No. The whole time i was at the school, the sexual abuse that I went through, I wanted to tell someone what was happening. I was afraid and i was ashamed and I was scared.
>> Simon: More than 200 of Pratt's fellow students say they, too, were sexually abused at the Gordon school, many by William Starr, who was the school principal for more than 15 years.

William Starr



Starr was later convicted of sexually assaulting ten students. He admitted to molesting dozens more. The government began closing the schools in the 1970s, and the stories, that hundreds thousands of children had been abused for a hundred years started coming to the surface. In 1996, a government commission reported that sexual abuse was "pervasive," that the kids were so poorly cared for that an "incalculable number" had died from tuberculosis and other diseases. The reaction was swift from both church and state.

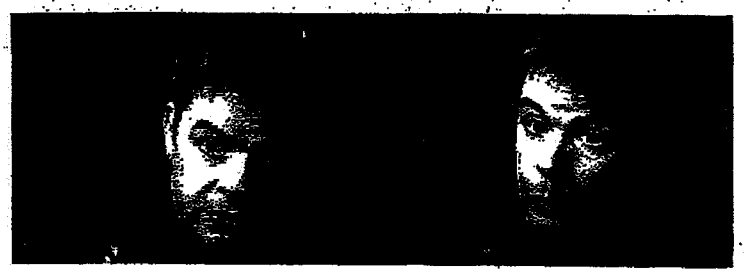
>> Merchant: The prime minister of Canada has apologized. The Pope has apologized. The Archbishop of Canterbury has apologized. The head of the United Church Synod of Canada has apologized-- very legitimate claims that everybody recognizes things went horribly, horribly wrong.



>> Simon: And everybody wanted to do something about it. Authorities prosecuted a few of the accused abusers, but most had died. The government set up a $350 million "healing fund" to help victims with counselling and treatment. Churches began outreach programs to the Indian community. And Canada's Indians, who have lived in poverty and obscurity for generations, started speaking out for themselves. Canada's Indians weren't allowed to vote or to hire a lawyer until the 1960S. But they're making up for lost time now with a vengeance-- literally with a vengeance. In the last few years, Indians have filed more than 7,000 lawsuits against Canada's government and its churches. They're seeking damages of billions of dollars. But the Canadian government has paid only a handful of those

claims. Shawn Tupper, the governments point man on the law suits, says there's no rush to judgment or to payment. Why not just settle the claims instead of forcing them into courts?

Shawn Tupper



>> Tupper: That's what we're trying to do. One of the critical parts of the response is making sure we can come up with response that protect people who were abused, and insure that people who may be coming forward looking for easy money don't get easy money.

>> Simon: Those lawsuits are a big problem for bishop Duncan Wallace, whose Anglican church ran 30 of the residential schools. Wallace maintains that they were operated according to principles which seemed like a good idea at the time.

Bishop Duncan Wallace

>> Wallace: The assumption was that the Indian children would be better off and should be raised as little white children.

>> Simon: Whether it was well- intended or not doesn't really explain the really bad things that happened at the schools: The sexual abuse, the physical abuse.

>> Wallace: No. That's inexcusable at any time, any place, any age.

>> Simon: How did that sort of thing go on for so long without the knowledge of the church authorities and the disciplinary action of the church authorities?

>> Wallace: That's a question for which I have no answer. I simply don't know.

>> Simon: The bishop is the first to admit that the church has moral debt to the Indians. But paying that debt in cash? Not so easy.

>> Wallace: If you want to come directly after the church for money, the first ten are fine. The first ten people will get their money from us, and the rest, the rest are out of luck as far as we're concerned, with that kind of settlement. We don't have that money. People say we have money in property. Do you want to buy a church? (Laughs)

>> Simon: The good bishop is already preparing his flock for leaner times. Two Anglican priests regularly carry the bad news to parishes around the diocese. It is rarely well received.

>> Helena Houlcroft: I can say categorically that residential schools and the policy of assimilation was dead wrong. And it did a tremendous amount of damage, and i know it's hard for church people to hear that.

Priest Helena Houlcroft

>> Woman 1: These people need some counselling. They need some medical help, like, not just hand them money.

>> Woman 2: Why do you have to be blamed forever for something? I mean...

>> Houlcroft: In what way are you experiencing being blamed?

>> Woman 2: Well, I hear all the time that we committed this terrible sin, but everybody didn't do wrong. And for how long do we have to be blamed for it?

>> Simon: How do you know when expiation for guilt has been consummated? How do you know where it stops, when you've done enough?

>> Wallace: Well, I guess the best answer to that is you probably never know. You do what you can, and what you think is right, I don't know when it's ended.

>> Simon: If courts order the churches to pay for the sins of earlier generations, the bishop says they will be, quite simply, out of business. Do you really think this is a prospect of churches going bankrupt?

>> Wallace: Oh, yeah. If things continue in the present way, with... Down the litigation course, there's no question.

>> Simon: No one, absolutely no one, wants the churches to disappear, but that doesn't mean it's not going to happen. Would you like to see these organizations, these churches, wiped out?

>> Redman: I don't think it would be a good thing. I think people have a need to have a church to have some spirituality in their life.

>> Simon: Yeah, well, it looks like a lot of these churches are going to get wiped out because the pending suits are just overwhelming.

>> Redman: Well, they should of thought of that before they started beating the hell out of us.

>> End.

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Local diocese feels great relief

By ANDREW EHRKAMP
Leader-Post
and Canadian Press

An agreement to compensate victims of residential school abuse has brought "great relief" to the Diocese of Qu'Appelle, which ran a residential school on the Gordon First Nation northeast of Regina, says its bishop.

Duncan Wallace said nearly 500 lawsuits have been "hanging over our heads" in the diocese for more than five years and the diocese has spent more than $500,000 in litigation costs.

"After five years or more of litigation going nowhere, some settlements are finally going to be made for valid claims," Wallace said. "We hope we will now stop bleeding from litigation costs, without ever having gone to court."

The agreement, announced Wednesday, would see the Anglican Church of Canada pay up to $25 million to those abused in its native residential schools.

If ratified by the 30 dioceses across Canada, the deal would require the Anglican church to pay 30 per cent of validated claims for sexual and physical abuse. The federal government would pay the rest, along with any costs that exceed the $25-million cap.

It's estimated that more than 90,000 aboriginal children aged six and older attended the live-in schools — often against their will — from 1930 until the last one closed outside Regina in 1996.

However, Regina lawyer Tony Merchant says Wednesday's deal merely removes a delay in settling lawsuits.

"This is good for First Nations people, it's just not very significant," said Merchant who represents about 800 residential school victims who attended Anglican church-run schools in Saskatchewan and Alberta. Settlements could cost taxpayers at least $1 billion, according to government projections. Merchant said the money from the Anglican church "in a sense is money going to the government because it has to pay the whole claim.

"All it does is marginally speed up the process . . . the government has one less means of delay," Merchant said. "The process will inevitably go more quickly because a component of the delay is out of the way."

Nevertheless, Wallace said expediting lawsuits benefits both the church and plaintiffs. The Diocese of Qu'Appelle ran a residential school on the Gordon First Nation near Punnichy until the 1980s.

One case against the Diocese of Qu'Appelle went to court a year and a half ago, but was dismissed, Wallace said.

Critics say Wednesday's deal offers nothing for loss of language or culture. Most of the mounting lawsuits involving more than 12,000 plaintiffs include such cultural claims.

But Public Works Minister and Regina MP Ralph Goodale, who is also responsible for residential school claims, said there's no legal precedent for compensating former students punished for speaking their native tongue in the schools.

Merchant said based on the number of residential schools, the Roman Catholic church — named in 72 per cent of cases — should agree to a larger amount of compensation.

Talks with the Catholic church stalled last fall.

DON HEALY Leader-Post

Regina lawyer Tony Merchant has represented many First Nations people in their fight for compensation for abuse they say they were subjected to at church-run residential schools in the past.

BROTHER-IN-LAW KILLED | CHRISTMAS CHEER FUND

Talk about settling native abuse suits a ruse: lawyer

RESIDENTIAL SCHOOL CASES

Federal officials accused of using legal tricks to wear down natives

BY RICHARD FOOT

The lawyer behind half the residential school lawsuits in Canada says Herb Gray's stewardship of the issue is a facade — because despite the Deputy Prime Minister's conciliatory talk, federal lawyers are still "slapping native people around."

Tony Merchant says Mr. Gray lacks the authority to resolve the thousands of abuse lawsuits against the government.

He also says Mr. Gray's statements about seeking a fair and comprehensive out-of-court settlement to the suits do not match the aggressive actions of federal lawyers.

"They're sounding like they want to deal in a fair and benign way with the First Nations claimants, but they aren't," says Mr. Merchant, whose Regina-based Merchant Law Group represents about 4,300 native people who say they were abused sexually, physically or culturally, in government-owned residential schools.

Mr. Merchant is a former Saskatchewan MLA, and a prominent provincial Liberal who was defeated by Ralph Goodale, Ottawa's Natural Resources Minister, in a federal nomination race in 1993.

Mr. Gray was appointed last year by Jean Chrétien, the Prime Minister, to find a way to solve the residential schools impasse — a multi-billion-dollar legal struggle against Ottawa and various churches that helped operate the schools.

In a letter this week, Mr. Gray [illegible] has been involved Church organizations to find solutions to all the issues raised by former students of the residential school system. Facilitating healing and reconciliation is a primary objective and the government has been working with survivor groups to find ways to move away primarily from using costly litigation."

Mr. Merchant says government actions don't equate with those words. He says federal lawyers defending his clients' lawsuits are using what he calls costly legal "tricks" to wear down native plaintiffs and combat their claims. He says the government is putting claimants through repetitive discovery processes, sitting them in front of psychologists and filing vast numbers of irrelevant documents on every case.

"This is a real tough-guy litigation approach and very hard on the victims. And that's totally inconsistent with the mood they want to create," he says. "They're telling First Nations people, 'We're looking for a solution. Here's Herb Gray, senior, respected man who is going to find a fair and appropriate out-of-court solution' — when in fact their actions are tough as nails."

Mr. Gray said yesterday it would be wrong for federal lawyers to ease up on defending the cases until a comprehensive, out-of-court agreement on the subject has been reached. He said that is not likely to happen in the near future.

"The Department of Justice and their lawyers have to make sure any rights of the Crown are not lost by not pursuing matters in court," he said. "I never suggested my discussions were of such a nature that there would be no further litigation activity while my discussions were underway."

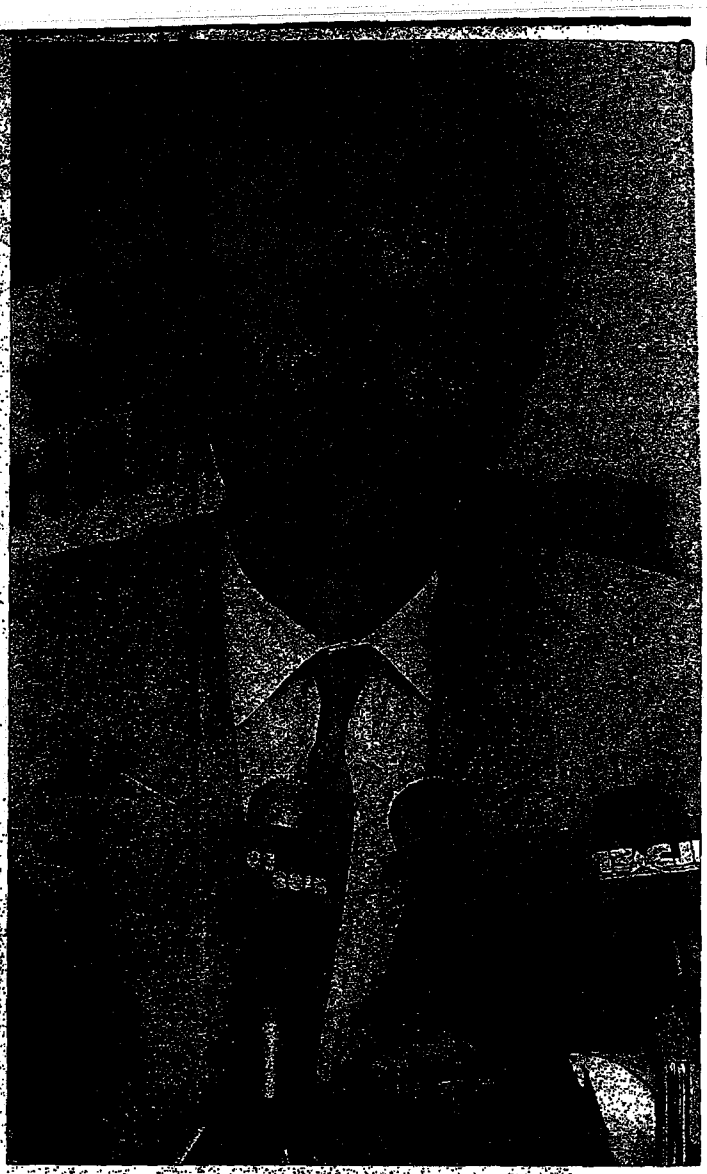
Mr. Merchant says Mr. Gray is a "minder" of the residential schools issue, and won't be given authority to settle lawsuits or propose an overall solution until the Prime Minister's Office allows it.

"I just feel that it's not going anywhere," he says. "I believe that there's a dichotomy between what the Prime Minister and Herb Gray are saying and thinking, and what is in fact happening."

Mr. Gray said his instructions from Mr. Chrétien have not changed. He says he was asked to "open a new dialogue with the church organizations in question, to discuss how we can find common ground to resolving the matter outside of primary reliance on litigation."

He said the federal Cabinet has not reached a decision about whether Mr. Gray should launch a new round of talks on any specific proposal to resolve the issue.

National Post



THE LEADERPOST

Lawyer Tony Merchant, above, says Herb Gray, the Deputy PM, lacks the authority to settle lawsuits.

storyteller carrier of news & events that effect the whole

ONTARIO

Ottawa

As the leader of the Liberal party leads the members of his cabinet into their third consecutive term as a majority government, Prime Minister Jean Chretien agreed that Aboriginal people and issues are in the key category of principal importance, during his post-victory news conference in Ottawa. Aboriginal people live with some of the most devastating circumstances in Canada. Literally epidemic proportions in suicide rates, physical and mental illness, corruption, crime, and a lack of educational resource and economic stability, from remote reserves to the streets of urban Canada, in comparison to the general population. Mr. Chretien has said that now is the time to begin the acutely fragile task of establishing a diplomatic and economic balance and strategy for Aboriginal people. All he has to do now is act.

Ottawa

The federal government has plans to amend and develop the current state of electoral affairs on Native reserves all across the nation. Plans they hope will even out the playing field for elected band council members and promote a truer sense of democratic responsibility and civic accountability for First Nation leadership. As well, the changes will assist First Nation councils in spending more time establishing and implementing their mandates, as the current process holds elections every two years, which is simply not enough time to expect to see significant results from administrations. Plans also include a strategy to protect reserve employees from dismissal by incoming band councils and having Election Canada (rather than Indian Affairs) supervise voting and giving band councils the ability to levy taxes.

Ottawa

Jean Chretien's Liberal government is proposing $2-billion be spent to cover the mounting legal costs of residential school lawsuits against them and four major religious sects. The suits are alleging loss of culture and language, as well as many claims of physical, psychological and sexual abuse. The schools were run for more than 100 years by four major church groups including the Roman Catholic, Anglican, Presbyterian, and United churches, under contract from the government, with the mandate of educating and assimilating Aboriginal people into non-Aboriginal society. The government and the churches are being sued by at least 7,000 aboriginal people across Canada. Churches are being asked to put up their own money; most likely a one-time disbursement to Ottawa, to contribute to rising costs in the court-

continued from page 9

rooms, which are expected to continue for some time yet. The Anglican Church of Canada has been asked to come up with $96.6-million over the next 10 to 15 years to fund settlement. The government suggested a long-term fund raising campaign be initiated.

Ottawa

"It's in every community. We need to move on this issue...because it's a form of slavery, one of the worst forms of exploitation and abuse. I have survived this issue, I know it to be true." Ms. Cherry Kingsley was once a prostitute and has since gone through a dramatic change. She now advocates on behalf of Aboriginal youth involved in the sex trade through the non-profit organization Save the Children. Ms. Kingsley and co-author Melanie Mark released their report, Sacred Lives, in early December; a report stating some fairly disturbing facts. According to the report, some 90% of prostitutes in the province of Manitoba are Aboriginal. The two authors denounce the "over representation" of native youth in the sex trade. They say solutions developed for non-native prostitutes cannot help Aboriginal youth and that Canada needs to appoint a board of government officials, native leaders and youth who have been involved, to work together on a national strategy. - A collection of quotes from 150 aboriginal youth involved in prostitution made up the hardest-hitting part of the report. They speak of horrible past abuse and low self-esteem – brought on by things like discrimination..I lost my virginity to rape and I was consistently abused by my mother," said one female in Winnipeg, "I was ashamed of myself, who I was and what I looked like and when I met this man he was the world to me. He said 'Oh, you're so pretty,' and I fell for it". The solution, according to them, is to get help from other native youth who have been there and know how to escape the vicious circle. "You don't want to go in and have a suit sitting there saying 'Come over here and talk to me, I'll fix you...[Suits] have never been on the streets to the point where they're dirty and gross and smelly and stinky and hurting" said a female youth from Vancouver. Senator Landon Pearson, who worked on the report as well, and currently advises the government on youth issues, says that the biggest problem facing Aboriginal prostitutes is racism. He also says solutions must come from within the native community. Matthew Coon Come, National Chief of the Assembly of First Nations said the report shows the immense impact discrimination has had on native youth. The Canadian Alliance says the solution is not to spend more money at Indian and Northern Affairs, but to invest more on drug and alcohol treatment centres for all young prostitutes.

Toronto

As reported in the Globe and Mail on Monday December 11, 2000, the successful American extradition of Indian activist Leonard Peltier for the shooting deaths of two FBI agents on June 26, 1975, was found by a Canadian commissioner of inquiry to be based on erroneous pretense and was "highly questionable". Key witness Myrtle Poor Bear has admitted to what many have suspected for years – her testimony was false because she was coerced and threatened by FBI agents acting out of vengeance for their slain comrades.

Commissioner Fred Kaufman, a judge of the Quebec court of Appeal for 16 years, concluded in a letter to US President Bill Clinton, "As you can see from her evidence, she acted under duress at the time and, much of what she said was false". The letter urges President Clinton to consider Peltier for executive clemency. "I am satisfied that if this had been known when the extradition hearings took place, the request to extradite Peltier would likely have been refused." The trial took place in 1977 in Fargo N.D.. Peltier has appealed the conviction of double homicide for the

Residential school suits not path to 'fast money': gov't

By James Parker
of The StarPhoenix

Ottawa's foot dragging in dealing with residential school lawsuits is subjecting victims of the schools to more abuse, Saskatchewan lawyers say.

But a federal representative said the government is trying to validate claims in a way that's financially responsible and sensitive to the plaintiffs.

"Nobody should think this is an easy way to get fast money," said Sean Tupper, director of the residential school unit at the Department of Indian Affairs and Northern Development (DIAND).

"Validation will be a critical and important part of these processes. It's important that the public know we aren't just giving away money. And it's also important that through validation, people have their stories heard. That's part of the healing process."

However, lawyers Tony Merchant, Barry Singer and Ron Cherkewich say the last thing Ottawa is concerned about is healing.

The three men say the federal Department of Justice is stalling every step of the way, often putting their clients through a painful examination of discovery process on two, three or four separate occasions.

> *"It's important that the public know we aren't just giving away money. And it's also important that through validation, people have their stories heard."*
>
> — Sean Tupper, DIAND spokesperson

"This is like tearing an emotional bandage off a wound slowly and repeatedly," said Merchant, whose firm represents 4,300 of the 7,000 former students who have filed suit against the government and the churches that ran most of the schools.

"It is designed to create a chill over litigation and make it hard for First Nations people and for us."

Ottawa believes there are 15,000 valid claims which will cost at least $2 billion to settle over the next decade. So far, the government has paid out $27 million settling 300 suits. Much of the money has gone to First Nations people who attended the Gordon residential school.

The Department of Justice has 68 lawyers working on residential school work throughout the country, including 15 in Saskatoon. Business has been so brisk here the department is moving into new offices to accommodate its growing staff.

Merchant said the government became a lot more hardnosed about dealing with the cases at the end of 1997. Since then, there have been just a handful of settlements.

"They demand everything you would demand in a $5 million lawsuit," said Merchant.

"They do nothing illegal or anything against the rules. But what they do is in a sense immoral. They ask a whole series of meaningless, non-productive questions and they want documentation in meaningless issues."

Cherkewich said it's clear to him the federal lawyers have been instructed to stall.

"These are good lawyers. Before, I've negotiated settlements over the phone with them. But on this, they don't have the authority to change the toilet paper in the bathroom."

Singer suspects the federal government may not want litigation to proceed until it has worked out a deal with the churches. Ottawa is negotiating with the Anglican, United, Roman Catholic and Presbyterian churches. The lawsuits are a major financial burden for the churches and they want the government to take full responsibility.

Tupper said the process is also taking longer than normal because the cases deal with complex issues, an assertion the lawyers dispute.

"We're dealing with things like breach of treaty, loss of education, language and culture, loss of companionship of families. You can't deal with those overnight. There's a lot of stuff to grapple with."

Tupper said the government hopes some of the lawsuits can be settled through alternative dispute resolution mechanisms. There are three pilot projects under way in Saskatchewan.

Merchant, for one, is unimpressed.

"It's nothing more than a new way to stall and delay."

SGI makes photo licence mandatory

By Neil Scott
Saskatchewan News Network

REGINA — All Saskatchewan drivers will have to have a photo driver's licence within two years, SGI and provincial government officials said Thursday.

Doreen Hamilton, minister responsible for the Saskatchewan Liquor and Gaming

Lawsuits: Firm handling 4,300 abuse cases

■ Continued from A1

"This is the Ralph Nader of lawyers, doing good for society by addressing a problem. There was no other way First Nations people were going to receive compensation except for the fact lawyers fought hard."

The Merchant Law Group, a 40-lawyer firm with offices in four provinces, represents about 4,300 people who attended the schools, which were established by the federal government at the turn of the century to assimilate aboriginal children into mainstream society.

That's nearly two-thirds of the 7,000 former students who have filed suit against the federal government and the churches who ran the schools, most of which were closed in 1960s. The total could soon rise to 10,000 if the courts accept several class-action suits.

Ottawa believes there are 15,000 valid claims which will cost at least $2 billion to settle over the next 10 years. A government spokesperson said the estimate is conservative.

The plaintiffs in many suits allege they suffered sexual, physical and emotional abuse at the schools. Others accuse the government and the churches of committing cultural genocide by forcing them to leave their communities and attend schools where they were forbidden to use their languages and practise their culture. So far, the government has paid out $27 million settling 300 cases.

The Merchant Law Group charges its clients a contingency fee of between 17.5 per cent and 40 per cent, depending upon at what stage in the legal process a case is settled.

Saskatoon lawyer Barry Singer, who represents 180 former students of a Yorkton-area school, said he believes the government is floating the $2-billion figure to alarm taxpayers and shift the focus to the contingency fees charged by lawyers. He said the figure may be a lot lower, particularly if Ottawa stops dragging its feet in handling the cases.

The federal government has set up a $350-million healing fund and offered a formal apology for the residential school system. But just a handful of lawsuits have been settled in the past two years.

"I think it's a number ($2 billion) they throw out so there's an editorial next day in the Globe and Mail about how

Singer

Merchant

everybody should sit down and talk about these things," said Singer.

"That's why those things are leaked."

Merchant also condemned the government for its delay tactics, which he says only re-victimizes his clients and drives up costs for taxpayers.

But he believes the government will eventually have to pay. He suggested the $100 million estimate of his firm's potential gross earnings is not only accurate, but likely conservative. When asked if he's going to get rich off the lawsuits, he said: "I'm already rich.

"We thought we would do well financially and I think we will do well financially," said the prominent Liberal, who is appealing the reprimand and $15,000 fine levied by the Law Society of Saskatchewan.

"But many of us are taken with the passion of this process. These are very compelling stories. There is a deep-seated hurt (in aboriginal communities). A gigantic hurt. I don't think there's a single, solitary First Nation person who hasn't been affected by the residential schools, whether they attended or not."

Sean Tupper, head of the Department of Indian Affairs and Northern Development's (DIAND) residential school unit, said the government's estimate of 15,000 valid claims is based on an analysis of abuse committed at the Mount Cashel orphanage in Newfoundland and 12 other institutions across the country.

"We realized that roughly 12 to 15 per cent of the population was abused. They presented validated claims. Our number (of 15,000) is based on 100,000 residential school survivors across the country."

Tupper said the government estimates it will cost $140,000 to deal with each case, a total which includes its own legal costs. However, he said recent court decisions in British Columbia suggests the estimate could be low.

Harold Jimmy, a Cree man who complained to the law society after receiving a solicitation letter from Merchant, said he's appalled lawyers could receive hundreds of millions of dollars handling the cases.

"It's unfortunate. I don't want to minimize the pain and suffering of the victims. But my contention all along is the government has admitted wrongdoing, the churches have admitted wrongdoing, why are the lawyers involved? We should be focused on healing."

Meanwhile, Federation of Saskatchewan Indian Nations (FSIN) vice-chief Lawrence Joseph said he is disappointed and disturbed by Merchant's admission.

In a statement, he blames DIAND for refusing to act "when it became undeniable that the residential schools were agents of cultural genocide." He said residential school survivors have no other choice but "to go to lawyers who don't seem to have any ethical dilemma about getting rich off the tragedy of an entire people."

He said legal action would not have been necessary if Ottawa had negotiated "a better settlement" with the FSIN and other Indian groups.

Judge wants reports public

WINNIPEG (CP) — A judge has ordered police reports about the re-investigation of Thomas Sophonow to be made public as part of the ongoing inquiry into Sophonow's wrongful conviction.

Retired Supreme Court Justice Peter Cory, who is overseeing the inquiry, said the reports of Const. John Burchill go to the root of Sophonow's wrongful arrest

KLEIN VOTED OFF

Tobin: Grad-student count hurts grant chances: president

■ Continued from A1

But MacKinnon was concerned about the relatively poor showing of the U of S compared to the national average. The money was shared among 50 Canadian institutions and universities.

Part of the reason the U of S did poorly was its relatively low ratio of graduate students to undergrads, he said.

something MacKinnon has been working to stem, he said.

On Thursday he lobbied Tobin to have the government review, for example, how money for research chairs is being allotted.

Although the chairs and the awards are given out based on peer review and at arm's length from the minister, he is

00414

Abuse lawsuits could hit $10B, lawyer says

RESIDENTIAL SCHOOLS

Non-physical claims would inflate size of federal estimate

BY RICHARD FOOT

Residential school lawsuits will cost the federal government $4-billion to $10-billion — far more than the $2-billion estimate federal planners have put forward — say lawyers for former students who are suing over their treatment in aboriginal schools.

Government calculations project Ottawa must spend at least $2-billion to resolve 7,000 lawsuits already in the courts, as well as thousands more expected to come.

However, that figure only estimates the cost of claims for physical and sexual abuse. Lawyers for plaintiffs say Ottawa must also consider the many claims for cultural abuse, loss of language and forced confinement if it hopes to accurately gauge its liabilities.

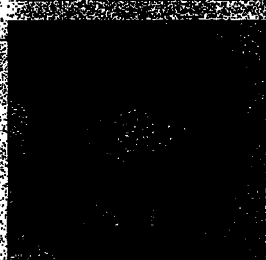
"Two-billion dollars is less than what will be required in the final result," says Timothy Turple, a Saskatchewan lawyer with the Merchant Law Group, a firm handling more than half the residential school cases in Canada.

"I wouldn't be surprised if total liability will exceed $4-billion. That wouldn't shock me, given the potential numbers of people involved."

Government figures show there are about 105,000 surviving former students of residential schools.

Mr. Turple says his firm represents about 4,600 people with existing claims and has new clients every day. Many claims, including those alleging sexual or physical harm, seek damages for some kind of non-physical suffering.

Across Canada, a majority of the residential school [illegible] compensation for one or more of the following: loss of culture, involuntary confinement, inadequate food and housing, indoctrination into the Christian faith, educational malpractice, abuse of treaty and forced labour.



Lawyers say it is this broad category of non-physical claims that will inflate the costs facing the government and four churches that operated the schools. The government is proposing to assume many of the churches' liabilities.

"They've cranked out this $2-billion number but I think it's really, really low," says Russell Raikes, chairman of the Canadian Residential School Plaintiffs Association, whose members represent an additional 4,000 native clients.

Mr. Raikes says if the government includes non-physical claims into its calculations, its costs would soar well past $10-billion.

Shawn Tupper, director of the residential schools unit at the Department of Indian Affairs, says Ottawa has no plans to compensate native people for non-physical abuse. He says none of these issues have been proven in court, and the government doubts that cultural and language matters are a legitimate cause of civil action.

Mr. Tupper says the government is not dismissing the issue of non-physical claims, but would prefer to resolve them through national or community-based cultural and social programs.

Tony Merchant, a Regina lawyer who helped pioneer residential school claims, says that response will not satisfy aboriginals or the courts.

"Normally gregarious children came into the schools and got talking beaten out of them," he says. "I think lawyers can prevail on the loss of culture issue, and I'm even more confident we can prevail on the confinement claim."

Adds Mr. Raikes: "If you went to a school and you didn't get enough to eat, you lost your language, you were humiliated on a daily basis, you were forced to work, you didn't receive a quality education in any sense of the word — you came out of there psychologically beaten and your spirit taken out of you, but you weren't beaten or sexually abused — does that mean you don't qualify for compensation?"

He says the government is afraid to acknowledge liability for such matters because doing so would [illegible] the potential number of claims [illegible] much broader.

Asked whether spending billions to compensate cultural claims might incite a taxpayer backlash, Mr. Raikes responds: "That's too bad. The fact is the government did something wrong and if there's a price to be paid then we as a society are going to have to pay it."

National Post

Gov't eyes huge award

By LEADER-POST STAFF

Ottawa is studying a court decision that awarded more than $370,000 to a Regina man who was sexually abused by a residential school administrator in the 1970s.

"My understanding is, it's the biggest so far that has been awarded by the courts," said Lynne Boyer, residential schools policy adviser for the federal Indian and Northern Affairs Department.

However, no decision has been made yet about whether the decision handed down by Saskatchewan Court of Queen's Bench Justice John Klebuc earlier this week will be appealed, Boyer said.

In his decision, Klebuc awarded $377,000 to the man, who is identified as H.L., in compensation for sexual abuse suffered while he was in the Boxing Club at Gordon's Residential School.

H.L.'s lawyer, Tony Merchant, said the decision set a precedent both for the size of the award and for the fact that the courts have found Ottawa liable even though the victim wasn't a resident of the school.

The plaintiff in the case is a status Indian and member of the Gordon First Nation reserve who was victimized in the mid-'70s on three occasions by William Peniston Starr. Starr was the principal of the Gordon's Indian Residential School and administrator of the school residence. The school and residence were owned and operated by the federal government.

The incidents involved Starr getting H.L. to masturbate him and Starr doing the same to H.L.

Hundreds of former Gordon's residents have filed suits against Starr, a convicted pedophile who was sentenced in 1993 to 4½ years in prison after pleading guilty to sexually assulting 10 male students.

H.L. said that as a result of his experiences, he experienced low-self esteem, feelings of shame, humiliation, and self blame. Court heard he dropped out of school, became an alcoholic, suffered emotional problems and had trouble holding down a job.

The judgment awarded damages for lost future earning capacity against both Starr and Ottawa in the amount of $179,190. Damages for lost past income were set at $97,213. Non-pecuniary damages were $80,000 and aggravated damages were $20,000. Further punitive damages of $20,000 were assigned to Starr.

During the trial, Government of Canada lawyers had argued that if Starr had committed the assaults, such conduct was outside the scope of his employment and therefore Ottawa wasn't liable. However, Klebuc rejected that line of defence.

"I am satisfied that Canada operated the boxing club and held it out to be a signficant achievement on the part of the Department of Indian Affairs," Klebuc wrote in his decision. "The Department's involvement went far beyond providing facilities and some funding ... in doing so, it created or enhanced the risks which are the subject of the within action."

Boyer said about 8,100 individuals have filed lawsuits over residential schools naming Ottawa as a defendant.

Between 350 and 400 suits have been settled out of court, while a handful of cases have gone to trial, she said.

Boyer said each case must be considered on its individual merits, so it doesn't necessarily follow that the H.L. decision will lead to a flood of non-resident plaintiffs filing suit.

Of the three Saskatchewan residential school cases that went to trial where Ottawa has been found liable for damages, none have been appealed.

TRAILER ROCK

ROY ANTAL/The Leader-Post

SaskTel expects to be busy

By TANIS FOWLER of the Leader-Post

More than 900,000 people will be dialing their moms this Mother's Day, say officials at SaskTel. The huge volume of calls expected will likely set a new record for what has traditionally been SaskTel's busiest calling day of the year.

With such a huge number of calls taking place, callers might have to deal with network congestion during the busy calling hours.

With that in mind, SaskTel is advising people to avoid calling between 10 a.m. and 2 p.m. and between 7:30 p.m. and 10 p.m.

Some more tips for a hassle-free call to your mom are to dial the number directly instead of using the operator for assistance, and to check the phone number and consider the time zones before dialing. After that, all that's left is to

IADA

ABUSE SUITS SOAR

OTTAWA URGED TO SETTLE

Millions spent researching records of residential schools

By Richard Foot

The federal government spent more than $440,000 last year searching its archives for historical documents required to defend lawsuits from former students of one Indian residential school in Saskatchewan.

The figure, disclosed in government court records, reveals Ottawa is spending millions of dollars on document research alone as it deals with allegations of abuse at dozens of residential schools across Canada.

The government is also paying the salaries and expenses of teams of lawyers dedicated to residential school cases and has already paid out $33-million on residential school compensation. But it is the task of combing through residential school records that is racking up some of the highest bills.

In a decision in July, Justice Gerald Kraus of the Saskatchewan Court of Queen's Bench said federal lawyers told him the search for documents relating to the 500 claims from the Lebret residential school north of Regina "has been a mammoth and expensive undertaking."

John Siebert, a consultant who has searched the records himself, says for many decades Ottawa micro-managed the schools, leaving a paper trail of millions of documents at the Department of Indian Affairs.

Now, he says, "the feds face a staggering logistical problem with document production in legal proceedings."

Tony Merchant, a lawyer representing some of the Lebret claimants, says the paper chase is a waste of time and money and calls Ottawa's endless pursuit of archived records "a demonstration of the extremes of silliness of the approach to this litigation" by the parties being sued.

Rather than spend $440,000 on "clerks fiddling around in the bowels of Ottawa," he says, the government should use its money to settle claims.

At the Lebret school, like many others across Canada, former students are suing both the government and one of four churches — in this case the Roman Catholic Oblates of Manitoba — which shared in the operation of the school. At issue between the two groups is who controlled residential schools and who should bear the liability for any abuse at them.

Merchant

To solve this question, Ottawa and church organizations are hiring researchers to scour government archives for records dating back over the last 100 years that may shed light on how responsibility for the schools was divvied up.

Mr. Merchant says if Ottawa and the churches could reach agreement on this, then trials could proceed and native plaintiffs could present their cases. But that's not likely to happen, he says, as the bickering over archived records from the Lebret school proves.

The government has so far produced a list of about 3,000 historical documents on Lebret. The Roman Catholic Oblates want the Saskatchewan courts to order Ottawa to produce more. The Oblates believe the government has Cabinet and ministerial records proving the church was not the controlling partner in the school.

In July, Jan Maydan, a senior advisor in the federal Office of Indian Residential Schools Resolution, told the Saskatchewan Court of Appeal that Ottawa was doing all it could to find relevant documents, and should not be forced to spend more time searching the Lebret files.

In an affidavit, she said in the last fiscal year her office spent $392,000 "just on research" related to Lebret, not including "the salaries and travel of federal government employees engaged in this litigation."

Plus, she said her office had spent $50,000 paying four full-time contractors to search for records requested by the Oblates.

"We were pretty shocked by those numbers," says Paul Harasen, a lawyer for the Oblates. He says he doesn't believe Ottawa is hiding documents, but that its researchers have failed to seek out specific records that might harm the government's case.

The Oblates have hired their own researcher to scour the National Archives for records, but private researchers, Mr. Harasen says, aren't being given access to residential school files not open to public scrutiny.

Federal officials have declined to reveal the exact cost of researching records for other residential schools across the country.

National Post

Sept 28 2001

Globe & Mail
Monday Jan 15/2007
A9

COMMENT EDITOR: PATRICK MARTIN
comment@globeandmail.ca

OPEN LETTER TO HERB GRAY

Accept responsibility for native schools

We the undersigned, university professors, researchers, and students of Native history in Canada, believe that the federal government bears primary financial responsibility for abuse claims arising from the treatment of former students at Indian residential schools.

In early September, Prime Minister Jean Chrétien named you as his Special Representative to the church organizations (Anglican, Presbyterian, Roman Catholic and United) involved in litigation related to Indian residential schools. We direct this letter to you in that capacity.

Litigation to date has resulted in 60 per cent of the financial liability being assigned to the churches and 40 per cent to the federal government. This has led to heavy financial demands on these institutions, which in the case of the national office of the Anglican Church of Canada has already caused a reduction of eight full-time staff members. Crippling lawsuits brought forward by Canada's Department of Justice have led one Anglican diocese in British Columbia to declare bankruptcy. . . . Yet, were, and are, the churches really or solely responsible for the residential schools?

While the federal government assigned the responsibility for schooling to the Christian churches, it remained legally responsible for Status Indians who attended residential schools. It then neglected to provide adequate funding for, and inspection of, the schools' operations. At the same time, many Christian missionaries attempted to protect their students from past injustices, and to assist the First Nations to reach an equal position with the Newcomers. In hindsight, we now realize that they were as culture-bound as any people of their own time, or of ours. They assumed that their culture and religion were superior. They sought to teach the First Nation children English (or French), as well as European work habits, and Christianity. There was no reciprocity.

Over the course of the last 15 years the Christian denominations responsible have all publicly apologized and accepted moral responsibility. They are willing to accept some financial responsibility. However, the current 60-40 allocation of financial responsibility . . . recommended by the courts is too onerous and unfair. The primary financial responsibility belongs with the federal government.

The Canadian government can do a great deal more to funding rehabilitative programs now and in the future. The churches are already funding some of this healing through grants to First Nations. It is acknowledged that Canada's 1998 statement of reconciliation in regard to residential schools and the accompanying policy and program initiatives are steps in the right direction, but more work needs to be done for reconciliation and forgiveness.

Canada could also make amends by putting more resources into indigenous language programs. And it could help local communities and individuals to communicate their feelings in order to work them through towards healing.

Kerry Abel, professor of history, Carleton University; Jennifer Brown, professor of history, University of Winnipeg; Ann ten Cate, archivist; Janet E. Chute, research associate, Dalhousie University School for Resource Management and Environmental Studies; Ken Coates, historian, Saskatoon; Olive Dickason, professor emeritus of history, University of Alberta and adjunct professor, University of Ottawa; Tony Hall, associate professor of Native American Studies, University of Lethbridge; Wayne Holst, instructor, Department of Continuing Education, University of Calgary; Dr. Jean Manore, assistant professor of history and Canadian Studies, Trent University; Jim Miller, professor of history, University of Saskatchewan; John Milloy, professor of history and native studies, Trent University; Jennifer Pettit, history professor, Mount Royal College; Donald Smith, professor of history, University of Calgary.

Globe & Mail
October 31st, 2001

Groups cool to residential schools offer

BY JILL MAHONEY, EDMONTON

For Flora Northwest, there was little comfort in the federal government's announcement that it will cover 70 per cent of out-of-court settlements for victims of abuse at native residential schools.

Her case, like thousands of others, could be years away from resolution because of court delays and the long process required to validate each claim.

"They should speed it up ... we've waited too long," said the 56-year-old who spent nine years in the 1950s and 60s at the Ermineskin Indian residential school in Alberta, where she says she experienced several forms of abuse.

Ms. Northwest also rejects as overstated assertions by church groups that payouts would push many congregations to poverty or even bankruptcy.

"Why should they get off scot-free?" she asked.

On Monday, Deputy Prime Minister Herb Gray said the government will pay 70 per cent of compensation negotiated by validated victims of sexual or physical abuse who settle out of court or through other dispute-resolution arbitration. Sources said this could represent about $700-million.

Victims can take church organizations, which say 30 per cent is too large a burden to bear, to court to recover the remainder.

It's not clear how many former students will accept Ottawa's offer.

More than 8,500 people have filed claims against the government alleging physical, sexual and other abuse, including loss of culture and language. There are 4,500 court cases because some claims have been lumped together while others are undergoing arbitration or have not yet been filed in court.

Tony Merchant, a Regina lawyer who represents about 4,900 plaintiffs, estimates a "very small" percentage will accept the offer.

Only 315 cases have been settled; payments range from $15,000 to $300,000, with an average of about $200,000, Mr. Merchant said.

The churches — Roman Catholic, United, Anglican and Presbyterian — that operated the schools with the government say Ottawa's unilateral action is unfair to them.

With reports from Shawn McCarthy and Steven Chase in Ottawa

Thursday, February 22/01

Calgary Herald

"Many of the questions involve historical issues"

LAWYER VAUGHN MARSHALL, WHO REPRESENTS ABOUT 600 ALBERTA NATIVE COMPLAINANTS

Judge speeds up aboriginal suit

Lawyers have 90 days to finalize questions

DARYL SLADE
CALGARY HERALD

A judge assigned to manage a multibillion-dollar lawsuit by aboriginals allegedly abused in federal government-owned, church-run residential schools has established a strict schedule to help move the case closer to trial.

With a Feb. 28 deadline about to pass for prospective claimants to register as part of the class-action suit, Alberta Court of Queen's Bench Justice Terrance McMahon attempted Wednesday to move quickly on to the next phase.

During a regular case management meeting in Calgary, McMahon gave lawyers for both sides 90 days to finalize their questions for pre-trial examination of witnesses.

Lawyers for about 2,500 Alberta aboriginals claiming sexual, physical and cultural abuse while at the schools from the 1920s to the 1960s submitted 140 pages of "interrogatories" to be asked of government and church witnesses.

They, in turn, will submit their questions to be asked of 50 plaintiffs who will be the test cases in the trial.

Lawyers for all sides must voice their objections on the relevance of materiality of questions by the next meeting on April 20, and have all questions finalized by the deadline of May 30, so they can proceed at a June 1 case management meeting.

"Many of the questions involve historical issues," said lawyer Vaughn Marshall, who represents about 600 of the Alberta complainants.

"It's quicker to provide the written questions beforehand, so they (witnesses) can take the time to look up answers and provide them in writing. It just saves a lot of time and moves the process ahead more quickly."

Marshall said he is optimistic the case, one of many involving 6,000 to 8,000 alleged victims nationally, could proceed to trial by sometime next year.

But McMahon told the gathering of more than 20 lawyers it still has to be determined who among the 50 test cases will proceed to trial, whether they will be handled by one or more judges, and if separate trials are held, whether they would be concurrent or at different times.

It also has to be determined where the trials would have to be held — Calgary, Edmonton or other relevant locations.

One of the biggest stumbling blocks to any out-of-court settlement is the government's refusal to compensate victims for non-physical or sexual abuse, in particular loss of culture and language.

"I think most of us plaintiffs' counsel are eternally optimistic that something along those lines will happen," Marshall said.

"The way it has been described by some defendants' lawyers is they consider them untested claims and that they would want the court to rule on those issues before they would be prepared to consider them in a settlement."

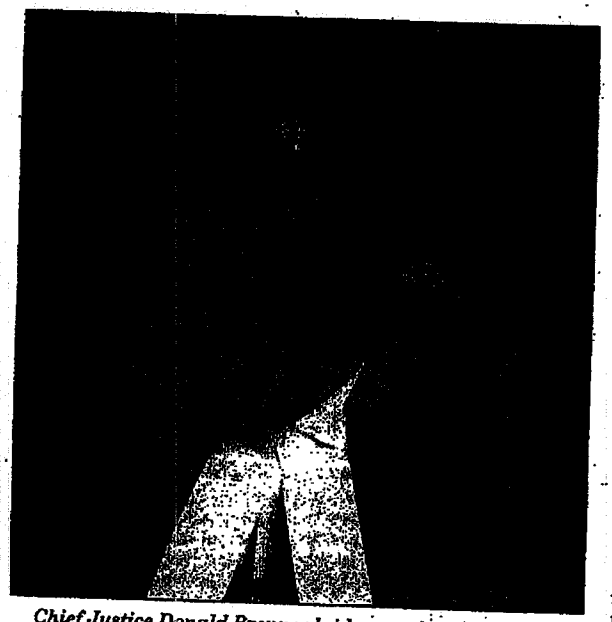
Frans Slatter, lawyer for several Roman Catholic institutions in Alberta, Saskatchewan and the Northwest Territories, agreed.

He said last week the issue of cultural suppression has never been recognized by the courts in this country.

Marshall said, however, there is precedent in Australia where the government compensated aboriginal victims for cultural abuse 15 years ago.

THE LAWYERS WEEKLY

Vol. 23, No. 19 *Celebrating 20 Years of Service to Canada's Legal Community 1983-2003* September 19, 2003



Chief Justice Donald Brenner laid groundwork for study.

CJC inviting public input on e-access to court records

By Gary Oakes
Victoria

The Canadian Judicial Council (CJC) wants to hear from all players in the legal system — "including media, litigants, legal and academic communities and commercial users"— on issues arising from electronic access to court records.

Regardless of the challenges involved, a discussion paper on the subject warns that "it is not a question of whether the electronic environment will dominate the administration of justice. It is a question of when."

Although prepared for a closed meeting of the council last May, the 51-page paper, "Open Courts, Electronic Access to Court Records, and Privacy," was released only earlier this month.

Prepared by a subcommittee of the CJC's Judges Technology Advisory Committee (JTAC), the paper says the "right of the public to open courts is an important constitutional rule, that the right of an individual to privacy is a fundamental value, and that the right to open courts generally outweighs the right to privacy."

The paper reaches 32 other conclusions, including one that the CJC "has a leadership role in initiating discussions and debate about the development of electronic access policies and that such policies be as consistent as possible throughout Canada."

In an executive summary, the subcommittee credits "the important work initially undertaken for the Administration of Justice Committee" by Chief Justice Donald Brenner of the B.C. Supreme Court and its law officer, Judith Hoffman. It says the paper "further develops the many policy and logistical issues which arise when courts accommodate electronic filing and electronic retrieval of courts records and docket information."

It says that because of "the complexity of the issues and the importance of consultation amongst those interested in and involved in electronic access policies, JTAC has concluded that it would be inappropriate for it to recommend a model policy.

see CJC p.3

Bad faith not a prerequisite for ordering costs payable by counsel personally: court

By John Jaffey
Toronto

An Ontario Superior Court judge [illegible] in the course of proceedings before he or she should be required to pay costs personally.

Saskatchewan Court of Appeal grants rare leave to appeal its own decision

By Deana Driver
Regina

In a rare move, a provincial court of appeal has [illegible] a resident at the Gordon's Day School when an employee of the school, William Starr, molested him [illegible] because they thought their courts of appeal would say, 'We're right and why should we

ruling, has held that bad faith is not a prerequisite for doing so.

Justice Joseph Quinn applied rule 57.07 of Ontario's *Rules of Civil Procedure*, which states: "Where a solicitor for a party has caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default, the court may make an order ... requiring the solicitor personally to pay the costs of any party."

In ordering Toronto lawyer Paul M. Feldman to personally pay costs of $6,527, Justice Quinn wrestled with the top court's finding that has usually been interpreted as requiring a lawyer to have acted in bad faith

"Any member of the legal profession might be subject to a compensatory order for costs if it is shown that repetitive and irrelevant material, and excessive motions and applications, characterized the proceedings in which they were involved, and that the lawyer acted in bad faith in encouraging this abuse and delay."

Justice McLachlin explained that courts "must be extremely cautious in awarding costs personally against a lawyer, given the duties upon a lawyer to guard confidentiality of instructions and to bring forward with courage even unpopular causes.

see COSTS p.19

review one of the appeal court's own decisions.

In a unanimous decision, three judges of the Saskatchewan Court of Appeal found that, in the words of the Act's s. 37, "the question involved in the appeal is one that ought to be submitted to the Supreme Court for decision."

In May 2001, a provincial Court of Queen's Bench judge awarded Native plaintiff H.L., damages of $407,000 — the highest award ever granted in a residential school case. But in December 2002, the appeal court cut the award to $86,000 by removing compensation for past and future earnings. The court also held the federal government liable, even though H.L. was not

Group in Regina, made an application under s. 37, suggesting that the appeal court require the Supreme Court to answer two questions:

1) What is the correct standard of review of the appellate court of a province, and is that standard different for the appellate court of Saskatchewan?

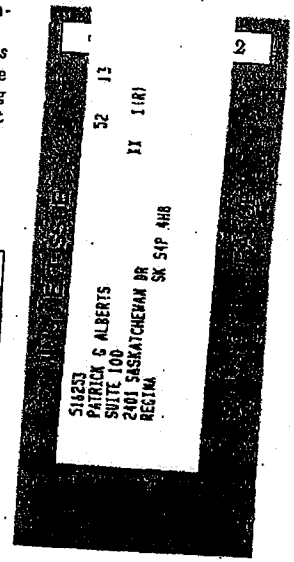
2) Did the Saskatchewan Court of Appeal misapply that standard regarding: (a) expert witnesses (b) pecuniary damages?'

Merchant told *The Lawyers Weekly* he chose to take the unusual move instead of seeking leave from the Supreme Court for more than one reason. "Lawyers have not gone to their courts of appeal and asked for leave to appeal, to some extent

... said, Aren't you taking quite a risk by applying to the Court of Appeal and not to the Supreme Court, because you only have 60 days to apply to the Supreme Court?'"

For one thing, he had no doubt that if the appeal court thought the further appeal had merit, "they would send it to the Supreme Court without any personal considerations," he said.

see APPEAL p.19



'The Court should not shirk from exercising the jurisdiction bestowed upon it'

APPEAL

–continued from front page–

"If anything, I thought it possible the Court of Appeal would be magnanimous and say, 'Maybe this should go on.'"

With Justices Calvin Tallis and Nicholas Sherstobitoff concurring, Chief Justice Ed Bayda accepted his arguments.

Citing caselaw, he acknowledged that provincial courts usually leave it to the Supreme Court to decide which cases it hears, and "insist upon litigants making their applications for leave not under s. 37 but under s. 40 (1).

"However, on rare occasions, a provincial or regional concern of compelling importance will arise, rendering a provincial court of appeal peculiarly suited to determine if that case is one that ought to be decided by the country's highest court. And, when that happens, the Court should not shirk from exercising the jurisdiction bestowed upon it by s. 37."

Justice Bayda pointed to the conflicting interpretations of whether the Saskatchewan Court of Appeal should hear a case by way of rehearing or review for error.

He said that while Justices Stuart Cameron, William Vancise and Gary Lane had decided to hear the appeal by way of rehearing, the Supreme Court in *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, seemed to conclude that any such appeal should be heard by way of review for error.

"Both conclusions cannot be right," the chief justice wrote. "The first conclusion enables this Court to do considerably more than the second conclusion."

He said that in delineating the boundaries of the powers of his court, the omission by the majority in *Housen* "to consider or refer to the statutory powers that are expressly spelled out for that court in the statute constituting it, may well mean that the majority's judgment as it relates to that delineation is *per incuriam*. ... Only the Supreme Court can find its earlier judgment *per incuriam*."

He said the court had used the power to rehear rather than review for error because of issues relating to the proper assessment of the qualifications and evidence of two expert witnesses and the propriety of awarding pecuniary damages.

"It is difficult to say what the final answer would have been in each case had it taken the opposite approach," he said. "This unsatisfactory situation, although, strictly speaking, relevant only to Saskatchewan, forms the basis for a question that is of compelling and fundamental importance and one that is either best resolved (perhaps one that can be resolved only) by the Supreme Court," he wrote.

"Moreover, this situation presents one of those rare occasions where this court is peculiarly suited to assess whether the question ought to be tried by the Supreme Court."

The chief justice said he had not examined the statutes of other provinces' appellate courts, some of which might find themselves in this same situation.

Merchant said Justice Cameron, who wrote the decision now under appeal, "went on for 20 pages talking about what is our [the court's] power — can we substitute what we think ought to have resulted, or are we only able to dabble.

"It's a very important principle for the justice system and for the public as well, because the way I see it, you would end up with dress rehearsals before the Court of Queen's Bench or the Supreme Court or the Ontario Court of Justice and the real show would be in the appeal

They both can't be right. The federal government, to its discredit, in the new settlement system they've got, have said if you have a problem in B.C., you can get up to $245,000 and if you have a problem anywhere else, you can only get $196,000."

He said the Supreme Court will have to decide whether there should be "markedly different financial awards, depending upon which province you're in, or that these financial awards ought to be pretty much the same across Canada."

Merchant said that by comparison with H.L., Caucasian victims of similar abuse "have had that much and more. There was a Caucasian girl who just got over $500,000 in Alberta. Not wanting to sound like I'm seeing racism, but you could make a pretty good argument that for some reason the compensation for Indians with the same sort of case often seems to be lower than for the same sort of case for white people."

The appeal court also allowed the federal government leave to cross-appeal on the ground the appellate court erred in applying principles of vicarious liability to the facts in the case. Chief Justice Bayda said the issue of vicarious liability raises an important question that ought to be decided by the Supreme Court.

He suggested that since both appellant and respondent would be arguing that the appellate court erred in issues pertaining

Trustee's affidavit described as 'Ripleyian in nature'

COSTS

–continued from front page–

"A lawyer should not be placed in a situation where ... fear of an adverse order of costs may conflict with these fundamental duties of his or her calling."

However, Justice Quinn found that the passage has been applied too broadly. "I do not think *Young v. Young* was intended to be a cross-country comprehensive assault on the statutory jurisdiction of a Superior Court to order a solicitor to personally pay costs."

Although conceding that the discretion available to him

In support, he submitted Canavan's affidavit containing an account Justice Quinn described as "Ripleyian in nature. In essence, he deposes that most of the orders were obtained without his knowledge and certainly without his consent and that he was unaware that he was in jeopardy of going to jail."

Canavan also deposed that on discovering he had been found in contempt, he was assured by Feldman "that I did not have to worry, and that he would be appearing in court ... to take care of matters."

had asked Feldman whether he had read and understood it and, through his counsel, he said Yes.

"The affidavit of Canavan recounts an amazing tale and my first reaction is disbelief," the judge said. "I am concerned why Canavan did not part company with Feldman earlier.... Is his affidavit merely some bold get-out-of-jail ploy? After all, had I not instigated the arrest of Canavan on May 23, Feldman would still be his counsel. Yet, with Feldman acknowledging Canavan's affidavit ... I am pretty well obliged to accept the truth of the statements in the

utmost care and only in the clearest of cases and that any doubt should be resolved in favour of the solicitor, he said that what should have been the routine winding up of a $1.4 million estate had become "an expensive merry-go-round."

A residual beneficiary brought a motion in October 2001 to force the trustee to pass accounts, but over the next 18 months it expanded to 10 motions. In presiding over the 10th last May, Justice Quinn declared himself seized of the passing of accounts and all outstanding and future motions, "on the theory that no more than 10 judges should ever be involved in the same case."

He also took the extraordinary step of summoning a police officer into court to arrest the estate trustee, Jack Canavan after the applicant's counsel, Ronald Bohm of Richmond Hill's Stong, Blackburn, Machon, Bohn, told the court a motions judge two months earlier had found Canavan in contempt, sentenced him to six months' imprisonment and issued a bench warrant for his arrest.

Soon after, Canavan discharged Feldman and retained John DiFiore, who appeared before Justice Quinn on June 26 seeking rescission of the contempt finding and Canavan's release from jail.

'Is his affidavit merely some bold get-out-of-jail ploy?'

He said he also believed Feldman had told the other counsel and the court "that he had spoken with me and that he had specifically obtained my consent to the finding of contempt.

"At no time did ... Feldman ever discuss with me any possibility of consenting to a finding of contempt, or that I would have three days within which to purge any such contempt, or that I would have to attend on a peremptory basis on March 4, 2003, or that I was to pay ... costs personally."

He said Feldman's counsel, Patrice Côté, also tried to obtain his release by filing a motion record containing an affidavit by Feldman which "implies that he had discussions with me since my incarceration and that I was repentant of the delay which I caused in the administration of the estate, and that I apologized to the court for failing to comply with previous orders. ... I did not have any such discussions with Feldman while I was incarcerated."

Noting that Feldman did not deliver a response to Canavan's affidavit, Justice Quinn said he

Accordingly, he rescinded the finding of contempt and the bench warrant against Canavan and ordered that he be released from jail immediately.

At the end of his decision, Justice Quinn added a new twist which might explain why Canavan did not part company with Feldman earlier.

"What I have not mentioned so far is that Canavan asked for, and was paid by Feldman from estate funds, approximately $96,000 in trustee's compensation even though the will of the deceased does not provide for the pre-taking of compensation and the estate accounts ... have not been passed. ... Canavan seems to have viewed the estate as his personal short-term annuity."

In adjourning the passing of accounts for a month, he ordered Canavan to reimburse the estate.

DiFiore advised *The Lawyers Weekly* that the money has been repaid and that on July 28, minutes of settlement were arrived at between his client, Canavan, and the beneficiary who brought the original application to have the accounts passed.

DiFiore also said the motion was adjourned *sine die*, and he expects the accounts to be passed in the near future.

Reasons in *Belanger v. McGrade Estate*, [2003] O.J. No. 2653, are available from FULL TEXT: 2319-021, 16 pp.

late court can read the record and read what the judge did and say, 'nah, they got this result wrong, I'm going to change it,' then appeals are going to be far more significant and there are going to be a whole lot more appeals."

Justice Bayda also wants the Supreme Court to offer guidance on the 12,000 residential school claims before Canadian courts.

"It is highly desirable, if not necessary, that the courts hearing this plethora of cases have early guidance from the highest court in the country on the questions that are commonly raised by the claims for pecuniary damages," he said.

"This guidance, in addition to assisting trial judges in making their assessments, will have the salutary effect of obviating appeals that would ordinarily ensue. ... A decision from the Supreme Court would go a long way to promote the expedition of and finality to these cases, not to mention justice for the thousands of litigants."

Merchant sees "a strangeness in the awards system in residential school awards" — that awards in British Columbia tend to be much larger than those in Saskatchewan.

"Saskatchewan is giving general damages of $60,000 to $75,000. B.C. is giving $125,000.

tion of Saskatchewan's *Court of Appeal Act, 2000*, the provincial attorney general might want to consider an application to intervene "with a view to presenting an argument restricted to those issue pertaining to the interpretation and construction of that Act."

Merchant said he told the appeal court he went back there because the Supreme Court "ought to see that these issues related to First Nations people are important, but you are in a court of appeal where 20 per cent of the province is First Nations and growing, you are in a province where there are 3,000 residential school litigations.

"The Supreme Court, located in central Canada where there are few First Nations people, would also grant leave to appeal, but you in Saskatchewan are better to see the importance of this issue.

"It's the same kind of argument I might make if I were in Nova Scotia or Newfoundland over the fisheries, or over oil and gas and cattle in Alberta."

Thor Kristiansen of Justice Canada's Indian Residential Schools team in Saskatoon acted for the respondent Attorney General of Canada.

Reasons in *H.L. v. Canada (Attorney General)*, [2003] S.J. No. 555, are available from FULL TEXT: 2319-023, 10 pp.

May 14 2004

SUPREME COURT

Decision reserved on residential school abuse case

By BARB PACHOLIK
Leader-Post

The Supreme Court of Canada has reserved decision on a Saskatchewan case that could have far-reaching implications for victims of abuse suffered at Indian residential schools.

The appeal was heard Thursday in Ottawa.

Last August in a rare move, the Saskatchewan Court of Appeal granted H.L., who cannot be named, permission to take his case to Canada's top court. Ordinarily those seeking to appeal would apply directly to the Supreme Court, but H.L.'s lawyer, Tony Merchant, chose an alternate — and rarely used — route of applying to the same appeal court that issued the contested decision.

In the ruling granting leave to appeal, Saskatchewan Chief Justice Ed Bayda said the case could offer guidance on the 12,000 residential school cases now before the courts across Canada.

"A decision from the Supreme Court would go a long way to promote the expedition of and finality to these cases, not to mention justice for the thousands of litigants," he wrote.

H.L., now 42, was assaulted almost three decades ago while participating in a boxing club run by William Penistan Starr on behalf of the government-run Gordon's Residential School near Punnichy. Starr was the residence administrator at the school. Although the victim didn't attend the school, the Saskatchewan appeal court held that the federal government was still vicariously liable. Starr was sentenced in a Regina courtroom in 1993 to 4½ years in prison after pleading guilty to sexually assaulting 10 male students who attended the school between 1968 and 1984.

In May 2001, Queen's Bench Justice John Klebuc ordered H.L. receive $407,129. But in December 2002, the Saskatchewan Court of Appeal reduced the award to $86,500 by removing any compensation for past and future earnings.

Among the issues the Supreme Court was asked to decide was the correct standard of review for an appeal court and vicarious liability.

Merchant says gov't stalling on lawsuits

By JAMES PARKER
Saskatchewan News Network

SASKATOON — Ottawa's foot dragging in dealing with residential school lawsuits is subjecting victims of the schools to more abuse, say Saskatchewan lawyers.

But a federal representative said the government is trying to validate claims in a way that's financially responsible and sensitive to the plaintiffs.

"Nobody should think this is an easy way to get fast money," said Sean Tupper, director of the residential school unit at the Department of Indian Affairs and Northern Development (DIAND).

"Validation will be a critical and important part of these processes. It's important that the public know we aren't just giving away money. And it's also important that through validation, people have their stories heard. That's part of the healing process."

However, lawyers Tony Merchant, Barry Singer and Ron Cherkewich say the last thing Ottawa is concerned about is healing.

The three men claim the federal Department of Justice is stalling every step of the way, often putting their clients through a painful examination of discovery process on two, three or four separate occasions.

"This is like tearing an emotional bandage off a wound slowly and repeatedly," said Merchant, whose firm represents 4,300 of the 7,000 former students who have filed suit against the government and the churches which ran most of the schools.

"It is designed to create a chill over litigation and make it hard for First Nations people and for us."

Ottawa believes there are 15,000 valid claims which will cost at least $2 billion to settle over the next decade.

So far, the government has paid out $27 million settling 300 suits.

Much of the money has gone to First Nations people who attended the Gordon Residential School.

The Department of Justice has 68 lawyers working on residential school work throughout the country, including 15 in Saskatoon.

Business has been so brisk here the department is moving into new offices to accommodate its growing staff.

Merchant said the government became a lot more hardnosed about dealing with the cases at the end of 1997. Since then, there have been just a handful of settlements.

"They demand everything you would demand in a $5-million lawsuit," said Merchant.

"They do nothing illegal or anything against the rules. But what they do is in a sense immoral. They ask a whole series of meaningless, non-productive questions and they want documentation in meaningless issues."

Cherkewich said it's clear to him the federal lawyers have been instructed to stall.

"These are good lawyers. Before, I've negotiated settlements over the phone with them. But on this, they don't have the authority to change the toilet paper in the bathroom."

Singer suspects the federal government may not want litigation to proceed until it has worked out a deal with the churches. Ottawa is negotiating with the Anglican, United, Roman Catholic and Presbyterian churches.

The lawsuits are a major financial burden for the churches and they want the government to take full responsibility.

And Singer, who represents 180 former students, said Ottawa may have a darker motive.

"They are like anybody else who has to pay money. They are trying not to pay money. They figure maybe people will quit, die or go away. They aren't being very honest or forthright about."

Tupper said the process is also taking longer than normal because the cases deal with complex issues, an assertion the lawyers dispute.

"We're dealing with things like breach of treaty, loss of education, language and culture, loss of companionship of families. You can't deal with those over night. There's a lot of stuff to grapple with."

Tupper said the government hopes some of the lawsuits can be settled through alternative dispute resolution mechanisms. There are three pilot projects under way in Saskatchewan.

Merchant, for one, is unimpressed.

"It's nothing more than a new way to stall and delay."

SASKATOON STARPHOENIX

Elias charged after fatal accident

Loren Elias, 29, from Wymark, has been charged in relation to a fatal motor vehicle accident that occurred Nov.

00425

spokesperson Dave Bailey said officials erred on the side of caution.

Abuse: Process hurts victims, Merchant says

■ Continued from A3

Tony Merchant, whose Regina-based law firm represents about 5,000 plaintiffs, said in the past an increase in the number of justice lawyers working on the cases has proven to be more of a hindrance than a help.

Merchant has frequently complained that Ottawa's "overly litigious, overly lawyered" validation process — which involves a rigorous examination for discovery in some cases — is putting victims through more pain and suffering.

"What's really happening is the government is prepared to spend money on lawyers and investigation that no private organization would be prepared to do because it's uneconomical. The government has spent $33 million on administration and $20 million actually paying money to First Nations people who suffered the abuse. Those gross numbers are gross."

While Merchant said cases are now being settled more quickly because of recent court decisions, some plaintiffs are running out of time.

Archdeacon Jim Boyles, a spokesperson for the Anglican Church of Canada, said lawsuits would be resolved at a quicker rate if the churches which ran the schools (Catholic, Anglican, Presbyterian and United) and the government agreed upon liability.

Last October, Ottawa surprised the churches by offering to pay 70 per cent of any claims that were settled.

"That was a unilateral action by the government," said Boyles. "Our response has been 'yes we want to resolve these claims, but we are unable to do that at that rate.'"

Natives demand changes to abuse proposal

BY SUE BAILEY, OTTAWA

Angry native leaders are ing to derail Ottawa's $ plan to settle a crushing residential school lawsuit

The growing back cost Ottawa millions i to save by keeping ca sluggish court system.

At current rates, it the claims would dra years and run up le least $2-billion — settlements.

Fierce resistance has delayed the forced Ottawa changes.

The federal g plan to speed settlem nced last December, to re-solve up to 1 out of court in seven ye

Ottawa would 70 per cent of proven dam for physical and sexual abuse, but only for those who sign away their future right to sue for language and cultural losses.

That's "a sham," said a spokesman for the Assembly of First Nations residential schools survivors group. It's also shameful, Ted Quewezance said.

"The plan fails to address ... many different kinds of harms suffered by children in the institutions. The government should be ashamed of itself."

At a heated closed-door meeting recently in Ottawa, the Assembly demanded changes.

"If they don't fly, we'll tell our people not to touch it," Mr. Quewezance said of the faltering deal.

Another option might be a class-action lawsuit, led by 19 law firms across Canada, that would seek damages for up to 90,000 former students, he said.

The lawsuit, if certified this fall, would seek $12-billion from the government for physical, sexual and cultural damages.

Monday, June 30, 2003

RESIDENTIAL SCHOOL LAWSUITS

Merchant dismisses hirings

SASKATOON (CP) — A federal decision to appoint 32 full-time adjudicators to help settle residential school lawsuits has been dismissed as "yet another disingenuous stall tactic" by a lawyer whose firm represents about half of the 11,500 former students suing Ottawa.

Tony Merchant predicted there will be long delays before the adjudicators actually begin work.

"Victims have learned the government is playing games," said Merchant. "They have learned this is just like land claims entitlement, native justice on reserves, hunting and fishing rights — it's stalling, keep talking it up like you're actually doing something."

But the man overseeing the process said Sunday he's confident it will be a legitimate option for plaintiffs.

"This is a subject that requires attention," said Ted Hughes, a retired Saskatchewan judge who has headed a number of high-profile public inquiries and has experience in mediation and dispute resolution.

"In my judgment, a lot of planning and forethought has gone into this proposal, on the part of the government, the aboriginal community and the churches. I'm satisfied entirely in the integrity of the system."

On June 20, Public Works Minister Ralph Goodale announced Hughes has agreed to serve for two years as chief adjudicator for a formal alternative dispute resolution process to deal with the lawsuits.

A new adjudication secretariat will be established in Regina.

Merchant suggested Hughes was appointed to give the process "a stamp of legitimacy.

"Mr. Justice Hughes retired from the court in 1980. He was appointed to the court in 1962. So, he's certainly senior and elderly, and of the highest repute. But one wonders how active he's likely to be when he began his career 41 years ago."

Hughes, who is 76, said he wouldn't be involved in the initiative if he didn't think it was worthwhile.

He said he doesn't plan to move to Regina from his home in Victoria for the duration of his appointment.

Sask Residential Lawsuits being fast tracked

SASKATOON (CP)—Some lawsuits against Saskatchewan residential schools are being fast tracked by a Regina judge.

Eight claims will serve as tests cases for dealing with an avalanche of suits in the courts.

Justice Gene Maurice met last week with representatives of some 50 Saskatchewan law firms involved in the one-thousand claims from former students.

They allege abuse at the hands of staff at the schools.

The aim is to bring the cases to trial quickly to establish the parameters for dealing with the cases.

Regina lawyer, Tony Merchant, says they may all be concluded over the next four or five months.

His law firm represents 3,000 former students of schools across the country and has filed statements of claim against the federal government on behalf of about 1,500 of the students.

Merchant and former students are angry with how the government and churches cannot agree on how to share the blame over what happened at the schools.

Native Directions News

Residential lawsuits fast-tracked

Several lawsuits against residential schools in Saskatchewan have been fast-tracked by Regina provincial judge, Justice Gene Maurice, who met with over 50 law firms involved in over a thousand abuse claims from former students.

Eight of those claims will act as test cases in order to deal with the mountain of individual claims that allege abuse at the hands of residential school staff.

By fast-tracking the eight test cases, the courts hope to prepare the framework on which the remaining cases will also be dealt with.

RESIDENTIAL SCHOOL ABUSE SCANDALS

Ottawa may help churches pay for lawsuits

Cost to taxpayers of settling 11,000 suits likely to exceed $1.3B

ED STRUZIK
Journal Staff Writer
EDMONTON

Faced with the prospects of bankruptcy, some of the country's largest Christian church groups could be getting a helping hand from Ottawa in defending themselves against mounting lawsuits in the residential school scandals.

A senior federal official told *The Journal* the government is willing to consider compromising on a number of key issues that Catholic, Anglican, United and Presbyterian church leaders proposed last year in the hopes of settling the 11,000 lawsuits that have been filed thus far.

If a deal is reached, it will almost certainly increase the $1.3 billion the government estimates it will have to pay in compensation to former residential school students who claim they were sexually, physically and culturally abused in the more than 100 schools that were operated across the country by the government and the churches.

Church leaders, however, believe it will be a small price to pay given the investments they have made in working with aboriginal people.

"We have not been given any formal notice of this, but if the government is serious, then it's a big step forward in getting this issue resolved," said Rev. David Iverson of the United Church of Canada.

"It's very similar to what we've been proposing all along."

See CHURCHES / back of section

THE G-8 TWO-STEP

As other world leaders look on, South African President Thabo Mbeki rushes to the aid of Jean Chretien on Thursday to stop part of Chretien's speech from blowing away as they st group photograph at the G-8 Summit at Kananaskis.

Plan for Africa falls short of expectation

Initiative offers no new G-8 funding commitments for continent

MIKE TRICKEY
Southam Newspapers
CALGARY

Prime Minister Jean Chretien concluded the G-8 summit on Thursday by unveiling a blueprint for African development that he hailed as a "new beginning and fresh hope" for impoverished Africans."

But the G-8 Africa Action Plan, as it is formally titled, was greeted with muted enthusiasm by Africans leaders attending the summit and roundly criticized as inadequate by international aid groups working in Africa.

"We are satisfied with this commitment," said Nigerian President Olusegun Obasanjo, speaking on behalf of the four African leaders invited to join the G-8 leaders and United Nations Gen-

African agenda hijacked / A2
An alternative media view / A3
Worth the cost / A20

eral Secretary Kofi Annan at the Rocky Mountain resort of Kananaskis.

"Of course, there is nothing that is human that can be regarded as perfect," Obasanjo said.

"This is a beginning."

Chretien, who had promised to make African development the centrepiece of the G-8 summit, described the action plan as "a solid commitment" to Africa.

"The system launched tod African contin the prime min "In the cou years, in all ar Africa has regr will be remer tremely import we have acte make sure th benefits all of the globe and should be left The Africa Ac 8's response to ship for Afric (Nepad), a do last year by Afri calls for a fund of the contine nomic and rens

Page 2.

ATT: MR. M. BUCHANAN
DAVIES DESPRATS
780 826 2520

Church bankruptcy still possible, official says

CHURCHES

Continued from A1

Iverson was part of the ecumenical group that was turned down last year when it asked the federal government to give the churches credit for past and future work that had been undertaken with the country's aboriginal people.

The group also failed to get Ottawa to back away from its insistence that the churches pay 30 per cent of whatever compensation is paid to former residential school victims out of court.

The churches claimed that they would go bankrupt long before most of the claims were settled if they agreed to the formula.

That compensation formula is no longer set in stone, said Shawn Tupper, the executive director of the Office of Indian Residential Schools Resolution of Canada, which was recently set up by the federal government.

He said the federal government is now willing to consider giving the churches credit for the charitable work that they have undertaken in the past and may do in the future, and negotiate a compensation formula that ensures that the church groups pay for wrongs done in the residential school in a way that does not bankrupt them.

"I don't want to be taken too literally," said Tupper.

"We are not promising that no part of the church will go bankrupt. I don't think we can make that promise. But I can say that we want to make sure that their faith and their institutions continue to exist."

Tupper said a lot has been learned over the past year to warrant a change in policy.

"The difficulties over the last few years have been driven by the fact that all of us were a little in the dark," said Tupper.

"Dealing with the lawsuits was all new for everybody, and I think the more we've been able to clarify issues, the more we've been able to overcome suspicion and mistrust."

Catholic church representatives said Tupper's overtures were most encouraging.

Several of their organizations have already filed, or are about to file for court protection because of the mounting legal fees they have had to pay defending themselves.

"Until we see their proposals on paper, it's difficult to know how to respond," said Gerry Kelly, a consultant working with the Canadian Conference of Catholic Bishops.

"But this is good news, and I think we would be willing to go back to the negotiating table if they are serious about this."

Sources say the government was persuaded to change its thinking on the compensation formula by Anglican Church leaders who continued to negotiate a deal with Ottawa when the ecumenical group disbanded last October.

They also say Deputy Prime Minister John Manley is determined to see the resolution of the residential school lawsuits expedited in a way that does not bring further harm to church organizations which have committed so much time, money and energy to charitable causes.

"A lot of time has been lost, but I don't think it's too late to give it another try," said Rev. Camille Piche, head of the Grandin Order of Catholic Oblates which faces more than 3,000 lawsuits.

"We need to have a process that is less confrontational, protects the innocent, and one that does not bankrupt the churches."

00430

LETTERS

Residential schools deserved to be harshly criticized

Re: "Why are residential schools' virtues being ignored" by Tom Schuck (Letters, *Leader-Post*, Sept. 2), it's amazing the amount of criticism and racism that arises when minority people — especially if it's First Nation people — reveal the terrible ordeal they have experienced at the hands of authority figures.

In this case, it's unfortunate that someone remembered that he did well with his crayons in kindergarten school, then decided to write an article at the expense of victims on hearsay and second-hand information in trying to contradict the obvious truth of horrible abuse suffered by the majority of First Nation people in those religious- and government-run residential schools.

From the years, 1946-1954, I was a survivor of those said schools and, if my memory serves me well, there were very few children from my reserve who were not forced to attend residential school. Any opposition from our parents was met with threats of incarceration by the government Indian agent and local RCMP. I'm sure this was the same situation on most reservations. However, I do remember one family that was able to escape from said school, when they left in the middle of the night and went to live and work on a farm.

Fortunately for them, the white farmer was able to fend off the agent and police when they tried to apprehend the children of this family.

As for any opposition from the bands in closing the residential schools, a brief research will show it may have been for the sole purpose of the band gaining full control and better management of these schools. However, many reserves decided it would be in the best interest of so many to demolish their residential schools and perhaps the nightmares along with it.

Today, there are some memorials standing on vacant sites in memory of such a tragedy.

At the discovery hearing of the First Nation residential school lawsuits, the government lawyers are amazed at the accuracy and similarities of abuse events shared by the many survivors they have heard thusfar. The rumour is some of said lawyers have simply quit their role in these lawsuits when they could no longer stand to hear those true stories of abuse.

Certainly, the First Nation people are well aware of their ordeal and that it would be presumptuous of any ambition on their part to use these lawsuits and the government as a cash cow. They are also well aware that the government is simply waiting for them to die off in order to save on compensation. So when you think about it, it's really the government that is guilty of using the taxpayers' money as a cash cow. It has already paid out a tremendous amount of money to its lawyers and administration that will be a lot more than any compensation it intends to pay out.

I am quite sure these lawyers will not be spending their money in any small towns and communities bordering the reservations. So instead of condemning First Nations people and their lawsuits, other Canadians should be supporting their cause. In turn, they will probably benefit from customers with compensation money.

And if Schuck still thinks that 10,000 survivors of the residential schools all got together in a big conspiracy to defraud the government, then he should do us a favour by simply walking around the corner and admitting himself in to that famous hospital at his town of Weyburn.

GEORGE YOUNG

Airdrie, AB

The StarPhoenix Saskatoon, Saskatchewan Tuesday, November 2, 2004

Settlements taking too long in abuse program: lawyer

REGINA (SNN) — Critics contend it's not exactly the speedy justice promised, but a program aimed at accelerating settlement of abuse claims from Canada's Indian residential schools is putting cash into victims' hands, says the man in charge.

"I think it's been very successful," said Ted Hughes, chief adjudicator in the Indian Residential Schools Adjudication Secretariat. His Regina-based office oversees the Alternative Dispute Resolution (ADR) process. "This is giving people a chance to come out and tell their story and start to feel better about the process and heal. That's why the program was launched, coupled with it being an alternate to a complicated court case."

In the year since applications for ADR became available and five months after the first case was heard, 27 decisions have been rendered, with awards ranging from $500 to $166,000. Another 24 have been heard and are awaiting decision. Among the 27 awards, 13 have been accepted, one person withdrew, 10 claimants have yet to decide, and reviews are pending in three.

"I think the percentage of acceptance of the awards speaks reasonably well for the satisfaction," Hughes maintained. ADR takes an informal approach, with an average hearing lasting four hours. They've been held in claimant's homes or at hospital bedsides and have included smudge ceremonies at claimants' requests.

Regina lawyer Tony Merchant, whose firm represents some 6,800 residential school claims, said the awards seem reasonable and his few clients who have used ADR have been mostly satisfied.

"The mediators are handling the exchange of knowledge well, and the victims are coming away with a sense that they . . . were heard appropriately," Merchant said.

Merchant

But he believes a lot of goodwill was eroded by the delay in starting the program. "When the program came out, there was enthusiasm by us and others to try it. Of course, a year went before you could try it."

With 90 per cent of the 12,000 residential school lawsuits unresolved after 16 years and plaintiffs dying, Ottawa unveiled the $1.7-billion, seven-year program in December 2002 to fast-track claims. But applications weren't available until November 2003. A month later, the first one arrived in Ottawa and about 950 have since followed. Applicants who are elderly or in failing health receive priority — currently about 300 files.

Yet only 78 applications have reached the adjudication office. Hughes is also disappointed with the pace, but said the delay is out of his hands because it originates in Ottawa where federal researchers amass the claimant's records before sending the file to adjudication.

"As soon as the cases come here, they're assigned that same day," he added. The first case reached his office in April, and the first hearing followed in May.

Merchant contends more should be done to speed things up.

"The question should be why in the hell are you finding all of these records because it's not worth the money and it's not worth the delay," he said. "They (the adjudicators) should be saying to the government, we're going to go ahead with this mediation without those records. Have them in a reasonable time. . . . If it's not readily available, it's probably not important," he argued.

Nicole Dauz, spokesperson for Indian Residential Schools Resolution Canada (IRSRC), said when the program was announced, applicants were told to expect a nine-month wait for a hearing. "Nine months is still a timely option," she said. "The government has always been consistently clear that alternative methods of resolution will include some level of validation," she added.

Hughes remains optimistic the process will speed up with plans to hire more researchers. Twelve more adjudicators are also being added to the existing 38 because Hughes wants more with an aboriginal background.

Some survivors have worried ADR won't provide sufficient compensation compared to the courts.

ADR awards for less severe physical abuse and wrongful confinement are capped at $3,500. For severe physical abuse and all sexual abuse, the maximum is $245,000 in British Columbia, Ontario and the Yukon (where court awards have generally been higher) and $195,000 elsewhere.

Awards in the nearly 1,300 out-of-court settlements (excluding the current ADR process) range from $700 to $314,813. The courts have rendered judgments in only 19 cases, involving 29 claimants, with awards from zero to $250,000.

(REGINA LEADER-POST)

ER-POST

iesday, January 11, 2006 ■ www.leaderpost.com

Lindsay Lohan is February's *Vanity Fair* covergirl, but she's no fan of the magazine's story about her.

A9

villages have disappeared / B1

FEDERAL ELECTION

vorry aboriginals

scrap Liberals' First Nations deal for their own

ONES AND SPEED BUMPS

OTTAWA (CP) — Aboriginal groups are bristling over the Conservative finance critic's statement that the Tories would ignore a $5.2-billion deal to improve housing and health care for native communities.

In an interview with a Saskatchewan radio station, Monte Solberg said a Conservative government would not live up to the agreement, reached in November.

"(The) Kelowna agreement is something that (the Liberals) crafted at the last moment on the back of a napkin on the eve of an election," Solberg told radio station CJWW on Monday.

"We're not going to honour that. We will have our own plan that will help natives a lot more than the Liberals'."

Metis National Council president Clement Chartier said the statement is of concern to all who took part in crafting the deal. "This just shows that the Conservatives have little to no respect or appreciation for aboriginal peoples," Chartier said in a statement.

Decision CANADA

MORE INSIDE

■ Mayor Pat Fiacco wants to know what parties will do for Regina.

Page B2

■ Political parties slammed for not saying how promises will be paid for.

Page B6

FEDERAL ELECTION

Debate gets nasty

By ELIZABETH THOMPSON
CanWest News Service

ONTREAL — The federal election campaign took a for the nasty Tuesday with charges of scandal and cor-ion flying fast and furious as the leaders of Canada's a political parties met for their final debate.

. what was easily the most vigorous and aggressive of our debates for the Jan. 23 election, sparks flew among eaders as they accused each other of being tainted and able to bring about the kind of change that Canadians seeking. However, the debate also forced the leaders some slippery moral ground, such as how they would dle the thorny questions of decriminalizing marijuana whether dying patients should be allowed to choose as-d suicide.

om the opening statements, it was clear that no holds e barred with Bloc Quebecois Leader Gilles Duceppe sing both Paul Martin's Liberals and Stephen Harper's servatives of being dogged by scandal.

he scandal of Option Canada shows that the Liberals the Conservatives aren't different. They deliberately sed public funds and broke Rene Levesque's rules on iscites. If the sponsorship scandal was a Liberal scan-Option Canada is a federal scandal. When Quebec's as-tions are at stake, for the Liberals and the servatives, anything goes."

arper characterized the Liberals as corrupt and the as impotent.

or Quebecers watching tonight: there's a choice be-l a corrupt party, and perpetual opposition," said er. "This is the only government which is continually g investigated by the police."

Quebecers want change, they have a better chance of ng it by voting for Conservatives who will sit around abinet table than for the Bloc which will never be part government, he said.

arper countered Duceppe on his contention that Con-atives were corrupt because prominent Tories were in-d in the Council for Canadian Unity which had close to Option Canada, saying federalists have a right to for Canada and that fighting for Canada is not a crime.

Ir. Duceppe says that anyone who defends federalism rrupt and that's not true. It's not a crime to defend fed-sm in Quebec."

artin sought to attack both the Conservatives and the at the same time, saying the Bloc would be powerless p a Harper government from scrapping the Kyoto pro-or getting Canada involved in the war in Iraq.

he Bloc can't stop this slide to the right."

en the NDP got into the act, sending missives to re-rs during the debate, pointing out that the Conserva-had their own share of scandals when they were in e.

esday's debate also marked the first time that all four leaders have been pinned down on their positions on

FROM A1

Tories

Continued from Page A1

"Mr. Solberg conveniently ignores that over 14 months of consultations and negotiations led up to the Kelowna agreement."

The deal was reached just days before Prime Minister Paul Martin called the Jan. 23 election.

Just weeks after helping achieve the agreement, Assembly of First Nations Grand Chief Phil Fontaine suggested aboriginals would be best served by voting Liberal or NDP, but not Conservative, to ensure the deal moves ahead.

In an interview Tuesday, Solberg said a government led by Stephen Harper should not be obligated to live up to an agreement reached by Paul Martin's Liberals.

"We don't feel bound to it," he said.

"A Conservative government would want to have a look at the agreement, and we're not going to commit to every last bit of it without having any input into it."

However, the party's Indian Affairs critic, Jim Prentice, disagreed with Solberg.

"We support the targets and objectives that were defined in Kelowna," Prentice told The Canadian Press.

"The five- and 10-year plans that were talked about at Kelowna are the way to go."

What Prentice has an issue with is the notion that $5.2 billion will be spent without determining how the money will be distributed.

"The issue surrounds the ambiguity on the finance plan," he said.

"There was quite a bit of uncertainty at the close of Kelowna on where the $5 billion would come from and how it would be allocated and spent, and over what period of time."

When pressed, Solberg would not say the Tories would scrap the deal altogether.

However, he did say the Conservatives would want to meet again with aboriginal groups before deciding the fate of the agreement.

"How extensively you would have to go back, I don't know," Solberg said.

"But clearly we want input on something like this. That's the responsible approach."

Solberg's statements are indicative of the real nature of the Conservative party's policy ideas, said Indian Affairs Minister Andy Scott.

"It does reveal the true intent behind the Conservatives on aboriginal issues," he said.

"What other hidden agenda items are we going to find out about?"

Scott was especially upset by Solberg's suggestion that the Kelowna agreement was penned just as an election was looming.

"To suggest that this was done at the last minute ... reveals their complete absence of respect for the process that communities across the country were engaged in," said Scott.

"The accord's loss for the (aboriginal) community, and the country, would be tragic."

FROM A1

Baking

Continued from Page A1

"I don't want another parent to feel how my wife and I felt."

Dion has already spoken to his MLA, and plans on taking the cause to city hall once his daughter has recovered from her injuries.

Although some people have suggested developing other safety precautions like amber lights, radar speed signs, or crossing guards in school zones, Dion said the speed bump is the only device that could offer 24-hour protection.

But Kelly Wyatt, a senior engineer for traffic and safety in Regina, said

FROM A1

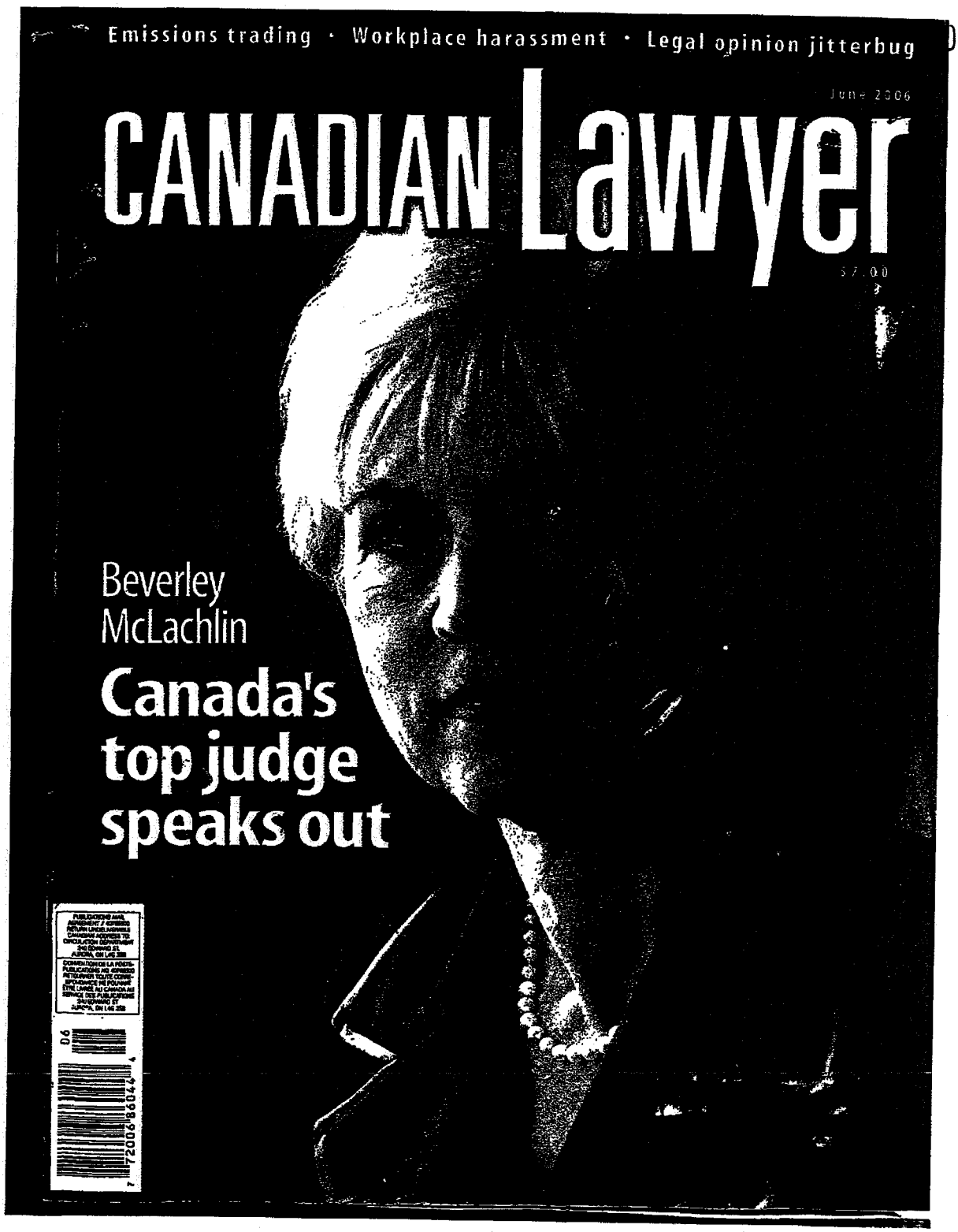
MRIs

Continued from Page A1

The new MRI is twice as fast as the older unit, which will shorten waiting lists, said Dwight Nelson, CEO of the Regina Qu'Appelle Health Region.

In addition, some people currently requiring a general anesthetic before a scan will no longer need it, and others will need much less anesthetic because they will be in the machine for a shorter time, he said.

The new MRI will also be able to scan the vascular system, from the heart to the toes, in one scan in-


Emissions trading · Workplace harassment · Legal opinion jitterbug
June 2006
CANADIAN Lawyer
$7.00
Beverley McLachlin
Canada's top judge speaks out

Quebec history have ever been removed from the bench. Richard Therrien was dismissed in 1996 for concealing his criminal past as an FLQ sympathizer from the provincial government when he was appointed to Quebec Superior Court. A part-time municipal court judge was unseated in 2003.

$80-million fees payout in residential schools scandal

Canada's class action bar is likely still marveling at news of the record-breaking $80-million payout for legal fees tentatively agreed to by the federal government for lawyers representing Aboriginal "survivors" of church-run residential schools.

Half of that money, $40 million, goes to Regina-based **Merchant Law Group**, according to the draft agreement given to news media in May. **Tony Merchant**, Q.C., all but sealed his firm's monumental settlement after a 2005 Supreme Court of Canada win on behalf of one such client, which ruled Ottawa was liable to the tune of $350,000 for abuse suffered by that individual in a residential school. The Merchant firm also represents about 9,000 others in a class proceeding — about half of all claimants, says the firm.

The firm has about 50 lawyers spread throughout 14 offices, mostly in Western Canada but also one in Montréal. According to reports, Merchant said his firm invested about $2 million in the case and that some of his lawyers went without any compensation during the decade-long lifecycle of the file. And, it seems class actions are big business for the firm. Its Web site lists at least 15 ongoing proceedings, ranging from actions involving Celebrex to Hollinger/Conrad Black to Zonolite asbestos insulation.

The aging survivors of the residential schools will get about $30,000 each, according to the draft agreement. A national consortium of lawyers will share in the remaining $40 million payout for legal fees. The $80 million fee package is believed to be the largest ever recorded for a Canadian class action case. Law firms involved in the tainted blood scandal in the last decade shared a $47 million legal fee in the settlements for those infected with Hepatitis C through infected blood products.

00437

Lenitta Covill

From: Bowdens Media [swmedia@shawbiz.ca]
Sent: July 12, 2006 12:01 PM
To: tonymerchant@canada.com
Cc: saskwestmedia@shawbiz.ca
Subject: Bowdens automated e-mail service

SASKWEST MEDIA MONITORING LTD.

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Customer : 79579

Media Report 14:00:53 12 Jul 2006

TO ORDER PLEASE PHONE OUR OFFICE AT 306-683-0044 OR EMAIL US AT swmedia@shawbiz.ca

TONY MERCHANT
MERCHANT LAW GROUP

,

Topic Order Number: 77769
Description: MERCHANT LAW GROUP

06:30 NEWS (CBK-AM), SASKATCHEWAN, 12 Jul 2006, 06:32AM, Length: 00:01:07, Ref# 6B3F00-2
Anchor/Reporters: TED DELLER, Reach: 31,000

SASKATCHEWAN: FORMER RESIDENTIAL SCHOOL STUDENTS THOUGHT THAT AFTER YEARS OF WAITING THEY WERE GOING TO BE COMPENSATED. **"TONY MERCHANT"** STUDENT REPRESENTATIVE

08:30 NEWS (CBK-AM), SASKATCHEWAN, 12 Jul 2006, 08:32AM, Length: 00:01:05, Ref# 6B4587-2
Anchor/Reporters: TED DELLER, Reach: 36,000

SASKATCHEWAN: FORMER RESIDENTIAL SCHOOL STUDENTS THOUGHT THAT AFTER YEARS OF WAITING THEY WERE GOING TO BE COMPENSATED. **"TONY MERCHANT"** STUDENT REPRESENTATIVE

Total items: 2 (2 radio, 0 television, 0 print, 0 other) Customer Report Order: 77769 Id: 6B3F00-2 Sent: 12 Jul 06 02:00PM

Thursd

Former residential school students $22.5 million; program costs $73.8 million

Featur

by Adrienne Fox-Kocsis
adriennef@wawatay.on.ca

Public treasury documents show the federal office for resolving Indian residential school claims spends millions more on administration than on compensating the former victims of the schools. For the 2003-2004 fiscal year, Indian Residential Schools Resolution Canada will allocate just over $22.5-million for out-of-court settlements to former students, out of a total budget of $96.33 million. According to the public accounts section of the federal Treasury Board, Indian Residential Schools Resolution staff and Justice lawyers will earn a combined $33.8 million by year's end. Another $25.9 million has been available for Indian Residential Schools Resolution operations, which includes historical research and implementation of a resolution framework. The remaining $4.7 million goes towards capital equipment and employee benefits. In 2002, Ralph Goodale, the former Indian Residential Schools minister, said the program "strived to manage and respond equitably to the more than 10,000 claimants who had filed claims of abuse against the government of Canada." That list has grown to more than 12,000, while only 1,117 settlements with former students have been reached. Nicole Dauz, the senior communications officer for the department, said that to date, "The government has spent more than $60 million on Indian residential school settlements." However, "Litigation is growing faster than the government can settle claims," Dauz said. "Today, there are over 12,000 individuals seeking compensation from the courts for abuse dating back over a period of 50 years, and it could take another 50 years for all those cases to work their way through the courts." As a solution to the growing volume of claimants, the government launched its formal alternative dispute resolution option in November 2003, "designed as a humane approach to settling outstanding claims in a fair, timely and effective fashion." At that time, Goodale said the voluntary process was an alternative to litigation and out-of-court settlements. It also promised to "offer timely settlements and payments for validated claims of sexual and physical abuse and wrongful confinement." Dauz said the program's success can be weighted by the simple fact "that more former students are gathering the courage to come forward and speak about their experiences." It's a positive fact, she said, "certainly not an indication that the department has not been effective." Dauz said the complexity of the residential school issue means it will take time to "address more than 100 years of history." Truth telling Ed Metatawabin, former alternative dispute resolution negotiator for the Fort Albany-based Peetabeck Keway Keykaywin Association, said the only objective of the federal government's handling of the residential schools settlement process is

"litigation management." "I don't think [the government] is interested in seeking reconciliation," Metatawabin said from his office in Fort Albany. "It's all litigation management." He believes the federal settlement process is meant "to decrease the liability of the federal government and also the churches" that were involved in running residential schools. "There's too much interest and pressure by both church and government to erase their liability on the issue, and as far as the feelings of the individual are concerned, that has been very far back in their plans." As a result, Metatawabin said he's left with little hope "for any kind of satisfaction" for former residential school students. He said that for now, the only option for abuse victims of residential schools that seems worth pursuing is the court system, but only if they're willing to wait. "I think the residential school policy has been very successful in undermining the authority, the autonomy of the First Nation people in Canada," he added. Metatawabin left this parting message for survivors: "I think (we should) write down on paper what has been done to each and everyone of us, put it in the media, put it in books and ... try to get them published to tell the truth. I think the Canadian people want the truth and I think it's their right to know the truth."

Wawatay News Vol.31 #05 (March 11, 2004)
2005.01.04 | Reads: 67 |

tice. It is a question of when."

Although prepared for a closed meeting of the council last May, the 51-page paper, "Open Courts, Electronic Access to Court tronic access policies and that such policies be as consistent as possible throughout Canada."

In an executive summary, the subcommittee credits "the cies, JTAC has concluded that it would be inappropriate for it to recommend a model policy.

see CJC p.3

Saskatchewan Court of Appeal grants rare leave to appeal its own decision

By Deana Driver
Regina

In a rare move, a provincial court of appeal has invoked a provision in the *Supreme Court Act* to require the Supreme Court of Canada to review one of the appeal court's own decisions.

In a unanimous decision, three judges of the Saskatchewan Court of Appeal found that, in the words of the Act's s. 37, "the question involved in the appeal is one that ought to be submitted to the Supreme Court for decision."

In May 2001, a provincial Court of Queen's Bench judge awarded Native plaintiff H.L., damages of $407,000 — the highest award ever granted in a residential school case. But in December 2002, the appeal court cut the award to $86,000 by removing compensation for past and future earnings. The court also held the federal government liable, even though H.L. was not a resident at the Gordon's Day School when an employee of the school, William Starr, molested him.

In January, H.L.'s lawyer, Tony Merchant of Merchant Law Group in Regina, made an application under s. 37, suggesting that the appeal court require the Supreme Court to answer two questions:

1) What is the correct standard of review of the appellate court of a province, and is that standard different for the appellate court of Saskatchewan?

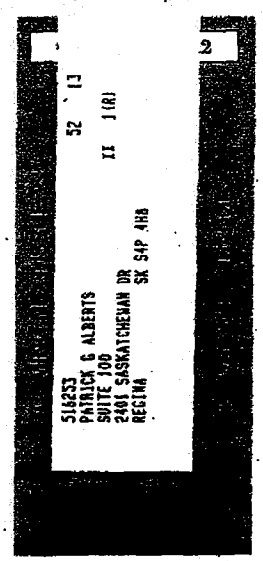
2) Did the Saskatchewan Court of Appeal misapply that standard regarding: (a) expert witnesses (b) pecuniary damages?"

Merchant told *The Lawyers Weekly* he chose to take the unusual move instead of seeking leave from the Supreme Court for more than one reason. "Lawyers have not gone to their courts of appeal and asked for leave to appeal, to some extent because they thought their courts of appeal would say, 'We're right and why should we grant you leave?' " he said.

"I thought that because some people said, 'Aren't you taking quite a risk by applying to the Court of Appeal and not to the Supreme Court, because you only have 60 days to apply to the Supreme Court?' "

For one thing, he had no doubt that if the appeal court thought the further appeal had merit, "they would send it to the Supreme Court without any personal considerations," he said.

see APPEAL p.19



This is Exhibit "B" as referred to in
the affidavit of DONALD T. M. OVERBRIDGE
sworn before me this 8th day of
AUGUST A.D. 20 06

A Commissioner for Oaths
in and for
the Province of Ontario
~~My Commission expires~~
Being a Solicitor

GREGORY T. CALLAHAN
BARRISTER & SOLICITOR

Section III - Performance Discussion

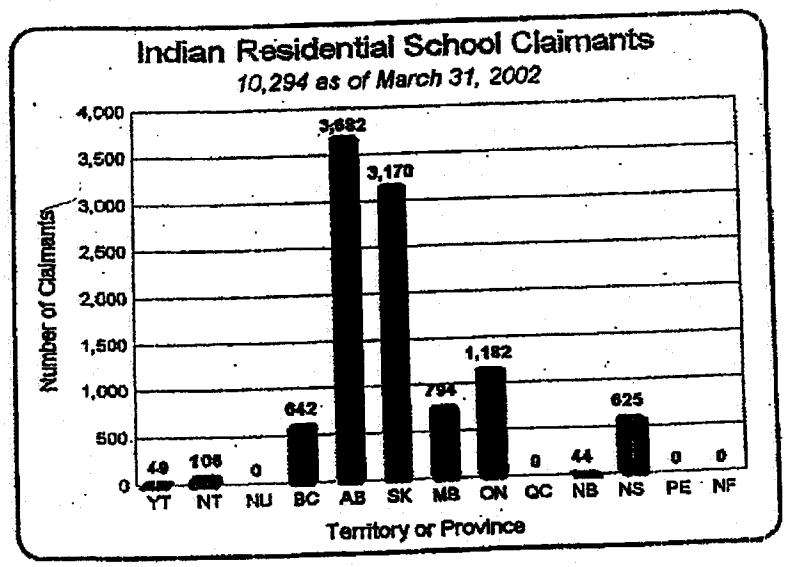
Strategic Outcome

Indian Residential Schools Resolution Canada seeks to enhance residential school survivor well-being by addressing and resolving issues arising from the legacy of the Indian residential school system.

To accomplish this, the Department will strengthen its partnerships within Government and with Aboriginal organizations, religious denominations and other citizens.

Challenges and Opportunities

One of the biggest challenges facing the Department is finding the most effective process to manage and respond fairly and swiftly to the more than 10,000 claimants who have to date filed claims of abuse, while at the same time remaining accountable to Canadians.



This is Exhibit "C" as referred to in
the affidavit of DONALD T.M. OUTERBRIDGE
sworn before me this 8th day of
AUGUST A.D. 20 06

A Commissioner for Oaths
in and for
the Province of Ontario
My Commission expires FOR
Being a Solicitor

GREGORY T. CALLIGHAN
BARRISTER & SOLICITOR

Department of Justice Canada / Ministère de la Justice Canada
Access to Information and Privacy Office
275 Sparks Street, 9th Floor
Ottawa, Ontario
Canada
K1A 0H8

Telephone: (613) 952-8361
Facsimile: (613) 957-2303

PROTECTED

SENT BY EMAIL

Your file: 089622
Our file: A-2005-00111 / nr

October 12, 2005

Mr. Darcy R. Merkur
Thomson Rogers
Barristers and Solicitors
Suite 3100, 390 Bay Street
Toronto, Ontario
M5H 1W2

Dear Mr. Merkur:

This letter is further to your request of August 30, 2005, filed under the *Access to Information Act* to obtain:

Baxter v. The Attorney General of Canada

a) information with respect to Department of Justice resources used to defend and respond to claims brought by Indian Residential School survivors, including, but not limited to, the number of lawyers assigned to work on Indian Residential School files (by years 2000 to present), the total costs associated with Department of Justice lawyers and administrative staff working on Indian Residential School files (again by years 2000 through to present) and any other information as to total costs associated with the defence of Indian Residential School claims by years 2000 to present.

As per your telephone conversation with Nancy Rhéaume of this office on October 7, 2005, I am pleased to enclose two of the documents relevant to your request, which are released in their entirety (2 pages). I understand that you requested that these two charts be sent to you by email as a preliminary release. As agreed, you will review the enclosed records and confirm with Ms. Rhéaume whether or not this completes the processing of your request.

Should you not be satisfied with the enclosures, and wish us to continue processing your request, we are informed that the Office of the primary interest has assessed a search of 16 hours in order to obtain the complete material at issue subject to this request. Therefore, charges for search activities have been assessed at $110.00 as authorized under section 11 of the *Access to Information Act*. Please note that the cost of processing for the first five hours will be borne by the Department and has already been deducted from the total cost. Please refer to attachment.

Consequently, should you wish us to pursue the matter further, I would ask that you forward to this office, within 15 days of this notice, a cheque or money order in the amount of $110.00 payable to the Receiver General for Canada.

Please note that we will put your request in abeyance until we receive further instructions from you. If we have not received a reply by October 27, 2005, we will be closing this file. Should you wish to discuss your request, do not hesitate to contact me at (613) 941-9922.

Please be advised that you are entitled to complain to the Information Commissioner concerning the processing of your request within one year from the date when it was received in this Office (September 6, 2005). In the event you decide to avail yourself of this right, your notice of complaint should be addressed to:

Information Commissioner
Tower B, Place de Ville
112 Kent Street, 22nd Floor
Ottawa, Ontario
K1A.1H3

Sincerely,

Kerri Clark
Director

Encl.

Department of Justice Canada
Access to Information and Privacy Office
275 Sparks Street, 9th Floor
Ottawa, Ontario
Canada
K1A 0H8
Fax: (613) 957-2303

FEE STATEMENT

A-2005-00111 / NR

To: Mr. Darcy R. Merkur
Thomson Rogers
Barristers and Solicitors
Suite 3100, 390 Bay Street
Toronto, Ontario
M5H 1W2

Date: October 12, 2005

Date *yyyy-mm-dd*	Description	Unit Cost	Quantity	Total
2005/09/06	Application fees	$5.00	1	$5.00
2005/09/06	(Deposit - Application fees)			($5.00)
2005/10/12	Searching	$10.00 per hr	16	$160.00
2005/10/12	(Less 5 free hours)			($50.00)

Balance Owing: $110.00

Detach here and return to the above address. A-2005-00111 / NR

- ☐ I wish to abandon my request.
- ☐ I wish to revise my request (see attached).
- ☐ I wish to review the records at your office and avoid paying the photocopy fee. Specify office: _____
- ☐ Please find enclosed a cheque for $_____ payable to the Receiver General for Canada.

Signature, Title: _____

Date: _____ Telephone: _____ Fax: _____

Canada

00447

IRS Lawyer FTE Utilization data 1999-2000 to 2004-2005 with forecast for 2005-2006
Annual Lawyer FTE Utilization

In response to ATIP request A-2005-00111 / nr dated September 9, 2005:

"information with respect to Department of Justice resources used to defend and respond to claims brought by Indian Residential School survivors, including, but not limited to, the number of lawyers assigned to work on Indian Residential School files (by years 2000 to present), the total costs associated with Department of Justice lawyers and administrative staff working on Indian Residential School files (again by years 2000 through to present) and any other information as to total costs associated with the defence of Indian Residential School claims by years 2000 to present"

Offices:	1999 - 2000 No of Lawyers	2000 - 2001 No of Lawyers	2001 - 2002 No of Lawyers	2002-2003 No of Lawyers	2003-2004 No of Lawyers	2004-2005 No of Lawyers	*2005-2006 No of Lawyers
ADAG	0	0	0	0	0.3	1.38	2.1
DIAND Legal Services LSU	2.21	3.63	0	0	0	0	0
Indian Residential Schools LSU	4	5.48	9.11	9.99	8.56	7.65	9.32
Atlantic	0.60	1.03	3.80	2.13	2.18	2.08	2.26
Civil Litigation	0.00	0.00	0.00	1.75	1.09	1.17	1.17
Public Law	0.00	0.00	0.00	0	0	0.13	0.13
Ontario	2.63	2.41	5.26	13.89	14.63	17.91	14.8
Quebec	0.21	0.21	0.50	0.72	0.6	0.94	0.35
Edmonton	3.77	15.57	13.64	15.69	19.53	21.46	17.62
Saskatoon	13.84	23.72	28.74	30.35	30.24	29.22	26.06
Winnipeg	1.50	4.35	4.94	5.22	8.79	9.8	11.64
Vancouver	11.15	12.15	16.64	22.05	17.68	19.87	24.09
Total Lawyers for all Offices:	39.91	66.55	82.63	101.79	103.6	130.81	109.34

*Annual forecast as at June 30, 2005

Prepared by: D.J. Francis (604) 775-6515

001

00448

IRS Expenditure data 1999-2000 to 2004-2005 with forecast for 2005-2006
Annual Direct Costs associated with the IRS business line (Salary and O&M combined)

In response to ATIP request A-2005-00111 / nr dated September 9, 2005:

"information with respect to Department of Justice resources used to defend and respond to claims brought by Indian Residential School survivors, including, but not limited to, the number of lawyers assigned to work on Indian Residential School files (by years 2000 to present), the total costs associated with Department of Justice lawyers and administrative staff working on Indian Residential School files (again by years 2000 through to present) and any other information as to total costs associated with the defence of Indian Residential School claims by years 2000 to present"

Region IRS Litigation	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	2005/2006 Forecast
ADAG's Office	$ -	$ -	$ -	$ -	$ 158,652	$ 540,941	$ 352,526
Aboriginal Law & Strategic Policy (ALSP) (formerly Native Law)	$ -	$ -	$ -	$ -	$ -	$ -	$ 127,161
DIAND Legal Services	$ 200,181	$ 398,144	$ 27,496	$ -	$ -	$ -	$ -
IRS Legal Services (Formerly IRS Unit - Ottawa and IRS Unit - Toronto)	$ -	$ 1,104,011	$ 1,289,196	$ 1,124,344	$ 1,119,399	$ 1,282,911	$ 1,494,372
AAP Business Centre	$ -	$ -	$ -	$ -	$ 96,973	$ 187,943	$ 125,953
Total Portfolio	$ 200,181	$ 1,502,155	$ 1,316,692	$ 1,124,344	$ 1,375,024	$ 2,011,795	$ 2,099,912
Atlantic	$ 17,184	$ 167,027	$ 268,406	$ 244,838	$ 280,478	$ 299,791	$ 305,041
Quebec Civil Affairs Directorate	$ -	$ 18,434	$ 57,364	$ 104,713	$ 99,250	$ 95,830	$ 64,236
Ontario	$ 225,436	$ 418,158	$ 535,463	$ 1,583,677	$ 2,127,581	$ 2,480,695	$ 2,393,425
Edmonton	$ 754,797	$ 1,688,943	$ 1,537,400	$ 1,937,563	$ 2,598,398	$ -	$ -
Calgary	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Saskatoon	$ 1,772,751	$ 2,504,029	$ 3,027,214	$ 3,764,258	$ 4,589,973	$ -	$ -
Winnipeg	$ 196,763	$ 447,513	$ 499,990	$ 601,354	$ 1,103,008	$ -	$ -
Prairies Roll-up	$ 2,724,311	$ 4,640,485	$ 5,064,604	$ 6,323,175	$ 8,291,377	$ 9,136,068	$ 9,194,246
Vancouver	$ 1,419,433	$ 1,631,608	$ 2,146,300	$ 2,650,844	$ 3,097,497	$ 3,618,383	$ 4,448,731
Whitehorse	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Yellowknife & Inuvik	$ 1,157	$ -	$ -	$ -	$ -	$ -	$ -
Northern Roll-up	$ 1,157	$ -	$ -	$ -	$ -	$ -	$ -
Public Law (SLAS)	$ -	$ -	$ -	$ -	$ 17,029	$ 12,469	$ 9,842
Civil Litigation	$ -	$ -	$ -	$ 193,506	$ 347,892	$ 382,389	$ 336,605
Total Regions	$ 4,387,520	$ 6,875,910	$ 8,091,129	$ 11,280,753	$ 14,241,101	$ 16,016,226	$ 16,752,128
Corporate	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Corporate	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total National [illegible]	$ 4,587,701	$ 8,378,065	$ 9,407,821	$ 12,405,097	$ 15,616,125	$ 18,027,720	$ 18,852,040

Prepared by: Deborah Francis, September 2005
(604) 775-6515

002

This is Exhibit "D" as referred to in
the affidavit of DONALD T. M. OUTERBRIDGE
sworn before me this 8th day of
AUGUST A.D. 20 06

A Commissioner for Oaths
in and for
the Province of Ontario
~~My Commission expires~~
Being a Solicitor

GREGORY T. CALLIGHAN
BARRISTER & SOLICITOR

Table 1: Departmental Planned Spending and Full Time Equivalents

($ millions)	Forecast Spending 2004-2005	Planned Spending 2005-2006	Planned Spending 2006-2007	Planned Spending 2007-2008[2]
Claims Resolution	99.8	121.1	153.5	-
Budgetary Main Estimates (gross)	99.8	121.1	153.5	-
Total Main Estimates	99.8	121.1	153.5	-
Adjustments:				
Forecasted lapse*	17.0	-	-	-
Total Planned Spending	82.8	121.1	153.5	-
Total Planned Spending	82.8	121.1	153.5	-
Plus: Cost of services received without charge	8.2	8.8	8.6	-
Net cost of Program	91.0	129.9	162.1	-
Full Time Equivalents	175	195	215	-

* Reflects the best forecast of lapsed budgetary Main Estimates for the fiscal year.

Planned spending is expected to increase over the planning period as a result of the increase in operational requirements necessary to support the full implementation of all programs in the National Resolution Framework, including the Commemoration program expected to be launched in 2005-2006 and other programs such as the ADR process and the IRS Mental Health Supports program which are currently underway.

The Department continues to improve its delivery mechanisms for the ADR process and continues to look for new ways to achieve even greater efficiencies in the current process. As a result, it is expected that the number of ADR hearings, and ultimately the number of settlements, will increase significantly over the planning period.

[2] Funding for the 2007-2008 fiscal year will be the subject of a Treasury Board submission following the formative evaluation of the National Resolution Framework that will be reported to Cabinet in the 2006-2007 fiscal year.

This is Exhibit "E" as referred to in
the affidavit of DONALD T.M. OUTERBRIDGE
sworn before me this 8th day of
AUGUST A.D. 20 06

A Commissioner for Oaths
in and for
the Province of Ontario
~~My Commission expires~~
Being a Solicitor

GREGORY T. CALLAHAN
BARRISTER & SOLICITOR

Department of Justice Canada
Ministère de la Justice Canada

234 Wellington Street
East Tower, Room 1001
Ottawa, Ontario
K1A 0H8

Telephone: (613) 948-1483
Fax: (613) 941-5879

December 21, 2005

Our File Number: 2-366522

Distribution List

Re: Residential Schools

Dear Sir/Madam:

As you may be aware, the Agreement in Principle of November 20, 2005 requires that the final settlement be approved by courts in seven jurisdictions at the provincial, territorial and federal levels. It provides that the agreement will be implemented following those approvals, and the expiry of an opt out period, as provided in all class action legislation.

Pending the implementation of the settlement, litigation is expected to continue in the normal course through discoveries, and to settlement, without prejudice to any rights which accrue as a result of the overall settlement envisaged by the AIP. In specific cases, it may be necessary to make particular arrangements in order to ensure that the overall settlement is not adversely affected by ongoing litigation. Counsel should feel free to contact the Department of Justice counsel having carriage in order to discuss any specific issues or matters which arise.

Yours truly,

Paul Vickery
Senior General Counsel
Civil Litigation Branch

Canada

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Affidavit of Donald I. M. Outerbridge
(sworn August 8, 2006)

Merchant Law Group
#100, 2401 Saskatchewan Drive
Regina, Saskatchewan, S7H 4P8
Telephone: (306) 359-7777
Fax: (306) 522-3299

Solicitors for the Plaintiff
Jane Ann Summers LSUC #27731

Court File No. # 29762

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARLENE C. CLOUD, GERALDINE ROBERTSON, RON DELEARY, LEO NICHOLAS, GORDON HOPKINS, WARREN DOXTATOR, ROBERTA HILL, J. FRANK HILL,
SYLVIA DELEARY, WILLIAM R. SANDS, ROSEMARY DELEARY, and SABRINA YOLANDA WHITEYE

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON and THE NEW ENGLAND COMPANY

Defendants

AFFIDAVIT

I, Paul Vogel, of the City of London, in the County of Middlesex, MAKE OATH AND SAY AS FOLLOWS:

1. I am a partner in the law firm of Cohen Highley LLP which, together with Koskie Minsky LLP, are the solicitors for the plaintiffs in this action. The information contained in this affidavit is based on my personal knowledge except to the extent that I rely upon information provided to me by my partner, Russell Raikes, in which case I so indicate and verily believe it to be true.

2. In May, 1997, Cohen Highley LLP was retained by the plaintiffs to act for former students and the families of former students who attended the Mohawk Institute Residential School (hereafter "Mohawk School").

3. Shortly after we were retained, a Steering Committee was formed. The purpose of the Steering Committee was as follows:

   a. To provide us with instructions as needed for the prosecution of this action;

   b. To keep members of the class informed within their respective aboriginal communities.

4. The Steering Committee included all of the representative plaintiffs except Yolanda Whiteye, as well as other interested former students and family members who were prepared to make the necessary commitment of time. Yolanda Whiteye resides in Windsor and was unable to attend the meetings; however, her mother, Barb Whiteye is a former student who did attend and participate in Steering Committee meetings.

5. Although the composition of the Steering Committee changed from time to time as some members died or became ill, the core of the Steering Committee remained essentially the same throughout this action.

6. I verily believe that the decision to bring this action, to continue it and to settle it was made with the concurrence and at the direction of the Steering Committee.

The Action

7. This action was commenced by statement of claim issued October 5, 1998 at London, Ontario. Attached hereto and marked as **exhibit "A"** to this my affidavit is a true copy of the original statement of claim.

8. In the statement of claim, the plaintiffs claimed, inter alia, damages arising from their attendance as children at the Mohawk School where they were provided with inadequate care and supervision, mistreated and abused.

9. The Mohawk School was an Indian Residential School located in Brantford, Ontario. The students who attended the school were largely drawn from various First Nation communities located in Southwestern Ontario and the Georgian Bay Region as well as Northern Quebec.

10. The defendants named in the statement of claim were the Government of Canada, the Diocese of Huron and the General Synod of the Anglican Church of Canada. After the action was commenced and before the certification motion, we determined that we lacked sufficient evidence to pursue the claim for damages as against the General Synod. As a result, we entered into an agreement with counsel for the General Synod that the action as against the General Synod would be discontinued without prejudice to the plaintiffs' right to reassert that claim at a future date should additional evidence become available.

11. In addition, we learned that the Mohawk School was originally owned and operated by the New England Company which leased the school to the Government of Canada starting in 1922. We added the New England Company as a defendant.

12. Attached hereto and marked as **exhibit "B"** to my affidavit is a true copy of the amended statement of claim.

13. After service of the amended statement of claim, we received extensive demands for particulars from the defendants with respect to virtually every paragraph in the amended statement of claim. As a result of those demands, we compiled very detailed particulars of the facts relied upon.

Attached hereto and marked as **exhibit "C"** and **"D"** to this my affidavit are true copies of the particulars which we provided to the defendants.

14. In their amended statement of claim and in the particulars provided, the former students of the Mohawk School have asserted the following causes of action as against the defendants: negligence, breach of fiduciary duty, breach of aboriginal rights, assault, battery and intentional infliction of mental suffering.

15. In addition, we asserted claims for damages on behalf of family members of former students for breach of fiduciary duty and for loss of care, guidance and companionship pursuant to section 61 of the Family Law Act.

16. From the outset of this litigation, the defendants steadfastly maintained that:

    a. This action could not be certified as a class proceeding;

    b. The claims related to loss of language and culture where not justiciable;

    c. Damages based on attendance at the school, in the absence of evidence of physical and sexual abuse, could not be maintained;

    d. The claims asserted were barred by the Limitations Act or the doctrine of laches; and,

    e. The claims as against the Crown and their agents were barred by various Crown immunity defences.

17. I verily believe that this action raised the following important and novel issues:

a. Whether language and the use of aboriginal language is an aboriginal right;

b. Whether the Crown had an obligation to safe-guard and promote the use of aboriginal language and culture;

c. Whether breach of an aboriginal right is a stand alone cause of action independent of an allegation of negligence or breach of fiduciary duty;

d. Whether the Crown can be liable for breaches of aboriginal rights which occurred prior to their constitutional protection in the Constitution Act, 1982;

e. Whether the non-Government defendants could be liable for breach of an aboriginal right;

f. Whether section 24 of the Crown Liability Act, 1952 immunized the Crown and other defendants from claims of breach of fiduciary duty (equitable claims);

g. Whether Family Law Act claims crystallized after 1978 so as to make section 61 applicable;

h. Whether the family class could pursue a claim for breach of fiduciary duty with respect to loss of language and culture.

18. Prior to the motion for certification, the defendant, New England Company, delivered a statement of defence. Attached hereto and marked as **exhibit "E"** to this affidavit is a true copy of the statement of defence of the New England Company. Although the other two defendants did not deliver a statement of defence, they did rely upon that pleading in the course of

argument of the certification motion and signalled their intent to us and to the Court that they would be pleading, inter alia, similar defences.

Motion for Certification

19. We prepared and served a motion record for the motion for certification. Each of the named representative plaintiffs swore an affidavit in support of that motion.

20. The defendants served and filed responding affidavit material. Cross-examinations of the former student representative plaintiffs and the defendants' witnesses were held.

21. The motion for certification was argued before Justice R. J. Haines in London on June 4, 5, 6, 7, 8, 11, 12 and 13, 2001. I was present and assisted Mr. Raikes with the argument of the motion for certification. I recall that the defendants vigorously resisted all aspects of the certification motion, and challenged the causes of action asserted.

22. In his reasons released October 9, 2001, Justice Haines ruled that the motion for certification be dismissed. In doing so, Justice Haines also found that the claims asserted by the family class were dismissed in their entirety and that all claims of former students arising from events prior to 1952 were barred by section 24 of the Crown Liability Act, 1952.

23. The defendants sought costs for the motion for certification from the plaintiffs in an amount exceeding $300,000 in aggregate. After argument of the costs, Justice Haines concluded that there should be no costs awarded given the historically disadvantaged nature of the plaintiff class and the public policy issues raised by this action.

Appeal to Divisional Court

24. Upon instructions from the Steering Committee, we appealed the decision of Justice Haines to the Divisional Court.

25. The appeal to the Divisional Court was heard by a three member panel in London composed of Justices Gravely, Valin and Cullity.

26. In or about the month of March 2002, we were joined in this action by Mr. Kirk Baert of Koskie Minsky LLP as our co-counsel. Mr. Baert specializes in class action litigation, and in particular, certification of class proceedings.

27. Until then, Mr. Russell Raikes of our firm was principally responsible for all aspects of this action, although he was assisted from time to time by myself, various associate lawyers, clerks and students whose involvement was critical given the issues in this action

28. I am advised by Mr. Raikes that he and Mr. Baert divided their responsibilities roughly as follows:

    a. They divided the argument in the Divisional Court and Court of Appeal;

    b. Mr. Raikes remained principally responsible for all client communications, including meetings with the Steering Committee from whom we obtained our instructions, as well as attending community meetings to keep members of the class updated and responding to individual queries from members of the class;

    c. Both participated fully in the negotiations which led to the settlement of this action and the national settlement.

29. The appeal to the Divisional Court was heard on January 8 and 9, 2002. The defendants opposed each and every aspect of the appeal which related not only to certification, but also to the limits of Crown immunity arising from the Crown Liability Act, 1952 as well as the claims asserted by the family class.

30. The defendants were successful in the Divisional Court (2:1), with Justice Cullity providing a very strong dissent. Attached hereto and marked as **exhibit "F"** is a true copy of the Reasons of the Divisional Court. Attached hereto and marked as **exhibit "G"** is a true copy of the Order of the Divisional Court.

Appeal to Court of Appeal

31. Following the decision of the Divisional Court, we sought leave to appeal to the Court of Appeal, which was granted on October 10, 2003. The appeal was heard in the Court of Appeal on May 10 and 11, 2004.

32. On December 3, 2004, the Ontario Court of Appeal unanimously ordered that this action be certified as a class proceeding. In its Reasons, it also upheld the plaintiffs' appeal with respect to the effect of section 24 of the Crown Liability Act, 1952 and permitted the claim for breach of fiduciary duty on behalf of family class members to proceed.

33. Attached hereto and marked as **exhibit "H"** to this affidavit is a true copy of the Reasons of the Ontario Court of Appeal.

34. Attached hereto and marked as **exhibit "I"** is a true copy of the Order of the Ontario Court of Appeal certifying this action as a class proceeding.

35. I verily believe that this action is the first and, to date, the only certified class action for an Indian Residential School in Canada.

36. I am advised by Mr. Raikes that at various times after October, 1998, he attempted to entreat the Federal Government to sit down to negotiate a resolution of this action. The defendants declined to participate in any settlement negotiations which would in any way compensate former students for loss of language and culture or which would compensate students on the basis of attendance at the school in the absence of sexual or physical abuse of each student. Further, the defendants steadfastly maintained that this action could not and would not be certified as a class action, and that in any event, the defendants would prevail at trial if necessary.

37. As indicated, the decision of the Ontario Court of Appeal was made on December 3, 2004. In January, 2005, the Federal Government and Assembly of First Nations announced that a political accord had been reached by which a negotiating table would be established to resolve the legacy of the residential school experience, including the litigation then pending before the courts in all provinces and territories.

38. Notwithstanding the announcement of that political accord, the defendants sought leave to appeal from the decision of the Ontario Court of Appeal to the Supreme Court of Canada. That motion for leave to appeal was dismissed May 12, 2006.

39. Very shortly after the dismissal of the motion for leave to appeal, the Federal Government announced that the Honourable Frank Iacobucci had been appointed as its lead negotiator in the negotiations which were to take place pursuant to the political accord.

40. In early June, Mr. Raikes and Mr. Baert attended a meeting with Justice Iacobucci in Toronto preliminary to the negotiations which were to follow. That meeting was also attended by counsel in the Baxter action, by Mr.

Merchant of Saskatchewan who participated by telephone and by counsel representing some of the Church entities affected.

41. It was agreed that the contents of that discussion would be kept confidential save that Justice Iacobucci specifically requested that all pending litigation, and in particular, this action, be placed in abeyance so as to allow the parties to focus on negotiating a pan-Canadian settlement.

42. We agreed to the abeyance subject to notice to the class in this action and the running of the opt out period proceeding.

43. Mr. Raikes and Mr. Baert were advised by Justice Iacobucci that this action could not be settled independent of a national settlement. To settle this action, it was necessary to fully participate in the negotiations that led to the settlement for which court approval is sought in this action, the Baxter action and in other class proceedings in other provinces and territories.

44. The negotiations formally commenced in Saskatoon in July, 2005. Of course, Mr. Raikes and Mr. Baert were fully involved in preparations for those negotiations prior to July.

The National Consortium

45. Shortly after Mr. Raikes was retained in this action, he contacted and/or was contacted by what started initially as a small group of counsel from across the country who were then acting for former students of Indian Residential Schools in various provinces. With their assistance, Mr. Raikes took the lead in organizing an informal association of plaintiffs' counsel known as the Plaintiffs Indian Residential School Counsel Association. Its purpose was to liaise with one another with a view to:

a. Exchanging useful information on legal issues relevant to residential school litigation;

b. Coordinating strategy on a regional and national level;

c. Working to achieve a collective negotiating strategy and position; and,

d. Sharing resources, where appropriate.

46. It must be remembered that the Crown was being sued across the country and had almost limitless resources at its disposal. By organizing this group and by sharing information, we believed that the plaintiffs in this action and in the other actions would be better served and had a better chance of success through settlement or litigation. Mr. Raikes' participation in this informal group was well known and encouraged by the Steering Committee.

47. Mr. Raikes was the chairperson for the Association until approximately 2001 at which point, the Association evolved into what is now known as the National Consortium.

48. The National Consortium is an affiliation of approximately 19 law firms, many of whom were part of the initial Plaintiffs Residential School Counsel Association, which threw their support and efforts into the Baxter action as well as other actions which appeared to have strategic national value.

49. Our firm has been retained by many individuals who did not attend the Mohawk school, but who attended other residential schools mostly in Ontario. Those clients are represented by us through our participation in the National Consortium and the Baxter action.

50. It was understood and agreed among the National Consortium members that we would continue to push this action to be certified, and once certified, to trial, recognizing that in doing so, we were "trail blazing". Our efforts in this action would benefit not only the members of the class in this action, but also the class members in Baxter, some of whom we represent.

The Negotiations

51. Again, I am not at liberty to go into detail as to what positions were taken during the negotiations because of an understanding given with respect to confidentiality. I am advised by Mr. Raikes and can say that:

a. The negotiations took place across the country at various locations throughout July, August, September, October and November, 2005;

b. An Agreement in Principle was reached and signed at approximately 11 p.m. on Sunday evening, November 20, 2005;

c. Mr. Raikes attended all but one day of the negotiations;

d. Mr. Baert was present for all but one or two days of the negotiations;

e. I am advised that Mr. Baert divided his time spent on these negotiations between this action and the Baxter action to reflect the fact that he was acting as counsel in both;

f. The negotiations were lengthy, involved many different stake holders and as is reflected in the final settlement agreement, covered a full range of issues related to the resolution of the litigation and issues of compensation;

g. At various points in the negotiations, impasses were reached. There was no certainty at any time that a settlement would be reached; in

fact, there was considerable risk that after spending months at the negotiating table that no deal would be achieved.

The Agreement in Principle

52. Attached hereto as **exhibit "J"** to this affidavit is a true copy of the Agreement in Principle signed by Mr. Raikes on behalf of the plaintiffs in this action. According to the Agreement in Principle, former students of the Mohawk School will receive:

a. Compensation for all aspects of their attendance at the Mohawk School called a common experience payment (CEP) equal to $10,000 plus $3,000 for each school year or part of a school year after the first year of attendance. This payment includes any claim for language and culture;

b. Those who were sexually abused, physically abused above a certain threshold or who suffered psychological abuse above a threshold prescribed may also receive further compensation through an Individual Assessment Process (IAP) which is a marked improvement on the Government's current Dispute Resolution program;

c. The Government will put money in trust for healing and wellness programs which will be administered by the Aboriginal Healing Fund;

d. A Truth and Reconciliation Commission will be established to record the experiences of former students and their families;

e. Money will also be spent on commemoration; and,

f. The Government has agreed to pay an amount for legal fees which includes the sum of $40,000,000 plus disbursements and GST, in addition to any amounts paid for costs to date, to the National Consortium of which Cohen Highley LLP is a member. The costs are paid in respect of fees and disbursements incurred to November 20, 2005.

53. Pursuant to the Agreement in Principle, the Government of Canada has committed $1.9 billion to the common experience payment for former Indian Residential School students. If this amount is inadequate, the Government will provide such additional monies as are necessary to ensure that each former student who applies receives their common experience payment.

54. The Agreement in Principle also contemplated that there might be a surplus in the common experience payment Fund. If that surplus is less than $40 million, the surplus is to be transferred to the Aboriginal Healing Fund to administer for additional healing and wellness programs for survivors and their families. If the surplus exceeds $40 million, the Agreement in Principle provides that former students shall each receive a voucher for up to $3,000 to be used for eligible healing and wellness services, and any further surplus shall go to the Aboriginal Healing Fund as above.

55. The family class members, i.e. non-students, may receive monies through the estates of their family members, if deceased, as indicated above. In addition, they will have full rights of participation in the program offered through the Aboriginal Healing Fund, and the right to participate in the Truth and Reconciliation Commission as well as any commemoration.

56. Attached hereto and marked as **exhibit "J"** is a true copy of an Agreement in Principle specific to this action which adopts and incorporates by reference the document just marked as **exhibit "K".**

57. As indicated in exhibit "J", estates of former students of the Mohawk School who have died may claim and receive the common experience payment going back to October 5, 1996, i.e. two years preceding the commencement of this action.

58. The cut off date for the Mohawk School stems from the provisions of the *Trustee Act* (Ontario) and the fact that this action was certified at the time the negotiations took place.

59. We are very pleased with the provisions concerning the deceased because there are many members of our class who have died since we were retained and since the action was commenced. I am saddened to advise this court that two of the representative plaintiffs, Warren Doxtator and Frank Hill have died, but am advised by Mr. Raikes that their surviving spouses support this settlement and are pleased that their husbands' claims will be compensated through the common experience payment, through community redress such as memorialization, truth and reconciliation, and healing and wellness programs.

60. As indicated above, the notice to the class of the certification of this action and the opportunity to opt out proceeded in this action while the negotiations were ongoing.

61. Attached hereto and marked as **exhibit "L"** is a true copy of the Order of Mr. Justice Haines approving the form of notice and prescribing the manner by which notice would be given and opt out would occur.

62. The Notice was published in each of the newspapers as required. Notice was mailed by our office and posted on the websites per the Order of Justice Haines. Attached hereto and marked as **exhibit "M"** is a true copy of the Notice to Class published in the London Free Press.

63. The following individuals opted out of this class action:

    a. Dwight Powless

    b. Dolores A. Jimerson

    c. Gordon Semple

    d. Roderick A. Green

Final Settlement Agreement

64. I am advised by Mr. Raikes that since November 20, 2005, there have been many meetings and discussions which have taken place to draft a final settlement agreement, a copy of which will be before this court for approval. The Final Settlement Agreement is substantially the same as the Agreement in Principle. Mr. Raikes has had minimal involvement in the development of the Final Settlement Agreement as that role was performed by Mr. Baert and other members of a special Committee that was established for that purpose.

65. As indicated above, the Agreement in Principle contemplated that former students would receive a healing voucher in the event of a surplus exceeding $40 million in the Common Experience Fund. In the Final Settlement Agreement, the healing voucher has been replaced with education credits which can be assigned by former students to a member of

the family class. Thus, a former student can elect to designate his or her child to receive this credit to use for education.

66. I verily believe that even after the Agreement in Principle was reached, there remained risk that this settlement would not be finished. That risk included, inter alia, whether the newly elected Federal Cabinet would approve the terms of the settlement and whether changes to the IAP could be finalized.

Retainer Agreement

67. Attached hereto and marked as **exhibit "N"** is a true copy of the signed retainer agreement. As the retainer agreement indicates, Cohen Highley LLP and Koskie Minsky LLP are entitled to be compensated in the event of a settlement or judgment under which any one or more of the members of the class receive compensation.

68. We presently have a database which indicates that we have been retained by in excess of 800 former students of the Mohawk School, in addition to a substantial number of their family members. In addition, we presently act for approximately 181 former students who attended other residential schools and who are represented by us in the Baxter action or in one case, in an individual lawsuit.

Fees

69. As at November 20, 2005, we had accrued legal fees and disbursements, plus GST of :

a. Fees	$1,226,014.20
b. GST on Fees	$ 85,816.64
c. Disbursements	$ 111,685.32

d.	GST for Disbursements	$ 6,387.46
	TOTAL	**$1,429,903.50**

70. I am advised by Mr. Baert and verily believe that as at November 20, 2005, his firm had fees, disbursements and GST of:

a.	Fees	$495,679.50
b.	GST on Fees	$ 34,697.57
c.	Disbursements	$ 24,655.71
d.	GST for Disbursements	$ 1,622.59
	TOTAL	**$556,655.37**

71. I am advised by Mr. Raikes and verily believe that of the $40,000,000 payable to the National Consortium of 19 law firms, Cohen Highley LLP will receive the sum of approximately $4,203,000 plus payment of disbursements and GST. This amount includes our time in the other files which we have opened on behalf of students who attended other residential schools, and the individual lawsuit which we have been prosecuting. The total fees in respect of those other files as at November 20, 2005 was:

a.	For Fees	$113,844.50
b.	GST on Fees	$ 7,741.37
	TOTAL	**$121,585.87**

72. Our disbursements to be paid in addition for those files as at November 20, 2005 are:

a.	Disbursements	$11,424.67
b.	GST for Disbursements	$ 721.67
	TOTAL	**$12,146.34**

73. I am advised by Mr. Raikes that since November 20, 2005, he and the other members of his team at Cohen Highley LLP have:

a. Notified by mail all members of the class registered with us of the settlement and its terms;

b. Attended meetings at various First Nations and Friendship Centres to explain to class members the terms of the settlement;

c. Responded to hundreds of individual calls, emails and letters;

d. Assisted clients in completing applications for an advance payment under the common experience payment portion of the settlement;

e. Reviewed various iterations of the draft final settlement agreement;

f. Participated in teleconference calls with co-counsel in the National Consortium on issues pertaining to the final settlement agreement.

74. I am advised by Mr. Raikes that under the Agreement among counsel belonging to the National Consortium, Koskie Minsky LLP has acted as counsel in this action and in Baxter. I understand that a separate affidavit will be filed by a member of the National Consortium which will address the fees to be paid to the members of the National Consortium, including Koskie Minsky.

75. As mentioned above, Mr. Raikes has had primary responsibility within our firm for this action. Mr. Raikes is a partner in Cohen Highley LLP. He was called to the Bar in 1984. He has practiced extensively in civil litigation since he was called, and a significant component of his work since 1990 has involved aboriginal law. He has taught aboriginal law courses at the University of Western Ontario Law School, has lectured in Canada and internationally, and is recognized as one of the top aboriginal law lawyers in Canada.

76. I was called to the Bar in 1976. I am certified as a specialist in civil litigation by the Law Society of Upper Canada. Both Mr. Raikes and I have acted as counsel in a number of class actions.

77. The fees referred to in paragraphs 69 and 71 have been calculated using the hourly rates usually charged by members of this firm for all litigation. The rates have changed over the years to reflect increased experience, the increase in our overhead and local market rates. The time related to the investigation and commencement of the action, for example, was charged at rates then in place within the firm; Mr. Raikes' hourly rate was then $200.00/hr.

78. The fees referred to in paragraphs 69 and 71 include:

    a. 4,551.5 hours of time by lawyers;

    b. 1,604.7 hours of time by students;

    c. 1,102.3 hours of time by law clerks.

79. Our clients in this action are for the most part impecunious. Many are quite elderly and some are in very poor health. As mentioned, several have died.

80. This action has been prosecuted by our firm and the Koskie Minsky firm on a contingency basis. We have achieved substantial success for our clients. I am advised by Mr. Raikes that the feedback which he has received from members of the class has been overwhelmingly in favour of the settlement. Many clients have expressed the view that they never thought they would see any money from this lawsuit; that the Government would fight until they were dead.

81. I firmly believe that but for the diligent counsel work by this firm and the Koskie Minsky firm, this action would never have been certified as a class action and the defendants would never have negotiated a settlement of this action that provides for compensation for everyone who attended the Mohawk School.

82. I verily believe that the fees to be paid to Cohen Highley and Koskie Minsky for this action and the work done for other clients whom we represent who attended Indian Residential Schools, are fair and reasonable having regard to:

a. The risk which we assumed in the carriage of this action;

b. The substantial efforts which we have made on behalf of our clients;

c. The results which we have achieved;

d. The length of time which we have carried this litigation at our expense;

e. The determined and vigorous defence of opposing counsel on behalf of their clients;

f. The terms of the retainer agreement.

83. This action has presented many and varied challenges to counsel, including but not limited to:

a. The legal issues on the merits of the action including several novel points of law;

b. The plaintiffs claim, at its core, is for child abuse in an institutional setting. The victims of that abuse have suffered life long trauma.

Some members of the class suffer from addictions and personality disorders which require extra time, effort and understanding as it relates to communication;

c. Many of the plaintiffs are impecunious, frequently change addresses and have other issues which we have had to address, such as social assistance benefits and the effect of this settlement on their entitlement to same;

d. We have attended numerous meetings on Reserves, including Waswanipi, a First Nation located in Northern Quebec near James Bay;

e. Many of the members of the class have not achieved higher than a grade 8 education;

f. Because of the nature of the abuse at the Mohawk School, the issues are ones that provoke considerable anger and pain among members of the class.

84. But for this settlement, the plaintiffs in this action could reasonably expect:

a. lengthy examination for discovery, likely in excess of 40 days;

b. a trial of the common issues in 2 to 4 years, which trial would likely exceed 12 weeks duration;

c. appeals from the trial decision which would take a minimum of 2 years to be heard;

d. if successful, hearings for the determination of individual issues, including the prospect of further discovery on those individual issues;

e. the prospect of appeals for the determination of those individual issues.

85. As indicated above, the members of the plaintiff class are largely elderly. I believe that there is a real risk that without this settlement, many former students would die before their individual issues were determined and, in that case, their claims would be very difficult, if not impossible, to prove.

86. We have recommended this settlement to the Steering Committee as a fair and reasonable settlement for the following reasons:

a. it provides compensation to every former student alive on or after October 5, 1996;

b. the compensation to be paid recognizes that the longer a student attended, the more they get;

c. this litigation is by no means risk free given the novel claims being advanced and the defences available to the defendants, particularly Canada;

d. the prosecution of this action through a common issues trial and through the individual issues hearings will take years to complete, and will be at substantial risk to the representative plaintiffs;

e. the settlement provides additional compensation for those who were sexually abused or physically or mentally abused above defined thresholds, using a process that is faster and more user friendly than the courts, i.e. less adversarial;

f. the settlement allows family members to participate in the truth and reconciliation, commemoration and healing and wellness

components, and to potentially gain through estates or through education vouchers. The claim of the family class is a far more difficult and riskier claim than that of former students who attended the Mohawk school.

87. I am not aware of any objections made to the terms of the settlement; in fact, the feedback from the meetings, emails, and telephone calls from class members has been overwhelmingly favourable.

88. Further, I am not aware of any member of the Steering Committee or of the plaintiff class who has objected in any way to the fees that are to be paid to this firm; in fact, I am advised by Mr. Raikes that members of the Steering Committee have advised him that we should be getting more given that we were the first to be certified, with the difficulty that entailed.

89. Subject to any fees which may be payable by the Government pursuant to the Final Settlement Agreement for work specific to the approval of the settlement, Cohen Highley LLP has agreed that the time which we have spent since November 20, 2005 will be subsumed in the fees that are to be paid to us as indicated above. As a result, none of the common experience payment received by members of the plaintiff class will be paid to this firm or Koskie Minsky LLP for work done before or after November 20, 2005 in prosecuting this action or in completing this settlement. To date, Cohen Highley LLP has accrued additional work in progress of approximately $120,000 since November 20, 2005.

90. I make this affidavit in support of the motion to approve this settlement and the motion to approve the fees, disbursements and GST payable to Cohen Highley LLP and Koskie Minsky LLP in this action and the Baxter action, and for no improper purpose.

SWORN before me at the City of London, in the County of Middlesex, this 20th day of July, 2006.

PAUL VOGEL

A commissioner, etc.

CV No. S-0001-2005 000 243

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ROSEMARIE KUPTANA, as a representative of that class of individuals who are enrolled as beneficiaries of the Inuvialuit Trust, and who attended a Federal Day School, Indian Residential School, Hostel, or other school of a residential nature, in various locations across Canada, all of which were established and administered by, or otherwise the responsibility of, the Government of Canada

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF ROSEMARIE ESTHER KUPTANA

SWORN THE 3 **DAY OF** August **, 2006**

I, ROSEMARIE ESTHER KUPTANA, of the Town of Inuvik, in the Northwest Territories, MAKE OATH AND STATE THAT:

1. Several generations of my family including myself attended Indian Residential Schools ("IRS"), and as such have personal knowledge of the matter hereinafter deposed to by me, except where stated by me to be by way of information and belief.

2. I am the former President of the national Inuit organization, the Inuit Tapiriit Kanatami (ITK) formerly known as the Inuit Tapirisat of Canada (ITC), the Inuit

Broadcasting Corporation (IBC) and the Inuit Circumpolar Conference (ICC). I have raised the issue of residential school in these positions as a contributing factor of the colonialization processes and a violation of our fundamental human rights as Inuit.

3. I was born in 1954 and raised in a traditional Inuit hunting society. I spoke only Inuinnaqtun (a dialect of the Inuit language) until the age of eight. My home community of Sachs Harbour, Northwest Territories is a village of 120 people on the Beaufort Sea.

4. At 6 years old, I began attending an IRS for Indigenous children four hundred miles away from home. The education policy that applied to indigenous peoples at the time required that I speak only English and adopt a foreign way of living.

5. I became involved in Inuit organizations around 1975 when discussion first began between Inuit and the Government of Canada to reach formal agreements regarding Inuit land rights.

6. I am one of the representative plaintiffs in this proceeding. I represent the class of individuals who are beneficiaries of the *Inuvialuit Trust*, and who attended an IRS in various locations across Canada, all of which were established and administered by, or otherwise the responsibility of, the Government of Canada.

7. It is my own personal experience at residential school that has shaped my life's work in the promotion and defense of Inuit rights. As such, I sought the constitutional recognition of the Inuit language and culture, bringing the issue of

residential schools to public attention as a piece of Canada's unfinished business with Inuit.

8. The devastation caused by the residential school system is severe. It is my firm belief that this issue must be publicly documented and the healing in our people and communities must begin. The residential schools Settlement Package is a beginning, upon which the Inuvialuit can build.

9. I am a member of the Inuvialuit society, which is a member of the larger Inuit society residing in four countries: Canada, Denmark, Russia and the United States.

10. I am currently employed as a residential school consultant in the legal department of the Inuvialuit Regional Corporation ("IRC"), the representative body of the Inuvialuit. The IRC is a democratically elected body representing 5,500 Inuvialuit. IRC's mandate is to continually improve the economic, social and cultural well being of the Inuvialuit. IRC has two sibling organizations who each have similar mandates in their regions: Nunavut Tunngavik Incorporated ("NTI") representing the Inuit in Nunavut Territory; and, Makivik Corporation ("Makivik") representing the Inuit in Nunavik (Northern Quebec) (collectively referred to as the "Inuit Organizations").

11. I recognize the work of Larry Philip Fontaine, National Chief of the Assembly of First Nations, to resolve the IRS legacy. Inuit and Inuvialuit survivors of IRS were excluded from the initial negotiations with the Federal Government. Some Inuvialuit and Inuit students resided at hostels and attended IRS recognized by the

Federal Government while others resided at hostels and attended federal day schools, which the government did not consider to be IRS. This distinction threatened to leave many Inuvialuit and Inuit former students out of the settlement. This would not have been a fair and lasting resolution to the IRS legacy.

12. I commenced a representative action against the government on behalf of myself and all IRS former students enrolled in the Inuvialuit Trust to ensure that IRC could participate in the discussions on the resolution of the impact of residential schools on behalf of former Inuvialuit students. NTI participated in the resolution discussions on behalf of former Inuit students in Nunavut. Makivik participated in the resolution discussions on behalf of former Inuit students in Northern Quebec.

13. The Inuit Organizations participated in the resolution discussions with the Honourable Frank Iacobucci, the federal representative. These negotiations culminated in an Agreement in Principle ("AIP") reached on November 20, 2005 and a Settlement Agreement on May 10, 2006. The AIP and Settlement Agreement recognize the Federal Government's federal day schools and hostels as Indian Residential Schools, including Inuvialuit and Inuit students

14. I have reviewed and considered the Settlement Agreement and consulted with class counsel in relation to same. I have also reviewed the Settlement Agreement with numerous Class Members, representatives from the Inuit Organizations both as a former student of an IRS and in my capacity as a residential school consultant

with IRC and I believe that the Settlement Agreement is for the benefit of the Class Members.

My Experience at Stringer Hall

15. I was born on March 24, 1954 in an igloo in the Prince of Wales Strait in the Northwest Territories. My Inuinnaqtun name is Kudlak Tuqtualuq. In 1957, my family settled in Sachs Harbour.

16. When I was 6 years old, the Royal Canadian Mounted Police came to our home and took my brother and myself from our family, without my parents' consent, and put us on a plane to Inuvik. I was made to attend Sir Alexander Mackenzie School for 6 years and Samuel Hearne Secondary School for 7 years and to reside at Stringer Hall hostel 10 months of the year for 13 years.

17. While attending residential school, I was denied the love, care and spiritual guidance of my parents, my family and my community. I was not allowed to speak in Inuinnaqtun, our native language, to eat our native food, to practice our spiritual beliefs or speak with my family, including my brother who also resided in Stringer Hall. I was physically and sexually abused.

18. When I returned home after the first year, I could no longer speak Inuinnaqtun. My grandmother and others in the community ridiculed me. After a decade in residential schools, I did not know how to relate to my parents, siblings, extended family or men, which caused me to withdraw from society and to experience

severe anxiety and panic attacks in day-to-day social interaction. Later, in life, I had to receive medical assistance for this disorder.

Residential Schools in Northern Canada

19. I understand from research conducted at the Anglican General Synod Archives, the Northwest Territories Archives, the Government of the Northwest Territories Education Records Office and the National Archives of Canada by IRC that the Federal Government funded residential schools in the Northwest Territories beginning in the late 1800s. Beginning in the 1950s the Government of Canada began building and operating federal day schools with hostels in the Northwest Territories and Northern Quebec. The archival records for these schools are incomplete and provide only pieces of the residential program in the North.

I Am Prepared to Act as Representative Plaintiff of the Survivor Class

20. I am prepared to act as representative plaintiff of the Survivor Class in relation to the representative action before this Honourable Court. I will fairly and adequately represent the interests of the Survivor Class should this Court appoint me as representative plaintiff. I appreciate that my role is to protect the interests of the Survivor Class.

21. I believe that the government of Canada has breached its duty to me and to the Survivor Class through its administration of IRS and in respect of its policy in relation to same and that, as a result, I, and the Survivor Class are entitled to compensation.

22. I understand that the major steps in the class action can be summarized as follows:

(1) The action was started by the issuance of the statement of claim. That claim has been amended in a fresh as amended statement of claim. Further amendments have been made in the Master Claim;

(2) I am now asking the Court to certify the action as a class proceeding by this motion for certification;

(3) If the Court certifies the action as a class proceeding, the certification notice will be sent the Survivor Class Members who will be given the opportunity to opt out of the class action if they wish within a fixed period;

(4) At the same time, the Court will be asked to approve the proposed settlement;

(5) Survivor Class Members will have the right to object to the proposed settlement;

(6) If the proposed settlement is approved by the Court, Survivor Class Members who do not opt out will receive the benefits set out in the settlement agreement;

(7) In the event the Class Members wish to make an additional claim, there is an opportunity through this settlement to participate in further hearings if necessary to prove or assess damages;

(8) Appeals of decisions may be taken at various stages of the settlement; and

(9) The Court will supervise the execution and administration of the settlement.

23. I also understand that, in agreeing to seek and accept an appointment as a representative plaintiff, it is my responsibility, among other things, to be familiar with this action, and:

(1) To review the Master Claim and any further amendments;

(2) To assist in the preparation and execution of an affidavit such as this one in support of the motion for certification and settlement approval;

(3) To attend, if necessary, with Class Counsel for cross examination of my affidavit;

(4) To attend with Class Counsel at the settlement approval hearing and give evidence regarding the case, if necessary;

(5) To receive briefings from and to instruct Class Counsel;

(6) To seek the court's approval of agreements respecting Class Counsel's fees and disbursements; and

(7) To communicate with Survivor Class Members throughout and through our counsel, as required.

24. To date, the following are some of the steps I have taken to fairly and adequately represent the Survivor Class Members:

(1) I retained and instructed Class Counsel to commence this class proceeding;

(2) Discussed with Class Counsel the nature of this class action, including the risks and costs of same;

(3) Assisted in drafting the statement of claim;

(4) Obtained documents and other information at the request of Class Counsel;

(5) Met with Class Counsel on numerous occasions; and

(6) Instructed Class Counsel, as necessary.

IDENTIFIABLE CLASS

25. I have reviewed the Master Claim. In my view, the class definition for the survivor class should be:

> 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.

Where Residential School means:

(i) institutions listed on List "A" to IRSRC'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;

26. I believe that this definition is an objective definition and the Survivor Class Members, upon receiving or reading the certification notice, will easily be able to determine whether or not they qualify as a Survivor Class Member.

POPULATION OF CLASS

27. The population of Class Members is definable, and is estimated to include approximately 90,000 individuals across Canada.

COMMON ISSUES

The common issues in the action are the following (the "Common Issues"):

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?

PREFERABLE PROCEDURE

28. I believe that a class action is the preferable procedure to resolve the Common Issues.

29. The class action will provide access to justice for me and other Survivor Class Members. I am aware that many Aboriginal Persons, including the Inuit, live in remote communities, are not in a position to retain counsel due to geographic, logistic and financial reasons, suffer from psychological and emotional problems often as a result of their residential school experiences, which include various forms of institutional child abuse, and suffer from poverty and often from substance abuse. I believe that thousands of residential school survivors and their families would not be able to advance their legal rights without this class action.

NO CONFLICT OF INTEREST

30. I do not believe that I have any interest that is in conflict with the interest of any other Survivor Class Member.

31. I believe that I can fairly and adequately represent the interest of the Survivor Class and I am committed to fulfilling my responsibilities as a representative plaintiff.

THE PROPOSED SETTLEMENT

32. I believe that this settlement package is beneficial to the Class Members, because it includes not only fair compensation for the time spent at residential schools, but it also includes a more accessible process for survivors to address the abuse they suffered at IRS.

33. It also includes a truth and reconciliation aspect, as well as a commemorative aspect, both of which are necessary to ensure that the issue of residential schools becomes a part of the public record in Canada, and that its legacy is never repeated.

34. This settlement package also includes a significant amount of money to be put towards reconciliation and healing programs, and ensures the continuation of the Aboriginal Healing Foundation (AHF).

35. Former students who died before May 30, 2005 still receive a benefit from this settlement through the significant commemoration and truth and reconciliation initiatives that will be undertaken. These initiatives are the foundation of the settlement package, and will ensure that the stories of deceased former students can be told and remembered in future generations.

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

SWORN BEFORE ME at the Town of Inuvik)
in the Northwest Territories, this 3 day of)
August, 2006)
)
)

Rosemarie Kuptana
Rosemarie Esther Kuptana

A NOTARY PUBLIC in and for the
Northwest Territories.
My commission expires: Nov 28/07

CV No. S-0001-2005 000 243

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ROSEMARIE KUPTANA, as a representative of that class of individuals who are enrolled as beneficiaries of the Inuvialuit Trust, and who attended a Federal Day School, Indian Residential School, Hostel, or other school of a residential nature, in various locations across Canada, all of which were established and administered by, or otherwise the responsibility of, the Government of Canada

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF DANA EVA MARIE FRANCEY
SWORN THIS 3 DAY OF August, 2006

I, DANA EVA MARIE FRANCEY, of the Town of Inuvik, in the Northwest Territories, MAKE OATH AND STATE THAT:

1. I am one of the proposed representative plaintiffs in this putative class proceeding. I bring this action on my own behalf and on behalf of all Class Members, as described and defined in the proposed Amended Statement of Claim (the "Claim").

2. I was born on October 1, 1980 in Inuvik, Northwest Territories. I am a member of Inuvialuit society and a beneficiary of the *Inuvialuit Final Agreement 1985 (IFA)* and I reside in Inuvik, Northwest Territories.

3. My mother, Judy Francey formerly known as Judy Kaglik Anikina attended Indian Residential School at Sir Alexander Mackenzie School from kindergarten to grade six and resided in Stringer Hall, in Inuvik for approximately 4-6 years from 1962 to 1971. In addition the following aunts and uncles attended Indian Residential School at Sir Alexander Mackenzie

School and Samuel Hearne Secondary School and resided at Stringer Hall: Archie Kaglik, Herman Kaglik, and Ruby St. Amand. I did not attend a residential school myself.

4. I meet the definition of a Family Class Member as set out in the Claim.

OVERVIEW OF MY POSITION

5. The damage done by Canada's residential schools policy has been devastating to the Inuvialuit community. While the Survivor Class has borne the brunt of that pain through direct experiences at Residential School, the legacy of those experiences has been passed on to children and grandchildren of Survivors and to the wider Inuvialuit community.

6. As a Family Class Member, I have felt the effects of the pain and humiliation suffered by my mother and her siblings in many ways. The multi-generational impacts of the residential schools policy are undeniable.

7. I believe it is important for all members of the Class, including the Family Class and the entire Inuvialuit community, to seek some form of closure on this tragic part of our history. It is time for the individuals who have suffered to seek reconciliation and attempt to rebuild themselves and their communities. It is time to focus on the positive, and I believe that this settlement is an essential part of that process. I therefore fully support the proposed settlement.

MY EXPERIENCE AS A FAMILY MEMBER OF A RESIDENTIAL SCHOOL SURVIVOR

8. As a family member of a Residential School survivor, I have seen and experienced the ongoing effects of the Residential School experience. I believe that my mother and her siblings were abused at Residential School, and deprived of adequate food, health care, and education. Additionally, my mother and her siblings were prohibited from speaking our Inuvialuit language and practicing our Inuvialuit customs.

9. My mother Judy Francey was physically and psychology abused while attending the Sir Alexander Mackenzie School and consequently her education was affected. She is currently in the process of seeking compensation under the Alternative Dispute process.

10. I believe the Residential School experience affected my mother and her siblings in that my mother and her siblings felt degraded and humiliated. I believe that the Residential School experience affected my mother and her siblings' ability to relate to other people, and in particular, negatively affected my relationship with my mother.

11. As a result of his/her Residential School experience my mother and her siblings found it difficult to express affection towards me, both verbally and physically. I believe my relationship with my mother was distant because my mother did not experience a loving and expressive relationship from caregivers while attending Residential School.

12. My mother Judy Francey experienced unhappiness, and struggles with abuse problems, has struggled to develop parenting skills and to overcome her loss of self-esteem. I did not receive the benefit of a wholesome family and upbringing as a result of my mother's negative experiences at residential school.

13. The experiences of my mother and her siblings at Residential School are tragic, and it saddens me to even think of them. Such devastating treatment damaged my mother for life, and had a multi-generational impact on the Inuvialuit community.

14. Accordingly, I believe that both my mother and my aunts and uncles and I suffered harm as a result of the Residential School experience.

I AM PREPARED TO ACT AS REPRESENTATIVE PLAINTIFF OF THE CLASS

15. I am prepared to act as representative plaintiff of the Class, and in particular the Family Class in this proceeding. I will fairly and adequately represent the interests of the Class should this Court appoint me as representative plaintiff. I appreciate that my role is to protect the interests of the Class.

16. I believe that the Defendants have breached their obligations as set out in the Claim, and that the Class is entitled to some form compensation or redress.

17. I understand that the major steps in a class action typically include: the issuance of the statement of claim (and amendments to it if required), and the provision of a defence; a motion for certification (including the exchange of supporting affidavits and cross examinations as necessary); and, assuming the action is certified as a class proceeding, discoveries, a trial as required, and potentially appeals.

18. In this case, the parties have reached a settlement, which they ask the Court to approve. I am now asking the Court to certify the action as a class proceeding by this motion for certification, and approve the settlement. I understand that if the Court certifies the action as a class proceeding, the certification notice will be sent to Class Members who will be given the opportunity to opt out of the class action if they wish within a fixed period. The Class Members will also be given full particulars of the settlement, if approved.

19. Class Members will have the right to object to the proposed settlement, and if approved those members who do not opt out will receive the benefits of the settlement agreement.

20. I also understand that, in agreeing to seek and accept an appointment as a representative plaintiff, it is my responsibility, among other things, to be familiar with this action, and to review the Claim and any further amendments, to assist in the preparation and execution of an affidavit such as this one in support of the motion for certification and settlement approval, to attend, if necessary, with Class Counsel for cross examination on my affidavit, to attend, if necessary, with Class Counsel at the settlement approval hearing and give evidence regarding the case, to receive briefings from and to instruct Class Counsel, to seek the court's approval of agreements respecting Class Counsel's fees and disbursements and to communicate with Class Members as required.

I have Taken Steps to Carry out my Obligations as Representative Plaintiff:

21. To date, I have taken steps to fairly and adequately represent the Class Members, including instructing counsel to amend and continue the prosecution of a class proceeding, addressing legal fees with counsel, discussing with counsel the nature of the class actions, including the risks and costs of same, assisting in the amendment of the Claim, obtaining

documents and other information at the request of counsel reviewing the litigation plan, meeting with counsel as required, and instructing counsel as necessary.

22. I have reviewed the Claim. I agree with the proposed definitions of the Classes and believe that they will allow individuals to determine whether they qualify as a Class member.

23. I have reviewed the common issues set out in the Claim. While I do not have legal expertise, I believe these issues would need to be addressed by virtually every individual Class Member if this matter did not proceed by way of a class action and that a resolution of the common issues would significantly advance this litigation.

24. I believe that a class action is the preferable procedure to resolve the common issues. The class action will provide access to justice for me and other Class Members. I am aware that many Inuvialuit persons live in remote communities, are not in a position to retain counsel due to geographic, logistic and financial reasons, suffer from psychological and emotional problems often as a result of their parent's Residential School experiences, and suffer from poverty and often from substance abuse. I believe that thousands of Residential School survivors and their families would not be able to advance their legal rights without these class actions.

25. I do not believe that I have any interest that is in conflict with the interest of any other Class Members. I believe that I can fairly and adequately represent the interests of the Class and in particular, the Family Class and I am committed to fulfilling my responsibilities as a representative plaintiff.

THE PROPOSED SETTLEMENT

26. The proposed settlement was reached through a long process of negotiation. The Honourable Frank Iacobucci, Q.C. was appointed in May 2005 as the Federal Representative responsible for convening and superintending multi-party settlement negotiations. Those negotiations were held in various cities across Canada over the summer and fall of 2005, with various stakeholders attending, including legal counsel as well as representatives from the Assembly of First Nations, Inuit and Inuvialuit representatives from Nunavut Tunngavik Incorporated, Inuvialuit Regional Corporation and Makivik Inc., among others.

27. An agreement in principle was reached with that group on November 20, 2005, and a final settlement agreement was reached on May 10, 2006. That settlement agreement was subsequently approved by the federal cabinet, and now is put forward for approval by the various courts.

28. I have reviewed the settlement agreement approved by the Federal Cabinet, and I have discussed it with Class Counsel. I believe that this settlement package is beneficial to the Family Class Members.

29. The components of the settlement agreement, which are beneficial to the Family Class members, include the following:

(a) There is a payment of $125,000,000 to the Aboriginal Healing Foundation. That Foundation is focused exclusively on addressing the healing needs of aboriginal people affected by the residential schools legacy, including the intergenerational impacts. The Foundation will use the funds to pay for community based healing programs designed with a holistic approach. The Foundation's mandate is to fund projects which help communities knit together social, health and other programs into an accessible format to help address the many ways in which individuals have suffered as a result of the residential schools legacy (ie. substance abuse problems, ill health effects, social, behavioral and emotional problems, educational needs, difficulties obtaining employment, etc.)

The Foundation is national in scope and accepts applications from aboriginal individuals, groups and organizations throughout Canada. It has a specific mandate to address the intergenerational impact of the residential schools legacy and the funds being provided under the settlement provide a direct and accessible benefit to the Family Class members;

(b) An additional $20,000,000 has been allocated to fund community based commemoration projects to acknowledge and remember how the residential schools policy has affected the Class. The purpose of commemoration is to

honour and validate the healing and reconciliation of the Class through the creation of memorial structures, ceremonies and other projects;

(c) A Truth and Reconciliation Commission is established through funding of $60,000,000, to provide an open, safe and holistic environment for the Class and the community to come forward with their experiences, with a view to raising public awareness, facilitating healing and rebuilding in the communities and providing a record for future generations. Both the commemoration projects and the truth and reconciliation initiatives are the foundation of the settlement package which are designed to ensure that the stories of Family Class Members can be told and remembered in future generations;

(d) A provision is made for surplus Common Experience Payment funds to be further disseminated to the Survivor Class by way of personal credits of up to $3000, which are transferable to Family Class Members. If a surplus of more than $40 million remains from the $1.9 billion set aside for the Common Experience Payments to the Survivor Class, those further credits will be provided. Those personal credits, many of which will likely be designated for use by Family Class Members, can be used for educational services provided by approved educational entities. It is my belief that given the educational nature of the personal credits, there is a strong likelihood that many members of the Survivor Class will pass on those credits to members of the Family Class, if a surplus exists. Surplus funds not disseminated in this way will go to the Assembly of First Nations and Innuit organizations for educational initiatives as well; and

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

30. The residential schools legacy has affected the Family Class and the entire Inuvialuit community. The members of the Family Class face a lifetime of trying to adjust and adapt, and to reconcile the history of Inuvialuit mistreatment by Canada with a desire to build a proud and

strong Inuvialuit community. I therefore believe that the wider support, which is offered by this settlement, is essential.

31. As a Family Class member, I believe that the significant monetary commitment made to the Inuvialuit community as part of this settlement agreement will help in healing the breach between Canada and Canadian Inuvialuit, and help all Inuvialuit people to move beyond the tragic legacy of residential schools.

32. I am satisfied with the settlement, and believe that it meets the needs of the Class members. I also believe that it is important for the settlement to be approved. Absent a settlement, I fear that litigation could be protracted, and more and more members of my community would die without seeing a resolution to this legacy.

SWORN BEFORE ME at the Town of Inuvik, in the Northwest Territories, this 3 day of August, 2006.

A NOTARY PUBLIC in and for the Northwest Territories

my commission expires: Nov 28/07

Dana Eva Marie Francey

Court File No. S-0001-2005 000 243

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ROSEMARIE KUPTANA, as a representative of that class of individuals who are enrolled as beneficiaries of the Inuvialuit Trust, and who attended a Federal Day School, Indian Residential School, Hostel, or other school of a residential nature, in various locations across Canada, all of which were established and administered by, or otherwise the responsibility of, the Government of Canada

Plaintiff

- and-

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF BENNY DOCTOR

SWORN THIS 3 DAY OF AUGUST, 2006

I, Benny Doctor, of Tulita, in the Northwest Territories, MAKE OATH AND STATE THAT:

PERSONAL BACKGROUND

1. I am a member of the Survivor Class and a potential representative plaintiffs in this putative class proceeding brought on behalf of all Class Members, as described and defined in the proposed Amended Statement of Claim (the "Claim").

2. I was born on August 16, 1952. I am a member of the Tulita Dene First Nation, in the Northwest Territories. I reside in the province of the Northwest Territories.

3. I attended at the Grollier Hall Indian Residential School ("Residential School") in Inuvik, Northwest Territories for five years from 1964 to 1969.

4. I meet the definition of a Survivor Class Member as set out in the Claim. I am one of the people who suffered directly from Canada's residential schools policy, as a person who actually attended Residential School. I know first hand the damage this has done to me personally and to my family and community

MY EXPERIENCE AS A RESIDENTIAL SCHOOL SURVIVOR

5. I understand from my parents that they were told by the authorities that my siblings and I had to go to Residential School in Inuvik. Inuvik was a long way from Tulita, about 300 miles by airplane. I remember being taken by my father with my brother to the plane to fly to Inuvik. There were other kids there who were going. I remember a man I believe was the Government Indian agent who was also there. I was sad, afraid and did not want to go.

6. At Residential School I was removed from the care of my parents, family, and community, actively discouraged from speaking my aboriginal language, repeatedly sexually and physically abused, strapped, insulted and taunted by persons in authority as a result of my aboriginal origin, and given inadequate food, health care, and education.

7. Starting in 1964 when I entered Residential School and continuing until I left in 1969 I was sexually abused, including rape, multiple times by each of three different men who worked as supervisors at the school. The first year I was at the school, my supervisor started abusing me soon after I arrived. It started with kissing, soon moved to oral sex and soon after that rape. This occurred regularly. In my second year a different supervisor became my primary abuser. He also progressed quickly into raping me. In my last year at the School yet a different supervisor became my primary abuser and he too raped me on a regular basis.

8. As a result I lived in a constant state of fear and emotional and physical pain while at Grollier Hall. Physical pain from the damage to my rectum caused by the sexual abuse and fear and emotional pain from knowing I was helpless and alone with no one to defend me against my abusers.

9. I was also physically abused by both a priest and a nun. The priest strapped me once. The nun was especially mean. She seemed to hate me. Her primary form of abuse was pulling my ears hard, which she did regularly. But she hurt me much more deeply with her words, for her abuse would often be accompanied by ridicule and verbal insults about who and what I was. She would often call me a French word, "sauvage", which means savage.

10. When we first arrived at Residential School I was separated from my older brother and not allowed to talk to him. I was also separated from my sisters. Being separated from my siblings caused me great loneliness. I often cried because of the loneliness and because I wanted to go home.

11. The nuns would read any letters I wrote before they were sent and they often did not send my letters because they did not like what I wrote. Residential School was like a concentration camp in that way, everything I did was controlled and I felt powerless.

12. I was often hungry at Residential School. The meals we got did not fill me up and we rarely got second helpings.

13. I felt degraded and humiliated by my Residential School experience. I felt ashamed. I still do. While at Residential School the other boys seemed to know I was a favourite victim of particular supervisors. They would constantly ridicule me. The shame I felt among my peers as a child stayed with me long after I left Residential School.

14. I believe my Residential School experience has caused me lifelong harm and injury which I will try to describe.

15. When I would return home for the summers I remember being angry at my parents. I wouldn't behave or listen to them the way I used to. Life at home was not happy like it had been before Residential School. I was not happy. I started to drink alcohol.

16. My Residential School experience caused me to turn to alcohol in order to deaden the pain, resulting in an addiction which was very difficult for me to overcome. I had a very low sense of self-worth, something I still struggle with. Later in my adult life my wife and I attended

detoxification and addiction programs. These together with my wife's support and our faith have allowed me to stop drinking.

17. My Residential School experience has severely affected my ability to positively relate to my wife, my children and my extended family in an emotional and loving way. My wife and I have attended family counseling and relationship programs. With the support of my wife and my children we are rebuilding our family relationships.

18. I will never be able to rebuild my relationship with my father. He died long before I could ever begin to tell him about what happened to me. I only told my mother a few years ago about the abuse I suffered at Residential school. Our relationship has begun to heal since then and we can even laugh sometimes now.

19. I have always had nightmares about what happened at Residential School. I still do.

20. I have become involved over the years in some activities which help me try to put Residential School behind me by allowing me to help others. I am involved in the Junior Rangers program. We take kids who have no connection to the land out in the bush to teach them how to live on the land. Many of these kids come from bad homes and situations. Many of their parents went to Residential School. I feel good when I am out on the land and I feel good when I am helping these kids.

21. My wife and I have also been involved in a community leadership program aimed at learning how to help others deal with bad situations in their lives resulting from alcohol, violence and abuse. Part of it is sharing your own bad experiences. Many people have bad experiences from Residential School to share.

I AM PREPARED TO ACT AS REPRESENTATIVE PLAINTIFF OF THE CLASS

My Obligations as Representative Plaintiff:

22. I am prepared to act as representative plaintiff of the Survivor Class in this proceeding. I will fairly and adequately represent the interests of the Class should this Court appoint me as representative plaintiff. I appreciate that my role is to protect the interests of the Class.

23. I believe that the Defendants have breached their obligations as set out in the Claim, and that the Survivor Class is entitled to compensation.

24. I understand that the major steps in a class action typically include: the issuance of the statement of claim (and amendments to it if required), and the provision of a defence; a motion for certification (including the exchange of supporting affidavits and cross examinations as necessary); and, assuming the action is certified as a class proceeding, discoveries, a trial as required, and potentially appeals.

25. In this case, the parties have reached a settlement which they ask the court to approve. I am now asking the Court to certify the action as a class proceeding by this motion for certification, and approve the settlement. I understand that if the Court certifies the action as a class proceeding, the certification notice will be sent to Class Members who will be given the opportunity to opt out of the class action if they wish, within a fixed period. The Class Members will also be given full particulars of the settlement, if approved.

26. Class Members will have the right to object to the proposed settlement, and if approved, opt out. Those Class Members who do not opt out will receive the benefits of the settlement agreement.

27. I also understand that, in agreeing to seek and accept an appointment as a representative plaintiff, it is my responsibility, among other things, to be familiar with this action, and to review the Claim and any further amendments, to assist in the preparation and execution of an affidavit such as this one in support of the motion for certification and settlement approval, to attend, if necessary, with Class Counsel for cross examination on my affidavit, to attend, if necessary, with Class Counsel at the settlement approval hearing and give evidence regarding the case, to receive briefings from and to instruct Class Counsel, to seek the court's approval of agreements

respecting Class Counsel's fees and disbursements and to communicate with Class Members as required.

I have Taken Steps to Carry out my Obligations as Representative Plaintiff:

28. To date, I have taken steps to fairly and adequately represent the Survivor Class Members, including instructing counsel to prepare this Affidavit, discussing with counsel the nature of these class actions, including the risks and costs of same, assisting in providing information at the request of counsel, meeting with counsel as required, and instructing counsel as necessary.

29. I have reviewed the Claim. I agree with the proposed definitions of the Classes and believe that they will allow individuals to determine whether they qualify as Class Members.

30. I have reviewed the common issues set out in the Claim. While I do not have legal expertise, I believe these issues would need to be addressed by virtually every individual Class Member if this matter did not proceed by way of a class action and that a resolution of the common issues would significantly advance this litigation.

31. I believe that a class action is the preferable procedure to resolve the common issues. The class action will provide access to justice for me and other Class Members. I am aware that many aboriginal persons like myself live in remote communities. Many are not in a position to retain counsel due to geographic, logistic and financial reasons, suffer from psychological and emotional problems often as a result of their experiences at residential schools, and suffer from poverty and often from substance abuse. I believe that thousands of survivors and their families would not be able to advance their legal rights without this class action.

32. I do not believe that I have any interest that is in conflict with the interest of any other Class Members. I believe that I can fairly and adequately represent the interests of the Survivor Class and I am committed to fulfilling my responsibilities as a representative plaintiff.

THE PROPOSED SETTLEMENT

33. I am advised by my counsel and believe that the proposed settlement was reached through a long process of negotiation. The Honourable Frank Iacobucci, Q.C. was appointed in May 2005 as the Federal Representative responsible for convening and superintending multi-party settlement negotiations. Those negotiations were held in various cities across Canada over the summer and fall of 2005, with various stakeholders attending, including legal counsel as well as aboriginal representatives from the Assembly of First Nations, among others.

34. An agreement in principle was reached with that group on November 20, 2005, and a final settlement agreement was reached on May 10, 2006. That settlement agreement was subsequently approved by the Federal Cabinet, and now is put forward for approval by the various courts.

35. I have reviewed the settlement agreement approved by the Federal Cabinet, and I have discussed it with my Counsel. I believe that this settlement package is beneficial to the Survivor Class Members. It includes fair compensation for the Survivor Class. This includes monetary compensation based on length of attendance at residential school, through the common experience payment. It also provides an accessible method by which survivors can seek additional compensation for serious physical and/or sexual abuse. I have reviewed these aspects of the settlement and I believe that they fairly and adequately meet the needs of members of the survivor class.

36. The settlement includes a truth and reconciliation aspect, as well as a commemorative aspect, both of which are necessary to ensure that the issue of residential schools becomes a part of the public record in Canada, and that its legacy is never repeated. This settlement package also includes a significant amount of money to be put towards healing programs through the Aboriginal Healing Foundation.

37. I am satisfied with the settlement, and believe that it meets the needs of the Survivor Class members. I also believe that it is important for the settlement to be approved. Absent a settlement, I fear that litigation could be protracted, and more and more members of my community would die without seeing a resolution to this legacy. The claims process promises an efficient delivery of compensation, which is important to me and my community.

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

SWORN before me at the Hamlet of Tulita)
in the Northwest Territories this 3)
day of August, 2006.)
)
)

A NOTARY PUBLIC IN AND
FOR THE NORTHWEST TERRITORIES
My commission expires: NOT/NA

DALE A. CUNNINGHAM
BARRISTER & SOLICITOR

BENNY DOCTOR

Court File No. S-0001-2005 000 243

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ROSEMARIE KUPTANA, as a representative of that class of individuals who are enrolled as beneficiaries of the Inuvialuit Trust, and who attended a Federal Day School, Indian Residential School, Hostel, or other school of a residential nature, in various locations across Canada, all of which were established and administered by, or otherwise the responsibility of, the Government of Canada

Plaintiff

- and-

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF LUCY DOCTOR

SWORN THIS 3 DAY OF AUGUST, 2006

I, Lucy Doctor, of Tulita, in the Northwest Territories, MAKE OATH AND STATE THAT:

1. I am a potential representative plaintiff and member of the Family Class in this putative class proceeding brought on behalf of all Class Members, as described and defined in the proposed Amended Statement of Claim (the "Claim").

2. I was born on April 19, 1931. I am a member of the Tulita Dene First Nation, in the Northwest Territories. I reside in Tulita in the Northwest Territories.

3. My son Benny Doctor attended at the Grollier Hall Indian Residential School ("Residential School") in Inuvik, Northwest Territories from approximately 1964 to 1969. In addition to Benny my other children were also sent to the Grollier Hall Residential School. These were my son Ronald Doctor and my daughters Cathy Fraser and Rita and Lorraine Doctor. I did not attend a residential school myself.

4. I meet the definition of a Family Class Member as set out in the Claim.

OVERVIEW OF MY POSITION

5. I believe that residential schools have had a devastating effect on Canada's aboriginal people. Those who attended the schools bore the brunt of the damage but the schools' impact has also been felt by the families of those survivors, including parents, spouses, children and grandchildren as well as by the wider aboriginal community.

6. As a Family Class Member, I have felt the effects of the pain and humiliation suffered by my children in many ways. The multi-generational impacts of the residential schools policy are undeniable.

7. I personally have felt the effects of my children's residential school experience and particularly that of my son Benny, in many ways that I will describe below. Like many other aboriginal Canadians I have spent a large part of my life dealing with those effects and looking backwards at the pain and injury which the residential schools caused. I agree with those aboriginal leaders and individuals who say it is time to begin looking ahead rather than behind. I believe it is time for individuals who have suffered to seek reconciliation and to attempt to rebuild themselves and their communities.

8. I have discussed this settlement with my legal counsel. I understand that it is the result of a lengthy negotiation process in which many lawyers representing survivors, aboriginal leaders, church representatives and representatives of Canada were involved. I understand that during the negotiations many different points of view were expressed and that in order to reach a settlement compromises were required on all sides. I am advised that one of the significant challenges in the negotiations to find a way to fairly and properly recognize the members of the Family Class in a settlement.

9. I recognize that this settlement does not provide and direct financial compensation to members of the Family Class. However other elements of the settlement are of benefit to those members and will help us to put the residential school legacy in the past where it belongs. I

believe that this settlement is a fair and reasonable way to address the claims of the Family Class, particularly taking into account the difficulties that may exist in attempting to pursue such claims through litigation. For these reasons I fully support the proposed settlement.

MY EXPERIENCE AS A FAMILY MEMBER OF A RESIDENTIAL SCHOOL SURVIVOR

10. I recall the day when my two sons were taken by plane from Tulita to Residential School in Inuvik. My husband had been told by the government man, I believe he was the Indian Agent, that our children had to go away to Residential School. I did not want by children to go. I could not bear to go to the plane with my husband and sons. I stayed home and cried. In 1967 the rest of my children, my three daughters, were taken away to Grollier Hall Residential School. My husband and I were now alone at home.

11. Before our children were all taken to Residential school our home was full of talking and laughing. There were many things to do and my children helped us to do them or accompanied myself or my husband while we did them. We told our children stories at night.

12. After all my children were gone I cried a lot out of loneliness. My husband was often away working or out in the bush. I was alone at home and had no help in taking care of our home, gathering wood, making clothes, preparing and storing food. My husband had no help in hunting, checking snares, and looking after the dogs. We both were not able to pass on many of the traditional Dene skills and knowledge to our sons and daughters when they were at a crucial young age for learning them.

13. There were many of us in the community who had lost children to Residential School. We women would often meet and talk about our children and how they were doing. We shared our sadness in this way. There was a lot of sadness in the community. After our children were gone to Residential School there were times when my husband and I would argue about them being there. I did not want them to be there. He told me that we had no choice that they had to learn the white man's ways. Having our children take to Residential School caused conflict between my husband and I.

14. As a parent of Residential School survivors, I have seen and experienced the ongoing effects of the Residential School experience. I understand my children, including, my son Benny Doctor, suffered mistreatment and neglect at Grollier Hall Residential School where they were also denied the right to use their own language or follow their own culture.

15. More particularly, I believe that my son Benny Doctor also suffered the following experiences at Grollier Hall:

a) From the year he entered the school in 1964 until he left in 1969 my son was subjected to sexual abuse at the hands of three supervisors employed at the Residential School. This abuse consisted fondling, oral and anal sex, and continued over a five year period;

b) Throughout his attendance at Residential School, my son was subjected to physical abuse, which included being strapped, struck and having his ears pulled for "infractions" such as speaking Dene and crying because he was lonely and wanted to go home;

c) My son was verbally ridiculed and humiliated publicly by nuns – one nun in particular would call my son a "sauvage" or savage;

d) My son was separated from his older brother and his sisters and not allowed to speak with them. This caused him great loneliness.

16. These experiences degraded and humiliated my son and I believe significantly affected my son's ability to relate to other people, and in particular, negatively affected my own relationship with my son. My son found it difficult to express affection towards me, both verbally and physically and still struggles with this today.

17. My son Benny did not experience a loving and expressive relationship with caregivers while attending Residential School. I believe this as well as the mistreatment, abuse and attack

upon his identity which he experienced at Grollier Hall are at the root of the many problems he has experienced in life which, in turn, severely affected my own life.

18. Before he was taken to Residential School Benny was a happy, talkative, outgoing boy. Upon his return from Residential School for the summer he had become very quiet. He did not talk to us, he did not seem happy and he started to drink alcohol. It got worse over the next few years and Benny started to disobey and talk back to myself and his father.

19. My son Benny has suffered from addiction to alcohol much of his life. I believe that his drinking was caused by the experiences he suffered through at residential school. My son and his family have experienced a great amount of pain because of his drinking. Seeing his pain has caused me much pain over the years. I have also felt a great amount of guilt for allowing my son and his brother and sisters to be taken so far away from home to residential school. I have also felt guilt for being unable to help my son while he was at residential school.

20. I believe having to send Benny and my other children to residential school damaged the parent – child bond between us. It prevented me from having the joy and satisfaction of passing on to my children many of the Dene skills and ways of life. While our children were at Residential School they lost much of their ability to speak Dene (Slavey). It was hard for them to relearn it after Residential School. My daughter Cathy never did regain it completely. My children also lost the opportunity to learn traditional Dene skills such as hunting, trapping, care of dog teams, crafts and knowledge of plants and animals. Some of our children later learned some of these skills, some did not.

21. While my son Benny and I have talked about some of his experiences, it was very traumatic at first for both of us. It was very difficult for my son to say what happened to him and it was very difficult for me to listen to it.

22. My son never learned naturally about how to express love or compassion for his family. He had difficulty being a good parent, husband and son. I believe these problems are a result of his time in residential school, and the failure of the Residential School to create a caring and nurturing environment for its students.

23. My son's Residential School experiences are tragic, and it saddens me to even think of them. His cruel treatment while in Residential School has irreversibly damaged my son, and contributed to a multi-generational loss to our family and to the aboriginal community generally.

24. I therefore believe that my son Benny, my other children and I suffered harm as a result of the Residential School experience.

I AM PREPARED TO ACT AS REPRESENTATIVE PLAINTIFF OF THE CLASS

25. I am prepared to act as representative plaintiff of the Class, and in particular the Family Class in this proceeding. I will fairly and adequately represent the interests of the Class should this Court appoint me as representative plaintiff. I appreciate that my role is to protect the interests of the Class.

26. I believe that the Defendants have breached their obligations as set out in the Claim, and that the Class is entitled to some form compensation or redress.

27. I understand that the major steps in a class action typically include: the issuance of the statement of claim (and amendments to it if required), and the provision of a defence; a motion for certification (including the exchange of supporting affidavits and cross examinations as necessary); and, assuming the action is certified as a class proceeding, discoveries, a trial as required, and potentially appeals.

28. In this case, the parties have reached a settlement which they ask the Court to approve. I am now asking the Court to certify the action as a class proceeding by this motion for certification, and approve the settlement. I understand that if the Court certifies the action as a class proceeding, the certification notice will be sent to Class Members who will be given the opportunity to opt out of the class action if they wish within a fixed period. The Class Members will also be given full particulars of the settlement, if approved.

29. Class Members will have the right to object to the proposed settlement, and if approved those members who do not opt out will receive the benefits of the settlement agreement.

30. I also understand that, in agreeing to seek and accept an appointment as a representative plaintiff, it is my responsibility, among other things, to be familiar with this action, and to review the Claim and any further amendments, to assist in the preparation and execution of an affidavit such as this one in support of the motion for certification and settlement approval, to attend, if necessary, with Class Counsel for cross examination on my affidavit, to attend, if necessary, with Class Counsel at the settlement approval hearing and give evidence regarding the case, to receive briefings from and to instruct Class Counsel, to seek the court's approval of agreements respecting Class Counsel's fees and disbursements and to communicate with Class Members as required.

I have Taken Steps to Carry out my Obligations as Representative Plaintiff:

31. To date, I have taken steps to fairly and adequately represent the Class Members, including instructing counsel to prepare and file this affidavit, discussing with counsel the nature of the class actions, including the risks and costs of same, assisting in gathering evidence for the Claim, obtaining documents and other information at the request of counsel and instructing counsel as necessary.

32. I have reviewed the Claim. I agree with the proposed definitions of the Classes and believe that they will allow individuals to determine whether they qualify as a Class member.

33. I have reviewed the common issues set out in the Claim. While I do not have legal expertise, I believe these issues would need to be addressed by virtually every individual Class Member if this matter did not proceed by way of a class action and that a resolution of the common issues would significantly advance this litigation.

34. I believe that a class action is the preferable procedure to resolve the common issues. The class action will provide access to justice for me and other Class Members. I am aware that many aboriginal persons live in remote communities, are not in a position to retain counsel due to geographic, logistic and financial reasons, suffer from psychological and emotional problems often as a result of their Residential School experiences, and suffer from poverty and often from

substance abuse. I believe that thousands of Residential School survivors and their families would not be able to advance their legal rights without these class actions.

35. I do not believe that I have any interest that is in conflict with the interest of any other Class Members. I believe that I can fairly and adequately represent the interests of the Class and in particular, the Family Class and I am committed to fulfilling my responsibilities as a potential representative plaintiff.

THE PROPOSED SETTLEMENT

36. I understand the proposed settlement was reached through a long process of negotiation. The Honourable Frank Iacobucci, Q.C. was appointed in May 2005 as the Federal Representative responsible for convening and superintending multi-party settlement negotiations. Those negotiations were held in various cities across Canada over the summer and fall of 2005, with various stakeholders attending, including legal counsel as well as aboriginal representatives from the Assembly of First Nations, among others.

37. I understand an agreement in principle was reached with that group on November 20, 2005, and a final settlement agreement was reached on May 10, 2006. That settlement agreement was subsequently approved by the federal cabinet, and now is put forward for approval by the various courts.

38. I have reviewed the settlement agreement approved by the Federal Cabinet, and I have discussed it with Class Counsel. I believe that this settlement package is beneficial to the Family Class Members.

39. The components of the settlement agreement which are beneficial to the Family Class members include the following:

(a) There is a payment of $125,000,000 to the Aboriginal Healing Foundation. That Foundation is focused exclusively on addressing the healing needs of aboriginal people affected by the residential schools legacy, including the intergenerational

impacts. The Foundation will use the funds to pay for community based healing programs designed with a holistic approach. The Foundation's mandate is to fund projects which help communities knit together social, health and other programs into an accessible format to help address the many ways in which individuals have suffered as a result of the residential schools legacy (ie. substance abuse problems, ill health effects, social, behavioral and emotional problems, educational needs, difficulties obtaining employment, etc.)

The Foundation is national in scope and accepts applications from aboriginal individuals, groups and organizations throughout Canada. It has a specific mandate to address the intergenerational impact of the residential schools legacy and the funds being provided under the settlement provide a direct and accessible benefit to the Family Class members;

(b) An additional $20,000,000 has been allocated to fund community based commemoration projects to acknowledge and remember how the residential schools policy has affected the Class. The purpose of commemoration is to honour and validate the healing and reconciliation of the Class through the creation of memorial structures, ceremonies and other projects;

(c) A Truth and Reconciliation Commission is established through funding of $60,000,000, to provide an open, safe and holistic environment for the Class and the community to come forward with their experiences, with a view to raising public awareness, facilitating healing and rebuilding in the communities and providing a record for future generations. Both the commemoration projects and the truth and reconciliation initiatives are the foundation of the settlement package which are designed to ensure that the stories of Family Class Members can be told and remembered in future generations;

(d) A provision is made for surplus Common Experience Payment funds to be further disseminated to the Survivor Class by way of personal credits of up to $3000, which are transferable to Family Class Members. If a surplus of more than $40

million remains from the $1.9 billion set aside for the Common Experience Payments to the Survivor Class, those further credits will be provided. Those personal credits, many of which will likely be designated for use by Family Class Members, can be used for educational services provided by approved educational entities. It is my belief that given the educational nature of the personal credits, there is a strong likelihood that many members of the Survivor Class will pass on those credits to members of the Family Class, if a surplus exists. Surplus funds not disseminated in this way will go to the Assembly of First Nations and Inuit organizations for educational initiatives which will be accessible to members of the Family Class; and

(e) In addition to the foregoing, the various church entities that are parties to the Settlement Agreement will provide up to $102.8 million, through cash and in-kind services to develop new programs designed to assist with healing and reconciliation for the Family Class members and their communities.

40. I believe the residential schools legacy has affected the Family Class and the entire aboriginal community in many ways including those experienced by myself personally. The members of the Family Class face a lifetime of trying to adjust and adapt to the effects that residential schools have had upon our families and communities. Some members of the Family Class are parents like myself, whose children were taken away to residential schools. Others are children whose parents went to residential school and never enjoyed a family upbringing in their own tradition and culture. These many individual experiences have deeply affected our people and communities. I therefore believe that the wider support which is offered by this settlement is essential.

41. As a Family Class member, I am hopeful the commitments made to the aboriginal community as part of this settlement agreement will help me and other members of the Family Class to move beyond the impacts that the residential school system has had on our lives.

42. I am satisfied with the settlement, and believe that it meets the needs of the Class members. I also believe that it is important for the settlement to be approved. Without a settlement, I fear that litigation could be protracted, and more and more members of my community would die without seeing a resolution to this legacy.

SWORN before me at the Hamlet of Tulita in the Northwest Territories this 3 day of August, 2006. I hereby certify that Benny Doctor was sworn by me to faithfully interpret the contents of this Affidavit to the Deponent, Lucy Doctor. I further certify that in my belief, the entire contents of the Affidavit and the Oath were faithfully interpreted to Lucy Doctor by Benny Doctor and that Lucy Doctor understood it.

A NOTARY PUBLIC IN AND
FOR THE NORTHWEST TERRITORIES
My commission expires: NOT/NA.

DALE A. CUNNINGHAM
BARRISTER & SOLICITOR

LUCY DOCTOR

CANADA)
PROVINCE OF SASKATCHEWAN)

Q.B.G. No. 816 of 2005 00519

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF REGINA

BETWEEN:

KENNETH SPARVIER, DENNIS SMOKEYDAY, RHONDA BUFFOLO, 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

AFFIDAVIT OF DEANNA RENEE CYR

I, DEANNA RENEE CYR, of the City of Regina, in the province of Saskatchewan, hereby MAKE OATH AND SWEAR:

1. I am the daughter of Brenda Cyr and I have read her sworn affidavit in the matter dated the 26th day of July, 2006.

2. I reside at the City of Regina, in the Province of Saskatchewan, since approximately 2000.

3. I was born at Fort Qu'Appelle, Saskatchewan on January 1, 1980 and my mother is Brenda Cyr.

21. These experiences degraded and humiliated my mother and I believe that significantly affected my mother's ability to relate to other people and, in particular, negatively affected my own relationship with my mother. My mother found it difficult to express affection towards me, both verbally and physically, and still finds it difficult today.

22. My mother did not experience a loving and warm relationship from caregivers while attending Residential School. I believe this, as well as the mistreatment, abuse and attack upon her identity, which she experienced at Lebret and Muscowequan Indian Residential School, are at the root of the many problems she has experienced in life which have, in turn, severely affected my own life.

23. My mother has suffered from addictions throughout her life, including addictions to alcohol and drugs.

24. While my mother and I have talked about some of her experiences, it is very traumatic for my mother to relate these memories. She used to self-medicate with drugs to take away some of the pain. I believe that my mother went through many more painful experiences at Residential School that she cannot or will not talk about with me.

25. My mother never learned how to be a successful parent, or how to openly express love or compassion for her children. I believe that these problems are a result of her time in Residential School, and the failure of the Residential School to create a caring and nurturing environment for its students.

26. I, myself, was never given a proper example of how to be a parent, or how to create and maintain a normal, functioning family. I lost that chance when my mother was permanently damaged by the Residential School. In addition, my

caused. I agree with those aboriginal leaders and individuals who say it is time to begin looking ahead rather than behind. I believe it is time for the individuals who have suffered to seek reconciliation and to attempt to rebuild themselves and their communities.

18. I have discussed this settlement with my legal counsel. I understand that it is the result of a lengthy negotiation process in which many lawyers representing survivors, aboriginal leaders, church representatives and representatives of Canada were involved. I understand that during the negotiations, many different points of view were expressed and that in order to reach a settlement, compromises were required on all sides. I am advised that one of the significant challenges in the negotiations is to find a way to fairly and properly recognize the members of the Family Class in a settlement.

19. I recognize that this settlement does not provide any direct financial compensation to members of the Family Class. However, other elements of the settlement are of benefit to those members and will help us to put the residential school legacy in the past where it belongs. I believe that this settlement is a fair and reasonable way to address the claims of the Family Class, particularly taking into account the difficulties that may exist in attempting to pursue such claims through litigation. For these reasons, I fully support the proposed settlement.

<u>My Experience as a Family Member of a Residential School Survivor</u>

20. As a child of a Residential School survivor, I have seen and experienced the ongoing effects of the Residential School experience. I understand that my mother suffered abuse, mistreatment and neglect at Muscowequan and Lebret Residential Schools where she was also denied the right to use her own language or follow her own culture.

10. My goals are to reunite my children as soon as possible and upgrade my education from that of grade 10 to grade 12 level.

11. My mother has disclosed to me that she suffered sexual and other abuse at Lebret and Muscowequan Indian Residential Schools as a very young girl.

12. I was unable to understand my mother when I was a child as I was unaware that my mother was abused. I learned about some of the abuse after my mother told me after her examination for discovery in her pending litigation claim, in approximately 2005.

13. I did not attend a residential school myself.

14. I do not have a strong connection to my aboriginal culture, including being able to speak my native tongue Cree.

15. I meet the definition of a family class member as advanced or to be advanced in this claim.

Overview of my Position

16. I believe that residential schools have had a devastating effect on Canada's aboriginal community. Those who attended the schools bore the brunt of the damage but the schools' impact has also been felt by the families of those survivors, including parents, spouses, children and grandchildren as well as by the wider aboriginal community.

17. I personally have felt the effects of my mother's residential school experience in many ways that I will describe in this affidavit. Like many other aboriginal Canadians, I have spent a large part of my life dealing with those effects and looking backwards at the pain and injury which the residential schools

4. I have two brothers from my mother and natural father and one sister as follows:

(a) Terrance Cyr;
(b) Robert Gambler;
(c) Sarah Gopher

5. I am a single parent and the mother of my children as follows:

(a) Jadau Cyr - DOB: December 25, 1999;
(b) Jacova Cyr - DOB: December 10, 2001;
(c) Jariah Cyr - DOB: July 16, 2003;
(d) Journey Cyr: DOB: June 6, 2006.

At present, my three oldest daughters are cared for by my mother, Brenda Cyr and I am caring for my youngest daughter.

6. I am in good health but I acknowledge that in the past I have had a serious drug and alcohol problem that I continue to deal with.

7. In 2005, I stopped consuming any alcohol or illicit drugs and I took counseling at "Maxie" (Métis Alcohol Counseling Centre in Regina).

8. My oldest daughter now suffers from fetal alcohol syndrome to a limited extent and my youngest daughter now has a very mild problem as a result of substance abuse by me during my pregnancy.

9. I am unemployed, reside on my own in Regina and I receive social assistance.

brothers have had serious substance abuse problems and difficulties in their lives in being stable and productive.

27. I am now a single mother of four young children. I am struggling to meet the day-to-day obligations of being a parent. However, I now know that my mother and I suffer from many of the same problems in parenting and I believe that many of these problems stem from my mother's attendance at Residential School. I am working as hard as I can to make sure that my children do not become part of yet another generation of aboriginal children that do not receive the love and attention they should.

28. My mother's Residential School experiences are tragic, and it saddens me to even think of them. Her devastating treatment while in Residential School has irreversibly damaged my mother, and contributed to a multi-generational loss to our family and to the aboriginal community generally.

29. I therefore believe that both my mother and I suffered harm as a result of the Residential School experience.

I am Prepared to Act as Representative Plaintiff of the Class

30. I am prepared to act as representative plaintiff of the Class, and, in particular, the Family Class in this proceeding. I will fairly and adequately represent the interests of the Class should this Court appoint me as representative plaintiff. I appreciate that my role is to protect the interests of the Class.

31. I believe that the Defendants have breached their obligations as set out in the Claim, and that the Class is entitled to some form of compensation or redress.

32. I understand that the major steps in a class action typically include: the issuance of the statement of claim (and amendments to it if required), and the provision of a defence; a motion for certification (including the exchange of supporting affidavits and cross-examinations as necessary); and, assuming the action is certified as a class proceeding, discoveries, a trial as required, and, potentially, appeals.

33. In this case, the parties have reached a settlement which they ask the Court to approve. I am now asking the Court to certify the action as a class proceeding by this motion for certification, and approve the settlement. I understand that if the Court certifies the action as a class proceeding, the certificate notice will be sent to Class Members who will be given the opportunity to opt out of the class action if they wish within a fixed period. The Class Members will also be given full particulars of the settlement, if approved.

34. Class Members will have the right to object to the proposed settlement, and if approved, those members who do not opt out will receive the benefits of the settlement agreement.

35. I also understand that, in agreeing to seek and accept an appointment as a representative plaintiff, it is my responsibility, among other things, to be familiar with this action, and to review the Claim and any further amendments, to assist in the preparation and execution of an affidavit such as this one in support of the motion for certification and settlement approval, to attend, if necessary, with Class Counsel for cross-examination on my affidavit, to attend, if necessary, with Class Counsel at the settlement approval hearing and give evidence regarding the case, to receive briefings from and to instruct Class Counsel, to seek the court's approval of agreements respecting Class Counsel's fees and disbursements and to communicate with Class Members as required.

I have Taken Steps to Carry out my Obligations as Representative Plaintiff:

36. To date, I have taken steps to fairly and adequately represent the Class Members, including instructing counsel to amend and continue the prosecution of a class proceeding, addressing legal fees with counsel, discussing with counsel the nature of the class actions, including the risks and costs of same, assisting in the amendment of the Claim, obtaining documents and other information at the request of counsel reviewing the litigation plan, meeting with counsel as required, and instructing counsel as necessary.

37. I have reviewed the Claim. I agree with the proposed definitions of the Classes and believe that they will allow individuals to determine whether they qualify as a Class member.

38. I have reviewed the common issues set out in the Claim. While I do not have legal expertise, I believe these issues would need to be addressed by virtually every individual Class Member if this matter did not proceed by way of a class action and that a resolution of the common issues would significantly advance this litigation.

39. I believe that a class action is the preferable procedure to resolve the common issues. The class action will provide access to justice for me and other Class Members. I am aware that many aboriginal persons live in remote communities, are not in a position to retain counsel due to geographic, logistic and financial reasons, suffer from psychological and emotional problems often as a result of their parent's Residential School experiences, and suffer from poverty and often from substance abuse. I believe that thousands of Residential School survivors and their families would not be able to advance their legal rights without these class actions.

40. I do not believe that I have any interest that is in conflict with the interest of any other Class Members. I believe that I can fairly and adequately represent the interests of the Class and, in particular, the Family Class and I am committed to fulfilling my responsibilities as a representative plaintiff.

The Proposed Settlement

41. The proposed settlement was reached through a long process of negotiation. The Honourable Frank Iacobucci, Q.C. was appointed in May 2005 as the Federal Representative responsible for convening and superintending multi-party settlement negotiations. Those negotiations were held in various cities across Canada over the summer and fall of 2005, with various stakeholders attending, including legal counsel as well as aboriginal representatives from the Assembly of First Nations, among others.

42. An agreement in principal was reached with that group on November 20, 2005, and a final settlement agreement was reached on May 10, 2006. That settlement agreement was subsequently approved by the federal cabinet, and now is put forward for approval by the various courts.

43. I have reviewed the settlement agreement approved by the Federal Cabinet, and I have discussed it with Class Counsel. I believe that this settlement package is beneficial to the Family Class Members.

44. The components of the settlement agreement which are beneficial to the Family Class members include the following:

(a) There is a payment of $125,000,000 to the Aboriginal Healing Foundation. That Foundation is focused exclusively on addressing the healing needs of aboriginal people affected by the residential schools legacy, including the intergenerational impacts. The

Foundation will use the funds to pay for community-based healing programs designed with a holistic approach. The Foundation's mandate is to fund projects which help communities knit together social, health and other programs into an accessible format to help address the many ways in which individuals have suffered as a result of the residential schools legacy (ie. substance abuse problems, ill health effects, social, behavioral and emotional problems, educational needs, difficulties obtaining employment, etc.).

The Foundation is national in scope and accepts applications from aboriginal individuals, groups and organizations throughout Canada. It has a specific mandate to address the intergenerational impact of the residential schools legacy and the funds being provided under the settlement provide a direct and accessible benefit to the Family Class members;

(b) An additional $20,000,000 has been allocated to fund community-based commemoration projects to acknowledge and remember how the residential schools policy has affected the Class. The purpose of commemoration is to honor and validate the healing and reconciliation of the Class through the creation of memorial structures, ceremonies and other projects;

(c) A Truth and Reconciliation Commission is established through funding of $60,000,000 to provide an open, safe and holistic environment for the Class and the community to come forward with their experiences, with a view to raising public awareness, facilitating healing and rebuilding in the communities and providing a record for future generations. Both the commemoration projects and the truth and reconciliation initiatives are the foundation of the

settlement package which are designed to ensure that the stories of Family Class Members can be told and remembered in future generations;

(d) A provision is made for surplus Common Experience Payment funds to be further disseminated to the Survivor Class by way of personal credits of up to $3,000, which are transferable to Family Class Members. If a surplus of more than $40 million remains from the $1.9 billion set aside for the Common Experience Payments to the Survivor Class, those further credits will be provided. Those personal credits, many of which will likely be designated for use by Family Class Members, can be used for educational services provided by approved educational entities. It is my belief that given the educational nature of the personal credits, there is a strong likelihood that many members of the Survivor Class will pass on those credits to members of the Family Class, if a surplus exists. Surplus funds not disseminated in this way will go to the Assembly of First Nations and Inuit organizations for educational initiatives as well; and

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

45. The residential schools legacy has affected the Family Class and the entire aboriginal community. The members of the Family Class face a lifetime of trying to adjust and adapt, and to reconcile the history of aboriginal mistreatment by Canada with a desire to build a proud and strong aboriginal community. I

therefore believe that the wider support which is offered by this settlement is essential.

46. As a Family Class member, I believe that the significant monetary commitment made to the aboriginal community as part of this settlement agreement will help in healing the breach between Canada and its First Nations, and help all First Nations people to move beyond the tragic legacy of residential schools.

47. I am satisfied with the settlement, and believe that it meets the needs of the Class members. I also believe that it is important for the settlement to be approved. Absent a settlement, I fear that litigation could be protracted, and more and more members of my community would die without seeing a resolution to this legacy.

SWORN BEFORE ME at the City of Regina, in the Province of Saskatchewan, this 31st day of July, 2006.

A Barrister and Solicitor duly entitled to practice law in the Province of Saskatchewan

Deanna Renee Cyr
Representative Plaintiff

This document prepared by:

Huck Birchard
Barristers and Solicitors
313, 2505 - 11th Avenue
Regina, SK S4P 0K6
Telephone: (306) 949-0950
Fax: (306) 949-0952

Court file no. 08-05-401 CVC

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

MICHELLINE AMMAQ, BLANDINA TULUGARJUK and NUNAVUT TUNNGAVIK INCORPORATED

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF MICHELLINE AMMAQ
SWORN THIS 17 DAY OF July, 2006

I, MICHELLINE AMMAQ, of the Hamlet of Igloolik, in the Territory of Nunavut, MAKE OATH AND STATE THAT:

1. I am one of the proposed representative plaintiffs in this putative class proceeding. I bring this action on my own behalf and on behalf of all Class Members, as described and defined in the Statement of Claim (the "Claim").

2. I was born on August 30th, 1957. I am an Inuk enrolled under the Nunavut Land Claims Agreement. I reside in the Territory of Nunavut.

3. I attended at the Joseph Bernier Hall Indian Residential School ("Residential School") in Chesterfield Inlet for 5 years, from 1964 to 1969.

Overview of My Position

4. As will be detailed below, I am one of the people who suffered directly from Canada's residential schools policy, as a person who actually attended Residential School. I know

first hand the damage this has done to me personally, and to the aboriginal community more generally. While the residential schools legacy has been recognized as a social problem, a political problem and a aboriginal problem (among others), it is my personal problem and my lived experience. I therefore think that it is important for me and other survivors to speak up and be heard: after a lifetime of shame, guilt, anger and fear, it is time to focus on reconciliation and rebuilding our communities. This settlement allows our community to move on, and I wholeheartedly endorse it.

My Experience as a Residential School Survivor

5. My experience at Residential School involved, but was not limited to, being removed from the care of my parents, family, and community, being actively discouraged from speaking my native language, being sexually and physically abused, and being given inadequate food, health care, and education.

6. I felt degraded and humiliated by my Residential School experience. I believe my Residential School experience has caused me lifelong harm and injury. Among other things, it has affected my ability to relate to other people, and my sense of self esteem and self worth.

I am prepared to act as representative plaintiff of the Class

My Obligations as Representative Plaintiff:

7. I am prepared to act as representative plaintiff of the Survivor Class in this proceeding. I will fairly and adequately represent the interests of the Class should this Court appoint me as representative plaintiff. I appreciate that my role is to protect the interests of the Class.

8. I believe that the Defendants have breached their obligations as set out in the Claim, and that the Survivor Class is entitled to compensation.

9. I understand that the major steps in a class action typically include: the issuance of the statement of claim (and amendments to it if required), and the provision of a defence; a

motion for certification (including the exchange of supporting affidavits and cross examinations as necessary); and, assuming the action is certified as a class proceeding, discoveries, a trial as required, and potentially appeals.

10. In this case, the parties have reached a settlement which they ask the court to approve. I am now asking the Court to certify the action as a class proceeding by this motion for certification, and approve the settlement. I understand that if the Court certifies the action as a class proceeding, the certification notice will be sent to Class Members who will be given the opportunity to opt out of the class action if they wish, within a fixed period. The Class Members will also be given full particulars of the settlement, if approved.

11. Class Members will have the right to object to the proposed settlement, and if approved, opt out. Those Class Members who do not opt out will receive the benefits of the settlement agreement.

12. I also understand that, in agreeing to seek and accept an appointment as a representative plaintiff, it is my responsibility, among other things, to be familiar with this action, and to review the Claim and any further amendments, to assist in the preparation and execution of an affidavit such as this one in support of the motion for certification and settlement approval, to attend, if necessary, with Class Counsel for cross examination on my affidavit, to attend, if necessary, with Class Counsel at the settlement approval hearing and give evidence regarding the case, to receive briefings from and to instruct Class Counsel, to seek the court's approval of agreements respecting Class Counsel's fees and disbursements and to communicate with Class Members as required.

I have Taken Steps to Carry out my Obligations as Representative Plaintiff:

13. To date, I have taken steps to fairly and adequately represent the Survivor Class Members, including instructing counsel to amend and continue a class proceeding, addressing legal fees with counsel, discussing with counsel the nature of these class actions, including the risks and costs of same, assisting in amending the Claim, obtaining documents and other information at the request of counsel, meeting with counsel as required, and instructing counsel as necessary.

14. I have reviewed the Claim. I agree with the proposed definitions of the Classes and believe that they will allow individuals to determine whether they qualify as Class Members.

15. I have reviewed the common issues set out in the Claim. While I do not have legal expertise, I believe these issues would need to be addressed by virtually every individual Class Member if this matter did not proceed by way of a class action and that a resolution of the common issues would significantly advance this litigation.

16. I believe that a class action is the preferable procedure to resolve the common issues. The class action will provide access to justice for me and other Class Members. I am aware that many aboriginal persons live in remote communities, are not in a position to retain counsel due to geographic, logistic and financial reasons, suffer from psychological and emotional problems often as a result of their experiences at residential schools, and suffer from poverty and often from substance abuse. I believe that thousands of survivors and their families would not be able to advance their legal rights without this class action.

17. I do not believe that I have any interest that is in conflict with the interest of any other Class Members. I believe that I can fairly and adequately represent the interests of the Survivor Class and I am committed to fulfilling my responsibilities as a representative plaintiff.

THE PROPOSED SETTLEMENT

18. The proposed settlement was reached through a long process of negotiation. The Honourable Frank Iacobucci, Q.C. was appointed in May 2005 as the Federal Representative responsible for convening and superintending multi-party settlement negotiations. Those negotiations were held in various cities across Canada over the summer and fall of 2005, with various stakeholders attending, including legal counsel as well as aboriginal representatives from the Assembly of First Nations, among others.

19. An agreement in principle was reached with that group on November 20, 2005, and a final settlement agreement was reached on May 10, 2006. That settlement agreement was

subsequently approved by the Federal Cabinet, and now is put forward for approval by the various courts.

20. I have reviewed the settlement agreement approved by the Federal Cabinet, and I have discussed it with Class Counsel. I believe that this settlement package is beneficial to the Survivor Class Members. It includes fair compensation for the Survivor Class. This includes monetary compensation based on length of attendance at residential school, through the common experience payment. It also provides an accessible method by which survivors can seek additional compensation for serious physical and/or sexual abuse. I have reviewed these aspects of the settlement and I believe that they fairly and adequately meet the needs of members of the survivor class.

21. The settlement includes a truth and reconciliation aspect, as well as a commemorative aspect, both of which are necessary to ensure that the issue of residential schools becomes a part of the public record in Canada, and that its legacy is never repeated. This settlement package also includes a significant amount of money to be put towards healing programs through the Aboriginal Healing Foundation.

22. I am satisfied with the settlement, and believe that it meets the needs of the Survivor Class members. I also believe that it is important for the settlement to be approved. Absent a settlement, I fear that litigation could be protracted, and more and more members of my community would die without seeing a resolution to this legacy. The claims process promises an efficient delivery of compensation, which is important to me and my community.

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

DECLARED WITH ME by means of Telephone at the Hamlet of Igloolik and in the city of Iqaluit, in the Territory of Nunavut on July 17, 2006 and subsequently signed by me.

Michelline Ammaq

A Notary Public, etc.

CANADA

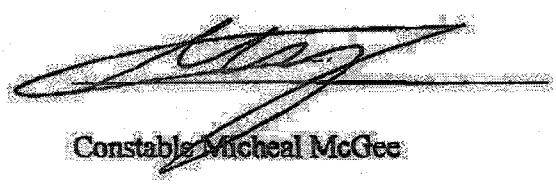
NUNAVUT

TO WIT;

I, Cons. Micheal McGee, of the Hamlet of Igloolik in Nunavut, a RCMP for Nunavut, SAY;

(a) I personally know Michelline Ammaq of the Hamlet of Igloolik in Nunavut, and

(b) I was personally present and did see the Affidavit executed by Michelline Ammaq in Igloolik in Nunavut on July 17, 2006.



Constable Micheal McGee

RCMP

Court file no. 08-05-401 CVC

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

MICHELLINE AMMAQ, BLANDINA TULUGARJUK and NUNAVUT TUNNGAVIK INCORPORATED

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF JANET BREWSTER

SWORN THIS 21 DAY OF July, 2006

I, JANET BREWSTER, of the City of Iqaluit, in the Territory of Nunavut, MAKE OATH AND STATE THAT:

1. I am one of the proposed representative plaintiffs in this putative class proceeding. I bring this action on my own behalf and on behalf of all Class Members, as described and defined in the proposed Amended Statement of Claim (the "Claim").

2. I was born on September 10, 1970. I am an Inuk enrolled under the Nunavut Land Claims Agreement. I reside in the Territory of Nunavut..

3. My mother attended at Akaitcho Hall Indian Residential School ("Residential School") in Yellowknife from 1964 to 1969. My stepfather, a Métis man, attended at Grollier Hall Residential School in Inuvik and the school in Fort Smith. I did not attend a residential school myself.

4. I meet the definition of a Family Class Member as set out in the Claim.

OVERVIEW OF MY POSITION

5. The damage done by Canada's residential schools policy has been devastating to the Inuit community. While the Survivor Class has borne the brunt of that pain, through the direct experiences at Residential School, that legacy has been passed on to children and grandchildren of Survivors and to the wider Inuit community.

6. As a Family Class Member, I have felt the effects of the pain and humiliation suffered by my mother, my stepfather, my grandmother and my grandfather in many ways. The multi-generational impacts of the residential schools policy are undeniable.

7. I believe it is important for all members of the Class, including the Family Class and the entire Inuit community, to seek some form of closure on this tragic part of our history. It is time for the individuals who have suffered to seek reconciliation and attempt to rebuild themselves and their communities. It is time to focus on the positive, and I believe that this settlement is an essential part of that process. I therefore fully support the proposed settlement.

MY EXPERIENCE AS A FAMILY MEMBER OF A RESIDENTIAL SCHOOL SURVIVOR

8. As a family member of a Residential School survivor, I have seen and experienced the ongoing effects of the Residential School experience. I believe that my mother and her siblings were abused at Residential School, and deprived of adequate food, health care, and education. Additionally, my mother and her siblings were prohibited from speaking our aboriginal language and practicing our aboriginal customs.

9. As a result of their time as Residential Schools, my parents had a difficult time supporting me in my educational, emotional and cultural growth. They faced complex challenges in supporting my educational growth because they both found it difficult to deal with teachers and to engage in activities like parent/teacher interviews.

10. My stepfather committed suicide in 2003.

11. My mother is a world-renowned interpreter and translator of English and Inuktitut. However, as a result of being discouraged from speaking her language in school, she stopped speaking Inuktitut to me when I reached school age.

12. My grandmother was a unilingual Inuk, speaking only Inuktitut. Since I did not and do not speak Inuktitut, I was rarely able to have a conversation with her without the aide of an interpreter. I know we both lost so much from not being able to speak the same language. It was difficult for me to learn from her and to bond with her when I was unable to understand her.

13. We have quite often cried out of frustration and deep sadness at our inability to speak to each other.

14. I have seen a letter that my grandfather wrote to Indian Affairs Canada complaining about the fact that two of his boys came home from All Saints Anglican School in Aklavik in 1957 unable to speak Inuktitut and that my grandmother and many other unilingual Inuit were having trouble communicating with their children.

15. I believe the Residential School experience affected my mother, stepfather aunts and uncles in that my they felt degraded and humiliated. I believe that the Residential School experience affected my parents ability to relate to other people, and in particular, negatively affected my relationship with my grandmother mother, stepfather, aunts and uncles.

16. As a result of his/her Residential School experience my parents found it difficult to express affection towards me, both verbally and physically. I believe our relationship was abnormally cold and distant because my parents did not experience a loving and expressive relationship from caregivers while attending Residential School.

17. From the time that I was a child, my parents have discouraged me from expressing emotions such as sadness or fear. If I came to them crying, they often reacted angrily or did little more than pat me on the back and tell me to "Stop crying and go wash my face." I have struggled not to become angry or unemotional when my older children cry and it

can be difficult for me to comfort them because I am sometimes torn between my natural urge to console them and the anxiety that I developed after being discouraged from seeking comfort from my parents. Many of my parenting skills have been developed through reading, observing and talking to other parents that I perceive as "normal." While my children are all healthy and happy and doing well in school and socially, I often feel that I lack adequate parenting skills and get filled with an overwhelming sense of disappointment in myself if they are unhappy or misbehaving.

18. The experiences of my mother, stepfather, aunts and uncles at Residential School are tragic, and it saddens me to even think of them. It is simply impossible to imagine that such devastating treatment would not have irreversibly damaged them for life, and thus contributed to a multi-generational loss to the Inuit community.

19. Accordingly, I believe thatboth my parents, grandparents, aunts, uncles and many Inuit others and I suffered harm as a result of the Residential School experience.

I AM PREPARED TO ACT AS REPRESENTATIVE PLAINTIFF OF THE CLASS

20. I am prepared to act as representative plaintiff of the Class, and in particular the Family Class in this proceeding. I will fairly and adequately represent the interests of the Class should this Court appoint me as representative plaintiff. I appreciate that my role is to protect the interests of the Class.

21. I believe that the Defendants have breached their obligations as set out in the Claim, and that the Class is entitled to some form compensation or redress.

22. I understand that the major steps in a class action typically include: the issuance of the statement of claim (and amendments to it if required), and the provision of a defence; a motion for certification (including the exchange of supporting affidavits and cross examinations as necessary); and, assuming the action is certified as a class proceeding, discoveries, a trial as required, and potentially appeals.

23. In this case, the parties have reached a settlement which they ask the Court to approve. I am now asking the Court to certify the action as a class proceeding by this motion for certification, and approve the settlement. I understand that if the Court certifies the action as a class proceeding, the certification notice will be sent to Class Members who will be given the opportunity to opt out of the class action if they wish within a fixed period. The Class Members will also be given full particulars of the settlement, if approved.

24. Class Members will have the right to object to the proposed settlement, and if approved those members who do not opt out will receive the benefits of the settlement agreement.

25. I also understand that, in agreeing to seek and accept an appointment as a representative plaintiff, it is my responsibility, among other things, to be familiar with this action, and to review the Claim and any further amendments, to assist in the preparation and execution of an affidavit such as this one in support of the motion for certification and settlement approval, to attend, if necessary, with Class Counsel for cross examination on my affidavit, to attend, if necessary, with Class Counsel at the settlement approval hearing and give evidence regarding the case, to receive briefings from and to instruct Class Counsel, to seek the court's approval of agreements respecting Class Counsel's fees and disbursements and to communicate with Class Members as required.

I have Taken Steps to Carry out my Obligations as Representative Plaintiff:

26. To date, I have taken steps to fairly and adequately represent the Class Members, including instructing counsel to amend and continue the prosecution of a class proceeding, addressing legal fees with counsel, discussing with counsel the nature of the class actions, including the risks and costs of same, assisting in the amendment of the Claim, obtaining documents and other information at the request of counsel reviewing the litigation plan, meeting with counsel as required, and instructing counsel as necessary.

27. I have reviewed the Claim. I agree with the proposed definitions of the Classes and believe that they will allow individuals to determine whether they qualify as a Class member.

28. I have reviewed the common issues set out in the Claim. While I do not have legal expertise, I believe these issues would need to be addressed by virtually every individual Class Member if this matter did not proceed by way of a class action and that a resolution of the common issues would significantly advance this litigation.

29. I believe that a class action is the preferable procedure to resolve the common issues. The class action will provide access to justice for me and other Class Members. I am aware that many Inuit live in remote communities, are not in a position to retain counsel due to geographic, logistic and financial reasons, suffer from psychological and emotional problems often as a result of their family member's Residential School experiences, and suffer from poverty and often from substance abuse. I believe that thousands of Residential School survivors and their families would not be able to advance their legal rights without these class actions.

30. I do not believe that I have any interest that is in conflict with the interest of any other Class Members. I believe that I can fairly and adequately represent the interests of the Class and in particular, the Family Class and I am committed to fulfilling my responsibilities as a representative plaintiff.

The Proposed Settlement

31. The proposed settlement was reached through a long process of negotiation. The Honourable Frank Iacobucci, Q.C. was appointed in May 2005 as the Federal Representative responsible for convening and superintending multi-party settlement negotiations. Those negotiations were held in various cities across Canada over the summer and fall of 2005, with various stakeholders attending, including legal counsel as well as aboriginal representatives from the Assembly of First Nations, Inuit and Inuvialuit representatives from Nunavut Tunngavik Incorporated, Inuvialuit Regional Corporation and Makivik Inc., among others.

32. An agreement in principle was reached with that group on November 20, 2005, and a final settlement agreement was reached on May 10, 2006. That settlement agreement was subsequently approved by the federal cabinet, and now is put forward for approval by the various courts.

33. I have reviewed the settlement agreement approved by the Federal Cabinet, and I have discussed it with Class Counsel. I believe that this settlement package is beneficial to the Family Class Members.

34. The components of the settlement agreement which are beneficial to the Family Class members include the following:

a. There is a payment of $125,000,000 to the Aboriginal Healing Foundation. That Foundation is focused exclusively on addressing the healing needs of aboriginal people affected by the residential schools legacy, including the intergenerational impacts. The Foundation will use the funds to pay for community based healing programs designed with a holistic approach. The Foundation's mandate is to fund projects which help communities knit together social, health and other programs into an accessible format to help address the many ways in which individuals have suffered as a result of the residential schools legacy (ie. substance abuse problems, ill health effects, social, behavioral and emotional problems, educational needs, difficulties obtaining employment, etc.)

b. The Foundation is national in scope and accepts applications from aboriginal individuals, groups and organizations throughout Canada. It has a specific mandate to address the intergenerational impact of the residential schools legacy and the funds being provided under the settlement provide a direct and accessible benefit to the Family Class members;

c. An additional $20,000,000 has been allocated to fund community based commemoration projects to acknowledge and remember how the residential schools policy has affected the Class. The purpose of commemoration is to

honour and validate the healing and reconciliation of the Class through the creation of memorial structures, ceremonies and other projects;

d. A Truth and Reconciliation Commission is established through funding of $60,000,000, to provide an open, safe and holistic environment for the Class and the community to come forward with their experiences, with a view to raising public awareness, facilitating healing and rebuilding in the communities and providing a record for future generations. Both the commemoration projects and the truth and reconciliation initiatives are the foundation of the settlement package which are designed to ensure that the stories of Family Class Members can be told and remembered in future generations;

e. A provision is made for surplus Common Experience Payment funds to be further disseminated to the Survivor Class by way of personal credits of up to $3000, which are transferable to Family Class Members. If a surplus of more than $40 million remains from the $1.9 billion set aside for the Common Experience Payments to the Survivor Class, those further credits will be provided. Those personal credits, many of which will likely be designated for use by Family Class Members, can be used for educational services provided by approved educational entities. It is my belief that given the educational nature of the personal credits, there is a strong likelihood that many members of the Survivor Class will pass on those credits to members of the Family Class, if a surplus exists. Surplus funds not disseminated in this way will go to the Assembly of First Nations and Inuit organizations for educational initiatives as well; and

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

35. The residential schools legacy has affected the Family Class and the entire Inuit community. The members of the Family Class face a lifetime of trying to adjust and adapt, and to reconcile the history of mistreatment by Canada with a desire to build a proud and strong community. I therefore believe that the wider support which is offered by this settlement is essential.

36. As a Family Class member, I believe that the significant monetary commitment made to the Inuit community as part of this settlement agreement will help in healing the breach between Canada and its Inuit, and help all Inuit to move beyond the tragic legacy of residential schools.

37. I am satisfied with the settlement, and believe that it meets the needs of the Class members. I also believe that it is important for the settlement to be approved. Absent a settlement, I fear that litigation could be protracted, and more and more members of my community would die without seeing a resolution to this legacy.

SWORN BEFORE ME at the City of)
in the Territory of 21st , this 21st day of)
July , 2006.)

A NOTARY PUBLIC in and for the)
Territory of)

Janet Brewster

00546

NO. L051875
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CAMBLE QUATELL, PEGGY GOOD, ADRIAN YELLOWKNEE, KENNETH SPARVIER, DENNIS SMOKEYDAY, RHONDA BUFFALO, MARIE GAGNON, SIMON SCIPIO, as representatives and claimants on behalf of themselves and all other individuals who attended Residential Schools in Canada, including but not limited to all Residential Schools' clients of the proposed Class Counsel, Merchant Law Group, as listed in part in Schedule 1 to this Claim, and the John and Jane Does named herein, and such further John and Jane Does and other individuals belonging to the proposed class, including 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, being a Jane and John Doe for each Canadian province and territory, and other John and Jane Does, Individuals, Estates, Next-of-Kin and Entities to be added

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

Proceeding under the *Class Proceedings Act*, R.S.B.C 1996, c. 50

AFFIDAVIT OF PAULINE JOAN MICHELL
SWORN THIS 1st DAY OF August, 2006

Kawaka Bar

I, Pauline Joan Michell, of the Village of ~~Sicka~~, in the Province of British Columbia, MAKE OATH AND STATE THAT:

1. I am one of the proposed representative plaintiffs in this putative class proceeding. I bring this action on my own behalf and on behalf of all Class Members, as described and defined in the proposed Amended Statement of Claim (the "Claim").

2. I was born on September 30, 1966. I am a member of the Kanaka Bar First Nation, in the province of British Columbia. I reside in the province of British Columbia.

3. My husband attended at the St. George's Indian Residential School ("Residential School") in Lytton, British Columbia from 1961 to 1969. In addition, my father, mother and eight of my brothers and sisters attended St. George's Indian Residential School in Lytton, British Columbia, from the 1940's through to 1970's. I did not attend a residential school myself.

4. My husband was a plaintiff in British Columbia Supreme Court Action No. C986621 which went to trial and wherein my husband was awarded damages for the abuse he suffered at St. George's residential school. I testified during the subject trial about the impact on our family of what happened to my husband at St. George's. My evidence at trial was accepted by the trial judge.

5. I meet the definition of a Family Class Member as set out in the Claim.

OVERVIEW OF MY POSITION

6. The damage done by Canada's residential schools policy has been devastating to the aboriginal community. While the Survivor Class has borne the brunt of that pain, through the direct experiences at Residential School, that legacy has been passed on to spouses, siblings, children and grandchildren of Survivors and to the wider aboriginal community.

7. As a Family Class Member, I have felt the effects of the pain and humiliation suffered by my husband, father, mother, brothers and sisters in many ways. The multi-generational impacts of the residential schools policy are undeniable.

8. I believe it is important for all members of the Class, including the Family Class and the entire aboriginal community, to seek some form of closure on this tragic part of our history. It is time for the individuals who have suffered to seek reconciliation and attempt to rebuild themselves and their communities. It is time to focus on the positive,

and I believe that this settlement is an essential part of that process. I therefore fully support the proposed settlement.

MY EXPERIENCE AS A FAMILY MEMBER OF A RESIDENTIAL SCHOOL SURVIVOR

9. As a spouse and family member of ten Residential School survivors, I have seen and experienced the ongoing effects of the Residential School experience. I believe that my husband, father, mother, brothers and sisters were abused at Residential School, and deprived of adequate food, health care, and education. Additionally, my husband, father, mother, brothers and sisters were prohibited from speaking our aboriginal language and practicing our aboriginal customs.

10. I believe the Residential School experience affected my husband, father, mother, brothers and sisters in that my husband, father, mother, brothers and sisters felt degraded and humiliated. I believe that the Residential School experience affected my husband's, father's, mother's, brothers' and sisters' ability to relate to other people, and in particular, negatively affected my relationship with my husband, father, mother, brothers and sisters.

11. As a result of their Residential School experience, my husband, father, mother, brothers and sisters have found it difficult to express affection towards me, both verbally and physically. I believe our relationship was abnormally cold and distant because my husband, father, mother, brothers and sisters did not experience a loving and expressive relationship from caregivers while attending Residential School.

12. The experiences of my husband, father, mother, brothers and sisters at Residential School are tragic, and it saddens me to even think of them. It is simply impossible to imagine that such devastating treatment would not have irreversibly damaged my husband, father, mother, brothers and sisters for life, and thus contributed to a multi-generational loss to the aboriginal community.

13. Accordingly, I believe that my husband, father, mother, brothers and sisters and I suffered harm as a result of the Residential School experience.

I AM PREPARED TO ACT AS REPRESENTATIVE PLAINTIFF OF THE FAMILY CLASS

14. I am prepared to act as representative plaintiff of the Family Class, and in particular the Family Class in this proceeding. I will fairly and adequately represent the interests of the Family Class should this Court appoint me as representative plaintiff. I appreciate that my role is to protect the interests of the Family Class.

15. I believe that the Defendants have breached their obligations as set out in the Claim, and that the Family Class is entitled to some form compensation or redress.

16. I understand that the major steps in a class action typically include: the issuance of the statement of claim (and amendments to it if required), and the provision of a defence; a motion for certification (including the exchange of supporting affidavits and cross examinations as necessary); and, assuming the action is certified as a class proceeding, discoveries, a trial as required, and potentially appeals.

17. In this case, the parties have reached a settlement which they ask the Court to approve. I am now asking the Court to certify the action as a class proceeding by this motion for certification, and approve the settlement. I understand that if the Court certifies the action as a class proceeding, the certification notice will be sent to Class Members who will be given the opportunity to opt out of the class action if they wish within a fixed period. The Class Members will also be given full particulars of the settlement, if approved.

18. Class Members will have the right to object to the proposed settlement, and if approved those members who do not opt out will receive the benefits of the settlement agreement.

19. I also understand that, in agreeing to seek and accept an appointment as a representative plaintiff, it is my responsibility, among other things, to be familiar with this action, and to review the Claim and any further amendments, to assist in the preparation and execution of an affidavit such as this one in support of the motion for certification and settlement approval, to attend, if necessary, with Class Counsel for cross examination on my affidavit, to attend, if necessary, with Class Counsel at the settlement approval hearing

and give evidence regarding the case, to receive briefings from and to instruct Class Counsel, to seek the court's approval of agreements respecting Class Counsel's fees and disbursements and to communicate with Class Members as required.

I have Taken Steps to Carry out my Obligations as Representative Plaintiff:

20. To date, I have taken steps to fairly and adequately represent the Class Members, including instructing counsel to amend and continue the prosecution of a class proceeding, addressing legal fees with counsel, discussing with counsel the nature of the class actions, including the risks and costs of same, assisting in the amendment of the Claim, obtaining documents and other information at the request of counsel reviewing the litigation plan, meeting with counsel as required, and instructing counsel as necessary.

21. I have reviewed the Claim. I agree with the proposed definitions of the Classes and believe that they will allow individuals to determine whether they qualify as a Class member.

22. I have reviewed the common issues set out in the Claim. While I do not have legal expertise, I believe these issues would need to be addressed by virtually every individual Class Member if this matter did not proceed by way of a class action and that a resolution of the common issues would significantly advance this litigation.

23. I believe that a class action is the preferable procedure to resolve the common issues. The class action will provide access to justice for me and other Class Members. I am aware that many aboriginal persons live in remote communities, are not in a position to retain counsel due to geographic, logistic and financial reasons, suffer from psychological and emotional problems often as a result of their husband, father, mother, brothers and sisters Residential School experiences, and suffer from poverty and often from substance abuse. I believe that thousands of Residential School survivors and their families would not be able to advance their legal rights without these class actions.

24. I do not believe that I have any interest that is in conflict with the interest of any other Class Members. I believe that I can fairly and adequately represent the interests of the Class and in particular, the Family Class and I am committed to fulfilling my responsibilities as a representative plaintiff.

THE PROPOSED SETTLEMENT

25. The proposed settlement was reached through a long process of negotiation. The Honourable Frank Iacobucci, Q.C. was appointed in May 2005 as the Federal Representative responsible for convening and superintending multi-party settlement negotiations. Those negotiations were held in various cities across Canada over the summer and fall of 2005, with various stakeholders attending, including legal counsel as well as aboriginal representatives from the Assembly of First Nations, among others.

26. An agreement in principle was reached with that group on November 20, 2005, and a final settlement agreement was reached on May 10, 2006. That settlement agreement was subsequently approved by the federal cabinet, and now is put forward for approval by the various courts.

27. I have reviewed the settlement agreement approved by the Federal Cabinet, and I have discussed it with Class Counsel. I believe that this settlement package is beneficial to the Family Class Members.

28. The components of the settlement agreement which are beneficial to the Family Class members include the following:

(a) There is a payment of $125,000,000 to the Aboriginal Healing Foundation. That Foundation is focused exclusively on addressing the healing needs of aboriginal people affected by the residential schools legacy, including the intergenerational impacts. The Foundation will use the funds to pay for community based healing programs designed with a holistic approach. The Foundation's mandate is to fund projects which help communities knit together social, health and other programs

into an accessible format to help address the many ways in which individuals have suffered as a result of the residential schools legacy (ie. substance abuse problems, ill health effects, social, behavioral and emotional problems, educational needs, difficulties obtaining employment, etc.)

The Foundation is national in scope and accepts applications from aboriginal individuals, groups and organizations throughout Canada. It has a specific mandate to address the intergenerational impact of the residential schools legacy and the funds being provided under the settlement provide a direct and accessible benefit to the Family Class members;

(b) An additional $20,000,000 has been allocated to fund community based commemoration projects to acknowledge and remember how the residential schools policy has affected the Class. The purpose of commemoration is to honour and validate the healing and reconciliation of the Class through the creation of memorial structures, ceremonies and other projects;

(c) A Truth and Reconciliation Commission is established through funding of $60,000,000, to provide an open, safe and holistic environment for the Class and the community to come forward with their experiences, with a view to raising public awareness, facilitating healing and rebuilding in the communities and providing a record for future generations. Both the commemoration projects and the truth and reconciliation initiatives are the foundation of the settlement package which are designed to ensure that the stories of Family Class Members can be told and remembered in future generations;

(d) A provision is made for surplus Common Experience Payment funds to be further disseminated to the Survivor Class by way of personal credits of up to $3000, which are transferable to Family Class Members. If a surplus of more than $40 million remains from the $1.9 billion set aside for the Common Experience Payments to the Survivor Class, those further credits will be provided. Those personal credits, many of which will likely be designated for use by Family Class Members, can be used for educational services provided by approved educational

entities. It is my belief that given the educational nature of the personal credits, there is a strong likelihood that many members of the Survivor Class will pass on those credits to members of the Family Class, if a surplus exists. Surplus funds not disseminated in this way will go to the Assembly of First Nations and Inuit organizations for educational initiatives as well; and

(e) In addition to the foregoing, the various church entities that are parties to the Settlement Agreement will provide up to $102.8 million, through cash and in-kind services to develop new programs designed to assist with healing and reconciliation for the Family Class members and their communities.

29. The residential schools legacy has affected the Family Class and the entire aboriginal community. The members of the Family Class face a lifetime of trying to adjust and adapt, and to reconcile the history of aboriginal mistreatment by Canada with a desire to build a proud and strong aboriginal community. I therefore believe that the wider support which is offered by this settlement is essential.

30. As a Family Class member, I believe that the significant monetary commitment made to the aboriginal community as part of this settlement agreement will help in healing the breach between Canada and its First Nations, and help all First Nations people to move beyond the tragic legacy of residential schools.

31. I am satisfied with the settlement, and believe that it meets the needs of the Class members. I also believe that it is important for the settlement to be approved. Absent a settlement, I fear that litigation could be protracted, and more and more members of my community would die without seeing a resolution to this legacy.

SWORN BEFORE ME at the Village of)
Masaka Bay, in the Province of)
British Columbia, this 1st day of)
August, 2006.)
)
)
)

Pauline Joan Michell

A Commissioner for taking Affidavits
within British Columbia

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)

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